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CLIMATE

Connecting Climate Change and the Law

March 18, 2024

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Greenwashing Beef Production

On February 28, New York State Attorney General (NYAG) Letitia James **filed a lawsuit** with the New York Supreme Court **against meat processing company JBS USA** for misleading the public about its environmental impact. According to James, the company claimed that it would achieve net zero emissions by 2040 – via a full-page advertisement in *The New York Times* and on the company's website – despite having plans to expand production and consequently increase its carbon footprint. JBS USA is the U.S. subsidiary of Brazil-based JBS Foods, the world's largest producer of beef products. Beef production has a significant impact on the environment **according to WWF**, and requires considerable amounts of water and energy, as well as land, which often includes some of the most important ecosystems in the world such as the Brazilian Amazon, and the savannahs of Southern Africa. It is estimated that approximately 25% of global land use, land-use change and forestry emissions can be attributed to beef production. In 2021, JBS's parent company reported total GHG emissions in excess of 71 million tons. Other allegedly misleading environmental statements made by JBS include: *"Agriculture can be part of the climate solution. Bacon, chicken wings, and steak with net zero emissions. It's possible"; "We will cut our own emissions by 30% in 2030 and eliminate Amazon deforestation from our supply chain within five years";* and *"JBS will achieve net zero greenhouse gas emissions, reducing its direct and indirect emissions and offsetting all residual emissions."* In June 2023, **JBS was warned** by BBB National Programs' National Advertising Division (NAD) to discontinue its 'net zero emissions by 2040' claims, but the New York State NYAG's office states that the claim was still on JBS's website as of February 2024. Shortly before the lawsuit was announced, on February 23, JBS announced that its planned listing of JBS S.A., the Brazilian parent company on the New York Stock Exchange, will be delayed, citing the need to allow investors more time to vote.

The NYAG is seeking disgorgement of "ill-gotten" profits, the payment of $5,000 penalties per violation, a third-party audit of the company's compliance with New York's consumer protection statutes, and for the company to refrain from making misleading environmental statements. The JBS lawsuit is not the NYAG's first greenwashing action. In November 2023, PepsiCo was sued for plastic pollution along the Buffalo River, allegedly contaminating the water and harming wildlife.

UK Chancellor Confirms Regulation of Ratings Providers and Commits Record Budget to Renewable Power

This week's big news in the UK was the Chancellor's Spring Budget, under which Prime Minister Rishi Sunak's government confirmed that the Financial Conduct Authority (FCA) would regulate ESG ratings providers. The FCA's current code of conduct for those companies is voluntary but on March 6, 2024, HM Treasury confirmed that a consultation response and legislative timeline would follow the Budget announcement later this year. In October 2022, **we highlighted** that the ambiguity around ESG data and scores created confusion and uncertainty, and globally, regulators appear to be acting. In December 2023, the European Council and Parliament **adopted plans** to regulate ESG ratings providers. Significantly, the Chancellor also **confirmed a budget** of over £1 billion allocated to its latest round of auctions for "contracts for difference” (CfDs). The auction round will award CfDs to renewable energy developers, allocating £800 million to offshore wind, £120 million to “established technologies such as onshore wind and solar, and £105 million to “emerging technologies” such as floating offshore wind.

The Chancellor also extended the “windfall tax” on oil and gas profits by one year until 2028-29 noting that “gas prices are forecast to remain abnormally high” until then. The windfall tax is the energy profits levy.

Zombie Wells

ClientEarth is supporting a group of Colorado property owners in a lawsuit against fossil fuel companies who, it is alleged, have left millions of wells unplugged that **continue to emit methane**. According to ClientEarth, these so-called zombie wells emit methane at 100 times the rate of oil and gas wells that have been plugged. The group further estimates that in 2021, abandoned wells released more than 295,000 tons of methane into the atmosphere, the equivalent of the annual carbon emissions of 1.8 million cars. Methane pollution from zombie wells is claimed to be linked to serious health issues and premature deaths of people in the area. ClientEarth reports that through various transactions, ownership of the wells on the properties of the claimants in the case were transferred from oil and gas majors such as Chevron (via Noble) to other fossil fuel companies, through to smaller private companies that subsequently went bankrupt. The objective of the lawsuit is to place responsibility back up this chain with solvent companies which will then need to bear the costs associated with clean-up. This follows ClientEarth’s other litigation, such as its **May 2023 complaint** against Cargill, one of the world’s largest soy and grain traders with the Organization for Economic Cooperation and Development (OECD) over **alleged deforestation and related human rights issues** in Brazil in violation of the OECD Guidelines for Multinational Enterprises. The organization and others also **sued French food-products company Danone** in 2023 under France’s Corporate Duty of Vigilance Law. ClientEarth argued that Danone must develop an adequate plan to reduce its production of single-use plastic, including social and environmental due diligence measures across the company’s entire supply chain.

Morningstar Analysis on Voting Trends of Asset Managers

A report published in February 2024 by Morningstar has shown the differing approaches taken by U.S. asset managers when voting on ESG issues. The study looks at the voting policies of the top 10 largest asset managers, including BlackRock, Capital Group, Invesco, Vanguard, State Street and JP Morgan and the policies of five European managers, and five sustainability-focused managers. Each manager’s policy wording was categorised either as: **supportive**, where the wording requires or strongly encourages disclosure of risks and opportunities on the topic in question; or **neutral**, where the language indicated reliance on management discretion, voting on a case by case basis; or **unsupportive**, where the language indicated that it is unlikely to support proposals requiring disclosure. European and sustainability-focused managers were found to generally use supportive language across all topics. However, U.S. asset managers appeared to use supportive language only on two environmental and social topics: those requesting core climate-related disclosures (e.g. Scopes 1 and 2 emissions and TCFD-aligned reporting); and those related to workforce management, safety and working conditions. Voting policy wording in respect of Scope 3 emissions disclosures was unsupportive or neutral, which is a trend among regulators and companies alike, as we discussed in last week's edition. The report also noted that neutral language often translated to low support due to the inherent discretion being applied conservatively, and tended to be more prevalent on social issues than environmental ones. But this does not mean that supportive policy language necessarily means high levels of support for ESG issues because some managers still frequently rejected proposals they perceived as overly prescriptive or duplicative.

The departures of JP Morgan Asset Management and State Street from the Climate Action 100+ initiative, and BlackRock's scaled-back participation as discussed in our February 28 edition, have not translated through to changes in voting policy on ESG issues, further discrediting the theory that their support of ESG initiatives is waning. The report notes that this development rather reflects the existing direction of travel of those firms' stewardship engagements, as Invesco – the latest asset manager to leave Climate Action 100+ – explains (see below).

Climate Action Group Sees Further Member Exists

In our February 28 edition, we discussed the departure of two major asset managers, JP Morgan Asset Management (JPMAM) and State Street Global Advisers from Climate Action 100+. This week, Invesco, also in the world's top 10 U.S. asset managers, announced that it had decided to leave the climate group. In a statement, Invesco noted that its withdrawal was due to its belief that clients would be better served through its own stakeholder engagement approach, with a similar reason being cited by JPMAM. Climate Action 100+ promotes taking necessary action on climate change and encourages companies to align their strategies with net zero. Founded in 2017, it included around 700 investors representing more than $68 trillion in AUM. However, growing political anti-ESG sentiment has made the initiative a target; in March 2023, 21 Republican Attorneys General **wrote a letter** to over 50 U.S. asset managers raising various concerns over their ESG practices, including membership of organizations like Climate Action 100+. The letter also included reference to membership of other organizations, including the Net Zero Asset Managers Initiative (NZAM), which has itself experienced high profile exits. In December 2022, **Vanguard announced its withdrawal from NZAM**. The issues facing Climate Action 100+ and NZAM mirror the difficulties faced by the Glasgow Financial Alliance for Net Zero, which in November 2022 dropped its connection to the UN-supported Race to Zero campaign after **several large U.S. banks threatened to withdraw** over concerns about ESG backlash and potential antitrust implications associated with such commitments. Between March and April 2023, **three major insurance companies exited** the Net-Zero Insurance Alliance, with Munich Re, one of the three departures, citing "material antitrust risks" as its reason for withdrawing.

In response to Invesco's exit, Climate Action 100+ also noted: *"Importantly, all participating investors are independent fiduciaries responsible for their own investment and voting decisions, and they agree to always act independently in setting strategies, policies and practices and deciding whether and how to engage with focus companies based on their own understanding of their best interests. It is also a matter for individual signatories to make their own decisions regarding ongoing participation in the initiative."*

EU focus on restoring nature

Although the European Council failed to approve the Corporate Sustainability Due Diligence Directive **as we discussed in a previous edition**, it was not an entirely unsuccessful week for European legislators. Members of the European Parliament voted in favour of the Nature Restoration Law that will require Member States to restore at least 30% of habitats in poor condition by 2030, 60% by 2040, and 90% by 2050. The final form of the law includes emergency provisions that allow a Member State to suspend improvement targets in exceptional circumstances where, for example, the land is required for food production. The law faced threats of opposition from right-wing politicians but was eventually adopted with 329 votes in favour, 275 against and 24 abstentions.

Around the Globe

From 2025, **Singapore will enforce** mandatory climate-related disclosures in line with the International Sustainability Standards Board's rules that focus on financial materiality. Scope 3 emissions reporting will begin for listed companies in 2026, with assurance for Scopes 1 and 2 emissions disclosures to commence the following year. Japan contributed to the Amazon Fund, which aims to tackle deforestation. Japan's $2.7 million donation makes it the first Asian country to contribute. China hopes that its new disclosure regime, introduced by its major stock exchanges in February 2024, will bring the country into line with European and global standards. The rules will apply to over 500 listed companies, and reports have to be published by 2026. In 2022, China was the biggest emitter of carbon dioxide emissions, accounting for nearly 31% of global emissions.