

ClientEarth disputes UK's court's dismissal of Shell climate lawsuit

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In the March edition of The Word, we reported on ClientEarth's lawsuit against Shell's board of directors, and considered the potential consequences for businesses and insurers.

On the 12th May, ClientEarth suffered a significant setback as a UK High Court judge ruled that the claim may not proceed with the court ruled that the claim did not disclose a prima facie case, as required under s.261(2)(a) Companies Act 2006.

According to Justice Trower, Shell's directors' duty to consider climate risks was misconceived by ClientEarth. Moreover, the duties under the Companies Act 2006:

'[do not] impose specific obligations on the director as to how the management of Shell's business and affairs should be conducted'.

Although ClientEarth's actions may have achieved the aim of drawing attention to Shell's strategy, it failed to satisfy the court that Shell's directors had breached their duty to manage climate risks. Further, the court added that:

'[there is no] universally accepted methodology as to the means by which Shell might be able to achieve the targeted reductions [to emissions]...this means that it is very difficult to treat what is said as providing a proper evidential basis for alleging that no reasonable board of directors could properly conclude that the pathway to achievement is the one they have adopted.'

The court held that ClientEarth had failed to provide sufficient evidence that the directors' alleged actions constituted an approach that no reasonable director could have adopted. ClientEarth was left *'disappointed'* by the High Court's initial decision.

However, on 19 May ClientEarth was granted an oral hearing in which the judge will be asked to reconsider their decision.

Considerations

If judges allow the derivative action to proceed, the risk of further such claims to other businesses will likely increase, becoming a cause of potential concern for insurers. As such, insurers should keep up to date with these proceedings.

Whilst the final outcome of this dispute remains unknown, considering the thorough nature of Justice Trower's judgment and the strong majority investor support for Shell's transition strategy, ClientEarth faces significant obstacles.

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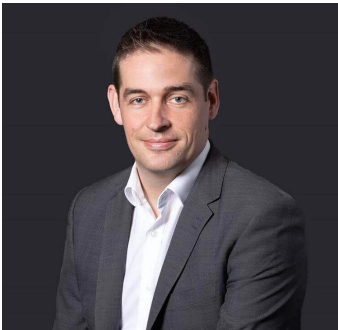
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