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Climate change, climate litigation, and liability insurance: a Swiss assessment

Mike Abegg and **Loris Urwyler** of **Prager Dreifuss** analyse climate litigation and liability insurance in Switzerland, highlighting key cases, procedural hurdles, and potential exposure for companies and executives

Switzerland is severely affected by climate change

According to the Swiss Federal Office of Meteorology and Climatology (MeteoSwiss), temperatures in Switzerland have increased twice as much over the past 150 years when compared with the global average.

Key drivers of Switzerland's temperature rise are human-induced greenhouse gas emissions (particularly CO_2) and the reduction of snow and ice cover. The latter leads to greater absorption of solar radiation by the earth's surface.

Switzerland's geography also plays a role: it consists mainly of land masses, which, unlike water masses, cannot store heat as effectively. Consequently, more energy is available to warm the air. This has also led to increasingly extreme weather patterns. For instance, MeteoSwiss reported that heavy rainfall events have become 26% more frequent and 12% more intense since 1901.

The fight against climate change is carried out differently

It is obvious that action must be taken to combat climate change. Therefore, pressure is exercised at various levels:

- Scientific pressure – scientists continuously collect data and issue warnings about anticipated environmental disruptions and potential damage.

Mike Abegg
Counsel
Prager Dreifuss
E: mike.abegg@prager-dreifuss.com

Mike is a member of the dispute resolution and insurance & reinsurance teams. He was admitted to the Swiss Bar in 2015. In addition, he has a doctorate in liability insurance law and an LLM degree from the Law School of Boston University. He advises and represents Swiss and foreign clients in court and enforcement proceedings and deals with national and international insurance cases.

Loris Urwyler
Trainee
Prager Dreifuss
E: loris.urwyler@prager-dreifuss.com

Loris works as a trainee in the Zurich office of Prager Dreifuss, with a focus on insurance and reinsurance. During his studies, he worked as junior legal counsel and secretary to the board of directors at a leading Swiss consulting firm in the medtech sector.

- Regulatory pressure – under **the Paris Agreement**, Switzerland has pledged to cut its greenhouse gas emissions by 50% by 2030 compared with 1990 levels. As a consequence, new regulations have been enacted in Switzerland. The Swiss Climate and Innovation Act sets out the goals of Swiss climate policy until 2050. In particular, Switzerland aims to be climate-neutral by 2050. Likewise, the revised **Swiss Federal Act on the Reduction of CO_2 Emissions** mandates a 50% reduction on greenhouse gas emissions by 2030 compared with the 1990 levels. Both regulations entered into force on January 1 2025.
- Media pressure – news outlets consistently highlight the escalating consequences of climate change. For instance, in 2025, the Swiss mountain village of Blatten was buried under a rockslide – an event widely linked in national and international reports to the changing climate.
- Economic pressure – investors and wealth managers increasingly channel funds towards sustainable investments, excluding from climate-conscious portfolios companies that fail to meet environmental standards.
- Social pressure – climate activists employ disruptive tactics – such as occupying panel discussions, blocking roads, or halting air traffic – to draw public and political attention to the crisis.
- Legal pressure – around the world, alleged climate offenders are being taken to court. Columbia Law School's **Climate Litigation Database** already records more than 4,000 climate-related cases globally.

Climate lawsuits are based on different claims

In 2024, the European Court of Human Rights (ECtHR) upheld a complaint against Switzerland filed by the association Verein KlimaSeniorinnen Schweiz, registered under Swiss law, along with four Swiss nationals. In **its judgment**, the ECtHR found, among other things, that Switzerland had violated Article 8 (right to private and family life) of **the European Convention on Human Rights** because the state's measures to reduce greenhouse gas emissions were deemed to be insufficient.

This landmark ruling was the first time the ECtHR recognised that inadequate government action on climate protection could constitute a violation of human rights. The Committee of Ministers of the Council of Europe is monitoring Switzerland's efforts to comply with the ECtHR's judgment.

More recently, however, climate litigation has expanded beyond cases against states. Increasingly, companies and their executives are finding themselves the target of such lawsuits – a development that forms the focus of this article. The examples of climate lawsuits outlined below are intended to illustrate this evolving dynamic.

International climate litigation

Climate litigation against companies often seeks restraining measures, such as orders requiring the reduction of CO_2 emissions.

In the Netherlands, for example, environmental organisations have demanded that the oil and gas company Shell cut its emissions by 45% by 2030 compared with 2019 levels. The court of first instance granted the claim, reasoning that Shell had a human rights-based obligation to reduce its CO_2 emissions. However, the appellate court overturned this decision, holding that there was neither a statutory duty to reduce emissions nor that such a duty arose from general tort law provisions under Dutch law. The case is pending before the Supreme Court of the Netherlands – the same court that had held the Dutch state liable in 2019 for failing to sufficiently reduce greenhouse gas emissions.

The latest claim against Shell seeks to compel the company to stop investing in new oil and gas fields – again a clear example of a demand to compel a defendant to desist from its current damaging activity.

In Germany, car manufacturers have become the target of climate litigants. Directors of the German association Deutsche Umwelthilfe demand that BMW and Mercedes cease selling new combustion engine vehicles. The directors argued that such climate-damaging activities violate their personality rights. Lower courts dismissed both cases. The suits are pending before the Federal Court.

Similarly, Greenpeace directors sued Volkswagen to halt combustion car production from 2030, but courts have also rejected this claim. Unlike in the BMW and Mercedes proceedings, the plaintiffs did not appeal, rendering the VW decision final.

However, climate lawsuits do not only seek judgments compelling defendants to

desist their climate-damaging operations: recently, a Peruvian farmer demanded in Germany that the energy company RWE bear the costs – in proportion to RWE's share of global greenhouse gas emissions – of appropriate measures to protect his property from glacial flooding. Payment of the costs for measures already taken was also sought. In May 2025, the lawsuit was dismissed on appeal after previously being rejected by the lower court. The judgment is final.

Another notable example is the case of Misti Leon, who is suing manufacturers, distributors, and sellers of fossil fuels in the US under product liability and public nuisance theories for the death of her mother during the Pacific Northwest heat dome event in 2021.

Ms Leon claims compensatory damages and equitable relief, arguing that the defendants had long known about the climate-harming effects of fossil fuels but misled the public, concealed the associated risks, and delayed mitigation efforts regarding climate change. She alleges that this conduct was causally linked to her mother's death from hyperthermia – a dangerous rise in body temperature above approximately 40°C (104°F) that can cause vital bodily functions to fail. The court has not yet ruled on the merits of this case.

In England, a Shell shareholder sued the members of Shell's board of directors. The plaintiff accused the board of directors of failing to comply with the Paris Agreement. Therefore, the plaintiff sought:

- A declaratory judgment that the board of directors had breached its duties; and
- An order requiring the board of directors to develop and implement a revised strategy for managing and controlling climate risks.

However, this lawsuit was also unsuccessful due to a lack of evidence of a breach of duty by the board of directors.

Climate litigation in Switzerland

A climate lawsuit has also been filed in Switzerland. Four Indonesian citizens living on the island of Pari in the Java Sea claim that the cement company Holcim has violated their personality rights and caused them loss of income in the areas of fishing, mechanics, and tourism, as well as property damage (e.g., damage to houses, boats, work equipment, fish farming enclosures) as a result of climate change.

According to the plaintiffs, rising sea levels are causing increasingly frequent flooding on Pari Island. Consequently, their health, physical and mental well-being, and economic livelihood have been adversely affected. The plaintiffs also report suffering from severe anxiety and distress. Since Holcim allegedly emits excessive amounts of CO_2 and thereby contributes to climate change, the company, they argue, bears partial responsibility for these impacts.

The plaintiffs therefore demand that Holcim:

- Reduce its CO_2 emissions;
- Pay damages and compensation for pain and suffering; and
- Contribute financially to flood protection measures (such as the construction of wave breaker systems and the planting of mangroves) to better protect the island against storm surges and erosion.

On December 17 2025, the Cantonal Court of Zug ruled to admit the plaintiffs' action, essentially for the following reasons:

- The court had jurisdiction to hear this international dispute.
- A legitimate legal interest for all of the plaintiffs' demands existed (standing).
- The request requiring a reduction of CO_2 emissions was sufficiently specific. Holcim can clearly identify what it must defend itself against, and the court could unambiguously determine the subject matter in dispute.

This decision is a preliminary procedural ruling. A decision on the merits has not yet been rendered, meaning that substantive legal questions of liability – such as causation and fault – remain entirely open. Nevertheless, several noteworthy aspects emerge from the court's reasoning, which extends over more than 50 pages:

- Since the parties referred to Swiss law, an implicit choice of law in favour of Swiss law was made (consideration 2.2).
- The plaintiffs' alleged impairments affect the scope of protection of their personality rights. If their statements were accepted as true, climate change would have an impact on their physical integrity and personal freedom (consideration 3.6.2.2).
- Corporate greenhouse gas emissions undisputably contribute to climate change (consideration 3.6.2.2).
- The lawsuit against Holcim is civil in nature, as it concerns the application of civil law provisions on the protection of personality rights in the context of climate change and does not seek to establish public law climate protection measures. The latter does not fall within the jurisdiction of the courts. Climate protection measures are only legally relevant if they have actually been enacted (consideration 3.7.1).
- Under Swiss law, the relationship between fundamental and human rights and private law matters is dealt with by means of the theory of third-party effect. While a direct third-party effect of fundamental rights between private individuals is rightly rejected in legal doctrine and case law, an indirect third-party effect, requiring the consideration of fundamental rights in the interpretation and application of private law, is recognised in various constellations. Although the right to life and the right to respect for private and family life have not yet been invoked in Switzerland in the sense of an indirect third-party effect, it cannot be ruled out that this might occur for the first time in connection with a climate-related legal dispute. Fundamental rights could be taken into account, particularly in the interpretation of the protection of personality rights (consideration 3.7.2).
- The lawsuit against Holcim differs from the actions brought against BMW and Mercedes. In those cases, the plaintiffs did not assert impairments that had already been suffered or were imminent but rather those expected to occur in the future (consideration 5.5.4).
- The coexistence of private and public interests in the *Holcim* case does not mean that the plaintiffs lack a need for legal protection due to the absence of a personal interest. In other words, the plaintiffs' impairment caused by climate change is not negated by the possibility that the rights of an indefinite number of other individuals – for instance, other residents of Pari Island or similar islands – might also be affected (consideration 5.5.5).
- Significant differences exist in the contributions to global warming. Approximately 70% of CO_2 emissions are attributable to the activities of a group of around 90 companies worldwide, the so-called carbon majors. This narrows the circle of potential

defendants. Therefore, civil liability for climate change cannot be dismissed from the outset on the ground that it might lead to "lawsuits against everyone" (consideration 5.5.6).

- The fact that a company is not solely responsible for climate change and that reducing greenhouse gases by a single player may not have an immediate noticeable impact on global climate does not absolve Holcim from its individual responsibility to contribute to the fight against climate change wherever possible (consideration 5.7.1).

According to a Swiss press report, Holcim has appealed the court's procedural ruling. Considering the possible appeals and their duration concerning the admissibility issue alone, it may take a few years before Swiss courts address the substantive issue of liability and render a final, binding judgment on the merits.

Greenwashing litigation

In Switzerland, companies or executives may face greenwashing lawsuits for unfair advertising if they inaccurately describe their products or services as CO_2-neutral or even climate-neutral. Those who use such terms must be able to account for each description, as CO_2-neutral and climate-neutral carry distinct meanings.

On January 1 2025, a new provision in **the Federal Act on Unfair Competition** entered into force in Switzerland. Under this law, a person acts unfairly and may be held liable under civil and/or criminal law if they "make claims about themselves, their goods, works or services relating to the environmental impact that they cause that cannot be substantiated on the basis of objective and verifiable criteria".

A greenwashing lawsuit on this legal basis can affect companies of all types and sizes – from start-ups and SMEs to large corporations. Misleading statements on a company's website, in verbal communication, or in visual materials may all constitute sufficient grounds for legal action.

It is worth noting that since 1966, Switzerland's advertising industry has maintained a neutral, independent body for alternative dispute resolution: the Swiss Commission for Fairness (SLK). As a private organisation, the SLK does not issue legally binding and enforceable decisions but instead makes recommendations. In most cases, the parties concerned comply voluntarily. Any individual may file a complaint with the SLK regarding commercial communication they consider unfair.

For instance, in 2023, the SLK advised FIFA, football's world governing body, to cease claiming that the 2022 World Cup in Qatar was climate-neutral, as FIFA had failed to provide adequate evidence supporting its environmental claims. According to the SLK, strict standards must apply when verifying the accuracy of environmental statements.

Chances of success in Switzerland?

Today, litigants bringing climate lawsuits against companies or executives before Swiss courts under Swiss law have an uphill battle. The burden of proof that the requirements for the claims asserted are met usually lies with the plaintiffs and frequently proves too difficult.

It is important to keep in mind that producing cement or extracting oil is not illegal. Moreover, there exists a significant social demand for many products whose production, extraction, or use results in CO_2 emissions.

With regard to claims demanding CO_2 reduction, Swiss law in any event lacks a strict statutory prohibition on emitting CO_2 above a certain level.

In terms of claims for damages and compensation, the liability requirement of a causal link between the damaging event (CO_2 emissions) and the damage suffered (property damage, loss of earnings, emotional distress) is already problematic. The question arises as to whether a company's CO_2 emissions are not too remote from the damage to be considered a link in the causal chain that could give rise to liability.

Moreover, it is questionable whether the plaintiffs can prove that the extreme weather event that caused the damage was directly attributable to the defendant's CO_2 emissions. This hurdle is high, because extreme weather events have always existed (even before humans were able to emit large amounts of CO_2).

Scientific reports are generally suitable for substantiating causal relationships and can therefore be used to support the criterion of causality. However, it is questionable whether general studies claiming that CO_2 emissions are responsible for weather events can be used as proof of causality in a legal sense.

Recently, for example, Yann Quilcaille et al published the study "**Systematic attribution of heatwaves to the emissions of carbon majors**" in the journal *Nature*. It quantified the statistical contribution of emissions from large companies to 213 heatwaves. Nevertheless, it could not establish a direct causal link between specific emissions from an individual company and a concrete damage or damaging event in the sense typically required in court proceedings.

With regard to the *Holcim* case, the study is of no direct relevance, as it analyses heatwaves exclusively and not flooding events or personality rights of a specific individual. Furthermore, Yann Quilcaille et al admit in their study the following: "Extending the attribution from physical hazards to societal impacts remains a challenge." This study, therefore, also does not provide a sufficient basis for establishing a violation of personality rights. Apart from that, courts outside Switzerland have already dismissed climate lawsuits due to the lack of a causal link and due to the lack of a violation of the plaintiffs' personality.

In contrast, greenwashing lawsuits have significant potential in Switzerland. In addition to potential contractual complaints, the group of people entitled to file such lawsuits is broad, considering the possibility to file a complaint with the SLK. In addition, it can be difficult for defendants to prove that the sustainability promise made is correct. It should therefore be clarified in advance whether the products or their consumption can be described as CO_2-neutral or even climate-neutral.

Liability insurance

Due to climate change, insurers are exposed to ever-increasing risks. Over the past 30 years, insured losses resulting from extreme weather events have shot up. Now, in addition, the question arises as to whether companies or executives are insured against climate lawsuits. However, the attempt to shift liability for climate litigation to insurers may meet significant hurdles for the following reasons:

- Concept of liability insurance – liability insurance is a type of asset insurance, meaning the insured interest is the insured person's financial assets against

third-party liability claims. Claims for CO_2 reduction, omission, removal, and declaratory actions do not constitute liability claims and are therefore usually not covered by liability insurance, unless otherwise specified in the insurance contract. Furthermore, in most cases, these legal claims have no impact on the insured's assets if they would be upheld by a court. The same applies to SLK proceedings, the judgments of which do not establish a legally enforceable liability.

- Case law – liability insurance deals with the issue of covering claims for (i) damages and (ii) compensation against the insured, and, if agreed, (iii) for defence costs of the insured. If the insured has not been legally ordered to pay damages or compensation – which is likely, given the difficulties that climate litigants are facing under Swiss law (see section 5 above) – the insured is not entitled to compensation from the insurer. Reason: according to the Swiss Federal Supreme Court, in liability insurance the insured's claim for indemnification of third-party liability losses arises, subject to certain exceptions, from the day on which the insured person's liability is ascertained by a court.
- Risk description – liability insurance companies are only required to provide coverage if all elements of the risk description are met and if no exclusions apply.
- No coverage under environmental insurance contracts – environmental liability and environmental damage insurance products cover damage and costs arising from unforeseen accidents; for example, in connection with spills at oil storage facilities. By contrast, the continuous emission of CO_2 cannot be regarded as an accident or an unforeseeable event.
- The insured's behaviour – the insurance company is entitled to reduce the compensation or to refuse it altogether if the policyholder violates statutory or contractual provisions, duties of care, or so-called obligations.
- Exclusions – although traditional insurance products, as far as can be seen, do not contain any explicit exclusions for climate lawsuits or for damages and personal injuries caused by the insured through CO_2 emissions, environmental exclusions can be very broadly defined in individual cases and thereby exclude a climate lawsuit. In addition, it is customary in the market that obligations of a penal or quasi-penal nature – such as fines or penalties – are not insured. In the case of greenwashing claims, it should also be noted that the general terms and conditions of insurance may stipulate that no coverage is provided for claims related to unfair competition.
- Burden of proof – the insured bears the burden of proof for the facts that establish coverage.

In light of the above, climate offenders cannot assume that insurers will cover all climate-related claims.

Prager Dreifuss has a wealth of experience in dealing with complex aspects of insurance litigation. Do not hesitate to contact the authors should you have questions regarding climate liability issues or insurance matters at large.