

Climate Litigation

As a working party we are working through how to best support the profession in understanding the impact of climate change on reserves. Any and all feedback you have after implementing the material below will be well received.

This is a non-peer reviewed paper issued by working party members to promote ideas and stimulate discussion amongst reserving actuaries and other interested readers. We would like to encourage readers to test out the ideas set out in this paper and provide feedback to the working party on their experiences.

This work comprises the thoughts of individual working party members and does not necessarily reflect the views of all working party members. Nor does it reflect the position of the IFoA, nor the employers of the authors. Readers choosing to apply approaches and ideas set out in this paper do so at their own risk. The authors, working party and IFoA do not accept any responsibility for any loss suffered by any party arising from reliance placed on this paper.

The working party is currently tracking three significant pieces of climate litigation that, while they do not directly affect insurers, present them with significant risks. We therefore believe that it is important for reserving actuaries to be familiar with the key facts of each:

- City and County of Honolulu vs. Sunoco LP et al.
- Luciano Lliuya vs. RWE AG
- ENEA vs. former directors of ENEA

This is not an exhaustive list of cases, and the comments below should not be taken as legal advice or a substitute for any research that you may need to carry out. It is not intended to update this document for developments in subsequent any of these cases. A discussion of insurance litigation associated with these and other cases will be presented by the working party at the GIRO Conference 2024 and not in this paper.

1. City and County of Honolulu vs. Sunoco LP et al.

[City & County of Honolulu v. Sunoco LP - Climate Change Litigation](#)

This is a complex case brought by Honolulu against Sunoco LP and a number of other major oil companies.

Compensation is sought for past damage and future mitigation actions required by the claimants as a result of rising sea levels.

The allegations are that, despite having carried out research demonstrating the damaging effects of greenhouse gas (GHG) emissions, the defendants acted to mislead the public as to these effects, encourage greater use of carbon-based technologies and reduced investment in alternative energy sources.

Defendants have sought on a number of occasions to have the case heard in US federal rather than state courts. They see these as providing a better forum with which to defend claims.

In 2023, a ruling by the Hawaii Supreme Court stated that the case was to be held in state courts. In early 2024, the defendants sought a ruling from the US Supreme Court that the case should be heard in federal courts. At the time of writing, no ruling by the US Supreme Court ruling has been published.

2. Luciano Lliuya vs. RWE AG

[Luciano Lliuya v. RWE AG - Climate Change Litigation](#)

This case was brought by Peruvian farmer Saúl Luciano Lliuya against RWE AG, Germany's largest electricity producer. The allegation is that RWE's GHG emissions have contributed to climate change and that this has caused the melting of a glacier above Snr Lliuya's home town of Huaraz. As a result, Snr Lliuya has been or will be forced to incur substantial costs to mitigate the threat of increased glacial meltwater.

The claim is for RWE's share of these mitigation costs. The share (at 0.47%) has been determined as RWE's historical share of GHG emissions as presented in scientific studies¹.

There are a number of interesting elements to this case:

- The claim that RWE bears a share of liability despite the proportion of historical GHG emissions for which it is responsible being very small.
- That the studies determining historical GHG emissions can be relied upon for this purpose.
- That the claim for damages arising in Peru can be brought in a German Court.

Expert and oral evidence was expected to take place during 2024, however we have not located any reporting at this stage.

¹ For example: Tracing anthropogenic CO₂ and methane emissions to fossil fuel and cement producers, 1854-2010 – Supplementary Materials (Richard Heede, November 2013)

Other cases with similar/related issues include:

[Hugues Falys, FIAN, Greenpeace, Ligue des droits humains v. TotalEnergies \(The Farmer Case\) - Climate Change Litigation](#) where litigation has been brought by a Belgian farmer and others against a multinational (Total) to force them to reduce their emissions. We note that this ruling has been sought even though, on its own, such a reduction is unlikely to bring about a sufficient level of global GHG emissions to limit global warming effects.

[KlimaSeniorinnen v Switzerland \(ECtHR\) - Climate Change Litigation](#) where the European Court of Human Rights found that the Swiss Government's climate policies were inadequate to meet its share of preventing global temperature increases. Again, it appears that the Court made this ruling even though the actions of the Swiss Government alone would seem to be unable to significantly reduce global warming.

3. Enea vs. former directors of Enea

[Polish energy giant sues former directors and insurer over failed coal power plant investment | ClientEarth](#)

[ClientEarth v. Enea - Climate Change Litigation](#)

In this 2024 case, Polish energy giant Enea, is suing its former directors and insurers for their alleged lack of due diligence in a coal power plant investment. The allegation is that this caused a loss to the company of over \$160 million.

Underlying this case is an earlier case in which NGO ClientEarth sued Enea in 2018 for breaching their fiduciary duties in embarking on a new coal-fired power plant. This earlier case successfully argued that rising carbon prices under the EU carbon trading scheme meant that the new power plant was not financially viable. As a result of this litigation, the project was cancelled by Enea, with substantial sums of investment proving unrecoverable.

Under the new case, Enea is seeking damages from those of its former directors who had voted in favour of the failed investment.