Managing the risk of climate litigation with strategic PR — the power of openness and transparency

In an era of rising environmental awareness and concern, businesses across the globe are facing a new breed of risk: climate and environmental litigation. Governments and private sector entities alike are increasingly being challenged in courtrooms by litigants concerned with tackling the urgent climate crisis and holding business to account.

In fact, the recent UN *Global Climate Litigation Report 2023* found that the total number of climate change court cases has more than doubled since 2017. The threat of action is a prediction come true for many legal watchers who envisioned the trend in this space being upward. The pressure is not just from external groups — we have also seen a *significant rise* in institutional investors using their equity ownership to try to influence the management and environmental decision-making of a company.

The recent decision of the UK High Court to *reject ClientEarth's claim that Shell directors had breached their duties by not taking sufficient action by way of* *climate risk management* may potentially have dulled the knife of many 'shareholder activists'. However, it is premature to describe this as a death knell for climate litigation, and fallout from the decision could instead become a battle cry for the next wave of actions.

Often in these types of cases there is focus on an alleged failure to live up to a core responsibility and suspected bad practice. For instance, in early August, it was announced that *six British water companies were facing lawsuits valued at over £800 million* brought against them on behalf of millions of customers partly due to allegedly under-reporting sewage discharges. A common feature in such cases is the David v Goliath factor – big business being taken on by motivated groups which are coming out swinging and who fancy their odds.

Another factor fuelling this rise in litigation, is the fact that *funding climate-related cases is becoming an increasingly popular financial product for investors*. For those seeking a 'sustainable' asset class unaffected by upheavals in the financial market, investing in a portfolio of climate litigation cases can be an attractive prospect. This access to finance can be of critical importance by helping to cover the costs of legal representation and the intensive evidence gathering needed in complex cases of this kind.

As the legal landscape evolves in this space – the ESG push has seen law firms grow advisory teams as well as ESG litigation practices – business leaders are finding the need to adopt a proactive approach to mitigate these risks.

Building trust through transparency

There is much anxiety among business leaders of both SMEs and major large-cap corporations about how to talk about ESG without strolling into the crosshairs of attack. Getting it right is key, but not always easy. To complicate matters further, there are growing voices in the mainstream media at odds with what it sees as an over-the-top pursuit of ESG and Net Zero strategies in business and politics.

One of the key issues is transparency.

Over-stated claims in any part of business should be avoided, for obvious reasons. The trend in climate litigation is to take corporations to task for failed promises or over-stated claims. *Nike has been accused of greenwashing* in a claim which alleges a range it has branded as sustainable is nothing of the sort.

As with Shell, this is an incredibly high-profile example. But it serves to underline that claims must have substance – words are important. Communications around ESG aspirations must therefore be open and honest and routed in reality. Falling into the trap of overstating aims and ambitions can be costly. Companies must first be honest with themselves. When stakeholders perceive honesty and openness, they are more likely to trust a company's intentions and initiatives, reducing the inclination to pursue redress.

When complaints and concerns are raised, listening to and addressing issues head-on can be critical in defusing potential litigation triggers. It may be worth proactively engaging with environmental advocacy groups in a private forum to understand their viewpoint better and create a fantastic opportunity to incorporate constructive feedback into your wider sustainability strategy.

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Even with the best prevention efforts, there is always a possibility of climate litigation being brought against a firm — especially for larger brands which have the potential to generate a lot of media attention and form a strong example case for activists across the globe.

If not properly managed, these cases can have a stark impact on business operations. For instance, it can impact talent acquisition and the viewpoint, even morale, of current staff. They are also likely to lead to reduced investor confidence and increase uncertainty.

It is important that the C-Suite, alongside its Corporate Affairs communications function, is prepared to address any launching of legal proceedings openly and promptly, with clear communication around your understanding of the issues and your intentions of engaging constructively in the process.

The nature of our media landscape is such that these cases often attract a lot of media coverage which only further amplifies the negative narrative surrounding the company. Reporting should always be balanced but this guidance should not be relied upon – it serves no one to leave an information vacuum.

Honesty is the best policy

Ultimately, it is important to note that climate litigation is not inherently negative. In some cases, these types of legal action can help drive positive change within a company and wider industry. However, business leaders need to be proactive in managing the reputational risks of these cases and address the concerns raised by activists constructively.

While many of these cases involve well-known brands and larger public companies, it is only a matter of time before others fall under the spotlight and larger SMEs should consider planning and preparation.

The ESG eco-system is one full of challengers keen to tear down those misleading and hiding away from their responsibility. At a time when silence on sustainability speaks volumes, open, honest and clear communication about your journey towards net-zero is the best approach.

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