Stay Current

PAUL HASTINGS

August 2025

Follow us on LinkedIn

Regulatory Update

RWE Case Establishes Legal Precedent for Corporate Climate Accountability Worldwide

By Ruth Knox, Matthew Ivor-Jones and Raphaël Saint George

A recent ruling by the Higher Regional Court of Hamm dismissed a plaintiff's individual claim for climate damages but established a legal precedent with significant implications for energy companies operating in Germany: Under German civil law, major corporate greenhouse gas (GHG) emitters can be held liable for their proportional contribution to climate-related harms.

In its final judgment in *Luciano Lliuya v. RWE AG*, the court acknowledged that although Peruvian plaintiff Saúl Luciano Lliuya could not prove a sufficiently imminent threat of glacial lake flooding to his property in the city of Huaraz (a requirement under § 1004 of the German Civil Code), his legal theory was both plausible and legally admissible. The court found that, had he been able to establish a higher probability of risk to his property, RWE could have been held liable for its historical emissions, estimated at 0.38% of global industrial GHGs since the Industrial Revolution, based on the "Heede Study" (Heede (2014), Carbon Majors: Accounting for carbon and methane emissions 1854 – 2010)

Most notably for energy producers, the court held that lawful conduct (e.g., operating under state-issued permits or compliance with the EU Emissions Trading System requirements, as was the case with RWE in this case) does not protect a company from liability if climate-related harm results. The ruling also dismissed traditional corporate defenses that have historically shielded oil and gas companies from climate liability. Specifically:

- The court rejected the "drop in the ocean" argument, holding that relative contribution matters more than absolute share. Even a 0.38% emissions share can be significant if it compares materially to that of other emitters. (p.35)
- Attribution science was accepted as a valid evidentiary tool. The court affirmed that climate science can be used to establish causal links between a specific company's emissions and concrete climate-related risks. This is a monumental development for the use of attribution science in global climate litigation.
- Parent companies may be held liable for emissions from their subsidiaries. RWE's attempt to shift responsibility to its operating companies was dismissed. (p.31)
- Foreseeability of harm was dated back to at least the 1960s. The court found that companies of RWE's size and sophistication should have been aware of the environmental consequences of GHG emissions following the Keeling Curve publication in 1958. (p. 34) However, the Senate held that the plaintiff could only justify attribution based on the portion of the defendant's emissions that occurred after 15 July 2004.

- The court confirmed that geographical distance is legally irrelevant. A company can be held liable in Germany for damages occurring abroad, even if thousands of kilometers separate the emitter and the affected party. (p.52)

- The court also held that companies must "continuously monitor the progress of scientific and technological developments in the relevant field".

Although Lliuya's claim was dismissed due to insufficient risk of imminent harm (the court estimated the likelihood of glacial lake flooding affecting his property within 30 years at only 1%), the ruling establishes that under German law, private parties can bring forward climate-related property claims based on historic emissions, with no requirement that the harm occur within Germany. The court also noted that "a causation rate of the defendant once established could not be assumed to remain constant in the future. Rather, this quota is constantly changing and would have to be adjusted accordingly". This ruling has significant implications for oil and gas companies with operations or registered entities in Germany, or those subject to German jurisdiction via supply chains or corporate structure.

✧ ✧ ✧

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

London

Ruth Knox
+44-20-3321-1085
ruthknox@paulhastings.com

Matthew Ivor-Jones
+44-20-3023-5250
matthewivor-jones@paulhastings.com

Paris

Raphaël Saint George
+33-1-42-99-04-72
raphaelsaintgeorge@paulhastings.com