INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 1 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 1 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-1-of-2026/)

Publisher

Prasanna S,

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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by
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EXPLORING THE SIGNIFICANCE OF DUTY OF CARE IN CORPORATE CLIMATE LITIGATION

AUTHOR - SIKHA GEORGE SOHAN, STUDENT AT CHRIST (DEEMED TO BE UNIVERSITY)

BEST CITATION – SIKHA GEORGE SOHAN, EXPLORING THE SIGNIFICANCE OF DUTY OF CARE IN CORPORATE CLIMATE LITIGATION, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 6 (1) OF 2026, PG.1031-1044, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI - https://doi.org/10.65393/XUMU2820

ABSTRACT

This research explores the transforming role of the concept of Duty of Care in the space of Corporate Climate litigation and its governance. This change is primarily centred around the recognition of a significant gap in the understanding of fiduciary duties which have been historically centred around shareholder value, with a causal neglect of environmental considerations. The recognition is after an inquiry into the effects of climate change related risks on climate litigation and governance frameworks in different jurisdictions.

The paper's aim is to explore the duty of directors to include climate related risks into their duties; identify and analyse the key climate litigation cases and examine the legal frameworks and approaches within different jurisdictions, including across the European Union, the United Kingdom, the United States, and India. The paper will investigate exceptional cases such as Milieudefensie v. Royal Dutch Shell and ClientEarth v. Shell, which are pioneering litigation cases which can establish corporate liability for harming climate as well as environmental degradation associated with climate action. The cases also open up potential for derivative actions to be taken against corporate directors. Furthermore, this study focuses on the implications of litigation on boards, and significance of associated climate risk assessments in corporate risk management, responsibilities of Board members in climate related disclosures, adapting business models to address climate risks and addressing governance based on the rights of shareholders and stakeholders.

In terms of the methodology, the study employs a doctrinal analysis of statutory and regulatory provisions and case law, corporate governance codes and standards, and international and domestic regulatory frameworks, along with comparative explorations of the legal frameworks and practices of corporate accountability for climate in the difference jurisdictions. This paper is an important scholarly and practitioner contribution to the literature on corporate climate governance by bridging gaps in our understanding of the legal, strategic and operational dimensions of climate related corporate duties.

KEYWORDS- Milieudefensie v. Royal Dutch Shell, ClientEarth v. Shell, stakeholders, corporate accountability, corporate climate governance

INTRODUCTION

Climate change is now positioned as perhaps the foremost challenge of the twenty-first century, and it presents serious environmental and social challenges while also having significant financial and operational consequences for companies.[2280] Corporate governance-by which we mean directors' legal and fiduciary duties-has traditionally centered

[2280] Filipe Duarte Santos, Paulo Lopes Ferreira & Jiesper Strandsbjerg Tristan Pedersen, *The Climate Change Challenge: A Review of the Barriers and Solutions to Deliver a Paris Solution*, 10 Climate 75 (2022), https://doi.org/10.3390/cli10050075

on shareholder value maximization with an emphasis on financial performance and risk management as well as conventional business strategy. [2281]The various duties that directors owe to shareholders, pursuant to long-standing principles like the Caremark doctrine and the business judgment rule, have typically involved only oversight of business and regulatory compliance, while straying too far into concerns about the environmental and societal repercussions of business activities. [2282]

As climate change is increasingly viewed as a legitimate financial and operational risk, it has contributed to a shift in general corporate governance thinking**.** Physical risk, such as hurricanes, floods, and variations in climate change are becoming more and more influencing corporate performance, supply chains, and competitiveness in the market, as well as transitional risks, such as the transition to a low-carbon economy in the world**.** Climate considerations are no longer an afterthought for corporate directors**.** Environmental climate has now come to the forefront of the concept of governance, which means directors need to consider climate in their strategic processes, risk assessment and mitigation, disclosure, and stakeholder management.

This change in course is evident in the increasing acceptance by courts, regulators, and financial institutions that climate-related risks may have a significant impact on long-run corporate sustainability and financial performance. [2283]Cases like Milieudefensie v. ClientEarth v. Royal Dutch Shell and derivative proceedings like that. Shell demonstrate how accountability of corporates towards climate action can be developed, because the directors and officers will need to take into consideration a number of climate risk factors in strategic planning, risk management and disclosure.[2284] These judicial developments illustrate a change in corporate governance from an ethical or voluntary approach to climate issues, to climate change as a business risk that may have enforceable legal consequences.

International advances in climate governance ranging from the European Union's Corporate Sustainability Reporting Directive, United Kingdom's legal duties under Companies Act 2006 and India's environmental and corporate law framework confirms that climate related factors are integrated into decision making in the corporate structure. [2285]The various emerging concepts with respect to climate change, comparative legal frameworks, help assess implications for corporate boards addressing climate risks in practice.

1. THE HISTORY OF THE DUTY OF CARE IN CORPORATE CLIMATE LAWSUIT

1.1. Conceptual Foundation of Duty of Care

Duty of care is a corpus of corporate governance that compelled directors to take reasonable care and diligence as per the notion of stewardship that has traditionally been patterned to control the operation of the business, risk management and making to attain the maximization of the shareholder value. [2286]But as now the issue of climate change is very clearly a tangible financial threat, these dear old principles must now be redefined. The physical and transitional risks activated by the climate change could significantly hurt the corporate operation, supply chains, and market positions.[2287] Physical risks would be those related to impacts that can be directly seen due to extreme weather conditions and rising sea-levels, as well as variations in climatic patterns. Although transitional risks occur because of the shift of society to low-carbon economy- regulatory

[2281] Kayode Akinsola, *The Evolving Role of Corporate Governance in Shaping Business Practices and Legal Accountability in the 21st Century* (Jan. 28, 2025), https://ssrn.com/abstract=5115523 or http://dx.doi.org/10.2139/ssrn.5115523

[2282] Gregory A. Markel, Daphne Morduchowitz & Matthew C. Catalano, *A Director's Duty of Oversight after* Marchand *in "Caremark" Case*, Harv. L. Sch. F. on Corp. Governance (Jan. 23, 2022)

[2283] Hans De Wulf, *The Failed Derivative Action by ClientEarth Against Shell's Directors: Minority Shareholders Should Not Try to Determine a Corporation's Climate Change Strategy Through the Courts*, Fin. L. Inst., Working Paper No. 2023-10 (2023)

[2284] *Id,4*

[2285] Umakanth Varottil, *The Role of Corporate Governance in Addressing Climate Change: The Case of India*, 2 U.S.-Asia L. Inst. E.-W. Stud. 3 (2022)

[2286] Rabinda Bhandari, *Corporate Governance: A Conceptual Guideline*, (2018).

[2287] *Id,7*

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

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change, change in market and reputational factors.

These risks are becoming more apparent, and those are easy to measure, hence judges and regulators are beginning to take notice of them and make them reasonable variables that directors are obliged to incorporate to meet their fiduciary obligation. The paradigm shift of climate change quota as an ethical problem to the perception as an actual business risk is a paradigm shift in corporate governance. This trend has been manifested by increasing acceptance by financial institutions, regulators and courts that climate risks can have a potent impact on corporate financial performance and long-term sustainability. Task Force on Climate related financial Disclosures (TCFD) has played a leading role in this transformation since by providing a framework through which companies can disclose, evaluate, and detect financial risks and opportunities associated with climate change.[2288]

The Duty of care is a principle at the heart of corporate governance, which obliges directors to exercise appropriate skill, reasonable care and diligence in their role as stewards, which has conventionally extended to overseeing the business operations, risk management and making strategic decisions in the context of maximizing shareholder value. [2289]

Climate change provokes both physical and transitional risks which can have a material effect on corporate operations, supply chains and market positions. Physical risks refer to the impacts which can be directly perceived due to extreme weather conditions, rise in sea level and alteration in climatic patterns.[2290]While transitional risks arise due to society's transition to a low-carbon economy - including regulatory change, a changing market, and reputational factors.[2291] However, climate change becoming an unmistakable material financial risk, establishes the need to reinterpret these principles.

The change in paradigm of climate change as an ethical concern into a reality of a business risk can be seen in the increased recognition of the long-term effect of climate risks on the business financial performance and long-term viability of corporations by financial institutions,regulators, and courts.[2292] Task Force on Climate-related Financial Disclosures (TCFD) has also been a strong propeller of this trend by providing a framework for companies to disclose, measure, and determine climate-related financial risks and opportunities.[2293]

Corporate directors can no longer brush climate change aside as outside the jurisdiction of their fiduciary responsibilities. Rather, it will be necessary to establish evidence of considerations of climate risks and opportunities in their strategy, risk management and disclosure practices.

1.2 The Tortious Duty of Care

The Duty of Care principle is a cornerstone of Tort law which imposes legal obligation on individuals and corporations to undertake a certain degree of care to avoid a risk of harm that are unreasonable and foreseeable.[2294] The duty stands as a prerequisite to identify and establish negligence. A standard negligence claim incorporates four essential elements to be demonstrated by plaintiff[2295]

1. The defendant owed a duty of care to the Plaintiff
2. Breach of duty of care by the defendant
3. The Plaintiff suffered cognisable injury or damage

[2288] Lihuan Zhou & Paul Smith, *Physically Fit? How Financial Institutions Can Better Disclose Climate-Related Physical Risks in Line with the Recommendations of the TCFD* (World Res. Inst. 2022)

[2289] Brighton Murisa Mupangavanhu, *Directors' Standards of Care, Skill, Diligence, and the Business Judgment Rule in View of South Africa's Companies Act 71 of 2008: Future Implications for Corporate Governance* (2016)

[2290] E. Di Febo, *Transition Risk in Climate Change: A Literature Review*, 13 Risks 66 (2025), https://doi.org/10.3390/risks13040066

[2291] Leo E. Strine, Jr., Corporate Governance and Climate Change: The Emerging Duty of Care, 98 Tex. L. Rev. 1053, 1065–75 (2020).

[2292] *Id,12*

[2293] Task Force on Climate-related Financial Disclosures (TCFD), Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures 1–38 (2017), https://www.fsb-tcfd.org/publications/final-recommendations-report/.

[2294] *Id,14*

[2295] Beate Sjåfjell, Sustainable Corporate Governance and the EU, 21 EUR. BUS. ORG. L. REV. 619 (2020)

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4. The injury or damage was caused directly by the breach of duty of the defendant.

A landmark case that illustrates the principle is Palsgraf v. LIRA Company.[2296] The case revolved around the question whether a watchful eye of an ordinary person could have seen the risk of harm. The gist of the legal principle is that a negligence claim is not valid unless it involves the violation of a legally protected interest or infringement of a right.[2297]

The traditional principle is gradually being applied to climate change nowadays. The tort of negligence has, until now, been based on a direct and foreseeable connection between a particular action and a localized injury. The relationship is based on a linear correlation between the two variables. The use of the legal principle for climate, related risks shows that the courts have started to reconceptualize what 'foreseeable' and 'reasonable' mean in this context.

Implementing this age-old doctrine regarding climate change is a significant change in the legal paradigm. Traditionally, the tort of negligence has been based on a linear and foreseeable relationship between direct actions and a specific and direct localized injury. Climate change is a non-linear, collective, and temporally spaced issue resulting from the aggregative actions of many parties.[2298] The simple fact that this legal principle is now being applied to climate lawsuits against companies indicates that courts have reconceptualized what is 'foreseeable' and 'unreasonable' risk. [2299]

As climate risks become increasingly important to business operations and to directors' regulatory considerations, they are now being viewed as a necessary part of directors' oversight duties. Similarly, the business judgment rule, which protects directors from liability in their good faith decisions, is now being reconsidered to include consideration of climate impacts in corporations.This application changes a defendants liability paradigm from the liability for a specific act or a single injury to the synchronized action of multiple parties forming an international crisis. Crude and simply mechanical application of a traditional doctrine is not sufficient to ensure legal accountability for a social problem.[2300]

1.3 Current Principles and Integration of Corporate Law.

The analysis of duty of care as extended to consider climatic issues is based on the available principles of corporate law instead of a development of new legal doctrines. In Delaware corporate law, for instance, the Caremark doctrine commands directors to put in place and monitor information and reporting systems reasonably designed to provide accurate information on the corporation's operational viability, compliance with the law, and financial performance.

Similarly, the business judgment rule (which protects directors from liability in respect of good-faith decisions) is being reinterpreted to include climate impacts account in business decision-limiting.While directors still have significant discretion with business decisions, there is a growing expectation that the directors have carefully considered the potential climate-related implications for the company.[2301]

Besides the tortious duty of care owed to the public, corporate directors also have a duty of care towards the corporations they are a part of.[2302] While undertaking any act, a director is required to exercise a care, diligence and a skill which is expected from a reasonable and

[2296] *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339 (1928)
[2297] Jacqueline Peel & Hari M. Osofsky, Climate Change Litigation, 16 ANN. REV. L. & SOC. SCI. 21 (2020)
[2298] Douglas A. Kysar, What Climate Change Can Do About Tort Law, 41 ENV'T L. 1 (2011)
[2299] Hari M. Osofsky, The Geography of Climate Change Litigation: Implications for Transnational Regulatory Governance, 83 WASH. U. L.Q. 1789 (2005)
[2300] Joana Setzer & Rebecca Byrnes, Global Trends in Climate Change Litigation: 2023 Snapshot, 2023 PEEL CTR. CLIMATE CHANGE L. (Grantham Research Inst., LSE)
[2301] Stephen M. Bainbridge, The Business Judgment Rule as Abstention Doctrine, 57 Vand. L. Rev. 83, 115–17 (2004).
[2302] *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985)

prudent man.[2303] This principle is codified in various statutes such as such as section 122(1)(b) of the Canada Business Corporations Act (CBCA) and sections 172 and 174 of the English Companies Act 2006 (CA 2006). [2304]

The concept of Duty of care often coincides with the fiduciary duty of Loyalty. The principle is rooted in the understanding that a director of a company should act in best interest of a company and balance conflict of interests.[2305] The intersection of the two principles forms a basis of climate risk management. This shifts climate action from a corporate social responsibility (section 135 of Companies Act,2013) or environmental, social, and governance (ESG) undertaking into a fundamental matter of survival of business.[2306]

2. LANDMARK CLIMATE LITIGATION CASES

2.1. Milieudefensie v. Royal Dutch Shell

This case is a landmark case in corporate climate litigation**.** It declared that companies could be liable in causing climate damage and hence liabilities should be incurred through tort law. The Hague District Court directed Royal Dutch Shell company to cut its greenhouse emissions by 45 percent by 2030 since corporations owe a duty of care under Dutch civil law to avoid irreversible climate change.[2307]

The court's focus was on Article 162 of the Dutch Civil Code, which provides for an unwritten standard of care that binds parties to refrain from doing things that are incompatible with generally accepted principles of law. This standard is construed to give effect to a number of international obligations under the European Convention on Human Rights, the UN Guiding Principles on Business and Human Rights and under international climate agreements like the Paris Agreement.[2308]

Several legal precedents were established by this case.

1- Corporates had an independent duty to mitigate and climate related risk.It is supposed to supplement state functions and not to substitute it.
2- Companies are responsible for emissions across the entire supply chain (Scope 3 emissions) and not just emissions arising out of their own operations.[2309]
3- Courts now have the opportunity to require the company to reduce its emissions and not only pay a fine or compensation. This can be used to modify corporate conduct over monetary compliance

The Court of appeal altered parts of its original decision without compromising on the responsibilities of companies in elimination of climate risk. The court affirmed that Shell company should work to lower its carbon emissions, although it did to specify an exact percentage or target to meet. This case illustrates how courts are still trying to identify central tenets in corporate climate accountability and how to enforce it.

2.2. ClientEarth v. Shell's Board of Directors

Client Earth initiated derivative action against the directors of Shell personally liable since they did not prepare the company for a climate change transition. In 2023, ClientEarth argued in the UK High court that shell's directors have collectively breached their statutory duties under section172 and 174 of the Companies Act 2006, since they did not put forth a solid climate plan to align the company's goals to achieve

[2303] Canada Business Corporations Act, R.S.C. 1985, c. C-44, § 122(1)(b) (Can.)
[2304] Companies Act 2006, c. 46, §§ 172, 174 (U.K.)
[2305] Umakanth Varottil, The Evolution of Corporate Law in India: The Journey from CSR to Governance Reform, 31 NAT'L L. SCH. INDIA REV. 201 (2019)
[2306] Companies Act, 2013, No. 18 of 2013, § 135 (India)
[2307] *Milieudefensie et al. v. Royal Dutch Shell plc* ("Milieudefensie v. Shell"), No. NL:RBDHA:2021:5339, District Court of The Hague, 4.4.55 (May 26, 2021)
[2308] Paiement, Phillip, Reimagining the Energy Corporation: Milieudefensie and Others v Royal Dutch Shell PLC (September 14, 2022). Available at SSRN: https://ssrn.com/abstract=4218965 or http://dx.doi.org/10.2139/ssrn.4218965
[2309] *Ibid*

the net zero targets prescribed by the Paris Agreement.[2310]

A derivative action allows shareholders to sue company directors on behalf of the company if they fail to act in its best interests.[2311] ClientEarth claimed that Shell's directors breached their duties by not providing a clear and realistic plan to reach Shell's net-zero target —failing in the duty to further the success of the company under section 172 and showing a lack of care, skill, and diligence mandated under section 174.[2312] The case showed that corporate climate promises can become legal obligations under company law.

The UK High Court rejected ClientEarth's case in July 2023 on mainly procedural, as opposed to rejecting its legal basis. The court ruled that ClientEarth had not supplied sufficient initial evidence, a prima facie case, and queried whether the claim was brought in good faith. Rather than analysing the directors' climate duties, the court inquired about the reason behind the lawsuit.[2313]

Even in its dismissal, the ClientEarth case remains of considerable importance. It showed that company law can be used to hold directors accountable for not coming up with or enacting effective climate policies.[2314]

2.3. International Precedents and New Trends.

In recent times, Climate cases against corporations are burgeoning across the several jurisdictions.[2315] In the United States, both shareholders and investors are initiating derivative and securities lawsuits with climate claims, most often alleging that corporations neglected to reveal significant climate risks or made false statements regarding the potential effect of climate change on their business and profitability.

These lawsuits draw on long-standing securities law principles but utilize them in new ways. They seek to make companies honest and transparent regarding how climate risk impacts their business and financial performance and connect corporate transparency to climate responsibility.[2316]

In Australia courts are accepting that directors have a duty of care to mitigate climate related harm that are unreasonable and foreseeable while planning business strategies, with various judicial decisions affirming the same.[2317][2318]

Corporate climate litigation has expanded rapidly over the last two decades from over 10 cases annually to over 200 cases by 2021.This because climate lawsuits have witnessed diversification of targets. Earlier, lawsuits primarily held governments liable for inadequacy in regulating polluters or supporting high emission industries through incentives like subsidies and research. A strategic shift has occurred suing corporates and directors for climate risk instead.

This strategic change takes advantage of the legal system to place pressure on the private sector to take action, especially in jurisdictions where regulatory action from the state has lagged. States have successfully been sued using civil rights laws, but litigants will usually face the 'political question doctrine' in jurisdiction like the U.S. courts, where courts are reluctant to intervene in cases that courts find that the legislature and executive are better suited to address. If the lawsuit is aimed at a private company, litigant can use legal theories

[2310] Pablo Iglesias-Rodríguez, *ClientEarth v Shell plc* and the (Un)Suitability of UK Company Law and Litigation to Pursue Climate-Related Goals, *Journal of Environmental Law*, Volume 35, Issue 3, November 2023, Pages 445–454, https://doi.org/10.1093/jel/eqad029

[2311] *Ibid*

[2312] *Corporate Climate Litigation: Comparing ClientEarth-Shell with the Indian Regulatory Framework*, Contributor, IndiaCorpLaw, July 18, 2023.

[2313] *Ibid*

[2314] Yi Zhang, Pan Xia & Xinjie Zheng. (2025) Climate Risks and Common Prosperity for Corporate Employees: The Role of Environment Governance in Promoting Social Equity in China. *Sustainability* 17:15, pages 6823

[2315] Network for Greening the Financial System, *Climate-Related Litigation: Recent Trends and Developments* (Sept. 2023), https://www.ngfs.net/sites/default/files/medias/documents/climate_related_litigation.pd

[2316] Bill Tarantino, Krista deBoer & Ashley Quinn, *Climate and Carbon Litigation Trends*, Harv. L. Sch. F. on Corp. Governance (July 7, 2025), https://corpgov.law.harvard.edu/2025/07/07/climate-and-carbon-litigation-trends/

[2317] Peel, Jacqueline, Corporate Climate Litigation in Australasia: (re)Shaping the Private Law-Climate Interface *The Oxford Handbook of Climate Change and Private Law* D. Kysar & E. Lim OUP, 2026, Available at SSRN: https://ssrn.com/abstract=5285798 or http://dx.doi.org/10.2139/ssrn.5285798

[2318] *Ibid*

developed around companies, such as fiduciary duties and consumer protection laws, to avoid the political questions doctrine.[2319]

3. COMPARATIVE ANALYSIS OF GLOBAL LEGAL FRAMEWORKS

3.1. European Union

The European Union has the power to introduce various climate risks into corporate governance.[2320] The EU Corporate Sustainability Reporting Directive (CSRD) together with the EU Taxonomy regulation have just introduced new obligations for disclosures and what used to be voluntary efforts to manage climate risks as a best practice are now part of the corporate governance processes.[2321]

The organizations are obliged to disclose and report the impact of their business models on the climate and how their businesses contribute to climate change. These requirements introduce dual materiality that traditional financial obligations will overlook. The EPA strategy assumes that the directors of the companies are obliged to take into account the long, term interests of the shareholders, which essentially means that the directors must take into consideration the climate, related risks and opportunities because of the possible significant impact that these issues can have on the business activities.[2322]

The European Union has the authority to incorporate various climate risks into corporate governance. The EU Corporate Sustainability Reporting Directive (CSRD) [2323] and EU Taxonomy Regulation add new obligations for disclosures and have effectively flipped previous efforts to manage climate risks as a voluntary best practice, into required obligations in corporate governance processes.[2324] These regulations impose obligations on organizations to disclose and report on the impact of their business models on the climate and how climate change is impacting their business. These regulations create dual materiality obligations for disclosures that are beyond traditional financial obligations. [2325]

The EU strategy is based on the premise that directors of companies have obligations to take into account the long-term interests of the company, that necessarily requires directors to take into account climate-related risks and opportunities because of their potentially material impact on business activity.[2326] The introduction of sustainability considerations into company law is one of a broader European commitment to use company governance as a vehicle to the realization of climate policy objectives without compromising commercial competitiveness.[2327]

European courts have also been willing to acknowledge corporate climate responsibilities using human rights frameworks. The case KlimaSeniorinnen v. Switzerland by the European Court of Human Rights established that states have positive duties owed to their citizens to protect them from the impacts of climate change as a result of the state's actions or inaction.In such cases, the ruling allows that the state can take steps against companies that cause climate risks in their operations that affect not just the plaintiffs but the public at large.[2328]This shift by a European court suggests that climate litigation in the corporate context (for corporations incorporated under various European laws) could progress as a direct

[2319] *Id,13*

[2320] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting, 2022 O.J. (L 322) 15 (CSRD)

[2321] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, 2020 O.J. (L 198) 13 (EU Taxonomy Regulation)

[2322] Carol A. Adams, The Double-Materiality Concept: Application and Issues, 33 SUSTAINABILITY ACCT. MGMT. & POL'Y J. 1 (2022)

[2323] Dinh, T., Husmann, A., & Melloni, G. (2022). Corporate Sustainability Reporting in Europe: A Scoping Review. *Accounting in Europe*, *20*(1), 1–29. https://doi.org/10.1080/17449480.2022.2149345

[2324] Katrin Hummel & Karina Bauernhofer. Consequences of sustainability reporting mandates: evidence from the EU taxonomy regulation. *Accounting Forum* 48:3, pages 374-400. (2024)

[2325] María J. Nieto & Chryssa Papathanassiou, *Different Shades of Green: EU Corporate Disclosure Rules and Their Effectiveness in Limiting "Greenwashing"*, Eur. Cent. Bank, Occasional Paper Series No. 370 (2023), https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op370~ae799b1df9.en.pdf

[2326] *Ibid*

[2327] Hummel, K., & Jobst, D. (2024). An Overview of Corporate Sustainability Reporting Legislation in the European Union. *Accounting in Europe*, *21*(3), 320–355. https://doi.org/10.1080/17449480.2024.2312145

[2328] Christina Eckes, Climate Constitutionalisation in Europe—After KlimaSeniorinnen and the ICJ's Advisory Opinion, Climate, 10.3390/cli13090186, **13**, 9, (186), (2025).

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challenge to the corporation's authority, looking towards established human rights law and principles as well as traditional corporate governance law.

3.2. United Kingdom

The Companies Act 2006 in the UK has established a unique mechanism to incorporate climate considerations while defining duties of directors section 172, which obliges directors to act in a way that promotes the success of the company while having regard to interests of multiple stakeholders, effect of the company's operations on the community and the environment.[2329]This allows directors to have clear legal authority to take climate considerations into account, distinguishing UK law from other legal systems that assume the interests of shareholders, which makes climate issues less important.[2330] Directors cannot simply rely on the business judgment rule to refuse to give regard to climate effects but rather must be able to demonstrate they have given sufficient consideration to environmental issues in executing their statutory duties.[2331]

Corporate governance under the Uk law places climate risk management as an important board duty. UK corporate Governance Code along with guidance papers mandates awareness of climate related risks, whereas UK's adoption of the climate financial disclosure as per the disclosure models prescribed by TFCD leads to the creation of models of Corporate Governance.[2332]

3.3. United States

The primary approach in the United States corporate legal framework to climate-centric responsibilities relies on common law fiduciary duty paradigms and specifically, the Delaware law duty of oversight. The Caremark doctrine addressing the duties of oversight obligations requires directors to adopt reasonable information and reporting systems regarding mission-critical risks, and it has just begun to be applied to climate risks and will become increasingly applied as climate risks evolve to become material dimensions of corporate activity and regulation.[2333] This development is perceived as an evolution of existing legal principles rather than establishment of a new statutory mandate.

The Delaware model points to the business judgment rule as an important feature, but recognizes that some failures on the climate risk front may amount to a breach of fiduciary duty.Directors can be held legally liable if they disregard significant climate risk or do not establish appropriate systems for monitoring climate-related information — particularly if it results in a violation of the law, or significant losses to the business, among other potential consequences.[2334] Even so, the high required threshold for Caremark claims diminishes the day-to-day impact of these kinds of abstract responsibilities.

In the US, securities law allows for another method of bringing climate accountability to companies. The U.S. Securities and Exchange Commission (SEC) is proposing extensive rules regarding disclosures about climate, and there are already requirements under existing laws for companies to report significant climate-related risks and effects on a company's business. [2335]In relation to company's climate risk disclosures, the disclosure rules indirectly regulate companies by requiring that boards

[2329] Cerioni, Luca. (2008). The success of the company in s. 172(1) of the UK companies act 2006: Towards an 'enlightened directors' primacy' ?. https://www.researchgate.net/publication/49400339_The_success_of_the_company_in_s_1721_of_the_UK_companies_act_2006_Towards_an_'enlightened_directors'_primacy'

[2330] *Ibid*

[2331] Lord Sales, *Directors' Duties and Climate Change: Navigating the Shifting Landscape of Corporate Environmental Responsibility* (Durham Law Sch. Inst. of Com. & Corp. L. Ann. Lecture, Durham Univ., Feb. 27, 2025).

[2332] Climate Governance Initiative & IFC, *Corporate Governance Codes in the UK* (June 9, 2025). https://hub.climate-governance.org/resource/corporate-governance-codes-navigator/corporate-governance-codes-in-the-uk

[2333] Gregory A. Markel, Daphne Morduchowitz & Matthew C. Catalano, A Director's Duty of Oversight after *Marchand* in "Caremark" Case, Harv. L. Sch. F. on Corp. Governance (Jan. 23, 2022), https://corpgov.law.harvard.edu/2022/01/23/a-directors-duty-of-oversight-after-marchand-in-caremark-case/

[2334] Michal Barzuza & Quinn Curtis, *The Road to Paris Runs Through Delaware: Climate Litigation and Directors' Duties* (Va. Pub. L. & Legal Theory Rsch. Paper No. 2023-05, 2023).

[2335] U.S. Sec. & Exch. Comm'n, Press Release, SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors (Mar. 6, 2024), https://www.sec.gov/newsroom/press-releases/2024-31

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

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APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

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fund existing laws regarding climate-related disclosures. In order to comply with laws regarding disclosures the boards of directors are obliged to monitor the awareness of the climate information to be disclosed.[2336]

3.4. Constitutional and Environmental Law Integration in India

India's corporate climate policy is the expression of its unique constitutional regime and an emphasis on environmentalism as a constitutionally protected right. The Companies Act 2013, section 166(2) requires directors to exercise their action in the best interest of the company, employees, shareholders, the community, and to protect the environment.[2337]This statutory language imposes environmental protection as a parallel goal of corporate governance and provides an unimpeachable legal standard to consider climate-related issues when making a corporate decision.[2338]

India's approach is unique in that it establishes a legal obligation to protect the environment and is more than solely a moral obligation and emerges legally from both constitutional law and corporation law. This is an obligation that is entrenched in the Constitution and the law of the corporation. The State has an obligation to conserve and enhance the environment and to preserve the forests and fauna of the country under Article 48A of the Constitution of India (Directive Principles of State Policy).[2339] Article 51A(g) continues on the issue by stating that it is a basic responsibility of all citizens to conserve and improve the natural environment, forests, lakes, rivers, and wildlife.[2340]

These constitutional principles have shaped the corporate law context, including corporate social responsibility (CSR) law.

The Companies Act, 2013, section 135, puts some responsibilities on specific companies to practice CSR. [2341][2342]Schedule VII of the Act explicitly lists activities such as ensuring environmental sustainability, maintaining ecological balance, protecting flora and fauna, conserving natural resources, and preserving the quality of soil, air, and water, which can be taken up as CSR activities.

This shows that India's model not only allows companies to engage in environmental protection initiatives as one of their social activities but it also makes it a legal requirement through the law for companies to consider environmental sustainability while fulfilling their corporate responsibilities.[2343] It legitimizes the assumption that things corporations do have direct impact on climate change, pollution, and overall environmental quality, and such corporate environmental responsibilities are needed governance functions.[2344]The language of the statute is so that directors would be implicating a breach of their fiduciary duties by prioritizing short-term profit-maximization over environmental protection.[2345]

The National Green Tribunal (NGT) was established in accordance with the National Green Tribunal Act, 2010 as a specialized judicial body that has the power to adjudicate environmental cases including those concerning regulatory corporate climate governance. Section 3 allows the Central Government to set up the Tribunal to control and manage the efficient and speedy disposal of cases about the environment. [2346]The NGT has the power to adjudicate on all civil cases that relate to the substantial question relating to the environment arising from the implementation of

[2336] *Ibid*

[2337] Madhuri Parikh, *Global Perspectives on Corporate Climate Legal Tactics: India National Report*, Version 1.0 (British Inst. of Int'l & Comparative L., Feb. 2024)

[2338] Commonwealth Climate and Law Initiative, *Directors' Liability and Climate Risk: White Paper on India* (2021)

[2339] INDIA CONST. art. 48A.

[2340] INDIA CONST. art. 51A(g)

[2341] Companies Act, No. 18 of 2013, § 135 (India)

[2342] *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India)

[2343] Umakanth Varottil, The Evolution of Corporate Law in India: From CSR to Corporate Governance Reform, 31 NAT'L L. SCH. INDIA REV. 201 (2019

[2344] Shibani Ghosh, Climate Change Litigation in India: Trends and Challenges, 11 J. ENV'T L. & PRAC. 35 (2019)

[2345] *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647 (India)

[2346] National Green Tribunal Act, No. 19 of 2010, § 14 (India)

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APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

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statutes fundamental to environmental governance as listed in Schedule I of the National Green Tribunal Act. Section 14 allows the NGT to hear all civil cases for the violation of environmental rights with the jurisdiction to grant the relief and compensation in that civil matter.[2347] In addition, Section 15 provides the Tribunal with the jurisdiction to offer relief, compensation, and restoration of the environment in regard to violating the environment. The NGT also has the ability to enforce specific entitlements drawn from fundamental concepts concerning the concept of duty toward 'environment,' including, The "Polluter Pays Principle" (Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446), and The "Precautionary Principle" and "Sustainable Development"(Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647). [2348]NGT can order companies which pollute them to rectify the damage, restore the environment, or take mitigation actions under Sections 15 and 17.

To date, Indian climate litigation and activism have dealt largely with the violation of constitutional rights and environmental law - rather than with governance mechanisms in the corporate sector. That said, the specifications for environmental obligations under corporate law lend themselves to derivative actions and climate governance based litigation once Indian courts begin developing a more sophisticated regime of corporate climate accountability.[2349]

4. SAILING THROUGH THE LEGAL AND PROCEDURAL OBSTACLES.

4.1 The Causation Conundrum

Establishing a causal connection between a defendant and a specific injury sustained by the plaintiff is thought to be the greatest hurdle in climate litigation. Climate science is so complex that it is hard to pinpoint a particular harm that is caused by the emission of a given defendant. Up to date, no court has obligated an emitter to compensate a certain injury to the climate.[2350]

Nevertheless, lawyers are continuing to develop legal theories and are taking advantage of advances in attribution science to conduct source attribution studies, to challenge climate liability hurdles. Attribution science has emerged to clarify the role that human behavior plays in climate change and to establish that behavior of certain companies or defendants for a specific impact.[2351]

In source attribution studies, it is possible to describe relative contributions of greenhouse gas (GHG) emissions from specific corporate actors and outline the source of pollution as a contributing element to a global crisis in climate change.[2352]

Challenging the legal precedent of separate claims involving individual and multiple defendants, plaintiffs can argue, based on principles of collective liability - theories such as the "concert of action" doctrine - that the major greenhouse gas GHG emitters engaged in collective behavior and that, as a collective, they acted in an irresponsible manner by continuing to emit elevated greenhouse gases, fully aware that an elevated risk from greenhouse gases to the environment and the impact that their collective emissions have had on society and the environment.[2353]

Instead of having to prove that a single corporation caused the harm, the focus is on showing each corporation's relative contribution to the harm caused. Scientists will provide data on emissions, which will be used to show that the corporate companies collectively constitute shared responsibility; simply put, a data point that is only seen as a scientific

[2347] National Green Tribunal Act, No. 19 of 2010, § 14(1), sch. I (India)
[2348] *Id,66*
[2349] Arghya Sengupta & Alok Prasanna Kumar, Environmental Rights Jurisprudence in India, 4 NUJS L. REV. 223 (2011).

[2350] Christopher W. Callahan & Justin S. Mankin, National Attribution of Historical Climate Damages, 122 CLIMATIC CHANGE 1 (2022)
[2351] Daniel A. Farber, Climate Change, Causation, and Delayed Harm, 44 HOFSTRA L. REV. 647 (2016
[2352] Richard Heede, Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 185 CLIMATIC CHANGE 229 (2014)
[2353] Friederike E.L. Otto et al., Attribution of Extreme Weather Events in the Context of Climate Change, 11 WIRES CLIMATE CHANGE e627 (2020)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
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APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
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finding can be reframed as a legal point. [2354]This represents a break from how cases can be handled: although the damages have yet to be demonstrated, courts will start determining that there is a case through collective relation of major emitters. This marks the start of a new chapter of climate litigation, the chapter in which companies will be held responsible for their collective harm toward contributing to climate change beyond their direct harm aspects.[2355]

4.2 The Political Question Doctrine

In the American context, the political question doctrine has been a very significant hurdle to climate litigants. This doctrine states that federal courts should not intervene in matters that are assigned to the legislature or executive branch by the constitution. Courts often cite the complication and global character of climate change as support for either deference to the political branches since the elected branches are in a better position to make policies and regulations. This doctrine also resulted in a dismissal of cases such as Kivalina v. ExxonMobil, where the court found that any attempt to regulate emissions of greenhouse gases was a political question for Congress and the Administration.

In a similar case, Juliana v. United States has experienced a protracted procedural battle.[2356] An appellate court ruled that the minor plaintiffs lacked standing to pursue a legal action that would result in courts performing as the political branches to provide a remedy. However, there is a question of legitimacy of this judicial abstention. As the science of climate change grows stronger and its real effects begin to be more tangible, the justification for judicial deference begins arguably to dissipate.[2357]

The legal Duty of states to recognise climate change as posed by existing international precedent, such as the Urgenda case in the Netherlands, and advisory opinions by ICJ has formed a potent opposition.[2358] These judgments give national courts and an otherwise legitimate frame in which to determine that inactivism by the government or corporation represents not just a failure of a policy context, but a breach of a legal duty.[2359]

4.3 The Business Judgment Rule

The business judgment rule is a key defence in corporate lawsuits, which protects the decisions of directors from second-guessing by judges, as long as it was made in good faith, with appropriate care and with the honest belief that it was in the best interest of the corporation. [2360]

This rule was core in the dismissal of ClientEarth v by the Court. Shell in regard to the reluctance to interfere with the board's discretion in administering a complicated business.

Nonetheless, the protection of the rule is never absolute. The scope of the rule can be limited by exceptions, such as 'information failure' and concerns of 'good faith.' If a director doesn't actively seek out information about the relevant climate risk, or disregards information it knows demonstrates an existential threat, it cannot claim the protection of the business judgment rule. Given how much attention financial regulators and investors have given to climate change as a material source of financial risk, a director cannot, in good faith, establish a claim that they don't have a clue about climate change or its risks. This shifts the burden of proof from plaintiffs establishing directors breached their duty to directors having to demonstrate in good faith that they sought out relevant climate risk education, policy recommendations to address the risks, and fully considered climate risks in its decision-making. Each of these is a subtle, yet important change that has the effect of eroding the business

[2354] Douglas A. Kysar, What Climate Change Can Do About Tort Law, 41 ENV'T L. 1 (2011)
[2355] RESTATEMENT (SECOND) OF TORTS § 876 (AM. L. INST. 1979)
[2356] Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020)
[2357] Urgenda Found. v. State of the Netherlands, 2019 Hoge Raad, ECLI:NL:HR:2019:2007 (Neth.)
[2358] *Id,78*
[2359] Request for Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, Case No. 31, ITLOS (May 21, 2024).
[2360] Mark Carney, Breaking the Tragedy of the Horizon—Climate Change and Financial Stability, Speech at Lloyd's of London (Sept. 29, 2015)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
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judgment rule's effectiveness as an absolute defence in climate litigation.[2361]

5. CORPORATE GOVERNANCE IMPLICATIONS AND PRACTICAL IMPLEMENTATION

5.1. Integration of Risk Management and Strategic Planning

Planning processes and risk management undertaken by the company should undergo significant reshaping in order to recognise climate**.** Instead of treating climate risks as individual environmental issues, climate risk needs to be included in current enterprise risk management frameworks. [2362]

Inclusion means defining both physical and transition climate risks, assessing their potential impact on the business operations, and developing appropriate mitigation and adaptation strategies.[2363]

Most companies typically plan for 3–5 years into the future for climate risk management. This disconnect between time horizons generates a clash with how companies are governed, which typically is with an emphasis on short-term results. Therefore, companies will need alternative board oversight and performance evaluation systems that acknowledge, encourage, and substantiate long-term climate strategies.[2364]

Incorporating climate-related considerations into decision making and strategic planning will lead to new kinds of expertise and methods of decision making.[2365] The boards also need directors with experience in climate science, environmental policy, fields to offer sufficient control over risks associated with climate.[2366]Traditional board composition that includes only financial and operational expertise, for example, may be insufficient to deal with the interdisciplinary complexity of climate change.

5.2. Disclosure and Transparency Requirements

Climate disclosure requirements represent a significant of corporate transparency obligations that involve board oversight roles. According to TCFD "Guidance for Effective Governance," when climate regulations emerge, organizations will have to disclose their governance, strategies, risk management, and details about their climate-related performance. [2367] All calls for disclosure will implicate board participation in their roles to identify, assess, and report climate-related information[2368].

The move towards compulsory climate disclosure creates a possible liability risk to those directors who fail to make accurate and complete disclosure of climate-related information[2369] Conventional methods of disclosure management need to be extended to cover climate-related risks and opportunities, such as forward-looking information relating to climate scenarios and transition planning. [2370]This will also require boards to develop new competency skills in handling complex scientific and technical information.[2371] Climate disclosure regulations introduce complexities and consequences for companies in engaging with a variety of stakeholders and it reshapes the stakeholder's role in governance. Companies should not ignore the impact of the climate-related information on other stakeholder groups, such as investors,

[2361] Sarah Barker, Directors' Duties in the Context of Climate Change Risk, 37 CO. LAW. 23 (2018
[2362] Martin Massey, Bogdan Pletea, Darren Munday, Neil Cantle & Iain Felstead, *Climate Change Risk Management Guidance* (Inst. of Risk Mgmt., Climate Change Special Interest Group Rep., 2021)
[2363] *Ibid*
[2364] TCS GoZero Hub & Macquarie Univ., *Value of Integrating Climate Risk Across the Business* (2024)
[2365] *Ibid*
[2366] Baer, M., Gasparini, M., Lancaster, R., & Ranger, N. (2023), "'All scenarios are wrong, but some are useful"—Toward a framework for assessing and using current climate risk scenarios within financial decisions', Frontiers in Climate, Vol. 5, Frontiers Media SA, https://doi.org/10.3389/fclim.2023.1146402
[2367] Eccles, R.G., Krzus, M.P. Implementing the Task Force on Climate-related Financial Disclosures Recommendations: An Assessment of Corporate Readiness. *Schmalenbach Bus Rev* 71, 287–293 (2019). https://doi.org/10.1007/s41464-018-0060-4
[2368] *Ibid*
[2369] *Directors' Fiduciary Duties and Climate Change: Emerging Risks*, Harv. L. Sch. F. on Corp. Governance, Dec. 8, 2021
[2370] Cynthia Williams, *Fiduciary Duties and Corporate Climate Responsibility*, Vanderbilt Law Review (forthcoming or specific details) (2021)
[2371] *Ibid*

employees, communities, and regulators.[2372] Since climate disclosures require integrating the interests of many stakeholders, companies may be compelled to modify their governance structure in order to address stakeholders' perspectives and concerns in decision-making about climate issues.[2373]

5.3. Business Model and Innovation Opportunity Adaptation.

Incorporating climate change into corporate governance presents issues but also opens opportunities for companies.[2374] Firms that act pre-emptively in addressing climate risks are likely to benefit from improvements in operational efficiency, lower compliance costs associated with regulating actions, and enhanced reputation with multiple stakeholder groups.[2375]

However, for this change to have true value, companies need a robust and discerning governance infrastructure that leads to climate-related investments that provide long-lasting sustainable value instead of simply being another expense.[2376]

Changing business models to address climate change may involve far-reaching business transformations, which threaten existing governance structures that prioritize immediate financial returns. Board members who are able to balance profits with long term goals of net zero emissions will require governance structures that provide necessary safeguards in regards to financial outcomes and climate-focused outcomes.[2377]

Companies that create climate solutions or are transforming their business models to become low-carbon need governance arrangements capable of evaluating new technologies, measuring emerging markets, and unwinding the challenges of changing business models.[2378][2379]

CONCLUSION

Climate change has transitioned from a peripheral issue to a central issue to the fiduciary duties of corporate directors, who must consider climate issues in every aspect of corporate management and decision-making. This change has taken place due to the increased understanding that climate risks are material risks, which directors must take into account in good faith to fulfill the fiduciary duties of overseeing the corporation for the benefit of the corporation and its stakeholders. Although enforcement and specific issues may differ amongst jurisdictional mechanisms, there is a clear movement worldwide to treat climate change as a facet of corporate governance, as opposed to merely voluntary environmental compliance and consideration of climate change.

Corporations will need to rethink into the entire risk management frameworks, strategic planning processes, and disclosure practices that they manage to address climate-related obligations. This will require different forms of knowledge at the board level, deeper engagement with stakeholders and tangible methods of balancing short-term financial strategies of accountability with long-term purposes for climate sustainability. Executing these matters in a proficient manner will likely distinguish leading business entities from lagging business entities in responding to normative changes in the law and in the market. The future may involve additional

[2372] Virginia E. Harper Ho, *Stakeholders & The Dawn Of Corporate Climate Governance* (Jan. 31, 2025), available at SSRN, https://ssrn.com/abstract=5124607

[2373] I.F.S. Wahyuningrum, Niswah Baroroh, Heri Yanto, Retnoningrum Hidayah, Annisa Sila Puspita & Laela Dwi Elviana, *Corporate Governance: Driving Climate Change Disclosure and Advancing SDGs*, J. Risk & Fin. Mgmt. Vol. 18, No. 5, Art. 234 (2025), https://doi.org/10.3390/jrfm18050234

[2374] I. M. García-Sánchez, *Climate Governance, Growth Opportunities, and Innovation* (2024)

[2375] Satirenjit Kaur Johl & Md. Abu Toha, The Nexus between Proactive Eco-Innovation and Firm Financial Performance: A Circular Economy Perspective, 13 *Sustainability* 6253 (2021), https://doi.org/10.3390/su13116253

[2376] *Ibid*

[2377] Maria Gebhardt, Anne Schneider, Florian Siedler & Henning Zülch, *Climate Reporting in the Fast Lane? The Impact of Corporate Governance on the Disclosure of Climate-Related Risks and Opportunities*, 33 Bus. Strategy & the Envt. 7253 (2024), https://doi.org/10.1002/bse.3852

[2378] Low-carbon business models: Review and typology, *Ind. Mark. Mgmt.* No. 123, Nov. 2024, at 222-50, https://doi.org/10.1016/j.indmarman.2024.10.001

[2379] Isabel-María García-Sánchez et al., *Decarbonisation Strategies and Climate Governance: Are Institutional Investors Reshaping the Business Model of Multinationals?*, *J. Innovation & Knowledge* Vol. 10, No. 3 (May–June 2025), Article 100698, https://doi.org/10.1016/j.jik.2025.100698

statutory duties for compliance with climate regulations; broadening the personal liability of corporate directors for not being diligent with respect to climate risks, and the introduction of remediation requiring corporations to change their conduct far beyond existing mitigating compensatory damages.

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