Minnesota Journal of Business Law and Entrepreneurship

Volume 2026, No. 2

ISSN: 1540-3270

ESG Litigation and Corporate Compliance: Emerging Trends in Business Regulation

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Abstract

The Environmental, Social, and Governance (ESG) commitments of companies have shifted irrevocably from a voluntary corporate responsibility policy into an area of hard law, enforcement, and high-stakes litigations. This paper will explore the rapidly evolving ESG litigation and corporate compliance scene in 2026 and illustrate the key regulatory regimes, common litigation strategies, and critical compliance challenges faced by companies globally. This paper attempts to demonstrate that today businesses function in a diffuse and growing more aggressive accountability environment, considering the latest trend of green washing litigation in various jurisdictions, the European Union's Omnibus simplification of the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), as well as the U.S.' recent deregulatory swing at the Federal level, alongside a growing number of initiatives at the State level, and the landmark Advisory Opinion issued by the International Court of Justice (ICJ) in July 2025 regarding climate obligations. Finally, in order to overcome the jurisdictional divergence, reduce litigation risks, and help companies align their business strategies with shifting stakeholder expectations, the paper proposes a framework for compliance governance.

Keywords: ESG, corporate compliance, green washing, climate litigation, CSRD, CSDDD, due diligence, sustainability regulation, fiduciary duty.

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1. Introduction

The Environmental, Social and Governance (ESG) Framework, previously a discretionary aspect of corporate citizenship, is currently one of the most impactful areas of regulatory and litigation issues affecting the modern business landscape. The confluence of mandatory disclosure regimes, supply chain due diligence obligations, climate accountability claims, consumer-protection enforcement actions, and more is gripping boards of directors, general counsels and compliance officers across jurisdictions like never before. The number, scope and complexity of ESG-related plaintiffs' actions, along with the bodies and array of vague ESG principles, have grown by a great deal, and the regulatory landscape has been reshaped to be battlegrounds with different levels of complexity in different jurisdictions, sharpened by a few and subdued by others, and politicized almost everywhere.

The fiscal year 2026 is a make-or-break year, as is 2024 and 2025. In Europe the Omnibus simplification package implemented in February 2026 significantly reduced the scope of the CSRD and CSDDD, whilst maintaining the core of the concepts. In this country, with the federal administration being deregulatory, the state attorneys general have stayed on the attack and a nationwide tide of private “green washing” class actions has emerged. In a recent unanimous advisory opinion in July 2025, the International Court of Justice decisively ruled that States have binding obligations to protect the climate system, which paves the way for derivative claims for corporate accountability. In all these advances there is one timely theme: In ESG, it's no longer just about reporting, it's about liability.

This paper examines the evolving corporate compliance and ESG litigation architecture (i) conceptually, (ii) as it currently stands over the major jurisdictions, (iii) as a typology in recent years, (iv) with regard to some key case studies reflecting doctrinal changes and (v) for corporate governance and risk management in terms of strategy. The goal is to produce a snapshot of the landscape and an analytical tool for profitability for businesses, regulators and those with academic interests.

2. Conceptual Framework: From Voluntary Reporting to Hard Law

ESG has first been developed as a three-part framework for investors and companies to take into account factors beyond just financial performance. It has three pillars related to environment: climate change, resource use and biodiversity, as well as pollution; three related to social: labor rights, human rights in supply chains, diversity and community impact; and three related to governance: board composition, executive compensation, anti-corruption practices and oversight structures. ESG had historically been a de facto voluntary disclosure norm, driven by investor preference and reputational pressure and with no backing from the law.

This attitude is now turned 180 degrees. ESG commitments that were once part of corporate responsibility have taken firm root in the space of ‘hard laws', with investor pressure and market restrictions, as well as financial penalties, becoming a reality for companies that fail to abide by the ESG reporting and disclosure obligations they set for themselves and their supply chains. The movement is the product of three forces: the volitional mandate of consumer-protection, securities, human-rights and fiduciary principles by regulation; the proclivity of the judiciary to consider uncharted grounds for liability, particularly in the area of consumer-protection; and the strategic investment in litigation by NGOs, activists, and government officials as a means of social and behavioral change.

More fundamentals, corporate law is growing in its recognition of ‘ongoing’ ESG risks, giving board directors direct responsibility for ESG governance failures. By redefining ESG as a fiduciary obligation, rather than a 'funny' CSR issue, it is now firmly a part of the central lawful duties of directors and officers and adds much greater teeth to the non-compliance teeth, if any.

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3. The Contemporary Regulatory Landscape

3.1 The European Union: From Ambition to Recalibration

Episode 2025 and 2026 marked a pivotal year of rethinking within the EU as the custodian of the world's most extensive regulatory framework in the ESG arena. The Omnibus simplification package, formally adopted in February 2026 through Amendment Directive (EU) 2026/470, was first presented by the European Commission to member states and industry in February 2025 due to their competitiveness concerns.

Changes that have been made in the CSRD and CSDDD represent significant changes in scope. The new regime will shift what was a 'hands-on' mandatory approach to the CSRD reporting obligations, with CSRD only applicable to companies that have over 1,000 employees and turnover exceeding €450 million, and for the CSDDD, applying to EU companies with over 5,000 employees and turnover exceeding €1.5 billion and also to non-EU companies where more than €1.5 billion turnover is generated within the EU. Also gone from the political compromise were in-scope companies being required to develop a climate transition plan, which had been one of the most aspirational aspects of the original CSDDD.

Of particular interest are also other amendments: Scampering information requests suffered from cascading effects for the smaller business partners, which is now prevented by the introduction of a "value-chain cap", while the transposition of the CSDDD is postponed until July 2028 with compliance by July 2029 and the liability provisions of the CSDDD have been moved from the harmonized EU regime to Member States legislation. The revised CSDDD stipulates that the maximum fine shall be 3% of a company's global turnover.

The overall body of EU regulations nevertheless remains very impressive, given these simplifications. The EU Taxonomy still classifies sustainable economic activities, the Carbon Border Adjustment Mechanism (CBAM) introduces a price on imports from sectors with high carbon footprint, the EU Deforestation Regulation (EUDR) mandates product-level traceability for certain commodities and the Empowering Consumers for the Green Transition Directive caps unsubstantiated environmental claims at the product level. In addition, EU Forced Labor Regulation came into force in December 2024 and is due to start being fully applicable at the end of 2027, banning products made with forced labor from the European market.

3.2 The United States: Federal Retreat, State Acceleration

At the federal level, the SEC's landmark climate disclosure rules, adopted in March 2024, are currently stayed pending litigation, and in March 2025 the SEC voted to end its defense of those rules in court, signaling a substantial policy shift. In July 2025, the U.S. Environmental Protection Agency announced its proposal to revoke its 2009 Endangerment Finding, the legal cornerstone of federal greenhouse gas regulation under the Clean Air Act. EPA Administrator Zeldin characterized this as among the most sweeping deregulatory actions in U.S. history.

The federal vacuum has been substantially filled by state-level activity; much of it bifurcated along political lines. California's SB 253 and SB 261 impose mandatory climate disclosure requirements on companies above specified global revenue thresholds doing business in California, regardless of where they are headquartered. However, in November 2025, the Ninth Circuit granted an injunction pending appeal as to enforcement of California's SB 261, while denying the motion as to SB 253 (the greenhouse gas emissions disclosure law), illustrating the unsettled litigation environment surrounding even state-level requirements.

In parallel, multiple states have enacted "anti-ESG" legislation restricting financial institutions' use of ESG considerations, regulating proxy advisors, or requiring disclosure of ESG-related decision-making.

3.3 The United Kingdom and Other Common-Law Jurisdictions

The UK has followed a slightly different route, the Financial Conduct Authority's anti green washing rule, which impacts everyone that is regulated, and the investment product labelling, Sustainability Disclosure Requirements (SDR). Additionally, the common law system states such as Australia, Canada and New Zealand have progressed their own required frameworks for climate-related financial reporting, which largely mirror the

disclosure requirements of the IFRS S2 standard created by the International Sustainability Standards Board (ISSB).

3.4 International Law: The ICJ Advisory Opinion

The ICJ ruled that "states have an obligation to protect the environment from greenhouse gas emissions and act with due diligence and cooperation to fulfill this obligation, including the obligation under the Paris Agreement to limit global warming to 1.5°C above pre-industrial levels". Importantly, the Court further ruled that "if states breach these obligations, they incur legal responsibility and may be required to cease the wrongful conduct, offer guarantees of non-repetition, and make full reparation depending on the circumstances".

While advisory opinions are not formally binding, the ICJ's pronouncement carries substantial interpretive weight. In the first six months following the ICJ's verdict, its effects were felt in at least two judgments of national and regional courts on the need to calculate anticipated end-use emissions resulting from the opening of new oil fields. Combined with the Inter-American Court of Human Rights' July 2025 opinion on environmental and human-rights duties, and the May 2024 ITLOS opinion on marine pollution from greenhouse gases, the international legal architecture for climate accountability is rapidly consolidating — with implications that extend, through state regulation of private actors, into corporate liability exposure.

3.5 Asia and the Global South

"Asia is poised to take the lead on mandatory human rights and environmental due diligence legislation in 2026, with bills in play in Indonesia, South Korea, and Thailand." Japan has refined its sustainability disclosure framework through the Sustainability Standards Board of Japan, while jurisdictions including Singapore, Hong Kong, and India have advanced climate-related disclosure requirements.

4. Typology of ESG Litigation

ESG litigation is not a single doctrinal category but a constellation of claims drawing on diverse legal foundations. Five principal categories now dominate the landscape.

4.1 Climate Change Litigation

"Climate change litigation" refers to both governmental litigation (usually state and municipal litigants against fossil fuel emitters for damages and remediation expenses) and litigant-filed suits (generally by activists) attacking governmental and/or corporate climate policies for failure to be ambitious enough. Unpracticed as ever, litigation centered on climate policy across the ESG battlegrounds remains decidedly on the rise, with demands for more ambitious climate policies, challenges to projects that are considered incompatible with climate commitments and calls for duty to ascertain accountability around alleged environmental harms.

An important subcategory of those shareholder actions rely on companies for allegedly insufficient climate strategies, which may be interpreted as a violation of director fiduciary duties..

4.2 Greenwashing Litigation

Greenwashing claims have the fastest growing class of ESG litigation. These actions allege Environmental claims for products, services or corporate strategies are deceptive or unsupported by corporations, often on the basis of violations of consumer-protection, false-advertising, unfair-trade-practices, or securities-disclosure laws. Greenwashing lawsuits, once confined to a cottage industry and sporadic in nature, are transforming today's business landscape from food producers to fashion brands to consumer goods and commercial real estate organisations, and are making their mark with a dizzying speed and increased complexity.

A notable doctrinal development is the use of a greenwashing theory for the forward looking and aspirational statements.

4.3 Human Rights and Supply Chain Litigation

Litigation premised on supply chain human rights violations has expanded dramatically, often through innovative parent-company liability theories. In the UK, ambitious claims are being brought against English parent companies in an attempt to test the boundaries of corporate liability, including the second-stage trial in the mass claim against BHP relating to the Fundão Dam collapse, listed to begin in October 2026, and claims against the Dyson Group concerning alleged harm suffered as a result of actions of its Malaysian operations.

4.4 Anti-ESG Litigation

A distinctively American phenomenon is the rise of "anti-ESG" litigation, in which plaintiffs challenge corporations and financial institutions for adopting ESG considerations rather than for failing to do so.

This countercurrent creates a distinctive double-bind for U.S.-listed multinationals: too much ESG exposes them to anti-ESG claims and Republican attorney general scrutiny, while too little exposes them to greenwashing claims and Democratic state enforcement.

5. Representative Case Studies

5.1 Apple (Carbon-Neutral Watch)

A class action lawsuit against Apple was filed in U.S. District Court for the Northern District of California in February 2025 by Apple Watch purchasers that alleged Apple "misrepresented" that three Apple Watch models released in 2023 were carbon-neutral products. According to the complaint, plaintiffs allege that Apple's price premium for these watches is based on its "carbon neutral" claim for which is affords offsets on forest projects in Kenya and China, which plaintiffs allege do not constitute "genuine, additional" carbon reductions. The case has attracted particular attention because of its implications for the entire carbon-offset ecosystem and the standards by which "carbon neutral" claims may be defended in court.

5.2 Total Energies (France)

In a 2025 case brought by Greenpeace, TotalEnergies was ordered to remove misleading website messages about aiming for carbon neutrality or face fines of €10,000 per day. This case marked the first successful greenwashing ruling in Europe against major oil and gas company for spurious "net zero" claims. The decision demonstrates that European courts are willing to require positive remediation, including the publication of corrective statements, rather than relying solely on monetary penalties.

5.3 Texas v. BlackRock and the American Airlines ERISA Decision

The 2025 American Airlines decision, in which a Texas federal judge ruled that the airline breached its ERISA fiduciary duty of loyalty by allowing ESG-influenced proxy voting in employee retirement plans, represents a watershed moment for anti-ESG litigation. The pending multistate Texas v. BlackRock action, alleging coordinated climate-policy-driven coal investment restraints, tests whether antitrust principles can be deployed against ESG-aligned investment behavior.

6. Implications for Corporate Compliance and Governance

The litigation and regulatory landscape outlined above has crystallized into a set of compliance imperatives that boards and senior management cannot prudently ignore.

6.1 Governance Architecture

Governance features have become aligned under a few elements of best practice in 2026. That can involve having a specific sustainability committee that reports to the board, embedding ESG into business planning itself, rather than as a standalone CSR team, the systems and infrastructure to be accessible and audited and

having executive-level responsibility for fulfilling the obligations as set by each jurisdiction. The care and attention spans of the deliberation, third-party verification, and the board's handling of the process, minute-by-minute, from a procedural perspective, are now more important than ever as a defense against a derivative claim.

6.2 Disclosure and Communications Discipline

The new spec of Greenwashing litigation has altered the playing field of corporate communications. The single clear message that has emerged from recent examples is that when putting forward claims, statements need to be specific, factual and put into perspective: truth is not enough if claims are misleading in context; and that if statements contain future intentions, it will be judged equally as if they were claims themselves. Businesses should also strive for transparent metrics, supported calculations, and (as applicable) third-party validation of any public sustainability claims.

In the meantime, the convergence of voluntary and mandatory disclosures as a result of the IFRS S2, simplified ESRS and ongoing investor requests has meant the substance of voluntary reports is becoming increasingly similar to a regulated disclosure; and thus so too the liability.

6.3 Supply Chain Due Diligence

Although it is now more limited and does not apply until later, supply chain due diligence has become a part of the built-in compliance for any multinational of size. This would work in practice by revising supplier contracts with specific clauses for ESG compliance, setting up audit controls and reporting mechanisms with major suppliers, and developing traceability systems through commodity supply chains. The EU Forced Labor Regulation, the Uyghur Forced Labor Prevention Act (UFLPA) in the U.S. and the EUDR plot-level traceability requirements all impose technical requirements, which very few companies can deliver without investing in systems.

6.4 Litigation Preparedness

Today, diversification of claim theories consumer protection, securities, fiduciary, antitrust, human rights, statutory due diligence, and traditional tort results in the need for comprehensive litigation preparedness through multidisciplinary capability. As important as substantive compliance, crisis communication, document retention, attorney-client privilege protection, and rapid-response governance protocols have become. As the cost of identifying potentially actionable greenwashing claims decreases, plaintiffs' counsel are taking advantage of artificial intelligence to add “claims of conscience” to the litigation toolkit, with the number of claims likely to continue growing.

6.5 Navigating Jurisdictional Fragmentation

In the case of multinationals, perhaps the most salient strategic trade-off is that of accommodating regulatory regimes which operate in opposing directions. The global ESG and sustainability terrain remains dynamic and evolving, and companies will continue to have disparate requirements by jurisdiction, while scope and timelines of regulations remain unclear in 2026. This divided regulatory landscape between jurisdictions brings yet another layer to businesses' problem solving strategies, as some jurisdictions seek to deregulate and others seek to strengthen regulatory and enforcement efforts. A pragmatic proposal consists of finding out the most demanding applicable standard for every material matter and having that as a baseline with documentation of deviations for jurisdictions where required

7. Emerging Trends and Future Directions

Several developments are likely to define the next phase of ESG litigation and compliance.

(a). Attribution Science and Causation. As attribution science the ability to quantitatively connect particular emissions to particular local weather impacts continues to enhance, the threat of causation typically accorded to

corporate defendants is slowly being eroded. The landscape of complex litigation is evolving, as novel arguments such as attribution science and the number of cases related to climate impacts, supply chains, human rights and greenwashing allegations are increasing.

(b).The AI Inflection. The practice of ESG litigation is now being revolutionized with the help of Artificial Intelligence (AI). Plaintiffs' firms employ AI tools to sift through corporate disclosures to look for inconsistencies that raise greenwashing suspicions, and defendants leverage AI for ESG data aggregation, scenario modeling, and compliance monitoring. Claims involving AI and ESG (energy/environment, bias, and labor displacement) are beginning to be a type of claim.

(c). Convergence of Reporting Standards. Underthe EU's Omnibus simplification, the efforts for converge towards ISSB-aligned disclosure are not perturbed. Obviously, harmonisation will lead to less friction in compliance, but it will also create less resistance to litigating inconsistencies based on a more consistent set of information revealed in the disclosure.

(d). Long-Horizon Liability. On a longer time horizon, claimants will try to build a case to pursue both corporate liability for historic carbon emissions and damages to address the costs of impacts and adaptation, where challenges like causation and allocation of responsibility can be overcome. Success of such claims, though, would rely on prospective doctrinal developments at both the international and domestic level, the ICJ Advisory Opinion offering important interpretive scaffolding.

(e). Anti-ESG as a Persistent Counter-Trend. The anti-ESG movement in the U.S. is not anticipated to fade anytime soon. The cross pressures that ensued must be dealt with by companies by communicating in the financial materiality of their decisions on sustainability and by acting procedurally neutral in their exercising fiduciary power where relevant applies, e.g. in the case of proxy voting.

8. Conclusion

ESG has gone from the fringe of corporate practice to become the focus of corporate legal risk. The regulatory system is disjointed, challenged, and polarized, but there is one clear trend – increased disclosure, increased accountability and increased litigation. Companies with operations in multiple jurisdictions must not take a "race to the bottom" approach in compliance mode: strict requirements from one jurisdiction may affect the global activities of companies involved across the market. Nor do they have haven in the U.S. either due to the increasingly aggressive enforcement campaign being waged by state attorneys general, by a growing number of private class actions, or by the reach of European mandates.

A strategic response would not be to "drop dead," but it would not be to make maximalist pledges that could be deemed impossible to fulfil to the satisfaction of the nation. Rather, it is the institutional capacities of board-level oversight, robust data infrastructure, disciplined communications and rigorous due diligence that enable accurate, defensible and useful ESG engagement. Those companies that do achieve this discipline will have much less reason for concern regarding litigation and be in a stronger position relative to the capital markets, regulatory environment, and stakeholder ecosystem in the years ahead.

There will not be a peak in 2025 and 2026 when it comes to ESG litigation. More likely, it is the opening drumbeat in a longer overture of increasing entitlements for plaintiffs in the face of increasing limitations for corporations, as the methodological tricks for plaintiffs' lawyers grow more effective and as the price for corporate non-compliance continues to grow. The companies that appreciate this pattern and align their organization to fit it will be the ones that flourish in the new age of accountability will be the companies that recognize this trend and set up their organization accordingly will be the ones that will prosper during the new era of accountability.

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