

## ESG LITIGATION

### OVERVIEW

Organizations are increasingly focused on litigation, as they comply with new regulatory obligations, go public with ESG commitments and report on progress.

Our powerhouse legal team designs, oversees and implements winning litigation strategies around the world.

We have a track record of success that spans a range of issues – from greenwashing claims to securities litigation and class actions to duty of care suits. As a result, clients trust us to limit disruption and protect reputation on high stakes matters. No case is too complex.

### CAPABILITIES IN FOCUS

- Greenwashing and green claims risk advisory and litigation
- Corporate Duty of Care (including related to the French Corporate Duty of Care 2017 Law and the EU Directive on Corporate Sustainability Due Diligence (CSDDD))
- Shareholder and public misstatements and omissions
- Securities litigation (including those related to corporate ESG practices)
- ESG class actions

## MEET THE TEAM



### **Daniel P. Mach**

Partner, New York

[daniel.mach@bcplaw.com](mailto:daniel.mach@bcplaw.com)

[+1 212 541 1146](tel:+12125411146)



### **Ravi Nayer**

Partner, London

[ravi.nayer@bcplaw.com](mailto:ravi.nayer@bcplaw.com)

[+44 \(0\) 20 3400 4796](tel:+442034004796)



### **Élodie Valette**

Partner, Paris

[elodie.valette@bcplaw.com](mailto:elodie.valette@bcplaw.com)

[+33 \(0\) 1 44 17 77 17](tel:+33144177717)



## **Merrit M. Jones**

Counsel, San Francisco

[merrit.jones@bclplaw.com](mailto:merrit.jones@bclplaw.com)

[+1 415 675 3435](tel:+14156753435)

## **RELATED PRACTICE AREAS**

- Securities & Corporate Governance
- Class Actions
- Mass Torts & Product Liability

## **EXPERIENCE**

### **ONE OF THE UK'S LARGEST ASSET MANAGERS**

Acting for one of the UK's largest asset managers in the Glencore Litigation. The claims are based on s90 and s90A of Financial Services and Markets Act (FSMA) and concern untrue or misleading statements and omissions contained in Glencore's published information due to the non-disclosure of global bribery and corruption practices as part of their governance practices.

The claims are being case managed together in the Commercial Court and potential collective liability stands in billions of pounds. This litigation will form an important test case for shareholders of English listed companies seeking to: (a) make financial recoveries for ESG-related failures; and (b) encourage improved ESG practices, including by virtue of directors' potential personal liability under FSMA.

### **THAMES WATER**

Acting for Thames Water in an investigation by the Water Services Regulation Authority – Ofwat – in relation to suspected breaches of license conditions and/or statutory duties pertaining to the treatment of wastewater.

We are providing advice and strategic insight in relation to Thames Water's response to Ofwat's formal information requests under section 203 of the Water Industry Act 1991, and Thames Water's strategy as Ofwat moves towards the conclusion of the investigation.

We have also been instructed by Thames Water to defend a related opt-out class action before the Competition Appeal Tribunal. The claim has been brought by Professor Carolyn Roberts, an environment and water specialist, and is the first environmental antitrust class action in the UK with a novel cause of action. This makes it one of the most high-profile environmental claims ever brought in the UK, and it will have important implications for the liability of water companies (and regulated firms more generally) arising from environmental matters. The class action concerns alleged overcharges to consumers through the client's water bills, as a result of Thames Water allegedly misreporting sewage spills data to its regulators.

## AGENCE DE SIMPLIFICATION DES NORMES SUR LE DEVOIR DE VIGILANCE

Assisting Agence de Simplification des Normes sur le Devoir de Vigilance, a rating agency on corporate duty of care. We drafted a questionnaire to be submitted by the client to parent companies, subsidiaries, suppliers and subcontractors in accordance with the French corporate duty of care law and the EU CSDDD.

## AN INTERNATIONAL COFFEE AND TEA COMPANY

Defending a false advertising putative class action filed against an international coffee and tea company against greenwashing claims based on sustainability statements they have made about their products. The case is pending in the Superior Court of California, and we have obtained a stay of discovery pending the outcome of our initial dispositive motion.

## RELATED INSIGHTS

Insights

Jun 25, 2024

**ESG continues to face courts in France**

Insights

May 28, 2024

**Navigating the FCA's new anti-greenwashing rules and guidance**

Insights

Jan 18, 2024

**What are the risks for firms that won't show greenwashing the red card?**

Insights

Sep 14, 2023

## **Raising the stakes in activist shareholder claims**

The High Court has ordered that ClientEarth pay Shell's costs in connection with all aspects of ClientEarth's unsuccessful application for permission to continue a derivative claim against Shell and its directors. This is a departure from the default position in derivative proceedings. Usually, the company will not be awarded any costs incurred in making submissions in opposition to, or attending any hearing of, a shareholder's application at the permission stage. This judgment therefore raises the stakes for activist shareholders who are considering bringing a derivative claim.

Insights

Aug 30, 2023

## **English High Court casts its jurisdictional net wider in the Fundão Dam class action proceedings**

In the High Court's recent judgment in *Município de Mariana & Ors v BHP Group (UK) Limited & Anor* the Court found that England was "clearly the appropriate forum" to determine whether Vale SA, a Brazilian company, should share liability with the BHP Group in a class action claim being brought in the English High Court as the result of the 2015 Brazilian Fundão Dam disaster. The claim was brought as a CPR Part 7 High Court action, with a large number of claimants listed on one claim form, and is not a representative action or subject to a Group Litigation Order.

Insights

May 23, 2023

## **High Court dismisses green strategy derivative claim against Shell's directors**

In February 2023 ClientEarth issued a derivative action against Shell's 11 directors. ClientEarth alleged that the directors had breached their duties under the Companies Act 2006 (CA 2006) by failing to adopt and implement an energy strategy that aligned with the Paris Agreement on Climate Change 2015 to limit global warming to 1.5°C. Given that it was bringing a derivative claim on behalf of the company, ClientEarth needed to obtain the permission of the court before the action could proceed. The application was considered on the basis of the papers before the court without the court hearing oral submissions. On 12 May 2023, the judge refused permission for the claim to proceed. The judge made several key points in his judgment which will be pertinent to future activist shareholder derivative actions.

News

Mar 03, 2023

## **Paris Partner featured in RFI and 'Law.com' on climate-change case involving TotalEnergies**

Insights

2 March 2023

## **Judicial review against the FCA in Ithaca Energy case**

ClientEarth has launched a judicial review against the FCA for approving a prospectus which ClientEarth claims contained inadequate climate-related disclosures. This is part of an increased use by environmental pressure groups of judicial channels to challenge companies - and now regulators - and to promote the transition to Net Zero. The courts of England and Wales have shown that they are willing to hear cases of this type and this trend is likely to continue.

## **Greenwashing to the test of deceptive commercial practices**

Carbon neutrality by 2050", "end of plastic waste", "Fly Responsible", messages intended to contribute to a sustainable future are multiplying. While these messages illustrate the desire of companies to choose environmentally friendly approaches, they must not "mislead the public about the reality of the advertiser's actions or the sustainable development properties of its products" otherwise they may constitute "greenwashing". In a sector that was only emerging and poorly regulated, the legislator intervened to provide a better framework for the practice of greenwashing. For more than a decade, the legislator has highlighted the interaction between consumer law and environmental law through various laws, including the Climate and Resilience Law n° 2021-1104 of August 22, 2021.