the climate case

SAÚL vs. RWE

New Era of Accountability

The precedent of Saúl Luciano Lliuya v. RWE

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I. Introduction

1. The procedure

On November 24, 2015, the Peruvian farmer and mountain guide Saúl Luciano Lliuya filed a lawsuit against the German energy company RWE with the support of Germanwatch and the Stiftung Zukunftsfähigkeit. He demanded that RWE contribute to protective measures against the threat of flooding from a glacial lake located above his property. RWE's greenhouse gas emissions have contributed significantly to the climate crisis, leading to the melting of glaciers and the growth of the glacial lake. As a result, Saúl Luciano Lliuya's property is in danger of being flooded. Before the first instance Regional Court of Essen and then before the second instance Higher Regional Court in Hamm, he invoked Section 1004 (1) of the German Civil Code (BGB): If property is impaired in any way other than by deprivation or withholding of possession, the owner may demand that the disturber remove the impairment. If further impairments are to be expected, the owner can sue for injunctive relief.

He argued that RWE's greenhouse gas emissions lead to an impairment of his property, as RWE contributes to global warming. According to the Carbon Majors Report, RWE is responsible for around 0.4% of global greenhouse gas emissions. Saúl Luciano Lliuya therefore demanded that RWE contribute to this proportion of the costs of the protective measures.

After the first instance court dismissed his claim end of 2016, Saúl Luciano Lliuya appealed the decision. The Hamm Higher Regional Court then ruled on November 30, 2017 that the claim was conclusive. This was the first major breakthrough in the proceedings! Why? A claim is conclusive if it is legally correct and suitable to substantiate the asserted claim. This preliminary legal examination precedes the taking of evidence in order to filter out claims that, from a purely legal point of view, have no chances of success. In the case of Lliuya v. RWE, the claim was initially dismissed by the Essen Regional Court as inconclusive. The court did not agree to RWE's legal responsibility for the specific climate risks in Peru and considered the causal link to be too vague. However, in 2017, the Higher Regional Court of Hamm reached a different conclusion: it held that RWE could, in principle, be held liable for protective measures under Section 1004(1) of the German Civil Code (BGB) due to its greenhouse gas emissions. For the first time, a German court recognized that major greenhouse gas emitters can be held liable for the impacts of the climate crisis.

This legal position, previously outlined only briefly in 2017, has now been thoroughly fleshed out and significantly expanded by the Higher Regional Court in its decision of May 28, 2025. As such, the ruling sets an important precedent that extends well beyond the specifics of this case. It is a landmark decision for corporate accountability amidst the climate crisis.

2. Definition: Precedent

The term „precedent“ refers to a decision that serves as a model for other cases or sets relevant standards.

Precedents play a particularly important role in Anglo-American common law systems, where civil law is largely uncodified. While certain areas are governed by statutes, the legal framework is primarily shaped by prior judicial decisions in similar cases.

In contrast, German law is predominantly codified, with legal norms set out in statutes such as the German Civil Code (BGB), which judges are required to apply. Nonetheless, court rulings remain central to legal interpretation and judicial practice. This is due, in part, to the binding nature of decisions by federal courts. However, decisions by lower courts—such as local, regional, and higher regional courts—also carry weight. While not formally binding, they serve as important guidance in practice. As a result, judgments from these courts can influence outcomes in other cases and, in practice, function as precedents within the German legal system.

II. The judgment of the Hamm Higher Regional Court

On May 28, 2025, the Higher Regional Court of Hamm delivered its long-awaited judgment. While the court dismissed Saul Luciano Lliuya's claim, the decision nevertheless marked a significant success: the court sided with the plaintiff on the legal arguments. It confirmed that major greenhouse gas emitters can, in principle, be held liable for the consequences of the climate crisis.

In delivering the judgment, the presiding judge highlighted the stark global inequality between the Global North and South, and between rich and poor, underscoring that holding emitters accountable reflects the principles of a „value-based legal system.“ He also noted that some major corporations are beginning to assume their societal responsibility by transitioning away from fossil business models.

The written ruling, released the same day, devotes 52 pages (pp. 39–91) to the legal reasoning. It provides detailed clarification on two central aspects: (1) the civil liability of carbon majors for climate-related risks or harm, and (2) a critical examination and rejection of the principal arguments advanced by fossil fuel corporations to contest their liability.

1. Key legal points

The court found the plaintiff's arguments to be legally well-founded. His legal argument that the CO_2 emissions of the defendant significantly contributed to the impairment of this property and do not have to be tolerated by him convinced the court. The key points of the court's legal reasoning are summarized below.

a) Applicability of German civil law to transnational cases

The court first establishes its basic international jurisdiction for this case. This follows from an EU regulation that regulates the jurisdiction of European courts for international matters and delineates the competences of the courts of EU member states vis-à-vis other courts (Brussels Ia Regulation).

German law is also applicable to this case. It is clear from European and German law that those affected by environmental damage - in this case the emission of greenhouse gases - may choose whether to apply the law in which the harmful act was carried out (Germany or Essen) or that of the place where the damage occurred (which would be Peru in this case) (see p. 32 et seq. of the judgment).

The court also clarifies that a person living abroad - in this case in Peru - can also assert a claim for the removal of a property disturbance under German law in accordance with the basic provision of Section 1004 (1) sentence 2 BGB (p. 39 et seq. judgment). It does not matter whether the owner of the affected property lives in the vicinity of the disturbance or even lives in Germany. The only decisive factor is that there is an impairment of property. The „Bundesgerichtshof“ (Federal Court of Justice) has repeatedly ruled that physical proximity is not a prerequisite for a claim under Section 1004 BGB. A current legal relationship between the disturber and the disturbance is also not necessary. Section 1004 BGB therefore protects property very comprehensively, regardless of where the owner lives or how far away they are from the source of the disturbance.

b) Allocation of causal contributions and causality between impairment of legal interests and emission of greenhouse gases possible

An essential element for liability in the context of claims for damages and, according to case law, also in the context of Section 1004 BGB is establishing causation between the impairment of a protected right and the actions of the disturber (here: the emissions of the defendant RWE from its coal plants). This entails that the defendant's attributable conduct must be at least partly causal for the impairment. In full accord with the plaintiff's position, the court holds that the defendant constitutes the tortfeasor (p. 42 of the judgment) and explains its reasoning as follows:

- emissions of subsidiaries are attributable to RWE

The court states that RWE, as the parent company, has full control over the corporate policy of its subsidiaries (p. 43 et seq. of the judgment). On p. 45 it states: „In this situation, the defendant, as the controlling company, has and had it in its power to control corporate policy according to its will by issuing instructions. As the parent company, it not only knew, knows and approves that the subsidiaries under its control generate energy from fossil fuels and thereby emit large quantities of CO_2, but it also caused its subsidiaries to do so through its corporate management decisions.“ Whether the defendant gave specific instructions on the use of fossil fuels or merely accepted this does not play a decisive legal role: it bears responsibility for the group's overall strategic orientation and the resulting emissions.

- Forseebality of the consequences of fossil business models since 1965

The court explained that in the mid-1960s, it was clearly foreseeable to energy companies such as the defendant that human CO_2 emissions would lead to global warming, causing problems such as melting glaciers and rising sea levels. Scientific evaluations from 1958 already showed the increase of CO_2 in the atmosphere. In the early 1970s, scientific societies warned of the serious and irreversible consequences of rising CO_2 emissions.

The judgment states on p. 49 et. seq: „According to the scientific measurements and evaluations of the climate researcher Charles D. Keeling, on whose data collection - the so-called „Keeling Curve“ - the plaintiff relies (…), direct evidence for the assumption of a steadily increasing CO_2 concentration and associated warming was already found in 1958. After evaluating his measurements, Keeling established that the burning of fossil fuels by mankind and the resulting release of CO_2 as well as the constantly increasing concentration of CO_2 contribute to global warming with undesirable consequences such as the melting of the ice caps, a rise in sea level, a warming of seawater, etc. (…). The German Physical Society spoke in the early 1970s of „unavoidable irreversible consequences on a global scale“ with regard to the impact of human activity on the climate and its (negative) consequences - assuming unhindered industrialization and further population growth (…) On the basis of this scientific opinion, the defendant could have recognized that the CO_2 emissions generated as a „waste product“ of coal-fired power generation were and are capable of contributing to the melting of glaciers as a result of the atmospheric greenhouse gas effect, not only due to the concatenation of particularly exceptional circumstances, but also due to ordinary physical processes.“okay :)

As a major energy producer, the defendant should therefore have been aware of its contribution to the climate crisis and the consequences. Large companies must constantly keep themselves informed about the latest scientific and technological developments.

- RWE‘s contribution of around 0.4% to total global emissions is significant

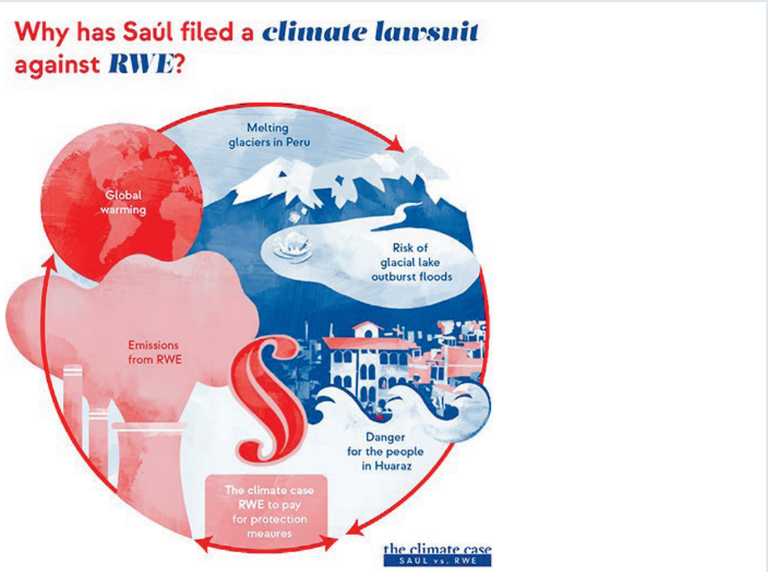
According to the court, RWE‘s emissions cannot be classified as insignificant. It states: „On a comparative basis, neither the defendant‘s (alleged) share of 0.38% of industrial CO_2 emissions nor its share of just under 0.24% of all CO_2 emissions worldwide appear low. According to the plaintiff‘s presentation, all causal shares of the world‘s largest emitters are each less than 3.6% of total emissions. In the list of the 81 largest CO_2 emitters worldwide (…), to which the plaintiff refers, the defendant occupies 23rd place. From this point of view, a share of 0.38% of all industrial CO_2 emissions worldwide is not a circumstance that is only suitable for bringing about the result - global warming and its alleged further consequences - under particularly peculiar, quite improbable circumstances that are to be disregarded according to the regular course of events. The defendant‘s share amounts to a good tenth of the causal share of the world‘s largest single emitter.“ (p. 52 judgment)

The court makes it clear that RWE‘s emissions are comparable to those of industrialized countries such as Spain or Sweden. The defendant reported around 166 million tons of CO_2 in 2013 and over 156 million tons in 2014 and describes itself as „Europe‘s largest single CO_2 emitter“.

- Causation between emissions from RWE and the impairment of protected rights

An essential element for liability in the context of claims for damages and, according to case law, also in the context of Section 1004 BGB is the causality between the impairment of the protected rights and the actions of the disturber (here: the defendant RWE). This means that the conduct of the defendant must be (at least partly) causal for the impairment.

The causal chain outlined by the plaintiff was as follows: RWE, through the operation of its power plants, emits greenhouse gases into the atmosphere. These emissions contribute to the overall concentration of greenhouse gases and thereby intensify global warming. As a consequence, the glaciers above Lake Palcacocha are melting at an accelerated rate, causing the lake's volume to rise to a critical level and increasing the risk of a catastrophic overflow. Such a flood wave would directly affect the plaintiff's property.



The court concurred with this argument, affirming that the defendant is directly responsible for the imminent threat to the plaintiff's property through its own actions. This holds true even though the causal chain is long and culminates in a natural event — a so-called glacial lake outburst flood (GLOF). Such an event, the court emphasized, is not a matter of mere chance, but a foreseeable consequence in accordance with the laws of nature.“Because the defendant intervenes in the climate by releasing CO_2 emissions, according to the plaintiff‘s submission, this is precisely where the individual acts of the causal chain take place, almost linearly, without coincidences and physically calculable.“ it says on p. 55 of the judgment)

According to the court, this case is therefore clearly different from cases cited by the defendant (BGH, judgment of 16.02.2001 - V ZR 422/99, para. 9 et seq. „mildew“; BGH, judgment of 20.09.2019 - V ZR 218/18, para. 10 et seq. „birch pollen“; BGH, judgment of 07.07.1995 - V ZR 213/94, para. 7 et seq. „wool lice“). Unlike those cases, which involved disturbances predominantly caused by natural events

that are largely random and not readily foreseeable under natural laws, the present case concerns a predictable chain of causation grounded in established scientific understanding.

Furthermore the courts states on p. 56 of the judgment: „The defendant, as the parent company of the RWE Group, caused the emission of large quantities of CO_2, since the construction and operation of the greenhouse gas-emitting power plants was and is based on its free will and on its fundamental entrepreneurial decision. Through its key decisions, it dominates and controls the subsidiaries that operate the power plants; as the parent company, it derives economic benefit from coal-fired power generation and the inevitable release of hundreds of millions of tons of CO_2 into the atmosphere. Unlike potentially affected landowners, as a large industrial operator of coal-fired power plants with scientific and legal expertise, it was and is able to assess and control (at least to a certain extent) the risk of damage to legal interests (...). In this respect, it also bears responsibility for the risk it has taken of endangering the legal interests of third parties if this risk actually materializes."

- Complexity and political nature of the climate crisis does not prevent liability

The court states that civil liability is not generally excluded in the case of cumulative, remote and long-term damage (p. 59 of the judgment). The „forest damage case" of 1987 cited by the defendant (BGH, judgment of December 10, 1987 - III ZR 220/86) does not generally exclude individual liability for environmental damage, but only failed at that time due to the lack of concrete proof of causation. In view of the court in contrast to that case, this case concerns specific CO_2 emissions of a certain company, the global effect of which is scientifically quantifiable and verifiable. Therefore, civil liability of RWE is possible in principle.

The court rejects the defendant's claim that climate lawsuits would overwhelm the judiciary or amount to political overreach (see pp. 63 et seq. of the judgment). While climate litigation often faces the argument—rooted in the political questions doctrine—that such issues belong to lawmakers, the court holds that such concerns are irrelevant to the legal assessment of the claim at hand. Moreover, it is neither unusual nor inherently impermissible for judicial claims to further political interests. The court also dismisses fears of a flood of lawsuits ("everyone against everyone"). In its view, the case demonstrates the stringent requirements for such claims and the complexity and expense of the proceedings. On balance, the court finds no legal basis to categorically deny civil claims related to climate change a thorough examination.

The court concludes (p.64 judgment): „Overall, the defendant's argument that solutions to this conflict can only be implemented at the state and political level is aimed at warding off claims (of emission damage) by affected owners from the outset, without having to enter into a legal examination or even a collection of evidence on the disputed facts. The Senate sees no legal basis for dealing with the present case in this way."

- Civil Liability in Cases Involving Multiple Polluters

The court affirms that a defendant may be held individually liable for contributing to a climate-related risks, even if they are only one of many emitters (p. 64 et. seq.). The fact that there are multiple contributers does not preclude the plaintiff from bringing a claim solely against one co-contributor related to their share.

c) Unlawfulness of the impairment of property

The court states that the claim under Section 1004 (1) of the German Civil Code (BGB) basically imposes responsibility on a disturber for any conduct whose consequences unreasonably affect another person. The court is thus in line with both supreme court case law and the prevailing opinion in legal literature, as it explains. Accordingly, it does not matter whether these actions - which are fueling climate change in this case - are permitted by law or state permits, nor whether emission certificates have been purchased. The fact that an acitivity may be lawful according to public law does not exclude civil liability (p. 65 ff. of the judgment). Section 1004 of the German Civil Code (BGB), over a century old, is emerging as a key legal standard for holding large companies and industrial actors accountable for their social and environmental impacts.

d) No joint responsibility of the plaintiffs

The court rejected the defendant's claim that the plaintiff bore joint responsibility for the risk to his property. The fact that he acquired a home in a high-risk area does not render him "to blame," as the defendant alleged.

According to the Hamm Higher Regional Court, Saúl as the plaintiff, as well as many other people affected by the dangerous consequences of climate change, are subject to a „so-called obligation to tolerate". They have to endure the behavior of large companies and the global North without being able to change anything. The plaintiff must therefore accept the concrete impairment of his property, as he cannot stop the emissions in the global North, as the presiding judge of the senate explained in the oral pronouncement of judgment. The court emphasized that the plaintiff is not partly responsible, as the causal factors originate entirely outside his sphere of influence.

It is legally irrelevant that he acquired the house from his parents and may have been aware of the climate-related risks. Had he declined the transfer, the legal successor would simply have been his parents, with no change to the underlying circumstances or any evidence of self-endangerment on their part. It has not been shown that the plaintiff's parents had to adapt their use of the property in 1984 to a GLOF made possible by anthropogenic climate change and, in particular, that they reasonably refrained from constructing the residential building to avoid endangering themselves.

2. Interim conclusion

In its ruling, the Higher Regional Court of Hamm fundamentally affirms the civil liability of major greenhouse gas emitters for climate-related damage. The court underscores that the harmful consequences of fossil fuel-based business models have been foreseeable since the mid-1960s and that substantial contributions to climate change may amount to unlawful interference with property rights—even where emissions were legally permitted. This sets a significant precedent for pursuing civil claims against large emitters.

3. Rejection of the principal arguments advanced by major emitters against their liability

Major emitters often refer to a similar repertoire of arguments to contest their liability for their contribution to the climate crisis. These include the that individual liability is unreasonable, that global causal chains are too complex, or that specific climate impacts are too unpredictable to attribute. These arguments were also used by the defendant RWE. The Hamm Higher Regional Court's decision establishes that major emitters bear (civil) legal responsibility for the climate crisis. In doing so, the court has clearly rejected some of the most important counter-arguments that major emitters repeatedly put forward - with far-reaching implications not only for future litigation, but also for political and social discourse.

TYPICAL ARGUMENTS AGAINST LIABILITY OF MAJORS PLAYERS IN THE FACE OF CLIMATE CRISIS	POSITION OF THE OLG HAMM IN ITS JUDGMENT OF 28.5.2025
Civil law is not applicable to claims arising from the climate crisis. These are political issues that only the legislator can address.	There is no legal basis to exclude claims with political relevance from civil liability. The court's decision on civil claims against major emitters to protect against the consequences of the climate crisis is in line with the separation of powers (p. 63 f. judgment).
Causation relating to climate change is too complex and scientifically uncertain.	This case concerns clearly identifiable CO_2 emissions from a specific company, the global effects of which are scientifically proven and comprehensible. Civil liability of the defendant is therefore possible in principle. (p. 54 ff judgment)
Holding individual emitters liable is arbitrary in view of their large number and small contributions, because humanity as a whole is responsible for the climate crisis.	0,4 % of all global emissions is a significant contribution which is clearly exceeds those of individual citizens, therefore justifying civil liability. The fact that the climate crisis is caused by a number of polluters does not prevent liability (p. 64 judgment).
Liability must be excluded if there is a permit	The permits granted by the German authorities for the operation of the plant and the allocation of emission allowances in accordance with the Greenhouse Gas Emissions Trading Act (TEHG) do not oblige the plaintiff to accept a concrete threat of impairment of his property. (p. 79 f. judgment)
Fossil energy generation is based on demand and serves the common good.	It is true that an adequate energy supply is of the greatest interest to Germany and its inhabitants. However, this fact does not mean that energy must be generated by the defendant and/or by burning fossil fuels. (…)In addition, the general interest in Germany in a comprehensive supply of energy is not capable of forcing a citizen of Peru to tolerate an impairment of his property. (p. 81 judgement) Energie keine Teilhabe hat." (S. 80 f. Urteil).
Emissions by subsidiaries cannot be attributed to the parent company.	*"In this situation, the defendant, as the controlling company, has and had the power to control corporate policy according to its will by issuing instructions. As the parent company, it not only knew, knows and approves that the subsidiaries under its control generate energy from fossil fuels and emit large quantities of CO_2 in the process, but it also induced its subsidiaries to do so through its corporate management decisions." (p. 45 judgment)*

III. Outlook

The ruling by the Hamm Higher Regional Court in the Lliuya v. RWE case has made legal history. For the first time, a German court has recognized that a company can be held liable under civil law for its contribution to the global climate crisis - even across national borders. The detailed legal explanations of the Higher Regional Court of Hamm on causation and the role of major emitters can also be applied to other civil law cases.

Whether in Germany, Europe or worldwide, the line of reasoning in this ruling will be cited, examined and applied in courtrooms. In its clarity and precision, the decision is a door opener for further climate lawsuits, not only against RWE, but also against other major emitters.
At the same time, the ruling has an impact beyond the legal realm and has both economic and political implications:

- Companies that contribute significantly to the climate crisis must factor the risk of legal liability into their business models in future. Those who derive profits from fossil business models must also take responsibility for the damage they cause.

- A crucial window of opportunity is now opening up for political decision-makers. The momentum is there to set up a clear legal framework that consistently implements the polluter pays principle and distributes the costs fairly. If this does not succeed, corporations will have to operate with the constant risk of liability - and those affected worldwide will take their cases to court with higher chances of success than ever before.

This decision marks the beginning of a new era of acountability. The extent of damage caused by the climate crisis and the responsibility of major emitters can be determined with unprecedented clarity. Without effective action from both businesses and policy makers to uphold the polluter pays principle and curb emissions, an increase in climate litigation is inevitable. With ongoing advances in climate science and litigation, future cases are poised to establish the responsibility of major emitters not just in principle, but decisively in practice. The foundation for such judicial successes has now been firmly laid.

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