

Aix-en-Provence
**Climate change Litigation and
Corporations**
30 September 2024

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Belgian case

- Hughes Falys v. Total
- Launched on the 13th of March 2024
- Still pending



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- A farmer
- Suing TotalEnergies
- Before a business tribunal
- 3 NGOs
- Backup academia
- Tribunal in Tournai
- Appeal Court in Mons (where there is a specialized chamber on environmental issues)



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Shell case **spilling-over** to Belgium

Milieudefensie v. Shell	
Defendant	« This is not constructive »
	« Dutch law is not applicable »

Milieudefensie v. Shell	
Plaintiff	Fault-based liability
	Unwritten standard of care

Falys v. TotalEnergies	
Defendant	« This is not constructive »
	« Belgian Law is not applicable »

Falys v. TotalEnergies	
Defendant	Fault-Based liability 1382 & 1383 CC
	Unwritten standard of care + statutory



Milieudefensie v. Shell Clearly inspirational		Hughes Falys c. TotalEnergies	
Unwritten standard of care for companies	1.5° C, as a common ground, since Paris Agreement	Standard of care	<i>Paris Agreement (1.5° C) State of the Art HR instruments: UNGP, OECD</i>
	UN Guiding Principles – Responsibility for business enterprises to respect human rights exists over and above compliance with national laws. It is not enough for companies to follow the measures states take; they have an individual responsibility (§.4.4.13)		1382 and duty of care in the light of human rights (= Urgenda)
	The Court is of the opinion that much can be expected from RDS (policy-setting position) (§4.4.17) (exceeds the emissions of many states) – It must take the necessary steps: this is a significant best efforts obligation (§4.4.24)		<i>Disinformation, influence, lobbying, insufficient strategies, greenwashing: knew, but did not act with care</i>
	« The argument not to impose a court order on only one private party fails on the basis of RDS’s legal obligations » (§.4.5.3)		Damage Future damage



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ÉCONOMIE • ÉNERGIES FOSSILES

Shell déménage son siège de La Haye à Londres

La compagnie pétrolière, qui veut notamment simplifier sa structure pour verser des dividendes plus importants, suit l'exemple du géant des produits de consommation Unilever.

Par Eric Albert (Londres, correspondance) et Jean-Pierre Stroobants (Bruxelles, bureau européen)

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GRAND CHAMBER

CASE OF DUARTE AGOSTINHO AND OTHERS
AGAINST PORTUGAL AND 32 OTHERS

(Application no. [39371/20](#))

DECISION

STRASBOURG

9 April 2024

• 191. The Court acknowledges the following aspects of climate change emphasised by the applicants.

• 193. Secondly, albeit complex and multi-layered, there is a certain causal relationship between public and private activities based on a State's territories that produce GHG emissions and the adverse impact on the rights and well-being of people residing outside its borders and thus outside the remit of that State's democratic process. Climate change is a global phenomenon, and each State bears its share of responsibility for the global challenges generated by climate change and has a role to play in finding appropriate solutions.

• 194. Thirdly, the problem of climate change is of a truly existential nature for humankind, in a way that sets it apart from other cause-and-effect situations. More fossil fuels being extracted or burnt anywhere in the world, beyond what can be offset by natural carbon sinks (net zero), will inevitably lead to higher GHG concentrations in the atmosphere and therefore to worsening the effects of climate change globally.

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Context

*In common:
back to basics*

- State-related climate case: **Klimaatzaak**
- Liability of companies re pollution **Eternit**
- Common law responsibility for pollution: between neighbours **3M**
- New Belgian civil code, with **potential**

Climate case

Klimaatzaak v. Belgian State & Regions

- NGO v. Belgian State and Regions
- **November 2023** - Appeal Court confirms the liability of the Federal State and of two Regions
- **Fault, due to the insufficient mitigation of emissions and lack of ambition** (« *ne sont pas normalement prudentes et diligentes* ») 1382 CC
- + violation art. 2 & 8 ECHR
- Order

The Flemish Region appealed to the Supreme Court (Pending)



Pollution & health case

The Brussels Times

Cancer through asbestos: Court convicts Eternit of intentional wrongdoing

Monday 4 December 2023

Abiding by the law does not tell the full story

Did the company knew about the risk?

Jonckeere v. Eternit, Trib.
Brussels, 27 Nov. 2023

Appeal is pending

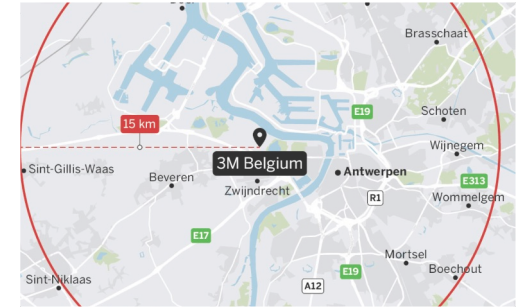
- **Hush money** - Recipients barred to bring legal action unless the person can prove "deliberate misconduct »
- *"By nevertheless leaving its conduct in this regard unchanged and continuing to operate its factory in identically the same way for decades, without taking the slightest protective measure, the defendant accepted the risks in question a priori »*
- *It is common ground that the defendant wrongly participated in the efforts made by the asbestos industry to systematically minimise and conceal the danger posed by asbestos, and in so doing, inter alia, to sabotage legislative initiatives to protect public health. In view of the knowledge which it had of the enormous danger posed by asbestos in reality, that conduct can only be classified as fraud.*

3M May 2023 – Revisiting the potential of basic « common law » (*troubles de voisinage*)

Belgian family successfully sues 3M for pollution



@TheBulletin



- A justice of the peace in Antwerp convicts 3M for abnormal neighbourhood disturbances
- Key aspect is: **imbalance**
- 1 km
- Blood tests show the impact of the industrial activity
- €2,000 to be paid to the family, but the amount of damages paid can increase if further damage is observed
- Paves the way for future litigation for others in the area
- *New: Juge de paix* can deliver **preventive orders**

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Belgian Civil Code revisited

New Book 3 on goods and property into force since September 2021

Codifies the Troubles de voisinage

Art. 3.102. 102. Prevention of abnormal neighbourhood disturbances

If a property (*bien immeuble*) causes **serious and obvious safety, health or pollution risks** to a neighbouring property, thereby upsetting the balance between the properties, the owner or occupier of the neighbouring property may apply to the court **for preventive measures to be taken to prevent the risk from occurring.**

Civil Code revisited

New book 5 on extra-contractual liability **Into force: January 2025**

Art.6.5.	Toute personne est responsable du dommage qu'elle cause à autrui par sa faute. <i>Everyone is liable for the damage they cause to others through its/her own fault.</i>
Art.6.6.	§ 1. Fault consists in a failure to comply with a legal rule which imposes or prohibits a particular course of conduct or with the general standard of care which must be observed in social relations. § 2. The general standard of care requires that conduct be adopted which would have been adopted by a prudent and reasonable person in the same circumstances. To this end, the following may in particular be taken into consideration: 1° the foreseeability of the damage 2° the proportionality between the risk of occurrence of the damage, its nature and extent, and the efforts and measures needed to prevent it; 3° the state of scientific knowledge 4° the state of the art and good professional practice; 5° the principles of good administration and good organisation.

New Belgian Civil Code

New book 5 on extra-contractual liability Into force: January 2025

Art.6.23 .	Uncertainty as to the identity of the person liable - Alternative causes If several similar acts for which different persons are liable have exposed the injured party to the risk of the damage occurring, without it being possible to prove which of these acts caused the damage, each of these persons is liable in proportion to the probability that the act for which he is liable caused the damage. However, a person who proves that the event for which he is liable did not cause the damage is not liable.
	NO provision on ecological damage – Left to future landmark cases ! A judge has already recognized that a damage to biodiversity was to be interpreted as a personal damage to the Walloon Region

Thank you

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@AixEspaceGallifet – Nagerdanste bonheur 2013 by Diadji Diop



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