Westlaw Today

Managing greenwashing risks

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DECEMBER 4, 2025

According to Merriam-Webster, greenwashing is "the act or practice of making a product, policy, activity, etc. appear to be more environmentally friendly or less environmentally damaging than it really is." (https://bit.ly/47SL5Ry)

This definition would seem broad enough to describe many simple exaggerations common to modern marketing. But when the conduct involves providing false or misleading information, either intentionally or inadvertently, regarding the environmental or sustainability attributes of a product, asset, or activity, greenwashing claims may result. The financial liabilities that can result from greenwashing will likely offset any short-term marketing gains.

Greenwashing typically occurs in one of three ways:

- *Misrepresentations ("fibbing")* — Asserting an environmental benefit without proof involves some level of fabrication. If the misrepresentation is known to be false or misleading, the greenwashing could be fraudulent.
- *Errors ("oops!")* — Using flawed or sloppy data or methodology.
- *Omissions ("shortcutting")* — Failure to disclose key information or to conduct a complete, credible, and transparent analysis.

This article explores the causes and consequences of greenwashing, with a particular focus on whether the resulting liabilities are insurable. The discussion also highlights best practices for managing these risks through transparency, verification, and adherence to international standards.

Greenwashing risks

Greenwashing presents two major areas of negative risk: (1) reputational risk; and (2) regulatory/legal risks.

Reputational risk

Increased public interest in green products and services is being driven by a variety of factors: changes in social norms, an orientation to the natural environment, a company's perceived green image, perceived benefits of buying green, institutional trust, sociodemographic characteristics, and overall consumer confidence.[1]

A growing number of consumers, investors, and employees are looking for products and corporate brands that deliver on environmental promises that match their own values. Consumer and regulatory expectations for a company's "green" reputation have evolved to include not only actions taken directly by company but also the actions of its partners in its supply chain, as well as third-party distribution, delivery, and use.

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Today, many consumers demand proof that these actions are being taken and that they are effective. When a product or company falls short of these expectations, the backlash can be significant.

One of the most famous examples of greenwashing risk to a company's reputation is Volkswagen's "Clean Diesel" campaign (a.k.a. "Dieselgate"). While promoting eco-friendly diesel cars, Volkswagen installed software that created lower emissions during government testing while emitting significantly higher emissions on the road.

In addition to facing criminal charges and the largest greenwashing fines and fees in history, Volkswagen's sterling reputation for sustainability took a significant hit as environmentally conscious formerly loyal customers abandoned the brand in droves.

Regulatory/legal risk

Unlike reputational risk, which can be hard to quantify, regulatory/legal risk can result in a judgment involving concrete money damages and/or fines. This financial exposure can come from consumer protection laws and class-action lawsuits by regulators, Attorneys General, and investors.

The Volkswagen example involved investigations and government actions by Australia, Belgium, Brazil, Canada, China, the European Union, France, Germany, Hong Kong, India, Italy, Japan, the Netherlands, Norway, Romania, South Africa,

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South Korea, Spain, Sweden, Switzerland, United Kingdom, and the United States as well as dozens of private actions (https://bit.ly/4prSkpv).

In the United States, the number of lawsuits involving greenwashing has risen sharply over the last 5 years. According to an environmental litigation database managed by The Columbia Climate School and the Sabin Center for Climate Change Law in collaboration with the Arnold & Porter law firm, the number of cases per year has increased from two in 2019 to nine in 2024. This number will likely be surpassed in 2025 (https://bit.ly/4oOVq6N).

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The types of cases vary greatly, from agricultural products claiming to be environmentally friendly to companies targeting to be Net Zero by 2050 without a plan to do so. About half of these cases have been dismissed, while the other half are moving forward.

Greenwashing risks are also driven by the trend toward Environmental, Social, and Governance ("ESG") disclosure. While the U.S. federal government has pulled back from imposing ESG reporting requirements, states and nations worldwide have not, and companies in some cases voluntarily choose to disclose this information in response to market pressures.

Because ESG generally involves public disclosures about environmental and sustainability practices, it increases the risk of greenwashing claims. Statements about a company's ESG measures — e.g., the company's status as "net-zero" or "carbon neutral" — invariably will be scrutinized by investors, consumers, and government agencies and may lead to greenwashing claims to the extent the disclosures are seen as false or misleading.

In recent years there has been something of a counter-revolution seeking to curtail corporate ESG initiatives, including those seeking to advance environmental sustainability. Several state attorneys general have opened investigations into asset managers' ESG practices; states have passed laws (https://bit.ly/3JZasbc) barring contracts with financial institutions that restrict their investments in industries including fossil fuels; and the Trump administration withdrew a proposed Biden-era rule[2] that would have required enhanced disclosure of ESG issues.

All that said, liability risk persists, as shareholders continue to file suits alleging greenwashing; states including New York and California continue to ramp up enforcement against greenwashing, as do many jurisdictions abroad.

Although most greenwashing litigation to date addresses consumer products or corporate environmental claims, there are also risks and potential liabilities related to service providers, such as sustainability and environmental consultants, who face such risk when they provide advice that could result in a greenwashing claim.

Insurance

Insurance may mitigate some of the greenwashing risk that companies face. Policies that are potential sources of coverage include:

Directors and officers (D&O) insurance

D&O insurance covers companies for claims against their directors and officers based on alleged "wrongful acts" done within the scope of their duties for the company. Most D&O policies also provide some degree of coverage for claims against the entity itself. This frequently includes coverage for lawsuits brought by the company's shareholders — including class action lawsuits — alleging that the company has taken wrongful action that has harmed its share price.

Many greenwashing claims fall within this category, as shareholders sue companies for misrepresentations or failures to live up to statements in ESG reporting, or in advertising or other public statements. Many D&O policies sold to private companies or nonprofits provide even broader coverage for claims against the entity, which could include consumer class actions or other greenwashing claims brought by non-shareholders.

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D&O policies also frequently provide coverage for regulatory investigations, which could cover greenwashing claims by governmental entities regarding the accuracy of the company's public disclosures.

In the Volkswagen example, the financial loss was extremely large, $14.7 billion under the U.S./California settlement that included offering to buy back impacted vehicles at a fair replacement value or have their leases terminated at no cost.[3] Most of these liabilities were not covered by insurance. However, Volkswagen's D&O insurers paid out €270 million ($308 million) as part of a settlement.[4]

Similar claims have been made against some of the world's largest diesel car manufacturers, which have been accused of installing "defeat devices" to ensure nitrogen oxide (NOx) emissions were kept within legal limits while being tested but not during normal driving.

Lawyers involved in the case against the manufacturers in the United Kingdom estimate the total claims to approach $8 billion by nearly 850,000 claimants. A judgment is expected in mid-2026.[5] The extent to which D&O insurance may cover these claims is as yet unknown.

According to Chubb Ltd. CEO Evan Greenberg, insurers should expect shareholder lawsuits alleging greenwashing against D&O policyholders. Greenberg notes that net-zero disclosures pose a particular challenge to the insurance industry.[6]

General liability (GL) insurance

GL insurance generally covers claims for bodily injury and property damage. In the greenwashing context, GL insurance could cover claims that a plaintiff was injured by using a product that was advertised as "sustainable" or "organic," but which actually contained a harmful substance, such as PFAS.

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GL insurance also provides coverage for misuse of intellectual property, which could apply to a claim that the company improperly cited a proprietary seal of sustainability in an advertisement in reference to a product that did not qualify for that certification.

Errors and omissions (E&O) insurance

E&O insurance may also provide coverage for greenwashing-related risks for professional service companies and individuals, such as the example cited above of the sustainability and environmental consultant who provides advice that results in a greenwashing claim.

Managing greenwashing risks

Regardless of whether greenwashing risks are covered by insurance, organizations need to focus on establishing clear risk management criteria (e.g., processes, procedures, and controls) for making environmental assertions and supporting them with complete and accurate data. In other words, what is accurately measured gets managed.

Additionally, having objective internal and independent external verification of environmental assertions adds credibility. In short, what gets verified is believed. Having these standard practices in place is perhaps the best defense against charges of greenwashing.

Standard practices can include technical specifications, quality performance, and safety, as well as terminology, testing and methods, packaging, or labeling requirements. There are many green and sustainability reporting guidelines, frameworks, and standards, designated by a virtual alphabet soup of acronyms.

When it comes to very specific technical requirements, ISO/IEC (International Organization for Standardization/International Electrotechnical Commission) has been developing standards and guidance for environmental management, performance, and reporting for over 35 years. There are currently over 25,000 published ISO standards.[7] Of these standards, there are hundreds dealing with various aspects of environmental sustainability for various entities, sectors, and governments.

The ISO Environmental Management standards that deal with various aspects of greenwashing risks and liabilities include, but are not limited to, the following:

> 14021:2016 — Environmental labels and declarations — Self-declared environmental claims (type II environmental labelling)
>
> 14024:2018 — Environmental labels and declarations — principles and procedures (type I environmental labeling)
>
> 14026: 2017 — Principles, requirements and guidelines for communication of footprint information
>
> 14030:2021 — Green debt instruments (green bonds and loans)
>
> 14063:2020 — Environmental communication. Guidelines and examples
>
> 14064/5/6/7/8 — Series on Greenhouse Gas (GHG) management, accounting, reporting, verification/validation, and professional competencies. ISO 14068 specifically addresses carbon neutrality.
>
> 14100:2022 — Guidance on environmental criteria for projects, assets, and activities to support the development of green finance

ISO's Technical Committee on Environmental/Climate Change Management is developing an international standard that establishes guiding principles and requirements for organizations to track and verify progress toward becoming net-zero organizations aligned with the goals of the Paris Agreement.

This new standard, ISO 14060, Net Zero Aligned Organizations, is expected to be released in early 2026. While the US has withdrawn from the Paris Agreement, these standards will likely have widespread global influence.

Moving forward, ISO/IEC is developing additional new standards addressing aspects of greenwashing and conformity assessment in digital products, AI, and cybersecurity. These standards will form the foundational framework of defining and litigating greenwashing complaints.

Conclusion

Greenwashing poses significant reputational and legal risks. Where the greenwashing risks are insurable, insurance coverage may be available under D&O, GL, and/or E&O insurance policies. The best defense against greenwashing is to be transparent about providing supporting data to support assertions, conduct internal and external verification, and adhere to applicable international standards.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of J.S. Held. J.S. Held does not provide policy interpretation or coverage advice.

Notes:

[1] Barbu A, Catană ȘA, Deselnicu DC, Cioca LI, Ioanid A. Factors Influencing Consumer Behavior toward Green Products: A Systematic Literature Review. Int J Environ Res Public Health. 2022 Dec 9;19(24):16568.

[2] SEC Drops Proposed Anti-Greenwashing Fund Disclosure Rules, ESG Today, June 17, 2025, https://bit.ly/4pqhJzS.

[3] Volkswagen Clean Air Act Civil Settlement, US EPA, https://bit.ly/49r9lLG; Office of Public Affairs, Volkswagen to Spend Up to $14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles, United States Department of Justice, https://bit.ly/3JM5zlP.

[4] VW to Receive Dieselgate Settlement From Former CEO, Executives, WSJ https://on.wsj.com/4oZHkjq.

[5] Carmakers accused in huge UK lawsuits of cheating diesel emissions tests, https://reut.rs/3LOxkL4.

[6] Greenwashing comes under fire, Business Insurance, July 12, 2022, https://bit.ly/3Kf7pLY.

[7] ISO, ISO in figures, https://bit.ly/3X3QvD3.

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This article was first published on Westlaw Today on December 4, 2025.