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RWE Lawsuit (Re Carbon Emissions & Climate Change in Peru)

Abstract

Saúl Luciano Lliuya, a Peruvian farmer, is suing Germany-based energy firm RWE AG for environmental damage caused by the firm's carbon emissions. Lliuya claims that, because research by the Carbon Disclosure Project and the Climate Accountability Institute indicates that RWE is responsible for 0.5% of global greenhouse-gas emissions, it should pay for 0.5% of the cost of flood defenses for Huaraz: about \$20,000.¹ Lliuya has sought the support of various environmental NGOs to aid his suit, and the plaintiff is collecting evidence to point to RWE's legal responsibility for potential damage to Lliuya's property. Although the case is still ongoing, the fact that it has not been dismissed for lack of standing represents a significant step forward for future environmental litigation. The progression of the case indicates that large companies are potentially financially liable for their greenhouse emissions.

Table of Key Facts

Case name	Lliuya v. RWE AG	
Date	2015 - Present	
Jurisdiction	Essen Regional Court, appealed to Hamm State Appellate Court	
Plaintiff	Saúl Luciano Lliuya, supported by Germanwatch	Defendants RWE AG
Decision	State Appellate Court agreed to hear the case, rejecting RWE's objections	

¹ "A Peruvian Farmer Is Suing a Major Energy Company to Save His Home." Time. Accessed March 5, 2019. <http://time.com/5415225/rwe-lliuya-climate-change/>

Prior procedures	Initial Regional Court suit dismissed, lacking evidence of defendant's legal responsibility, Also appealed to State Appellate Court
Subsequent procedures	State Appellate Court has appointed hydrology experts to examine environmental damage in Peru

Background

RWE, a German electrical utilities firm, is the second-largest electricity producer in Germany. It supplies electricity to more than 30 million customers and has more than 70,000 employees. In 2017, RWE collected revenues of nearly 47 billion euros, with a profit of nearly 7 billion euros.

Peruvian farmer Saúl Luciano Lliuya is suing RWE in a German court for damages relating to the cost of flood protection measures near his home in the village of Huaraz. Lliuya alleges that RWE's historic emissions of greenhouse gases (and subsequent contribution to climate change) have interfered with his property ownership and that RWE's emissions constitute an interference per section 1004 of the German civil code.

Given the proximity of Lliuya's village to a nearby mountain lake, he worries that climate change will damage nearby glaciers above the lake, possibly causing destructive flooding. A previous flood in 1941 killed 1,800 people when a piece of a glacier broke off into the lake. The lake's level is higher now, and 50,000 people live in the floodwaters' path, so further glacial collapses would be disastrous.

Through a local agricultural adviser, Lliuya was connected with Germanwatch, an NGO, which has primarily coordinated external media attention to support the ongoing case in Germany. Germanwatch representatives visited Lliuya in his village following the 2014 Climate Summit in Lima, Peru. Germanwatch also connected Lliuya with Dr. Roda Verheyen, an environmental law specialist, who has handled the case's legal aspects.

To support the case financially, Germanwatch and partners chose a crowdfunding model. Such a model covers the high costs of the scientific studies required for the suit's evidentiary stage while allowing supporters to show their solidarity with the ongoing legal effort. Germanwatch's partner Stiftung Zukunftsfähigkeit (Foundation for Sustainability) ran the crowdfunding campaign using the betterplace.org platform. To date, 288 donors have contributed nearly 50,000 euros, toward an ultimate goal of more than 60,000 euros.

Lliuya seeks 21,000 euros in compensation from RWE. This figure represents 0.47% of the estimated cost of glacial flood protection measures in his village.² According to a 2014 Institute of Climate Responsibility estimate, RWE's historic carbon emissions are 0.47% of total global emissions causing global warming from 1751 through 2010, the largest single share contributed to global emissions by any European company.

In December 2016, Lliuya's lawsuit was dismissed in Essen District Court for lack of standing. However, Lliuya's chances for success were improved when, following an appeal, the Higher Regional Court in Hamm agreed to move into evidentiary procedures, indicating a belief

² At this point, it is uncertain if other governmental bodies or nongovernmental organizations are assisting in flood protection measures.

that corporations could face liability for environmental and climate damage. As of September 2018, two court-appointed hydrology experts are collecting information and preparing to offer an opinion on whether there is really a serious threat to Lliuya’s property. If such a threat exists, evidence will be collected regarding RWE’s legal responsibility for potential damage to Lliuya’s property. The timeline regarding the release of the opinion in the case is as yet unknown.

Timeline of Key Events

Date	Key Event
March 2015	Lliuya files complaint against RWE
May 2015	RWE moves to dismiss complaint and request for compensation, citing lack of legal standing
November 2015	Lliuya files suit against RWE in German district court
November 2016	Hearings begin in German district court
December 2016	Judge dismisses lawsuit, finding Lliuya had not established RWE’s legal responsibility
January 2017	Lliuya appeals
November 2017	Higher Regional Court agrees to hear the case
February & March 2018	Higher Regional Court rejects RWE objections, reiterating that climate damages can lead to corporate liability
July 2018	Higher Regional Court announces it will select experts (citing lack of agreement between plaintiff and defendant)
September 2018	Selected hydrology experts accept their appointment to provide opinion on existence of threat of impairment to Lliuya’s property

Impact

The Hamm Higher Regional Court’s decision to enter the evidentiary stage, as opposed to dismissing the case as did the Essen District Court, suggests that the regional court may believe that corporate liability could exist for greenhouse gas emissions. As the case is still pending, the assessment of the impact is still difficult at this stage. However, its continued viability at the regional court level represents a potentially significant financial risk for companies operating in industries associated with significant levels of greenhouse gas emissions.

Accountants and insurance experts have already begun advising corporate actors that cases modeled after Lliuya’s effort may lead to steep financial penalties for historic greenhouse

gas emissions.³ In addition to validating Lliuya's claims and concerns about the damaging effects of climate change in his own village, the case's non-dismissal already makes it a template that advocacy groups hope will be replicable in other jurisdictions against other corporate respondents,⁴ although this has yet to be seen.

Strategic Elements

The primary strategic element of Lliuya's case against RWE is the innovative technique of pairing a developing-world plaintiff with expert legal counsel, bolstered by a sophisticated media strategy, to bring a lawsuit against a large European corporation in a European jurisdiction. An additional innovative aspect to this case is linking a company's historic contributions to global greenhouse gas emissions to a specific liability associated with a single plaintiff. This strategy begins to roll back the anonymity of the "tragedy of the commons" by linking individual damages to uniquely emitting companies. Although it is still too early to tell definitively, the regional court's decision to advance to the evidentiary stage suggests this strategy may be viable and replicable for other plaintiffs.

If Lliuya's case continues to advance, there are innumerable similar cases, which could be brought in developed-world jurisdictions against specific companies for their historic contributions to global greenhouse gas emissions. For example, citizens of Pacific island nations such as Nauru or Tuvalu could bring suit against any of the oil majors, such as ExxonMobil or BP for their role in rising sea levels, or farmers in African nations hosting large Australian mines could bring suit against the Australian mining operators. In each example, the developed-world respondent would need to appear in their domestic judicial systems, as opposed to developing-world plaintiffs attempting to bring lawsuits in Tuvaluan or Zambian courts against large multinational corporations.

An additional strategic element to monitor moving forward in this case is the crowdfunding efforts undertaken by organizations supporting the plaintiff that cover the court and attorneys' fees as well as the high costs of the scientific reports that are required for the evidentiary stage of the suit.⁵ It appears that this could be a strategy taken in future environmental and human rights abuse cases.

Further Information

- [Time: Climate Change Could Destroy This Peruvian Farmer's Home. Now He's Suing a European Energy Company for Damages](http://time.com/5415225/rwe-lliuya-climate-change/) (<http://time.com/5415225/rwe-lliuya-climate-change/>)

³ "Climate-Change Lawsuits - New Green Advocates." Accessed April 15, 2019. <https://www.economist.com/international/2017/11/02/climate-change-lawsuits>.

⁴ Id.

⁵ "RWE Lawsuit: First Test Case in Europe to Clarify Responsibilities of Carbon Majors for Climate Change | Germanwatch e.V." Accessed April 15, 2019. <https://germanwatch.org/en/15999>.

- The Verge: A Peruvian Farmer is Suing an Energy Giant over Climate Change (<https://www.theverge.com/2015/12/2/9821758/climate-change-lawsuit-un-rwe-energy-vs-peru-farmer>)
- Digital Journal: Peruvian Farmer Scores Small Win in Court over German Energy Giant (<http://www.digitaljournal.com/news/world/german-court-hears-peruvian-farmer-s-climate-change-appeal/article/507510>)
- Germanwatch: Historic Breakthrough with Global Impact in “Climate Lawsuit” (<https://germanwatch.org/en/14795>)
- DW: Peruvian Farmer Sues German Energy Firm RWE (<https://www.dw.com/en/peruvian-farmer-sues-german-energy-firm-rwe/a-36506880>)
- The Guardian: Peruvian Farmer Demands Climate Compensation from German Company (<https://www.theguardian.com/environment/2015/mar/16/peruvian-farmer-demands-climate-compensation-from-german-company>)
- E&E News: Claim Blaming Utility for Devastating Glacier Melt in Peru May Set Landmark Legal Precedent (<https://www.eenews.net/stories/1060016270>)
- Climate Case Chart: Lliuya v. RWE AG (<http://climatecasechart.com/non-us-case/Lliuya-v-rwe-ag/>)
- Business & Human Rights Resource Center: RWE Lawsuit (<https://www.business-humanrights.org/en/corporate-legal-accountability/special-issues/climate-change-litigation?page=5>)