



## COTTON 2040 MASTERCLASS 3 SUMMARY

### Liability Risk



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This document presents a summary of the recent masterclass “Liability Risk”. The masterclass, the third in a series of six co-hosted by [WTW](#) and [Forum for the Future](#) in October 2022, provided practical guidance on how brands and retailers can proactively manage their climate-related legal risk.

The masterclass first outlined how the **legal landscape is evolving with growing climate litigation against big emitters**, upcoming climate-related regulations and laws, and new applications of existing laws to prosecute greenwashing. The class showed how liability risks can arise from the poor management of transition and physical risks. The drivers of climate-related liability risk includes plaintiffs who allege they have suffered loss and damage from the physical impacts of climate change, and investors who feel fossil fuel-intensive companies have failed in their fiduciary duties to manage transition risk.

The masterclass then identified the types of climate-related liability risks faced by brands and retailers, and how these **materialise through operations, markets, value chains and transactions**. Speakers highlighted ‘greenwashing’ lawsuits and investigations into green claims and credentials driven by regulatory bodies including the UK Competition Markets Authority’s recent investigation of ASOS, Boohoo and George at Asda.

The final part of the masterclass set out practical steps to reduce exposure to litigation. This includes **understanding climate-related liability risks, seeking advisory support for regulatory responses and disclosure, conducting a climate contract audit, understanding novel insurance clauses for risk transfer, and developing risk management opportunities that bring together stakeholders**. It concluded with a view to the future and the potential for climate litigation cases and TNFD to set the wheels in motion for further biodiversity litigation on cotton production which harms ecosystems.

## Key Takeaways

- The number of climate-related laws and cases is growing rapidly with 2099 climate litigation cases identified to date. The majority have been in the US, but the numbers are growing across other regions.
- Traditionally, fossil fuel-based companies have been the target for climate litigation cases. However, other sectors and industries including fashion and retail industry, food and beverage, and the plastics industry, are being targeted.
- Brands and retailers should understand their climate-related liability risks and seek advisory support for regulatory responses and disclosure.

“Climate liability issues associated with climate change are vastly underestimated by most businesses and can affect a company’s reputation. Your reputation is your most valuable asset going forward. In order to protect it, be proactive.”

- Nadine Coudel, Director at WTW