

Social Inflation

A thematic and
jurisdictional guide

October 2025



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Introduction

What do we mean by 'social inflation'?

Social inflation has become a familiar expression to those handling insurance claims. It is often traced back to Warren Buffett over 45 years ago, accompanying a warning to Berkshire Hathaway shareholders that costs in the insurance sector were expected to rise. He identified one of the causes as social inflation, which he stated was "a broadening definition by society and juries of what is covered by insurance policies."

Social inflation is now recognised as a term to describe the rising insurance claim costs due to social, political, legal and economic developments. In 2020, Darren Pain of The Geneva Association stated that "social inflation refers to all ways in which insurers' claims costs rise over and above general economic inflation, including shifts in societal preferences over who is best placed to absorb risk."

Social inflation is primarily a US phenomenon and remains most prevalent there as the only jurisdiction that uses juries consistently in civil cases. This guide aims to look beyond the jury system to explore the extent to which other factors may be driving social inflation, in the US and beyond.

This wider rise in claims costs is often referred to as claims inflation. Lloyd's defines claims inflation as "the change in claims cost of a like-for-like policy over time." It goes on to explain that it is the sum of:

- **Economic inflation** - changes in claims costs as captured through published economic indices relevant to an insurer's mix of business;
- **Excess inflation** - changes in claims costs beyond what is captured in economic indices, including factors specific to a insurers' business, such as supply chain disruptions, new types of claim and demand surges; and
- **Social inflation** - sometimes referred to as a subset of excess inflation, relating to changes in claims costs as a result of societal trends.

What drives social inflation?

Key factors driving social inflation include



Collective redress mechanisms



Litigation funding



Public sentiment



Emerging risks



Nuclear verdicts



Claimant strategy

You can read about each of these in more detail under the headings that follow.

Themes



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Collective Redress



The use of collective redress mechanisms to bring claims on behalf of large groups or classes of individuals means more claims, more claimants, increased litigation funding, increased claims costs and the potential use of these mechanisms in relation to emerging risks. It is arguably the most significant influence on social inflation.

An important consideration is whether opt-in or opt-out mechanisms are used. Opt-in actions require potential claimants to be proactive, whether joining or issuing proceedings themselves, or authorising a representative to act on their behalf. Opt-out actions allow a single party to act on behalf of a defined class, with any decision binding on any other party affected by the action, unless they choose to opt-out to preserve their own rights to pursue the claim.

The use of an opt-out mechanism is perceived as being more attractive to consumer organisations, litigation funders and claimant law firms. Opt-in procedures are distinguished as offering greater efficiency.

The United States, England and Wales and the Netherlands are particularly influential in this area, having established collective redress mechanisms. The US and England and Wales have diverse mechanisms creating options for plaintiffs/claimants. The Netherlands has a well-established regime which acted as a stimulus for the introduction of the Representative Actions Directive (RAD) in the European Union.

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United States, England and Wales and the Netherlands

In the United States, collective redress mechanisms are available across state and federal jurisdictions. Rule 23 of the Federal Rules of Civil Procedure regulates US federal class litigation, ensuring that class actions are certified only where appropriate. Many states have enacted analogous rules to Rule 23. The Class Action Fairness Act expanded the jurisdictional reach of federal courts over class actions and mass actions. Mass actions involve one hundred or more individual plaintiffs and common questions of law or fact, but are not classified as class actions. These can be brought in federal courts despite the prerequisites for federal jurisdiction not being met.

The use of the multidistrict litigation (MDL) procedure is another mechanism, allowing civil actions in different federal districts which involve one or more common questions of fact to be consolidated, along with the use of bellwether trials. To give a sense of the sliding scale of cases involved in MDL, the Johnson & Johnson Talcum Powder Product Litigation had over 66,000 actions pending at the start of August 2025. By contrast, the Roundup Products Liability Litigation had around 4,400 actions pending.

As of December 2025, there will be new rules-based practices and procedures for MDL, including the development of early case management plans. Defendant efforts to require each plaintiff to establish factual support for the basic elements of their claims have so far been unsuccessful.

In England and Wales, both opt-in and opt-out actions are capable of being pursued across a range of collective redress mechanisms:

- Group litigation orders manage multiple claims having common or related issues of fact or law. These are opt-in actions, as each claimant must actively join the proceedings.
- Representative claims under CPR 19.8 allowing one or more claimants to represent other claimants with the 'same interest'. These are traditionally seen as opt-out actions. However, they can be pursued on an opt-in basis.
- Competition Appeal Tribunal collective proceedings deal with alleged breaches of competition law. These can be opt-in or opt-out actions. Opt-out collective actions are currently subject to a review due to concern about costs, effectiveness and the limited precedent on damages and distribution, despite being available for a decade.
- Multiple joint claims (also referred to as 'omnibus claims') allow multiple claimants to use a single claim form in the same proceedings. These can be defined as opt-in actions.

In the Netherlands, the Dutch Act on the Collective Settlement of Mass Claims (WCAM) introduced the concept of collective settlements into Dutch law in 2005. This was superseded by the Dutch Act on the Redress of Mass Damage in Class Actions (WAMCA) which came into force on 1 January 2020.

WAMCA altered the landscape of class actions by allowing a representative entity filing an action on behalf of a group of injured persons to seek damages in a collective action, thus establishing both the liability of the party causing the damage and the compensation in a single lawsuit. As noted before, this mature regime offered inspiration for the introduction of the RAD.

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The European Union

There has been uneven implementation of the RAD in Member States, despite transposition being required by June 2023. The RAD covers representative actions, which are defined as an action “for the protection of the collective interests of consumers that is brought by a qualified [representative] entity as a claimant party on behalf of consumers to seek an injunctive measure, a redress measure, or both.”

The RAD does not prevent Member States from adopting or retaining measures “for the protection of the collective interests of consumers at national level”. This means that Member States are permitted to have other collective redress mechanisms operating at the same time as representative actions.

In addition, the RAD is intended to cover infringements of EU law set out within Annex I. An alleged breach of any EU legislation set out in Annex I can therefore form the basis of a representative action. However, this does not prevent Member States from introducing domestic legislation permitting representative actions for other type of claims in their jurisdiction (as seen in Germany).

Collective redress via a representative entity can be undertaken on a domestic or cross-border basis. Where a representative entity brings a representative action in a Member State other than that in which it is designated, it should be considered a cross-border representative action. Where a qualified entity brings a representative action in the Member State in which it is designated, it should be considered a domestic representative action, even if it is brought against a trader domiciled in another Member State and even if consumers from several Member States are represented within it. The RAD establishes a clear designation process for those representatives permitted to bring cross-border representative actions and leaves the question of designating domestic representative entities to the Member State in question.



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Jurisdiction	RAD implemented	Opt-in or opt-out?	Types of action covered by legislation implementing RAD	Other collective redress mechanisms?
Germany	Yes	Opt-in	Designated qualified entities can bring representative actions relating to infringements of European Union law as defined within Annex I of the RAD. However, the legislation transposing the RAD into German law expands the representative action procedure to a wider range of infringements than those listed in Annex I of the RAD, including general tortious actions.	Since 2018, the 'model declaratory action' has allowed consumer protection associations to file lawsuits on behalf of multiple individuals who have suffered similar harm from the same defendant. The model declaratory action was retained by the legislation transposing the RAD into German law. This type of action can be brought as an alternative to a claim for compensatory redress. The model declaratory action also operates on an opt-in model and can be brought by a qualified entity, allow courts to make a declaratory finding regarding the potential liability of a defendant. Individual claimants must pursue their claims individually thereafter. Mass claims, involving many individual claims based on similar legal arguments, can also be pursued. The Federal Court of Justice is now able to make a 'leading decision' (akin to a bellwether trial) on these legal questions. Although not formally binding, the decisions are likely to be followed by lower courts.

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Italy	Yes	Opt-in	Designated qualified entities can bring representative actions relating to infringements of European Union law as defined within Annex I of the RAD, as set out in Annex II-septies of the Italian Consumer Code.	Class actions (referred to as 'collective proceedings') were first introduced into Italian law in 2007 and are unaffected by the transposition of the RAD into Italian law. These actions can be brought independently by each member belonging to the class or by non-profit organisations or associations against companies or entities managing public services or public utilities. The non-profit organisations or associations must have statutory objectives which include the protection of the individual rights in question. The remedy sought in these actions could be compensatory or injunctive, and an action is not limited by the subject matter.
Republic of Ireland	Yes	Opt-in	Designated qualified entities can bring representative actions relating to infringements of European Union law as defined within Annex I of the RAD.	Currently, there is no other formal procedure for bringing class actions in Ireland. Multi-party litigation tends to be dealt with by test cases, where numerous claims arise from the same set of circumstances but only one single test case is run. This acts as a precedent for the remaining cases, akin to a US-style bellwether trial.

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France	Yes	Opt-in	Designated qualified entities can bring representative actions relating to infringements of European Union law as defined within Annex I of the RAD.	As part of the legislation transposing the RAD into French law, a unified group action regime has recently been implemented into French law. The new regime expands the jurisdiction of the French courts to allow any breach of a legal or contractual obligation suffered by several natural or legal persons to be pursued as a group action. Remedies that can be sought in group actions have now been widened to allow claimants to seek the cessation of unlawful conduct, and compensation for damages.
The Netherlands	Yes	Opt-out	All types of actions may be brought under the Netherlands collective redress regime following the transposition of the RAD reflecting the position prior to implementation. Representative actions can be brought for infringements of European Union law as defined within Annex I of the RAD including all securities claims, product liability claims, claims resulting from data breaches and (follow-on) damages claims against infringers of EU competition law.	WAMCA entered into force on 1 January 2020. WAMCA allows a representative entity filing an action on behalf of a group of injured persons to seek damages in a collective action, thus establishing both the liability of the party causing the damage and the compensation in a single lawsuit. Since June 2023, and the transposition of the RAD, an amended version of WAMCA has applied.

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Spain	No. A draft bill is working its way through the Spanish legislative process.	Opt-out	The draft bill confirms that Spanish implementation of the RAD will not be limited to infringements of European Union law as defined within Annex I of the RAD but will extend to any infringement in which the collective rights and interests of consumers have been harmed. The draft bill also indicates that an opt-in action may be ordered if required by the circumstances, such as the administration of justice.	There are existing mechanisms to defend the collective interests of consumers. Currently there is a system of collective actions, where consumers or consumer associations are entitled to claim compensatory damages. This system is used infrequently. Collective actions pursued under the existing mechanisms have focused on litigation regarding financial products sold by banks to consumers and the private enforcement of competition law (e.g., claims for damages against the so-called "truck cartel"). The draft bill would implement a specific, unified system for bringing class actions via a new Title IV to Book IV of the Code of Civil Procedure, replacing the current articles in respect of existing mechanisms.

The ongoing domestic implementation of the RAD has raised discussion about the potential for pan-European representative claims, particularly on an opt-out basis. The rules on jurisdiction and enforcement of judgments within Europe are governed by the Brussels I Regulation. However, in the case of cross-border representative actions, the Directive prescribes that they can only be brought on an 'opt in' basis, which will restrict the impact of such claims and prevent pan-European opt-out actions. Representative entities must establish the jurisdiction of the court where they seek to bring a claim. Together with the introduction of the right to disclosure of funding arrangements by the Directive, in accordance with national rules, claimants will favour jurisdictions with more flexible procedures. In addition, as noted in our thematic section on Public Sentiment, the willingness of claimants to pursue such actions will also depend on existing cultural issues.

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Other jurisdictions

Collective redress is permitted in Australia through opt-out class action regimes existing at both state and federal levels. Australia is considered a plaintiff-friendly jurisdiction and one of the most active class action markets in the world. Class actions are conducted as representative actions with over two hundred ongoing at the time of writing, across both state and federal jurisdictions. The threshold requirements to commence a class action call for seven or more parties with the same action, arising out of the same or related circumstances and including one substantial common issue of fact or law. There is no class certification process, meaning that defendants can face multiple class actions arising from the same or similar allegations.

Singapore has a form of representative action which allows one or more persons to represent a group of persons with a common interest in proceedings. Representative bodies can only bring actions on behalf of a class of persons such as consumers if the representative body or the representing person(s) has a common interest with the members of the class. However, the use of this mechanism is uncommon.

In Israel, the law allows for group actions in a number of circumstances. The Class Actions Law sets out a structured process for bringing class actions, ordinarily on an opt-out basis. Opt-in actions can be ordered by the court where appropriate. Actions that can be brought under the Class Actions Law are specified in a closed list appended to the Law, such as securities and environmental claims. Class actions can also be brought in relation to certain pieces of legislation, such as the Insurance Contract Law and the Banking Law. Israeli law also permits mechanisms for collective compensation in areas such as labour disputes.

Looking to Latin America, in Argentina, the Consumers Protection Law allows certain persons to bring consumer claims before courts on behalf of a class of consumers, including an affected person in the class or consumer associations. In addition, General Environmental Law No. 25,675 recognises the right to initiate an action to prevent or repair environmental damage, meaning that collective redress can be pursued where environmental harm affects the public interest.

The interpretation of individual and collective rights was considered in the landmark Halabi ruling, which established the requirements for a collective action, including the definition of the class, factual cause of loss, damage sustained and a suitable representative. In the case of Halabi, the Supreme Court applied an opt-out mechanism.

In Mexico, three types of group action are permitted, with the mechanism (opt-in or opt-out) dependent on the type of action pursued. Group actions can be pursued by federal bureaux such as the Consumer Protection Bureau, a common representative of at least thirty claimants, not-for-profit civil associations and the Mexican Attorney General.

The ability to function as a representative is limited by the Mexican Procedure Code, with standing being granted to the regulatory bodies of certain regulated markets depending on the basis of the claim, such as the Federal Consumer Protection Agency for consumer matters. Private entities may sponsor or function as representative under strict conditions (similar to EU representative entities). Common representatives appointed by a group must be made up of at least thirty members. Similarly, non-profit civil associations must have been legally incorporated at least one year prior to filing the action in question.

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Litigation Funding



Litigation funding involves a third party financing some or all the legal expenses associated with a legal dispute in exchange for a share of any proceeds recovered.

There is no doubt that the use of litigation funding is increasing worldwide, but it is less clear whether that translates directly into increased costs and awards for insurers. It is argued that the growth of litigation funding affects social inflation in several ways:

- Driven by the availability of procedures for collective redress, litigation funders are open to funding a wide range of claims and with more claimants involved.
- The presence of litigation funders drives increased frequency and severity of claims, including prolonged claims duration and increased legal expenses.
- Funders can 'invest' by funding large pieces of litigation and securing a percentage of any settlements/awards, which can materially affect settlement dynamics.

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Is litigation funding permitted?

The United States is identified as the centre of litigation funding worldwide. In 2021, Swiss Re identified that more than half of the \$17 billion invested in funding was deployed in the United States. A 2023 litigation finance survey conducted by Lake Whillans/ Above the Law stated that 39% of respondents had firsthand experience of working with a litigation funder.

Some US insurers offer 'judgment preservation policies' which allow plaintiffs that are successful in obtaining significant monetary judgments to 'lock in' part or the whole of an award while awaiting the outcome of any appeals. Litigation funding is permitted for federal actions, but it should be noted that several states do not permit litigation funding, such as Alabama and Kentucky.

In the UK, the use of litigation funding continues to increase, with funders offering a range of services funding individual or group claims. In addition, alongside the more traditional funding models, some more novel approaches are being developed. Some funders are choosing to collaborate with legal firms, allowing the funding of claims portfolios directly. An example of this trend has been an investment agreement in excess of £400 million between a leading funder and a UK-based firm using US-based experience in class actions.

In European nations, the third party litigation funding market remains smaller than in the United Kingdom and the United States. However, the market is developing and is expected to increase further as the impacts of national laws implementing the Representative Actions Directive (RAD) are felt.

The Netherlands is the prototype for the use of litigation funding in Europe. With an established and mature class action system prior to RAD implementation, the Netherlands permits the use of third party funding. Major funders have been involved in Dutch collective redress actions for some time. In Germany, Italy, and Spain, litigation funding is permitted, not limited to

certain types of claims and is growing in use. France is in a similar position, but its use is limited to international arbitration matters and representative actions. In the Republic of Ireland, litigation funding is prohibited, with efforts to introduce use for international commercial arbitration stalling.

Looking to other jurisdictions worldwide, in Australia, there is a mature and valuable market for litigation funding, with no limitations on the types of claims that may be funded. Funding is most-commonly associated with use in insolvency-related and class action litigation.

In Singapore, the use of litigation funding is permitted in relation to international and domestic arbitration, mediation in relation to arbitrated disputes, court proceedings relating to arbitration, court proceedings in the Singapore International Commercial Court, and a range of claw-back court actions by liquidators in an insolvency context.

Litigation funding is permitted in Israel and, as a new and evolving area, is not limited to specific types of claims. The Supreme Court of Israel has endorsed the practice provided that ethical standards are upheld, and public policy is not violated.

From a Latin American perspective, the use of funding is permitted in Mexico and Argentina and not limited to certain types of claims. In Argentina, contingency fee arrangements are valid, albeit regulated in accordance with the Attorneys' Fee Law meaning that a fee cannot ordinarily exceed 30% of the result of the lawsuit.

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Current regulation

The United States, with its blend of federal and state regulation, offers a patchwork of requirements. There is no federal regulation of litigation funding or duty of disclosure in the United States. Disclosure can be compelled in accordance with local federal court rules in some instances. As noted above, some states do not permit litigation funding, and a number of states have enacted statewide legislation to respond to increasing litigation funding. Varying regulations across a number of states have been enacted requiring:

- Funders to register with, or obtain a licence from, the state.
- Disclosure of the total amount to be repaid or limits on the annual fees that can be charged against the original amount provided to the plaintiff.
- Disclosure of parties with a right to compensation arising from the proceeds of an action.
- Increasing transparency in the use of funding.

England and Wales currently have a system of voluntary self-regulation through membership of the Association of Litigation Funders. Members become a signatory to the code of conduct, which includes provisions in respect of capital adequacy, termination and approval of settlement, and control provisions preventing funders from compelling legal representatives to act in breach of professional duties.

Current disclosure requirements in England and Wales depend on the action being pursued. Competition Appeal Tribunal certification procedures usually require the tribunal to review any funding agreement. More generally, there is no requirement for disclosure of funding agreements.

There are no European Union-wide regulations or directives that control litigation funding, although developments are expected and discussed below. Article 10 of the RAD offers limited direction for countries. Where a Member State's national

law permits the use of funding in respect of domestic or cross-border representative actions, then any funding agreements must ensure:

- Funding by third parties that have an economic interest in the bringing or the outcome of the representative action for redress measures does not divert the representative action away from the protection of the collective interests of consumers.
- Funders (or other third parties) do not unduly influence the representative entity in a manner detrimental to consumer interests.
- Representative actions are not brought against defendants that are competitors of the funding provider or on which the funding provider is dependent.
- The representative entity must also disclose to the court or administrative authority a financial overview that lists sources of funds used to support the representative action.

For France, Italy, Germany, Spain, the Netherlands and Republic of Ireland, these requirements have been/will be implemented into national law, again noting that this is provided that litigation funding is permitted in the jurisdiction (all except the Republic of Ireland).

In addition, some variation in application has occurred, with Germany electing to restrict the funder's share of any damages recovered to a maximum of 10%.

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In Mexico, there is no specific regulatory framework which limits the use of third party litigation funding nor is there any requirement to disclose the existence of a funding agreement. In Israel, there are currently no specific laws or regulation, with applicable principles derived from the existing framework of civil and contract law. Funding arrangements can be disclosed and scrutinised to prevent conflicts of interest, ensure ethical standards and the integrity of the legal system.

In Australia, the Federal Government introduced regulations exempting third party litigation funders from the need to hold a financial services licence. Litigation funders are subject to oversight from the Australian Securities and Investments Commission, and the Association of Litigation Funders Australia has produced guidelines on best practice and behaviour to be observed by members. At state and federal level, funders are required to manage conflicts of interest and disclosure obligations.

In Singapore, funding dispute resolution proceedings must be the principal business of any funders, with set limits of share capital and managed assets. The Singapore Institute of Arbitrators (SI Arb) also established guidelines in 2017 for funders with the aim of promoting best practice, expectations of transparency and accountability. The Professional Conduct Rules 2015 require disclosure of the funder's identity and address to the appropriate court/tribunal and other parties. Those rules also prohibit firms from holding an interest or shares in funders linked to a client, and the receipt of commissions or fees from a funder for referrals is also prohibited.

In Israel, any applicable regulation is derived from the existing framework of civil and contract law. Courts may order the disclosure of a funding agreement to ensure transparency and prevent conflict. For claims brought under the Class Actions Law, a District Court judge recently ruled that companies targeting profits from the action cannot fund class actions.

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What might the future hold?

In the United States, states will continue to legislate on issues such as disclosure/transparency as they deem necessary. There is growing interest in litigation funding at the federal level. In early 2025, two bills were introduced with differing aims, both now having been referred to the House Committee on the Judiciary.

- **Litigation Transparency Act:** This legislation would compel the disclosure of any third-party funding in any civil cases.
- **The Protecting Our Courts from Foreign Manipulation Act 2025:** This legislation would compel disclosure from any foreign person or entity participating as a litigation funder in U.S. federal courts and prevent third-party funding by foreign states and sovereign wealth funds.

The litigation funding market in England and Wales has undergone a period of uncertainty following the Supreme Court decision in PACCAR in July 2023, effectively upending the enforceability of many funding agreements. This decision is discussed in further detail in the jurisdiction section covering England and Wales.

Allied with broader questions, PACCAR prompted a Civil Justice Council (CJC) report on the litigation funding market, published in July 2025. That report recommended legislative measures to reverse PACCAR, and a number of light-touch regulatory measures. These included disclosure obligations and capital adequacy requirements for funders, a codified prohibition on funders controlling litigation and a binding ADR process to deal with funder/funded disputes. At the time of writing, no further steps have been taken.

Looking to Europe, litigation funding may be subject to European Union-wide regulation in the future. In light of the RAD, increases in litigation funding is expected, prompting discussion over the need for regulation. In September 2022, the European Parliament recommended the adoption of minimum standards to allow effective oversight of litigation funding, which prompted the European Commission to launch a mapping exercise.

In March 2025, the Commission published a report, 'Mapping Third Party Litigation Funding the European Union', identifying the current regulatory position in each Member State, and three possible regulatory approaches:

- **No regulation:** Existing principles of contract law, the measures within the RAD and other sector-based rules are sufficient to regulate this issue.
- **Light-touch regulation:** A balanced approach to prevent the legal uncertainty created by the absence of regulation. This would involve disclosure and financial regulation.
- **Strong regulation:** Comprehensive steps to limit the negative effects of funding such as undue influence and the funding of frivolous actions.

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The light-touch measures align closely with the Principles Governing the Third Party Funding of Litigation published by the European Law Institute in October 2024. The principles set out twelve key mandatory elements to govern the conduct of funders and funded parties. The key principles are similar to those discussed in the CJC report too, with suggested minimum content for funding agreements, and sample wordings also set out.

What is clear is that the European Union is likely to regulate litigation funding in some form in the near future. We believe that any regulation will be light-touch, so as not to strangle the growth of mass actions for consumer claims now provided for by the RAD.

The European Commission marked the Republic of Ireland out as a distinct outlier in Europe due to its ongoing prohibition of litigation funding. The outcome of a 2023 Irish Law Commission consultation on the law governing litigation funding remains unclear.

In Australia, current state and federal practice notes offer guidance on managing conflicts of interest and disclosure, and there are no current suggestions that further regulation is imminent from government or financial regulators.

There are no indications that there will be further regulation of the litigation funding market in Singapore, Israel, Argentina and Mexico in the near future.



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Emerging Risks



New and emerging risks offer additional, and sometimes greater, opportunities for social inflation to manifest itself. Without new and emerging risks, there would be no significant increase in litigation and the need for funding would be restricted.

Those emerging risks contributing to social inflation do not apply uniformly across all jurisdictions.

Two liability risks that have resulted in significant US class settlements in the hundreds of millions of dollars, including individual damages awards with outsized punitive damages awards, are glyphosate weedkiller and talcum powder.

These risks have not had a significant financial impact outside the United States to date. The first major European class action alleging a link between asbestos-contaminated talcum powders and certain cancers was only recently commenced in the High Court in London. In the case of glyphosate, European discussions have addressed ongoing use and licensing, and significant class actions in Australia have failed to adequately establish a causation link to certain cancers.

In this section, we highlight some of the common risk found across multiple regions.

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Climate change and the risks faced by corporates

A large proportion of climate change litigation is aimed at national governments by activists seeking to drive policy or regulation. Other actions have pursued corporates and their directors, with varied success. Directly and indirectly, outcomes to date have created both awareness and actual risk of further climate-related litigation for companies and their directors.

The 2021 decision in *Milieudefensie v Shell*, long held as the exemplar of successful climate activist litigation against a company, was overturned in 2024. *Milieudefensie* has since filed actions against Shell and ING in the Netherlands, but their outcomes are uncertain. Similarly, in England and Wales, an unsuccessful 2023 derivative action was pursued by ClientEarth against the board of directors of Shell.

These actions created wide-ranging dialogue about the prominence of climate action for companies and directors, but to date, no single action can be held up as the cornerstone of successful climate litigation against corporates. A number of other judgments and, more recently, advisory opinions, have highlighted where those litigation risks may appear:

- The German action of *Lliuya v RWE*, although unsuccessful, held that major greenhouse gas emitters could, in principle, be held liable under German civil law on an attributional basis for their contribution to climate-related harm in another jurisdiction (Peru).
- The Italian Court of Cassation in *Greenpeace v ENI* held that tortious claims for climate-related harm could be pursued against companies in Italy, and potentially their directors and shareholders. This represents the possible emergence of a new category of liability borne by directors of companies engaged in climate-negative practices.

- Two recent advisory opinions, from the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACHR), clarified the obligations of states to respond to the climate crisis, including the regulation of private actors such as companies. Businesses will find themselves in the regulatory crosshairs if states elect to respond to these opinions. They and their insurers should anticipate stricter regulatory requirements, and proactively engage in climate-related actions of their own.

Some jurisdictions have pushed back against the expansion of liability concepts to respond to climate change. In *Pabai Pabai v Commonwealth of Australia*, the Federal Court held that using common law negligence principles to challenge government policies on climate change was unsuitable. An action in France (*Bloom v Total*) was also dismissed having attempted to hold Total's executives personally responsible under criminal law for alleged climate-related harms including manslaughter.

Nonetheless, directors and officers of companies across all jurisdictions will increasingly be expected to consider their companies' exposure to liability, as well as physical and transitional risks associated with climate change.

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A number of ongoing actions will provide further insight into the risks of climate and sustainability-related litigation. Of this, we note the following:

- In the United States, a number of states are pursuing fossil fuel companies for their contribution to climate change, with associated damages being sought for a fund to cover climate-related damage. Other states have introduced or are considering 'polluter pays' superfund legislation, requiring polluters to pay for climate-related harms. However, it should be noted that these claims and pieces of legislation are the subject of challenge by the Department of Justice following an Executive Order from President Trump questioning the competence of states to pursue such actions.
- The French duty of vigilance places requirements on specified companies and groups, and is being cited in a number of shareholder and activist-related actions to date. In addition, a judgment is expected in late 2025 in the first greenwashing action in Europe challenging net-zero claims of a fossil fuel company (Greenpeace v Total).
- In Australia, a judgment is awaited in the action of ACCR v Santos, a greenwashing claim challenging claims by a fossil fuel company in respect of its energy sources and plans to achieve net zero.

Looking to other jurisdictions, a bill has been introduced in Mexico to address climate litigation in the jurisdiction, but the draft does not establish a framework that would allow third parties to seek compensation from those who engage in harmful practices. To date, noteworthy climate litigation against businesses has not been identified in Spain, the Republic of Ireland, Singapore, Israel or Argentina.



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Corporate governance and securities litigation

In an era where an increasing number of climate or sustainability-related actions are being initiated, there remains an increasing risk of securities litigation dealing with the 'routine' operations of companies.

In Australia, although all unsuccessful, securities actions have been pursued against a number of companies including Quintis, the Commonwealth Bank of Australia, Myer Holding Limited and Iluka Resources Limited. These actions alleged a variety of misdeeds including serious non-compliance with anti-money laundering laws, misleading sales and profit guidance, and breaches of continuous disclosure obligations.

In England and Wales, claims under S90 and S90A of the Financial Services and Markets Act 2000 continue to gather pace, reflecting an increased scrutiny on company financial disclosures. These actions are expensive and complicated to defend, particularly in the absence of widespread judicial authority. The position is similar to that of Israel, where recent court decisions have expanded the scope of directors' duties and liabilities, emphasising the increasing importance of corporate governance, at the risk of shareholder derivative actions being pursued.

Securities litigation is also advancing in the Netherlands. Investors in Fiat Chrysler are pursuing an action against the legal successor, Stellantis, for alleged losses caused by the fall in share price associated with the emissions 'defeat devices' scandal. Further, a group of institutional investors have notified Philips of a possible claim for shareholder losses resulting from the defective manufacture of CPAP products, themselves the subject of significant litigation and settlements in the US, and also now in Italy on a pan-European basis.

Product liability: European regulation and the spread of US risks?

As products increase in complexity, the greater the risk of inherent defects generating litigation. Insurers should be mindful of developments and reported defects with products.

The United States will continue to be a key jurisdiction where product liability actions are pursued. A review of multidistrict litigation (MDL) in the US emphasises the wide range of product liability actions, including talcum powder, polypropylene hernia mesh action, hair relaxer and proton pump inhibitors. One major growth area expected in the US is litigation relating to GLP-1 products such as Wegovy and Ozempic, following allegations that some users have suffered gastrointestinal injuries. MDL 3094 relating to these issues is progressing. Developments are awaited with interest.

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In the European Union, the impact of the Product Liability Directive (PLD) will be closely examined, with implementation due across Member States by the end of 2026. The PLD makes substantial changes to the product liability regime including widening the list of potentially liable subjects, expanding the definition of product to consider technological developments, changes to the burden of proof and disclosure obligations. Aligned with the Representative Actions Directive, the updated PLD raises the prospect of pan-European product liability actions. One such action, relating to defective Philips CPAP machines, is already underway in Italy.

In England and Wales, the Law Commission announced in July 2025 that it will be reviewing the product liability regime. Their recommendations will be awaited with interest, in particular any suggestion of regulatory alignment with the PLD.

More specifically, a growing number of product liability claims mirror those that have led to large damages awards and settlements in the United States:

- CPAP machines: As noted in our comments on the action in Italy, defective Philips CPAP machines resulted in settlements in the United States totalling over \$1.5 billion.
- Talcum powder: In October 2025, it was reported that an action had been filed on behalf of approximately 3,000 claimants in the UK against Johnson & Johnson over alleged links between asbestos-contaminated talcum powder products and cancer. The J&J MDL in the US had in excess of 67,000 actions pending at the time of writing.
- Glyphosate: A number of claims in Australia have pursued Bayer in respect of links between their Roundup glyphosate products and certain cancers. A French court dismissed a claim that an 18-year-old's birth defects were caused by prenatal glyphosate exposure, again on causation grounds. In Argentina, the region of Misiones banned the use of glyphosate as of 2025 due to the prevalence of alleged glyphosate-induced illness, but no related litigation has been identified to date.
- Concussion: Sporting concussion-related actions are underway in England & Wales, with the *Rooke v AFL Group* Proceedings also ongoing in Australia.
- Combat arms earplugs: A claim against 3M for defective combat arms earplugs resulted in over 390,000 claims within a single piece of MDL in the US. Settlement was agreed at over \$6 billion in 2023. In September 2025, it was reported that a letter before action has been issued by a firm in the UK on behalf of a number of claimants, with a claims cohort of between 2,000 to 3,000 affected individuals.

Although improbable that the frequency or scale of these actions will reach the levels observed in the United States, their growing occurrence in Europe and Australia warrants careful observation.

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PFAS

The development of liability risks in the United States relating to PFAS continues at pace. Litigation relating to PFAS through both environmental and product-related exposure is increasing, particularly as states and municipalities continue to regulate and pursue actions in relation to contaminated water. While the South Carolina MDL (relating to Aqueous Fire Fighting Foam) continues, further individual claims for injury may follow dependent on the prevailing medical opinion.

Australia has also generated activity in this space, with claims typically settling before judgment. This means there is currently an absence of authoritative judgments clarifying crucial issues such as expected mitigation and the type of injuries, damage and loss that can be attributed to PFAS contamination.

The French Government has taken recent regulatory steps to limit the use of PFAS, passing a law introducing a number of phased bans. From 1 January 2026, cosmetics, textiles for clothing and ski wax containing PFAS will be banned, with all textiles containing PFAS banned from 2030. The phased ban may result in additional claims against non-compliant companies in the future. In the interim, actions are being pursued. The activist groups PFAS contre Terre and Notre Affaire à Tous also announced a group action in 2025 against two industrial companies, Arkema and Daikin, alleging PFAS-related injury and associated damages. At the time of writing the claim is ongoing.

Although claims for PFAS-related damages have not been seen in Spain yet, the Spanish insurance market has introduced specific exclusions for PFAS in policies, reflecting their concern over liabilities and litigation risk.

In England and Wales, further regulations on the use of and exposure to PFAS may be introduced with the UK Parliamentary Environmental Committee commencing an inquiry on the risk posed. In the interim, two leading claimant firms announced instructions to investigate claims that environmental damage and injury to residents may have been sustained in North Yorkshire near a manufacturer of AFFF products.

In the Netherlands, the chemical company, Chemours, was held liable for PFAS-related damages in 2023, and subsequently, a group of eleven consumer groups announced a proposed action against the state for failing to prevent damage caused by PFAS. That action is ongoing.

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Data breaches

The GDPR remains the model for data protection regulation on a global basis, with data breach actions forming a significant part of the EU litigation landscape, both nationally and in the EU Courts. Although the Austrian Post decision in 2023 confirmed that a breach of the GDPR does not automatically give rise to a right to claim damages, claims will likely increase across all EU jurisdictions as the importance of data surges.

In the Netherlands, several class actions alleging breaches of GDPR have been filed against various technology companies such as Meta, Amazon and Oracle. None of these claims have reached a conclusion yet, leaving it unclear whether a Dutch court will hold that an opt-out claim for breaches of GDPR is viable.

In the Republic of Ireland, the Irish Supreme Court recently handed down judgment in *Dillon v Irish Life Assurance*, confirming that data breach claims seeking compensation for distress, upset and anxiety are not personal injury claims requiring medical evidence. Arguably making such claims more attractive for claimants, they should however expect no more than 'very, very modest awards'.

In Australia, the introduction of the new statutory tort for serious invasions of privacy in 2024 (which took effect in June 2025) now provides individuals with the right to seek redress for privacy breach claims. This cause of action did not exist at common law previously, creating a new area of exposure for businesses in Australia.

Looking to the Americas, a draft bill to update the Argentine Data Protection Regulation will establish the obligation to notify

security breaches to the data protection authority within 72 hours of becoming aware of it. In Mexico, a new Federal Data Protection Law has been published, replacing its 2010 predecessor. This reform is part of a broader legislative package that included reforms of the Government's transparency mechanisms.

In the United States, the 2024 Change Healthcare cyber-attack prompted a number of class actions, which were consolidated into MDL in the US District Court of Minnesota. We expect further developments of this nature to occur in the future.

Finally, in Singapore, a contravention of the Personal Data Protection Act (PDPA) allows individuals who have suffered emotional distress as a result of a data breach to pursue an organisation for relief, compensatable even without proof of financial loss. However, with collective redress limited, large-scale data breach actions have not been brought to date.

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Societal shifts in public sentiment over responsibility for certain risks form part of the discussion surrounding social inflation. The effect that public sentiment has on risk, the prospect of increasing liabilities and claims costs for insurers is again jurisdiction dependent.

The prevalence of jury trials in the United States means there is a direct link between societal attitudes reflecting anti-corporate sentiment and nuclear verdicts. There is not such an established link in other jurisdictions in the rest of the world, where the influence of public sentiment is more subtle.

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Jury trials

Public sentiment in the United States can have a disproportionately large impact on civil claims. The availability of civil jury trials in the United States means outcomes can be influenced by personal bias, which may be triggered by a variety of factors:

- The wider economic climate and inequality of wealth create a desire to punish companies and award plaintiffs based on fairness rather than legal grounds.
- Increasing mistrust of large businesses and corporations.
- Younger generations involved in activism, relating to climate change and other social trends, may challenge certain behaviours or actions such as corporate mismanagement. Millennials and Generation Z have also been disproportionately affected by cost-of-living concerns and may hold negative perceptions towards organisations viewed as having deep pockets.
- Media coverage and advertising by plaintiff firms of 'nuclear verdict' sums, without qualifications about the likelihood of significant reductions on appeal, can lead the public to assume that such figures represent the status quo. Plaintiffs expect more and juries are likely to award more.

Public policy and sentiment

For other jurisdictions, perceptions of fairness and public sentiment may result in courts and legislatures being willing to expand liability in certain instances where public policy and access to justice dictates. Recent examples across a number of jurisdictions include:

- In England and Wales, it can be argued that some COVID-19 business interruption decisions in favour of businesses were affected by considerations of public policy and 'fairness'.
- In Italy, the recent decision in *Greenpeace v ENI* emphasised the supervisory role that the judiciary has over climate-related issues including compliance with international treaties. As public pressure over climate issues builds, particularly in respect of corporate responses, the Italian judiciary may be more prepared to make climate-positive findings where the legal framework allows.

- Mexico has seen notable changes in claims awards due to public policy issues. Discussed further in the section on Nuclear Verdicts and the Mexico jurisdiction commentary, punitive damages as an extension of moral damages have been introduced, as well as the separate category of 'damage to life plans' based on human rights jurisprudence.

Additionally, although Mexico's judicial appointment reforms are unlikely to result in expansion of liability concepts, they may increase the influence of public opinion in legal interpretation and dispute resolution.

- In Israel, judges have significant discretion in reaching their decisions, allowing for societal norms to be considered. Depending on the approach of the appropriate judge(s), this can result in certain claims involving such issues as human rights receiving higher compensation.

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Willingness to claim and the normalisation of litigation

The appetite of the public to pursue actions can give rise to increased claims numbers for insurers.

In the European Union, the Netherlands is identified as the poster child for collective redress with an established system in place for some time. This is borne out by the use of the WAMCA class action mechanism. The growing register of ongoing and settled WAMCA actions maintained by the Dutch government is evidence of this. The register demonstrates the diversity of actions which are being pursued and is indicative of an increasing understanding of the process amongst the Dutch population. The same contention can be made in England and Wales with the increasing number of Competition Appeal Tribunal actions being pursued.

The impact of the Representative Actions Directive (RAD) on claims numbers cannot be meaningfully measured yet, particularly as implementation of the RAD via domestic legislation is not complete. The representative action process introduced by the Directive will encourage more actions across a wide range of sectors. Whether those claims numbers will cause significant concern to insurers remains unclear.

On this note, insurers should be closely monitoring a significant cross-border representative action underway in Italy. Relating to the manufacture of defective CPAP and BiPAP devices by Philips, this action is important for being one of the first cross-border representative actions. However, this is also notable as a similar action in the US (pursued as multidistrict litigation) resulted in Philips paying in excess of \$1.5 billion across a number of settlements. Should this action, or a similar action, prove successful, it could accelerate the normalisation of the representative action procedure and collective redress across a wider range of European nations, especially from a cross-border perspective.

Other jurisdictions such as Germany and the Netherlands already have a cultural association with the use of collective redress. There have been domestic representative actions commenced in Germany against Hansewerk Nature, EON and ExtraEnergie by the Federation of Consumer Organisations over energy prices.

By contrast, collective redress mechanisms in countries such as France and Spain (whether based on RAD or otherwise) are rarely used, and therefore widespread use of the representative action may not be immediate, requiring a cultural shift for claimants.

In Australia, there is an established system for bringing class actions that is utilised widely. Combined with a strong culture of promoting access to justice, significant class action activity has been seen in relation to mass consumer claims, securities actions, employment related actions (particularly for alleged wage theft and systemic underpayment), government related class actions, and financial product claims.

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Sentiment leading to activism

As a factor also discussed under emerging risks, activist litigation is a strong reflection of public sentiment. While activist litigation does not necessarily compel changes to existing claims reserves for insurers, it highlights public sentiment and such actions can be indicative that claims in a particular area, particularly in the D&O arena, are likely to increase in the coming years.

In jurisdictions such as the Netherlands, and England and Wales, there have been examples of shareholder actions by non-governmental organisations seeking to compel net zero obligations, as opposed to claims for compensation or damages.

The Milieudefensie action against Shell was a groundbreaking decision which ordered Shell to reduce group-wide CO2 emissions by 2030. Although overturned, a subsequent action has been issued by Milieudefensie seeking to influence the climate strategy of the Dutch bank, ING. The initial Shell action also led to similar efforts in the UK in the similarly unsuccessful Client Earth action against the directors of Shell.

Actions in the US are also of interest, whether the plaintiffs are states or municipalities pursuing fossil fuel companies. A series of claims has been issued by states and municipalities against fossil fuel companies alleging responsibility for actual and proximate contribution to climate change occurring in those locations, seeking financial redress and coverage for climate-related damage. However, it should be noted that the Trump administration has launched a number of actions in response, seeking to block those efforts.

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Social deflation?

It can be argued that public sentiment can play a role in reducing the risk of social inflation. The Republic of Ireland is an example of 'social deflation' following a series of measures aimed at reducing insurance claims costs.

Prompted by public perceptions around unmeritorious or unjustified personal injury claims, these measures have created significant reductions in liability claims numbers and total awards. The Injuries Resolution Board reported 30% and 40% reductions in motor liability and public liability claims made respectively in 2024 when compared to 2019.

The measures included reductions in the scale for valuing personal injury claims, increased use of mediation and further potential reforms to reduce legal costs.

These changes are similar to those undertaken in England and Wales such as the imposition in 2021 of a tariff to short-term motor-induced whiplash injuries and the introduction of widespread fixed costs reforms.

Although the tariff itself was given a circa 15% uplift in May 2025, motor claims numbers registered with the UK Government's Compensation Recovery Unit have reduced from over 650,000 in the year up to March 2019 to less than 315,000 in the year up to March 2025. The reforms have had a meaningful impact on motor claims, notwithstanding other factors such as increased remote working.

The reforms in England and Wales were themselves in response to public and insurer sentiment in respect of a 'compensation culture', linked to allegations of unmeritorious and often fraudulent personal injury claims allied with excessive legal costs. Further measures are underway which may look to reduce insurer indemnity spend in dealing with low-value claims. Although excluded from a pilot to introduce compulsory mediation in small claims, success in the existing pilot may result in the same being extended to motor vehicle claims, potentially reducing pressure on the court system further.

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Nuclear Verdicts



The term 'nuclear verdicts', or the alternative 'shock verdicts', is often used to describe civil jury verdicts awarding damages of \$10 million or more in the United States, usually in relation to a single verdict (as opposed to the total sum agreed or awarded to a class or group of claimants which often far exceeds \$10 million).

More recently, the term 'thermonuclear verdicts' has become common to describe verdicts or damage awards in excess of \$100 million.

The outsized nature of nuclear verdicts, particularly when applicable to one claim, is identified as a key trigger for social inflation. These verdicts do not conform to any economic or inflationary standard and therefore increase the risk of increased costs to insurers beyond what is expected.

The availability of punitive damages both in Europe and globally is restricted or limited to narrow circumstances and types of claims. This issue, along with claimant strategy and public sentiment, clearly demonstrates the risk in conflating social inflation in the United States with its effect in other jurisdictions.

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The United States

Nuclear verdicts are often associated with the use of the civil jury, fuelled by public sentiment, and strategies used by the United States plaintiff bar. These verdicts often involve the awarding of compensatory damages by a jury, accompanied by a punitive damages award, significantly exceeding the compensatory sum, usually aimed at punishing the wrongdoer and discouraging similar behaviour. Nuclear verdicts are not limited to specific types of risk either. Examples of individual claimants being awarded sums exceeding \$10 million recently include:

- In 2025, as noted in the section on US emerging risks, a Florida jury found Tesla partially liable to victims of a collision involving an Autopilot-enabled vehicle. Compensatory and punitive damages payable by Tesla are expected to total over \$240 million (subject to any appeal).
- In 2025, a Missouri appellate court upheld a \$611 million consolidated verdict for three plaintiffs against Bayer relating to their glyphosate-based Roundup product and allegations of cancer.
- In October 2025, a Los Angeles jury handed down a \$966 million verdict in favour of the family of a deceased individual following allegations of a link between her past talcum powder usage and her mesothelioma.

The application of punitive damages is not uniform across the United States, but those states where the risk of nuclear verdicts is heightened have been referred to as 'judicial hellholes' by defendant activists. Locations such as Georgia, the Supreme Court of Pennsylvania, Illinois (specifically Cook County), California, New York City, South Carolina (asbestos litigation), Michigan, Louisiana and St. Louis have been identified as such. Defendant activist groups, such as the American Tort Reform Association and US Chamber of Commerce Institute for Legal Reform, continue to push for widespread tort reforms in various

US states to provide caps on non-economic and punitive damages.

There have been examples of states introducing tort reform in order to mitigate the risk of nuclear verdicts.

The recently enacted Senate Bill 68 in Georgia provided a clear example of efforts to limit the risk of nuclear verdicts, by challenging claimant strategies aimed at maximising damages. The Bill prevents plaintiff legal representatives from arguing the value of non-economic damages until closing arguments, being supported by evidence having a 'rational connection to the facts'.

Although not directed at nuclear verdicts specifically, Florida introduced significant tort reform in 2023 including a reduction in limitation periods from four years to two, a modified negligence system, and efforts to reduce phantom medical expense claims.

A number of states have enacted tort reforms to respond to nuclear verdicts in specific sectors such as trucking:

- West Virginia, via SB583, introduced caps on non-economic damages in actions involving commercial motor vehicles, limiting them to \$5 million.
- Iowa, via Senate File 228, capped non-economic damages in a similar fashion, but provided exceptions such as excessive speed and drink-driving.

Some commentators have noted that the characterisation of verdicts as 'nuclear' or 'shock' could result in plaintiffs being negatively affected in certain actions. In the case of *Wakefield v Vi Salus, Inc.* the U.S. Court of Appeals for the Ninth Circuit vacated a statutory damages award of more than \$900 million under the Telephone Consumer Protection Act. The court held that an aggregate damages award may "in certain extreme circumstances" violate the Constitution even if the per-violation (individual actions) award would not.

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Other jurisdictions

The issue of nuclear verdicts is rarely considered in other jurisdictions. Judgments or awards of nuclear or shock value are rarely seen, due to the absence of jury trials and/or the imposition of significant punitive damages beyond usual compensatory levels.

Those jurisdictions that do allow for the imposition of punitive damages usually place restrictions on the circumstances in which they can be awarded.

An interesting point of comparison to the United States' position is that of Mexico, as briefly noted in the section on US public sentiment. The approach to punitive damages in Mexico has evolved following constitutional reforms in 2011, recognising and incorporating punitive damages as an extension of moral damages. Although judgments awarding punitive damages remain rare, their frequency is increasing.

Further development of damage awards in Mexico includes recognition of 'damage to life plans'. Based on human rights jurisprudence, these awards are a category independent of moral or economic damages, assessing and making awards for long-term consequences that affect the life trajectories of victims and their families. Although the likelihood of a 'nuclear verdict' (based on the definition for the United States) in Mexico is low, the country serves as an illustrative example of a jurisdiction where damage awards may still rise significantly even in the absence of jury verdicts due to legislative or judicial developments. In Australia, the use of civil juries is extremely limited, with the state of Victoria the sole jurisdiction where jury trials may be sought on application by one of the parties, subject to the discretion of the court. In any event, the awarding of punitive damages is very rare, with their availability in personal injury actions precluded by statutory intervention.

Argentina does not permit punitive damages in general civil litigation. However, punitive damages may be awarded for breaches of consumer law such as defective products. Punitive awards are made with reference to the cap of five million Argentinian pesos and the seriousness of the defendant's conduct.

In Singapore, punitive damages are reserved only for 'outrageous breaches or conduct'. In Israel, punitive damages can be awarded in cases of intentional acts to harm victims, particularly actions requiring legal or moral condemnation.

Looking to Europe, in England and Wales, punitive (or exemplary) damages in tort may be awarded but are available in limited circumstances. Similar limited applications are also seen in Europe. Germany and the Republic of Ireland allow for punitive damages (identified as exemplary damages in Ireland) in circumstances where the defendant's behaviour warrants deterrence and additional punishment beyond compensatory damages.

The Netherlands allows for the award of a form of non-material damage purely to compensate for the victim's distress, pain and suffering. These awards are not intended to function as a deterrent for future conduct or to punish the defendant as with punitive damages.

In Italy, damages are typically compensatory. It has been established that punitive damages are compatible with Italian law, but only in circumstances where an Italian court is asked to enforce a foreign judgment. French and Spanish law does not allow for punitive damages.

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When pursuing an action for compensation, claimants/plaintiffs and their representatives want to maximise their settlement sum or any judgment amount.

In the United States, such strategy focuses on the use of civil jury trials. As mentioned elsewhere, while this strategy is a key element of social inflation in the United States, it is not applicable in the same fashion to other jurisdictions without civil jury trials and punitive damages.

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Plaintiff strategies in the United States

The plaintiff bar is aggressive and adept at developing strategies to maximise settlements and judgments in jury trials. Combined with the availability of funding and savvy advertising, this has led to increasing numbers of claims with ever greater damages awards. The plaintiff bar is skilful in understanding public sentiment and prejudices, and how those might be used to increase damages awards.

Terms such as 'nuclear verdicts', 'anchoring arguments' (using previous decisions as a reference point or imprinting excessive damages values on juries during initial arguments) and 'reptile theory' (leading a jury to a fight or flight response compelling punishment of a defendant creating the danger) have become commonplace amongst US insurers and lobbying groups discussing the topic of social inflation. These plaintiff strategies have given rise to use of the terms 'litigation abuse' or 'legal system abuse' to describe their impact.

However, there are increasing examples of resistance to these strategies. The recently enacted Senate Bill 68 in Georgia prevents plaintiff legal representatives from trying to 'anchor' the value of non-economic damages (such as anxiety, suffering and loss of enjoyment) by preventing any reference to a proposed range or amount for such damages until closing arguments. Any such reference must be supported by evidence having a 'rational connection to the facts'.

A further novelty in the US is that conflicting expert evidence can be presented. For example, allegations that cancer is caused by the weedkiller Roundup have not been conclusively proven. Nonetheless, substantial damages (both general and punitive) have still been awarded to successful plaintiffs in the United States.

In contrast, the Federal Court of Australia has found that the available scientific evidence does not support a link between use of the Roundup product and non-Hodgkin lymphoma diagnoses. In our view, analogous claims would also be unlikely to succeed in European nations due to similar causation arguments.

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Claimant strategies in other jurisdictions

In contrast to the United States, similar plaintiff strategies cannot be said to be a cause of social inflation in the other jurisdictions discussed across Europe, Australia, Singapore, Argentina, Mexico and Israel. In respect of liability claims, claimants and their legal representatives are usually limited to claims seeking recoverable losses.

Compensation for personal injury claims in these jurisdictions is linked to judicial guidance, judicial precedent, the use of actuarial tables and injury tariff systems as appropriate in that jurisdiction. Punitive or exemplary damages are prohibited or, where permitted, limited to exceptional circumstances, as set out under nuclear verdicts. Simply put, there can be no comparison between the strategies open to legal representatives in these jurisdictions and those available to legal representative in the United States.

There have been concerns that the involvement of litigation funders may impact settlement negotiations and claimant/plaintiff strategy, by seeking to prolong settlement discussions to increase returns and increase associated legal costs. These concerns may be overstated currently.

Several US states have introduced legislation to prevent the undue influence of litigation funders. The prevention of undue influence forms part of national regulation in other jurisdictions, as set out under litigation funding.

Claimant strategies also extend beyond monetary compensation. Some claims, including those advanced by activists, are intended to influence domestic or international legal reform on certain issues or establish how certain claims will be considered in the courts. This can create social inflationary risks not by requiring insurers immediately to adjust their claims reserves, but by

generating additional liability risks and the danger of increased claims in the medium to longer-term.

Climate activist litigation is a good example of this, as discussed further under Emerging Risks and Public Sentiment.

The European Court of Human Rights decision in Verein KlimaSeniorinnen v Switzerland provided an initial example in explicitly recognising a link between climate change and rights-based arguments. In 2025, two landmark climate advisory opinions, from the International Court of Justice and the Inter-American Court of Human Rights, further clarified the obligations of states to respond to the climate crisis. These opinions not only placed climate change squarely within states' legal duties, but also made clear these duties extend to the regulation of private actors such as companies.

The implications of these opinions are significant. National governments will be considering these opinions and they have been welcomed by environmental groups looking to challenge domestic policy making or corporate behaviour. The opinions place corporates squarely within future regulatory crosshairs, and the subsequent risk of associated litigation, particularly those in jurisdictions that respond to these advisory opinions.

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Forum shopping

In England and Wales, there have been examples of claimants pursuing actions that would ordinarily be pursued where the damage or injury took place, such as Vedanta, Okpabi and the Fundão Dam action. Although similar claims in future will turn on their facts, those decisions highlighted the willingness of the judiciary to consider arguments relating to access to justice and subsidiary/parent company liability.

Looking to Europe, the introduction of the Representative Actions Directive raised questions of the prospect of forum shopping across EU Member States. As an example, the Hague District Court recently permitted an action against an oil company following an oil spill in Peru to be pursued in the Netherlands. Victims affected are represented by a Dutch non-profit organisation. It should be noted that the action is not being pursued under the Netherlands' WAMCA legislation. More generally in the EU, there remains a limited list of representative entities currently qualified to bring cross-border actions, and significant numbers of cross-border actions have yet to be commenced. The prospect of certain jurisdictions and types of actions attracting the interest of funders and legal representatives is discussed further under collective redress. In the absence of complete transposition, a lack of uniform implementation of the RAD across the Europe, and limited examples of ongoing or successful claims, means that providing clarity on the effects of the RAD on forum shopping cannot yet be offered.

One other jurisdiction where forum shopping is identified as a risk is Mexico. In 2024, judicial reform introduced the popular election of federal and local judges, including Supreme Court justices, magistrates and judges at all levels.

With eligibility criteria also relaxed, concerns have been raised that elected judges, whether intentionally or otherwise, will favour claimants, particularly where a decision could potentially increase chances of re-election. On that basis, claimant firms could engage in forum shopping, deliberately pursuing claim in courts perceived as being more likely to be sympathetic to claimants.



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United States



Collective redress

The United States is uniquely impacted by social inflation due to the nature of both the federal and state-level court systems.

Both state and federal courts have collective redress mechanisms. For a federal court to have subject matter jurisdiction, there must be either diversity jurisdiction (diversity amongst the parties), or a federal question jurisdiction (question of federal law). There are no limits on the type of redress that can be sought, such as monetary compensation, declarations or injunctions.

Each state has its own rules for collective redress, often fashioned on the federal rules. There may be limits to the types of recovery possible in state class actions.

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Federal class actions are authorised and governed by Rule 23 of the Federal Rules of Civil Procedure, with 23(a) setting out the prerequisites for a federal class action:

- The class is so numerous that joinder of all members is impracticable.
- There are questions of law or fact common to the class.
- The claims or defences of the representative parties are typical of the claims or defences of the class.
- The representative parties will fairly and adequately protect the interests of the class.

Federal class actions generally operate on an opt-out basis.

The Class Action Fairness Act expanded the jurisdictional reach of federal courts over class actions and mass actions. Mass actions involve one hundred or more individual plaintiffs and common questions of law or fact, but are not classified as class actions. These can be brought in federal courts despite the prerequisites for federal jurisdiction not being met.

In circumstances where a wide range of individual actions have been pursued, and a single class action is not possible, multidistrict litigation (MDL) is an alternative route.

MDL may be commenced where civil actions in different federal districts “involve one or more common questions of fact such that the actions should be transferred to one federal district for co-ordinated or consolidated pretrial proceedings...”. Cases are assigned as MDL by the Judicial Panel on Multidistrict Litigation, which will consider if there are issues of common fact between the parties and whether the parties and judicial system would benefit from the co-ordination of the actions. Following efforts by companies facing MDL, the US Judicial Conference’s Committee

on Rules of Practice and Procedure approved a new Rule 16.1 of the Federal Rules of Civil Procedure, approved by the US Supreme Court in April 2025. Expected to be implemented in December 2025, Rule 16.1 will introduce rules-based practices and procedures for MDL, including the development of early case management plans. Defendant efforts to require each plaintiff to establish factual support for the basic elements of their claims have so far been unsuccessful.

The MDL process involves the selection of a small selection of ‘bellwether’ trials, with their outcomes closely monitored. Although not binding on other actions within the MDL, a positive bellwether verdict for a plaintiff may prompt settlement negotiations. To give a sense of the sliding scale of MDL, the Johnson & Johnson Talcum Powder Product Litigation had over 67,000 pending at the start of October 2025. By contrast, the Roundup Products Liability Litigation had around 4,400 actions pending.

It should be noted that the existence of MDL does not prevent individual plaintiffs from bringing direct actions against defendants, some of which may result in verdicts of significant value (as set out below in the US section on nuclear verdicts). Nonetheless, the well-developed systems of collective redress in the United States generate additional claims as both plaintiffs and plaintiff attorneys are secure in using these procedures to bring claims.

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Litigation funding

Litigation funding is permitted in the United States and primarily used to fund plaintiff claims. These actions are attractive to funders; if successful, the funder will receive a proportion of the damages award. There is therefore an incentive for funders to ensure that settlements represent the financial maximum possible, creating greater returns for them.

The use of litigation funding is increasing, with a 2023 survey stating that 39% of respondents had first hand experience of working with a litigation funder.

Litigation funding falls into two distinct categories, consumer and commercial. Consumer funding exists between an individual plaintiff and funder, for example to assist with the pursuit of a personal injury claim. Commercial arrangements exist between funders and law firms or corporations. Both enable claims that might not have been ordinarily pursued, increasing claims numbers and costs.

The growth of litigation funding is receiving congressional attention. In February 2025, a Litigation Transparency Act bill was introduced, despite previous bills with similar aims failing. The bill aims to compel the disclosure of any third-party funding in any civil cases. Currently, there is no federal duty of disclosure when a funding agreement is in place.

The Protecting Our Courts from Foreign Manipulation Act 2025, was also introduced in April 2025, aiming to compel disclosure from any foreign person or entity participating as a litigation funder in U.S. federal courts and prevent third-party funding by foreign states and sovereign wealth funds. A 2023 draft of the bill was not enacted. Both 2025 bills have been referred to the House Committee on the Judiciary.

These proposals are consistent with public opinion on this issue. A joint survey by the American Property Casualty Insurance Association (APCIA) and Munich Re US found over three-quarters of respondents agreed that foreign investments in US civil

litigation should be banned and represented a threat to national security.

A number of states have enacted statewide legislation to respond to increasing litigation funding. The measures in place vary from state to state, with examples set out below.

- Licensing: States such as Nevada, Nebraska, West Virginia, and Tennessee require funders to register with or obtain a licence from the state.
- Fee Caps: States such as Nebraska also place disclosure requirements on the total amount to be repaid or limit the annual fees charged against the original amount provided to the plaintiff (no more than 18% in West Virginia, 17% in Arkansas).
- Disclosure of funding agreements: Indiana, West Virginia and Louisiana have enacted legislation increasing transparency in the use of funding, including the disclosure of parties with the right to compensation arising from the proceeds of an action.

At the time of writing, a number of other states are also advancing legislation which would include similar measures, including Arizona, Maryland and Ohio. In contrast, California permits the use of litigation funding with regulation drawn from existing consumer legislation and emphasis on ethical considerations for legal representatives. It should be noted that there are some states where litigation funding is heavily restricted, making it difficult for funders to operate. State courts in Alabama have previously held that a funding agreement was void on public policy grounds because the agreement was a “gambling contract . . . and its speculative characteristics make it closely akin to champerty”. Kentucky is another state where funding agreements have been held to be inconsistent with public policy.

Disclosure may be compelled in certain circumstances in accordance with local federal court rules. In New Jersey, parties must confirm a funder’s name and address and if approval is

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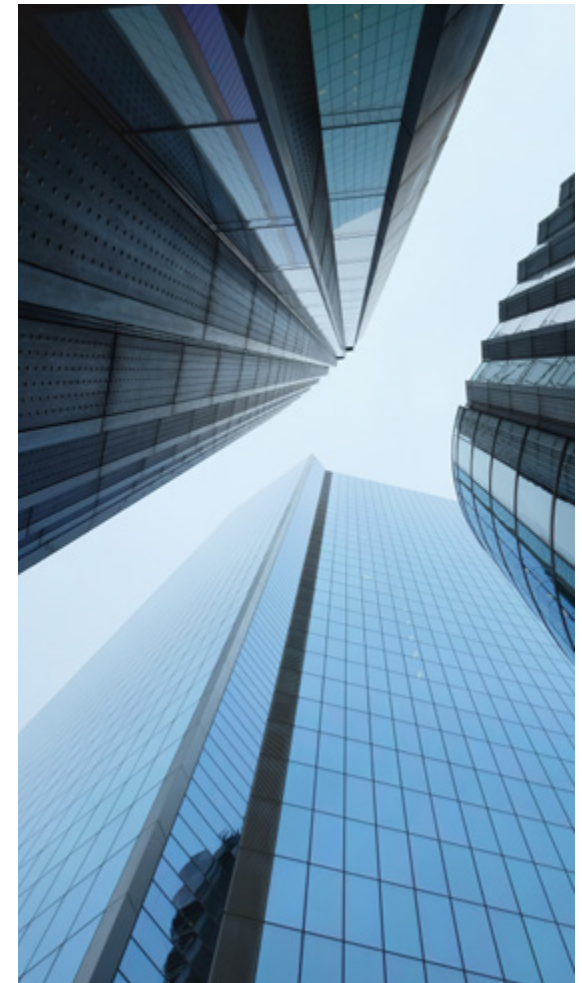
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required for litigation or settlement decisions. In April 2023, funders behind the Johnson & Johnson talcum powder MDL were disclosed as a result. In September 2023, a Florida judge overseeing the 3M federal MDL prevented plaintiffs entering any funding agreements without judicial approval, to avoid 'predatory' funders offering advances on settlement sums.

The litigation funding industry in the United States is robust yet faces challenges from insurers offering alternative means of funding legal actions. Insurers offer judgment preservation policies which allow plaintiffs successful in securing significant monetary judgments at trial, (whether on summary judgment or in arbitration) to 'lock in' some or all of a damage award while appeals are ongoing.

Overall, the United States houses a claims environment in which plaintiffs are increasingly comfortable seeking external financing.



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Emerging risks

The United States is often at the epicentre of emerging liability litigation risk. Actions relating to exposure to glyphosate and associated opioid litigation continue, and the statistics report for MDL shows those actions proceeding within the US, and where further claims may arise, include:

- Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation.
- Polypropylene Hernia Mesh Products Liability Litigation.
- Juul Labs, Marketing, Sales, Practices and Products Liability Litigation.
- Roundup Products Liability Litigation.

A sizable proportion of MDL, with considerable numbers of actions pending, involve product liability. Therefore, insurers will need to be mindful of product liability risks arising through the development of new products. The increasing use of GLP-1 medicines such as Ozempic, Wegovy and Mounjaro has already prompted the centralisation in Pennsylvania of a number of actions into MDL, involving allegations that the drugs cause gastrointestinal injuries.

In addition, data breach litigation is expected to increase as cyber-attacks become frequent. For example, the 2024 attack on Change Healthcare prompted a number of class actions, which were consolidated and designated in Tennessee as MDL.

The issue of biometrics is also of interest to those pursuing and funding class actions. The state of Illinois has found itself at the centre of a flurry of actions alleging breaches of the state's Biometric Information Privacy Act (BIPA). BIPA protects consumers and employees in Illinois from the misuse of their biometric data by companies by requiring that written consent be obtained. There have been a number of significant settlements, including a \$650 million settlement with Facebook, a \$100 million settlement

with Google, and \$50 million settlement with Clearview AI. However, an amendment to BIPA made in August 2024 changes how statutory damage awards for BIPA violations should be calculated, limiting plaintiffs to one statutory damage award. Previously, plaintiffs were entitled to separate statutory awards for each separate biometric identification or transmission made without written consent.

Texas has also concluded a \$1.4 billion settlement with Meta relating to the state's Capture or Use of Biometric Identifier Act. Litigation alleging violations of this Act by Google is also ongoing, with further actions expected. Looking to other states, the California Consumer Privacy Act treats biometric information in the same manner as other personal information. It is also worth noting that most of the state laws regarding biometrics do not have a private right of action, and it is for their state attorney general to pursue. This includes Arkansas, Arizona, Colorado, Maine, Maryland, Montana, Utah, Vermont, Virginia and Washington.

Other developing risks have focused on the issue of technology in various forms. Currently, there is a sole MDL relating to adolescent addiction and personal injury caused by social media being pursued in the Northern District of California. The MDL consolidates hundreds of actions brought on behalf of children and adolescents alleging that several social media companies (including Facebook/Instagram, YouTube, and Snapchat) designed their platforms to foster compulsive use by minors, resulting in a variety of harms. In addition, the MDL also contains claims from state attorneys-general and public nuisance claims from school districts and other municipal bodies. If a major jury-led decision finds on behalf of a plaintiff or number of plaintiffs, then further actions may follow. The MDL is currently proceeding through a number of case management conferences.

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Efforts within the MDL to hold Meta CEO Mark Zuckerberg responsible under a 'nascent theory of corporate officer liability' were unsuccessful.

The advent and further integration of artificial intelligence (AI) may also prompt concerns about other types of claims. There is MDL ongoing against OpenAI relating to copyright infringement, but there is a possibility of claims resulting from injury (such as mental health outcomes) or data loss resulting from the AI systems.

In addition, a number of securities class actions are underway in the United States relating to AI, some of which include allegations of AI washing. In a comparable manner to greenwashing, AI washing involves the misrepresentation of AI capabilities to overstate capacity and technology.

Considering the intersection of technology and products, Tesla faces continuing litigation in respect of its Autopilot system. Although successful claims have been rare to date, in July 2025, a Florida jury found Tesla partially liable to victims of a collision involving an Autopilot-enabled vehicle. Compensatory and punitive damages payable by Tesla are expected to total over \$240 million.

Video game addiction lawsuits are also being filed in the United States. An effort to centralise the actions in MDL was rejected in June 2024 due to the identification of substantial differences in the various actions by the MDL panel. A number of defendants in one of the actions proposed for consolidation, Angelilli v Activision Blizzard, was recently dismissed from the case by the District Court in Northern Illinois. Roblox Corp was released on the basis its game content was protected expression under the First Amendment, and was not liable for content created by users under Section 230 of Communications Decency Act of 1996. Nonetheless, these actions are expected to increase in number.

Litigation relating to exposure to PFAS is likely to increase as a raft of regulations limiting its use come into force. The ongoing MDL on 'Aqueous Film-Forming Foams (AFFF) Products Liability litigation' is switching its focus from the water contamination

claims advanced by municipalities (following the settlement of those claims) to the individual claims from firefighters exposed during their use of AFFF (which contain PFAS or derivative/related compounds), who allege that they have suffered cancers and numerous other medical conditions. State attorneys general and local governments have filed several other actions against manufacturers, alleging contamination of water supplies.

In August 2025, the chemical companies Chemours, DuPont and Corteva agreed a \$875 million settlement with the state of New Jersey. The settlement related to claims including alleged pollution associated with PFAS.

Finally, the issue of climate change is likely to generate increased risk and claims costs for insurers in the United States. Noteworthy claims by activists in the US to date have focused on enacting legislative change at the state (such as *Held v Montana*) or federal (such as *Juliana v United States*) level. However, a series of claims have been issued by states against fossil fuel companies alleging responsibility for actual and proximate contribution to climate change, associated damages being sought for a fund to cover climate-related damage. In one instance, the Hawaiian Supreme Court found that a pollution exclusion in a liability policy included GHG emissions, meaning that cover for losses flowing from claims brought against the fossil company which held the policy were excluded. However, claims against fossil fuel companies, whether brought by individuals, states or municipalities, if successful, will have the potential to result in significant damages awards, and may result in further actions being encouraged, leading to additional costs to insurers.

It should be noted that there can be measures or actions taken to prevent the emergence or continuation of litigation risk which can contribute to social inflation. In April 2025, North Dakota enacted a measure providing that any warning labels that meet EPA standards will be deemed "sufficient to satisfy any requirement for warning or labeling regarding health or safety". This measure will effectively shield businesses such as Bayer (through Roundup) from further litigation alleging injury through continued use.

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Considering climate litigation too, the US Department of Justice issued proceedings in May 2025, against four Democratic-led states to block climate laws and litigation. The litigation challenged climate 'superfund' legislation in New York and Vermont, and a claim against fossil fuel companies brought by the

state of Hawai'i and a proposed action in Michigan. At the time of writing, these actions, and the underlying state actions which prompted them, remain ongoing.

Public sentiment

Public sentiment carries a disproportionately significant impact on civil claims in the United States. Public willingness to pursue litigation increases claims. The availability of civil jury trials in the United States means that outcomes can be influenced by personal bias in a unique manner, triggered by a variety of factors:

- The wider economic climate and inequality of wealth create a desire to punish companies and award plaintiffs based on fairness rather than legal grounds.
- Increasing mistrust of large businesses, corporations and the legal system itself in the United States.
- Younger generations are increasingly involved in activism, including in relation to climate change and other social trends, and may look to challenge certain behaviours or actions such as corporate mismanagement. They are also more likely to access social media platforms proliferating anti-corporate sentiment. Millennials and Generation Z have also been disproportionately affected by cost-of-living concerns and

may hold negative perceptions towards organisations viewed as having deep pockets.

- Media reporting of 'nuclear verdicts' awards, without fully explaining the likelihood of significant reductions on appeal, can lead the public to assume that these figures represent the status quo. Plaintiffs expect more and juries are likely to award more.
- A study by Illinois State University also suggested that educational attainment and political voting intention may also impact jury inclination in making high value awards.
- The APCIA / Munich Re survey referred to above also suggests that public sentiment on certain issues such as 'jury anchoring' (discussed below) and litigation funding are in lockstep with legislative developments in some instances.

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Nuclear verdicts

This term, or the alternative ‘shock verdicts’, is often used to describe civil jury verdicts awarding damages of \$10 million or more, usually in relation to a single verdict as opposed to the total sum agreed or awarded to a class or group of claimants which often far exceeds \$10 million. The specific association of nuclear verdicts with jury involvement again highlights the importance of public sentiment on social inflation. The term ‘thermonuclear verdict’ has increasingly found traction to describe verdicts in excess of \$100 million.

Nuclear verdicts often involve the awarding of compensatory damages by a jury, accompanied by a punitive damages award, significantly exceeding the compensatory sum, usually aimed at punishing the wrongdoer. The application of punitive damages is not uniform across the United States.

Those states where the risk of nuclear verdicts is heightened are often called ‘judicial hellholes’ by defendant activists, such as the American Tort Reform Foundation (ATRF). A 2024-25 ATRF report on this issue highlights the following locations and courts as allowing innovative lawsuits and welcoming litigation tourism: Georgia, the Supreme Court of Pennsylvania, Illinois (specifically Cook County), California, New York City, South Carolina (asbestos litigation), the Michigan Supreme Court, Louisiana and St. Louis.

Florida was often identified as a ‘judicial hellhole’ but in 2023 introduced significant tort reform, which included a reduction in limitation periods from four to two years, a modified negligence system, and efforts to reduce phantom medical expense claims.

Overall, analysis by Marathon Strategies indicates that the median value nuclear verdicts increased from \$41 million to \$44 million in 2023. Referring to the APCIA / Munich Re survey above, over two-thirds of respondents agreed that the advertising of verdicts with large payouts desensitises people to high jury awards. Significant post-pandemic increases in nuclear verdicts have been driven by awards against various sub-industries.

Product liability claims result in a sizable proportion of nuclear verdicts. As an example, Bayer was ordered to pay \$2.25 billion in January 2024 to a plaintiff alleging that the company’s glyphosate weedkiller was responsible for his non-Hodgkins lymphoma. However, as noted in the US section on public sentiment, these decisions are often reduced on appeal. In this instance, a judge in Pennsylvania reduced the billion-dollar award to \$400 million on appeal. Reductions on appeal are by no means guaranteed. In 2025, a Missouri appellate court upheld a \$611 million consolidated verdict for three plaintiffs against Bayer relating to their glyphosate-based Roundup product and allegations of cancer.

Johnson & Johnson continue to agree payments as part of the ongoing MDL relating to talcum powder marketing and liability. In June 2024, J&J agreed to pay \$700 million to settle an investigation by a large number of US states into the marketing of its baby powder and other talc-based products blamed for allegedly causing cancer.

Fatal or serious road traffic collisions often generate significant nuclear verdicts, the recent award against Tesla noted. In 2024, one such verdict in St. Louis resulted in a \$462 million verdict against a trucking company. As with other nuclear verdicts, such verdicts are routinely appealed, and this verdict was reduced to around \$120 million.

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Claimant strategy

The plaintiff bar in the US is aggressive and adept at developing strategies to maximise settlements and judgments in jury trials. These strategies, when combined with availability of funding and savvy advertising, have led to greater numbers of claims with ever greater damages awards.

The nature of jury trials in the United States means that conflicting expert evidence is not fatal to a claim. For example, allegations that cancer is caused by the weedkiller Roundup have not been conclusively proven, without which causative link similar claims would be unlikely to succeed in European nations. However, in the US, substantial damages (both general and punitive) have still been awarded to successful plaintiffs.

There have been considerable efforts by organisations such as the American Tort Reform Association to reform the civil justice system across the United States to address these strategies via tort reform.

One claimant strategy, known as 'jury anchoring' involves relying on the cognitive bias of jurors to rely on the first financial sum discussed when making decisions. The ATRF has supported civil litigation reform measures such as those recently enacted Senate Bill 68 in Georgia. The Bill prevents plaintiff legal representatives from arguing the value of non-economic damages until closing arguments, being supported by evidence having a 'rational connection to the facts'.

The APCIA / Munich Re survey gave some insight into public sentiment on tactics employed by plaintiff representatives. The survey suggests that a large majority of respondents agreed that 'jury anchoring' increases the size of jury awards, and that factual evidence should be supplied to support suggested damages awards.

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England and Wales



Collective redress

England and Wales have a number of established routes through which multi-party actions may be pursued, each with their own process and costs consequences.

Depending on the circumstances, both opt-in and opt-out actions can be pursued in England and Wales. Opt-in actions require potential claimants to take proactive action, whether joining or issuing proceedings themselves, or authorising a representative to act on their behalf.

Opt-out actions allow a single party to pursue on behalf of a defined class, with any decision binding on any other party affected by the action, unless they choose to opt-out to preserve their own rights to pursue the claim.

There are various collective redress mechanisms available in England and Wales dependent on claim type:

- Group litigation orders (GLOs): GLOs manage multiple claims with “common or related issues of fact or law”. Claimants have to opt-in to join the Group Register before a cut-off date decided by the judge. The UK Government website lists all GLOs made. The current list indicates a significant proportion of GLOs granted in the last two years deal with emission ‘defeat devices’, identified as the ‘Pan-NOx group litigation’ (a total of 13 GLOs). The limited use of GLOs is indicative of the availability of more flexible approaches to collective redress available in England and Wales.
- Representative claims: One or more claimants represent other claimants with the ‘same interest’. CPR 19.8(4) enables these claims to proceed on an opt-out basis. The authoritative decision in *Lloyd v Google* highlighted the issues with bringing a representative action for breaches of data protection legislation, followed by a similar failure in *Prismall v Google & Deepmind* for misuse of private information claims.

Subsequent decisions have further clarified the operation of the representative claim route. *Smyth v British Airways* highlighted the importance of the ‘same interest’ requirement when a representative claim is pursued; judicial findings in the dismissed securities claim of *Wirral Council v Indivior* highlighted further factors to be considered when a court exercises its discretion to allow a representative claim to continue.

- Collective actions regime in competition law: This regime deals with proceedings following alleged breaches of competition law brought before the Competition Appeal Tribunal (CAT) by a class representative.

The class representative does not have to be a member of the defined class. This type of action may be brought either on an opt-in or opt-out basis and the CAT determines the basis with reference to the CAT Rules and Guide to Proceedings. In August 2025, the Department for Business and Trade commenced a call for evidence directed specifically at the opt-out collective action regime, due to concerns about costs, effectiveness and limited precedent on damages and distribution in the decade since its introduction. The now-concluded *Merrick v Mastercard* action is the most well-known collective proceedings settlement, but only one opt-out case (*Justin Le Patourel v BT*) has reached final judgment.

The review will consider alternative routes for consumers to seek redress, including ADR and voluntary redress schemes. Any future proposals to change the opt-out collective action regime will be subject to further consultation.

- Multiple joint claims: These claims involve multiple claimants using a single claim form, as their action can be “conveniently disposed of in the same proceedings,” sometimes referred to as an ‘omnibus claim form’. The recent decision of *Morris v Williams & Co Solicitors* emphasised that this mechanism is flexible, not being as restrictive as other routes. The judgment highlighted that the question of ‘convenience’ will be determined on the facts of each case.

The largest single group claim in UK legal history involving more than 600,000 claimants, the *Fundão Dam* action, is currently awaiting judgment from the High Court. As these actions are brought by multiple claimants, they can be said to be opt-in.

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Litigation funding

Third party litigation funding is permitted in England and Wales, where it is used in an increasing diversity of claims with funders offering funding for individual claims or group actions. This has allowed claims to progress which previously may not have proceeded due to lack of funds, or where it was considered uncommercial to bring individual claims. The maturity and range of collective measures in England and Wales make for an attractive proposition, particularly allied with the current absence of formal regulation.

However, risks associated with the use of litigation funding have been raised. In *Smyth v British Airways*, Master Davison commented “the dominant motive for [the representative action] lies in the financial interests of its backers... and not the interests of consumers. That motive has translated into a proposed deduction from the compensation available to each represented party which is excessive and disproportionate...”

Currently, litigation funders in England and Wales are self-regulated. Some are members of the Association of Litigation Funders (ALF), which abides by voluntary code of conduct with requirements on capital adequacy, termination, approval of settlement and control provisions. Members include major litigation funders Harbour, Therium, Burford Capital and Augusta Ventures.

Funders are prevented from taking any active role in the litigation including control of settlement discussions or actions which may cause a claimant’s legal representatives to act in breach of professional duties. However, there is no compulsory requirement in civil litigation compelling the disclosure of a funding agreement to an opposing party or the court, although disclosure may be ordered.

Funding agreements usually result in the funder taking their fee(s) from any settlement before the distribution of damages to class members, and the Court of Appeal recently affirmed this position in *Gutmann v Apple*.

Alongside the more traditional funding models, funders have chosen to collaborate with legal firms allowing the funding of claims portfolios directly. An example of this trend has been investment agreements between Gramercy and a UK-based firm using US-based experience in class actions lawsuits.

Post-PACCAR and the Civil Justice Council

In England and Wales, litigation funding agreements (LFAs) have, primarily, been written on a share of proceeds model which calculates the funder’s fee as a share of the proceeds recovered by successful claimants. It was widely understood LFAs were not damages-based agreements (DBAs) and fell outside the scope of the DBA Regulations.

However, in 2023, the Supreme Court ruling in *PACCAR* held LFAs calculated by reference to a share of damages recovered are DBAs. Since LFAs have not generally complied with the DBA Regulations, *PACCAR* effectively upended the enforceability of many LFAs. A further complication is opt-out proceedings in the CAT prohibit the use of DBAs and, without adequate funding in place to meet an adverse costs order, such claims cannot proceed. The decision had significant consequences for collective redress mechanisms in England and Wales.

Pending legislation to reverse the effects of *PACCAR*, many funders have adjusted their LFAs to a multiple-based repayment model where the funder’s fee is calculated as a multiple of its capital outlay if successful. The validity of these adjustments were challenged. In July 2025, the Court of Appeal in *Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd* held that LFAs, where funder’s fees were calculated based on multiples of outlay, subject to a cap, did not constitute DBAs. Furthermore, conditional language allowing a recovery based on damages in the event of future legislative change (i.e. upon the reversal of *PACCAR*) did not convert the LFA to a DBA.

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In April 2024, in response to PACCAR and broader questions relating to regulation of litigation funding, the Civil Justice Council (CJC) launched a review to address the rapidly changing landscape.

The CJC published its report in June 2025, making a series of recommendations to reform litigation funding. The CJC found that litigation funding was an increasingly essential part of the overall litigation landscape, offering appropriate and effective protection for funded parties and defendants.

The most immediate recommendation was the reversal of PACCAR through the use of legislation, carrying both retrospective and prospective application. It was also recommended that any legislation make clear the categorical difference between contingency fee funding by lawyers through conditional fee agreement (i.e. a Contingency Fee Agreement or DBA) and litigation funding by a third party for the purposes of dispute resolution (LFA).

Consistent with the approach taken in the European Law Institute's Principles Governing The Third Party Litigation Funding of Litigation, the CJC recommends 'light-touch' regulations to replace existing self-regulation which include:

- Funders should meet capital adequacy requirements, with ATE insurance in place for non-commercial parties or in collective/group actions.
- The prohibition on funders from controlling funded litigation, whether directly or indirectly, should be codified. Breaching this requirement (or any approved regulations) would render the LFA unenforceable.
- Disclosure of the existence of a funding agreement including the funder's name should be made to the court and other parties at the earliest opportunity when the agreement is made.
- A binding ADR process should resolve disputes between funders and funded parties.

Additional requirements would apply where funding is used for a consumer claim or forms of collective redress:

- Funders should be subject to a regulatory Consumer Duty.
- Independent legal advice should be provided by a King's Counsel to the funded party before the agreement is made.
- LFAs in these circumstances should have standard terms.
- The court must approve the funding agreement following a consideration of the terms and details of the proposed financial return.

The report also recommended that any regulation of funding should be reviewed after five years. At the time of writing, the recommendations have not been advanced or any further proposals published.

Emerging risks

Those risks generating multidistrict litigation and mass tort actions in the United States, such as glyphosate, opioids, talcum powder and PFAS, have not yet translated to England and Wales in a meaningful sense, whether through substantial settlements or positive judicial precedent. However, increasing numbers of actions involving similar claims to those seen in the US are being announced and pursued.

- A first UK group action into alleged links between talcum powder and cancer was announced in 2024. In October 2025, it was reported that an action had been filed on behalf of approximately 3,000 claimants in the UK over alleged links between talcum powder products and cancer.
- Those same legal representatives also announced in September 2025 that a letter before action has been issued on behalf of a number of individuals to 3M for hearing loss resulting from the supply of allegedly defective ear protection equipment to the UK military. It remains uncertain whether any talc or hearing loss claims in England and Wales will succeed or match the financial outcomes seen in the 3M MDL settlement.
- Three group litigation test cases for sports-related concussion and head injury claims, covering football, rugby league and rugby union are currently proceeding. The actions allege that the respective sporting governing bodies failed to implement adequate concussion risk management, despite a knowledge of the risk.

Looking to similar liability risks, the authorisation of glyphosate for use in England and Wales was extended in April 2025 until December 2026. In the absence of unequivocal evidence linking glyphosate use with health issues, bringing successful actions is likely to be challenging.

As concern grows over the use and impacts of PFAS, further regulations on their use (and exposure) may be introduced. Two leading claimant firms announced in 2024 that they had been instructed to investigate claims relating to Bentham, North Yorkshire. It is alleged that areas surrounding a factory manufacturing firefighting foams have been contaminated, and that environmental damage and injury to residents may have been sustained. In September 2025, it was announced that one claim in respect of a single property allegedly affected had been settled through the exchange of pre-action correspondence.

Currently, it is not clear whether other claims will be successful. The UK Parliamentary Environmental Audit Committee has commenced an enquiry on the risks posed by PFAS in the UK, and whether existing regulatory mechanisms are adequate. Additional regulations on PFAS may generate an increase in claims costs in the future, following breaches, whether via individual claims or class actions. Accordingly, insurers may wish to consider any additional risk to their portfolio from insuring such products or companies.

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A significant proportion of US-based class actions involve product liability, and there have been examples in England and Wales of large product liability claims, including metal-on-metal hip defects and PIP breast implants. Similarly, the large number of NOx emissions litigation involves a defective product.

As products increase in complexity, the greater the risk of inherent defects generating litigation. Discussions around product safety and liability reforms in England and Wales have emphasised that any proposals should make it “easier for consumers to seek redress if they have been harmed by an unsafe product.” In late July 2025, the Law Commission announced that it will be reviewing the law relating to defective products, to take into account technologies that have emerged since the current regime was introduced. Implementing modifications to the product liability regime will be a gradual process. However, stakeholders including manufacturers, importers, insurers, and other entities such as online marketplaces will need to remain informed about relevant updates and developments.

Claims under S90 and S90A of the Financial Services and Markets Act 2000 (FSMA) continue to gather pace, reflecting increased scrutiny of company financial disclosures. False statements or dishonest omissions in financial reporting can result in investors claiming losses running into hundreds of millions of pounds.

These actions are expensive and complicated to defend, particularly when noting the limited judicial authority. However, the decision in *Wirral v Indivior* (currently subject to an application to appeal to the Supreme Court) found that the representative action mechanism was inappropriate for this FSMA action on its facts.

Companies are also facing regulation of their climate-related and sustainability-related disclosures. Companies making disclosures materially relied upon by investors, yet in breach of regulations may find themselves subject to FSMA claims. The prospect of the development of these types of actions will attract the interest of litigation funders.

The issue of forum shopping remains a concern for companies, particularly those with international subsidiaries. The decisions to allow claims to proceed based on an alleged duty of care from the UK-domiciled parent company to foreign citizens in *Vedanta*, *Okpabi* and the *Fundão Dam* action demonstrated the willingness of the English and Welsh courts to allow actions to proceed that would ordinarily be pursued where the damage or injury took place. Furthermore, those decisions highlighted a more general willingness on the part of the courts to entertain arguments relating to policy issues such as access to justice. Of course, any similar claims in future will turn on their specific facts and circumstances but should remain a concern for insurers.

Climate change activism may also drive litigation against companies. The unsuccessful 2023 derivative action brought by the activist group, ClientEarth, against the board of directors of Shell was arguably at odds with the public policy considerations that judges have occasionally given voice to. Climate change litigation in the UK continues to be primarily centred on government actions or policies; however, future activist litigation involving private companies on various grounds must be expected, especially following recent international advisory opinions identifying the responsibilities of private companies in this area.

Crucially, publicity is often second only to victory in this area of law, as activists continue to search for creative ways to circumnavigate existing obstacles such as the willingness of the courts to expand tortious boundaries to address issues such as climate change. A significant opinion from Lord Sales, a Justice of the UK Supreme Court, noted that, in the absence of Parliamentary intervention, “the courts may find themselves—for want of a better alternative—drawn into determining the novel application, and potentially the expansion, of tort law standards in order to regulate the consequences [of climate change].”

Public sentiment

In England and Wales, public attitudes towards business have shifted negatively. The most recent edition of the BEIS Tracker on Public Attitudes towards corporate governance in summer 2022 indicated that “levels of trust were lower in relation to transparency about social matters (36% trust and 52% distrust) and being honest about their impact on the environment (33% trust, 56% distrust)”.

Unlike the United States, public sentiment cannot be said to directly impact the outcome of claims, or any compensation awarded. The impact of public sentiment may, however, be reflected in an increased willingness by claimants to commence litigation.

There may also be cases of the courts being willing to expand the boundaries of tortious liability following societal trends and public policy. For example, in *Begum v Maran (UK) Ltd*, the Court of Appeal refused to strike out the claimant’s duty of care arguments and was prepared to extend the duty of care so that the defendant might be liable for damage caused by third parties on the ground that it created the source of the danger. As Coulson LJ observed, there is “a growing trend of claims in negligence where there has been an intervention of some kind by a third party, such as claims against public bodies and local authorities based on the acts of others.”

The large number of COVID-19 business interruption claims finding in favour of businesses could be considered outcomes affected by considerations of public policy and ‘fairness’. Similarly, in allowing the *Fundão Dam* claim to proceed in the UK (and following the *Vedanta* and *Okpabi* decisions) the Court of Appeal was motivated by genuine concerns over the adequacy of remediation in the foreign courts and was not willing to allow the challenges of managing complex, cross-border group litigation to stand in the way.

Nuclear verdicts

A fundamental difference compared to the US is the absence of civil jury trials. In England and Wales, punitive (or exemplary) damages in tort may be awarded but are available in limited circumstances.

The limited nature of their application means that they cannot be said significantly to impact claims costs or generate concern for insurers when reserving.

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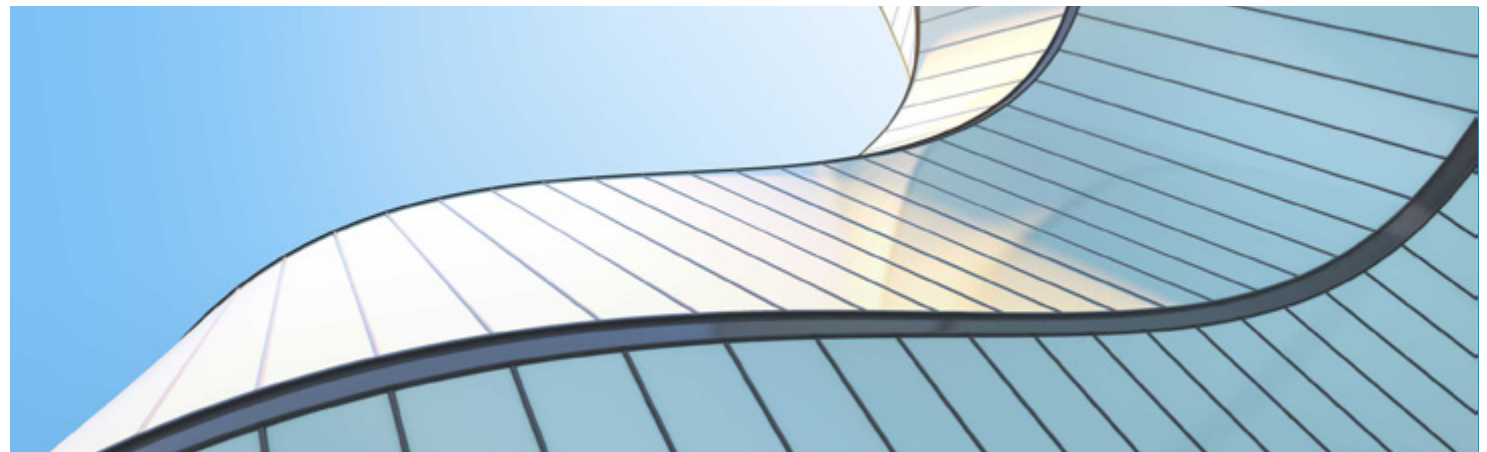
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Claimant strategy

There are now a number of established UK-based claimant law firms specialising in litigating mass torts, class actions and group litigation. A number of firms currently manage a significant number of group consumer claims including the Fundão Dam action, the Pan-NOx group litigation orders and the proposed talc, hearing loss and sporting concussion claims.

Those firms have demonstrated an increasing willingness to advertise their services, or ensure that ongoing awareness of the progression of these claims is raised via various media channels.

However, it remains the case these firms have limited influence on the outcome of actions and judgments, save for their representation and submissions, with actions in England and Wales subject to structured rules on what is recoverable both in damages and costs.



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Collective redress

In 2014, an opt-in group action procedure was introduced in France via Law 2014-344 dealing with consumer affairs. This procedure was gradually extended on a piecemeal basis to other sector-specific regimes including healthcare products, environmental matters, personal data protection, and workplace discrimination claims.

Group actions were pursued through the civil courts, allowed only to seek compensatory damages; group actions seeking injunctive relief were not permitted. An approved non-profit organisation could act as a representative in a group action if it had been in existence for five years and complied with other criteria.

Following concerns about the efficacy and use of the group action procedure, combined with the need to implement the Representative Action Directive (RAD), a unified group action regime has recently been implemented into French law.

Applying to class actions commenced from 3 May 2025, Law No. 2025-391 of 30 April 2025, a law introducing several EU provisions (Dispositions d'adaptation au droit de L'union Européenne) standardised the French group action framework (the DDADUE Law).

The DDADUE Law ensures compliance with the RAD, expanding the jurisdiction of the French courts as follows:

- Any breach of a legal or contractual obligation suffered by several natural or legal persons can be pursued as a group action. This includes breaches:
 - during professional activity;
 - by private law bodies responsible for the management of a public service; and
 - by a public law entity.
- Legal persons can now take part in class actions, alongside individuals.
- Cross-border representative actions are now permitted in line with the requirements of the RAD but require prior approval.
- Remedies that can be sought in group actions have now been widened to respond to all types of damage. This means that claimants can now seek the cessation of unlawful conduct, and compensation for damages.
- Group actions can now be initiated by a wider range of entities, who may now be granted standing to act as a representative. These now include (dependent on the remedy sought):
 - Representative entities meeting the criteria set out in the RAD can bring cross-border actions.
 - To bring compensation claims, a non-profit organisation must meet the approval criteria set out in the DDADUE under Article 16.1-C-1.
 - To bring actions for cessation, government approval is not required, but the non-profit organisation must have been registered for over two years, performed effective and public activities for 24 consecutive months, and have a statutory purpose of defending the relevant interests breached.
 - Trade unions may also bring class actions in respect of alleged workplace discrimination or data protection issues.
 - Seafarers, farmers and fishermen's trade unions may bring a class action where the relevant breach or claim for compensation affects several of their members.
 - The Public Prosecutor's Office may act as a representative entity to seek the cessation of unlawful conduct only. The Office may also join any class action, compensatory or otherwise, to support the claim.
- Group actions will continue to operate on an opt-in basis, albeit publication of class criteria is 'deferred' to allow resolution of liability initially.
- If compensation is sought, the judge will rule on liability, then establish the criteria for the class members to whom liability is owed. An assessment of individual damage or evidence needed for assessments will be set out. The court will state the period in which class members can join the action, along with any publicity measures, and the costs to be borne by the defendant.
- If a cessation of unlawful conduct is sought, then, following a ruling on liability, the court will order the remedy (whether provisional or otherwise), along with any publicity measures to notify those likely to have been affected, and the costs to be borne by the defendant.
- Specially designated courts will deal with class actions, with the DDADUE Law setting out in detail the process by which class actions will be dealt with.

Litigation funding

Litigation funding is not regulated in France and as such not forbidden; there are no current limitations on application to specific types of claims or disclosure requirements. It is currently used to a limited extent, and only in large international arbitration matters rather than smaller civil disputes.

As part of the DDADUE Act standardising group actions in France, litigation funding is permitted for representative actions. Any funding agreement in place must be disclosed, with the funding subject to supervision by the representative organisation and the court. The use of any litigation funding must be independent, not influenced by parties other than consumers, particularly those with an economic interest in bringing the group action.

Furthermore, the representative organisation must not place themselves in a conflict of interest, preserving the group action from the influence of a third party to the proceedings.

Emerging risks

The passing of the DDADUE Law broadening the availability of class actions in France represents a significant liability risk to companies and their insurers, and details of claims brought under the new regime are eagerly awaited.

Climate and sustainability

Beyond collective redress actions, there have been several shareholder and activist-related actions commenced in France directed at corporate interests (not limited to fossil fuel exploration) and their response to climate change with reference to the duty of vigilance and other legal obligations.

Those actions include:

- Notre Affaire à Tous v Total – an action by a non-governmental organisation alleging that Total has failed to provide detailed information in its vigilance plan on the reduction of emissions.
- Envol Vert et al v Casino – an action against the French supermarket chain Casino by a group of non-governmental organisations. It is argued that Casino's involvement in the cattle industry in Brazil and Colombia violates both the French duty of vigilance, by causing harm to the environment in those nations, and human rights.
- Notre Affaire à Tous et al v BNP Paribas – an action by non-governmental organisations alleging the detail contained in BNP Paribas' due diligence plan on the climate risks of its activities is inadequate and in violation of the duty of vigilance.

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At the time of writing, these actions are ongoing.

France will also be the location of the first European greenwashing judgment challenging the net-zero claims of a fossil fuel company. The claimant, Greenpeace France, is seeking an injunction and moral damages against Total. The judgment in this action is expected to be issued in late October 2025.

The activist group Bloom filed a novel action claiming that Total's directors and shareholders should face criminal liability for contributing to climate change. Ultimately dismissed in February 2025, the action demonstrates the diversity of risk faced by companies in France.

Glyphosate

Addressing liability risks often observed in the United States as indicators of social inflation, glyphosate has been subject to discussions in France. Although the European Commission extended the license for glyphosate use until 2033, the French government abstained in the vote, reflecting domestic restrictions requiring the use of alternatives to glyphosate where available.

Although the French Government has compensated farmers for illnesses associated with glyphosate exposure, there are no expectations of similar numbers of actions as seen in the US. As with other European jurisdictions, issues of causation are likely to prevent successful claims. Reflecting this, in July 2025 the Court of Vienne (Isere) rejected a claim that an 18-year-old's birth defects were caused by prenatal glyphosate exposure, holding that evidence of exposure was too weak to establish causation.

PFAS

From a regulatory perspective, the French Government passed Law No. 2025-188 of 27 February 2025 introducing a number of phased bans for the use of PFAS. From 1 January 2026, cosmetics, textiles for clothing and ski wax containing PFAS will be banned. From 2030, all textiles containing PFAS will be banned. The phased ban may result in additional claims against non-compliant companies in the future, but in the meantime, actions associated with PFAS are ongoing.

In February 2025, the activist groups PFAS contre Terre and Notre Affaire à Tous announced a group action against two industrial companies, Arkema and Daikin, alleging PFAS-related injury and associated damages. At the time of writing, the claim is ongoing.

The City of Lyon and the southern Lyon water authority has also committed to undertake filtration work at water treatment facilities and a new pipeline from the north of Lyon to the southern suburbs. More than EUR11 million has been committed as emergency funding by the City of Lyon, demonstrating the significant cost in undertaking remedial work to address PFAS contamination.

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Product liability

From a product liability perspective, the introduction of the updated Product Liability Directive, to be transposed by December 2026 will have an impact in France, particularly in light of the standardised group action procedure. Broadening the concepts of products and damages, along with the inclusion of additional liable parties (such as online marketplaces), we expect that the updated PLD will generate larger numbers of claims, both on an individual and group basis.

In the meantime, the Cour de cassation handed down some noteworthy rulings on defective products in recent years. In November 2023, it was ruled that the victim of a defective product can seek compensation from the producer for its loss by choosing to invoke either the defect in the product or a fault committed by the producer, which gives the victim more time to act (the limitation period being longer in cases of fault).

Automated data processing systems

On the technology front, since April 2023, Article L12-10-1 the French Insurance Code provides for compensation for damage caused by a breach of an automated data processing system, provided that the victim files their complaint with the competent authority within 72 hours from the time of the breach becoming known. This provision may generate increased risk as the use of automated systems grows.

Public sentiment

As noted above, prior to the introduction of the consolidated group action model in 2025, the use of the group action procedure has been limited.

Therefore, shareholder and litigant activism combined with pressure from consumer groups has acted as the primary form of influence of public sentiment on French claims.

There has been increased pressure on French companies to consider the implications of their business models as part of climate change and ESG-related concerns. The French duty of vigilance, which places requirements on specified companies and groups, is a crucial part of these considerations.

Organisations must create, implement and monitor their own vigilance plan to prevent breaches of human rights and fundamental freedoms, and protect the health and safety of individuals and the environment. This is the vehicle that has been used to bring the actions referred to above.

Nuclear verdicts

France does not have a system of civil jury trials or the imposition of punitive damages that we see in the US. Therefore, the type of verdict which can be considered a 'nuclear verdict' is only handed down in the event of a major disaster.

As an example, the Erika judgment involved an incident in which a grounded vessel created an oil slick, and Total was ordered to pay EUR192 million. However, these types of incidents are rare, and therefore the prospect of nuclear verdicts in France is unlikely to generate increased risk and claims costs.

Notably, the recent DDADUE Law establishes a new 'serial damages civil penalty'. Although not comparable to a US-style punitive damages award, in the event of a breach of legal or contractual obligations, the Public Prosecutor's Office or the French government may seek an additional penalty sum. This penalty sum is imposed if the liable party has deliberately committed a fault to gain undue profit or savings, causing damage to multiple individuals or companies. Individuals may be penalised up to twice the sum gained or saved, with companies potentially penalised up to five times the sum gained or saved. The penalty fee is non-insurable, meaning it cannot be covered through liability policies.

Unlike a punitive damages award, which is awarded to the injured party, any civil penalties imposed will be allocated to a fund for the financing of group actions in France.

Claimant strategy

Civil and commercial claims in France are heard by judges and are not subject to a jury trial. French law follows the principle of 'integral reparation', meaning the victim must be compensated for loss or damage without being impoverished or enriched as a result.

The aim is to put the victim back in the situation they would have been in had the damage not occurred, or in an equivalent situation. Therefore, anchoring strategies used by legal representatives in the United States to increase damages awards are not applicable in France.

In addition, the French Insurance Code imposes strict requirements on exclusion clauses, irrespective of the governing law of the contract. This means that exclusion clauses applying other national law not meeting appropriate French standards may be invalidated in order to affirm the primacy of French law.

Bodily injuries in France are assessed with reference to The Nomenclature Dintilhac. This lists all recoverable damages / heads of loss in a personal injury claim and provides a method of valuation. Compensation for bodily injuries is not harmonised at the Supreme Court level and so each Court of Appeal has its own criteria.

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Collective redress

Prior to the introduction of an Act transposing the Representative Actions Directive (RAD) into German law, other collective redress procedures were already available in Germany. Since 2018, the 'model declaratory action' has allowed consumer protection associations to file lawsuits on behalf of multiple individuals who have suffered similar harm from the same defendant.

This type of action operated on an opt-in basis, being brought by a qualified entity and allowed courts to make injunctive or declaratory findings regarding the potential liability of a defendant. Individual claimants must pursue their claim individually thereafter and cannot be pursued by the qualified entity.

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Prior to 2018, there were other collective redress procedures available in Germany limited to specific sectors, but these cannot be said to impact on social inflation.

In October 2023, the German Federal Council approved the law implementing the RAD. Article I of the implementing act was the Consumer Rights Enforcement Act (the Act) which introduced the representative action for performance (identified as 'actions for redress' or those seeking compensation). The Act also amended the requirements for the 'model declaratory action'.

The Act provides that opt-in representative claims may now be brought by representative entities. The Act is not only applicable to actions pursuing infringements of European Union law, as defined within Annex I of the RAD, but expanded the new procedure to a wider range of infringements including general tortious actions.

The Act sets out that:

- Small businesses employing fewer than 10 people and turnover not exceeding EUR2 million will be considered 'consumers' and allowed to join representative actions.
- Those representative entities entitled to bring domestic representative actions must be 'qualified consumer associations' registered in accordance with the Injunctions Act, who do not receive more than 5% of their financial resources from private companies.
- The Injunctions Act sets out that a domestic representative entity must demonstrate:
 - It has been registered for at least one year.
 - It will continue to fulfil any statutory duties effectively in the future.
 - It will not bring claims primarily to generate income.
 - It does now allow those who work for the association to benefit from unreasonably high remuneration.

- Representative actions and model declaratory actions in Germany require a 'reasonable demonstration' that at least 50 consumers are affected (an alteration from the original model declaratory action which required 50 consumers to opt in to the action).
- Once a representative action is ongoing, other representative actions against the same defendant relating to the same subject matter may not be pursued until the conclusion of the initial action.
- If the parties agree to a settlement, it must be approved by the court. In the event of settlement, any consumers who do not wish to be bound by its terms can withdraw within a one-month period following the settlement announcement.

A register of representative actions in Germany (both model declaratory and remedial actions) can be found on the German Federal Office of Justice website.

Mass claims, involving a large number of individual actions of individual claims based on similar legal arguments, also occur in Germany. One such example has been a large number of data scraping actions against Facebook. In order to assist in dealing with these mass claims, the Federal Court of Justice (BGH) has, since October 2024, been able to make decisions using the 'leading decision procedure'.

Akin to a 'bellwether trial' in multidistrict litigation in the United States, the BGH can make a 'leading decision' on the legal questions consistent across a large number of materially similar claims. Although not formally binding, BGH decisions will likely be followed by lower courts, hopefully limiting the pressure on the court system, and also conclude other claims more efficiently.

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Litigation funding

Third party litigation funding is permitted under German law. In recent years, there has been a growing use of such funding in litigation and arbitration matters. Funding is not limited to certain types of claims and can be used across various types of civil litigation, including commercial disputes, personal injury cases, intellectual property disputes, and more.

Although there is no specific restriction on the types of claims eligible for third party funding, certain funders have their own criteria for selecting cases to finance. Specific sectors and claim types are more attractive to funders due to factors such as the likelihood of success, the potential recovery amount and the complexity of the legal issues involved.

There are certain regulations and ethical considerations that apply to the use of third party funding. Funders may need to comply with licensing requirements and regulations governing their activities if they act in a specific manner. The German Federal Financial Supervisory Authority (BaFin) is responsible for supervising and regulating entities engaged in financial services activities. While third party litigation funding may not fall within the traditional scope of financial services activities, certain aspects of funding arrangements may be subject to regulatory oversight by BaFin (e.g., if they are seen as an investment firm).

Additionally, legal practitioners in Germany are subject to ethical rules, such as those outlined in the German Federal Lawyers' Act, which may impose restrictions or guidelines on the use of third party funding.

Representative Actions Directive

The Consumer Rights Enforcement Act contains provisions on the use of litigation funding in actions introduced by the RAD. As set out within the RAD itself, a representative action may be deemed inadmissible if the funder is a competitor of or dependent on the defendant being pursued. In addition, the representative entity is expected to be responsible for the conduct of proceedings and should not be influenced by the funder. Evidence to the contrary will result in the action being deemed inadmissible.

In addition, the Consumer Rights Enforcement Act states that redress actions will be deemed inadmissible where the funder's success fee exceeds 10% of the sum to be paid by the defendant. The European Commission's 2025 report on litigation funding found that limiting success fees to a maximum of 10% makes widespread litigation funding for representative redress actions unlikely in Germany.

On disclosure, when the action is filed the representative entity must advise how the action is funded. If a funder is involved in the continuing pursuit of the action, then any funding agreement must be disclosed.

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Collective actions

There have been several landmark court decisions creating significant liability precedents, but the new representative action scheme is likely to create additional risk of claims and have financial implications as well.

Shortly after implementation, the Federation of Consumer Organisations (FCO) announced it intended to use the range of collective redress measures (model declaratory actions for redress or remedial actions) against energy suppliers, telecommunication companies and financial services providers. Accordingly, the FCO commenced actions in 2024 against Hansewerk Nature, ExtraEnergie and E.ON in respect of energy prices.

A recent representative action was filed against X (formerly Twitter), alleging misuse of data to influence political and social opinions, seeking damages for German X users who opted in. A model declaratory action has recently been initiated against Meta, seeking a declaration of alleged breaches of the GDPR and clarification on the potential compensation for subsequent individual claims. In a similar manner, a case is being brought against the media company DAZN, seeking a declaration about DAZN's authority to increase subscription prices unilaterally. These are examples of the risks facing large social and other media organisations from the collective redress measures available in Germany.

Product liability risks

The updated EU Product Liability Directive (PLD) is due to be implemented in Germany (and all other EU states) by December 2026. The definition of product will be updated to include 'non-tangible' products such as software, digital manufacturing files, operating systems, apps and AI systems, also extending the range of liable parties to include non-EU manufacturers' authorised representatives and fulfilment service providers. Alongside the introduction of the provisions of the RAD, the introduction of the

updated PLD may result in greater number of product-related actions for redress.

Liability and environmental risks

The landmark Neubauer decision in 2021 challenging German governmental climate change policy led the way for similar actions in other jurisdictions. On a similar note, the climate attribution action in *Lliuya v RWE*, although unsuccessful on the facts, crucially recognised that a German company could be liable for damage in another country caused by that company's emissions in Germany. This marked a very significant development, opening the door to climate attribution claims in Germany.

Companies also need to be aware of their risks associated with environmental standards legislation such as the existing Act on Corporate Due Diligence Obligations in Supply Chains (LkSG), acting as forerunner for the future and expected implementation of the EU Corporate Sustainability Due Diligence Directive (CSDDD). Currently, the LkSG requires German companies with over 1,000 employees to conduct appropriate human rights and certain environmental due diligence across their supply chains.

Violations can result in fines of up to 2% of global annual turnover dependent on company turnover, but the LkSG does not create an action in civil liability. To date, there have been no reported fines, but alleged violations have been reported to the German Federal Office of Economic Affairs and Export Control for alleged supply chain failures including circumvention of labour and union rights by Pakistani textile companies selling to German clothing chains.

The EU CSDDD, scheduled to be implemented from 26 July 2026, will have broader requirements than the LkSG. Crucially, managing directors of companies may have personal liability for any breaches of the CSDDD. Companies will need to be aware of any changes resulting from EU efforts to 'simplify' compliance with a number of directives (including the CSDDD) to reduce administrative burdens.

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Public sentiment

There are no civil jury trials in Germany. The German legal system is known for its formalistic approach to law and legal proceedings. Courts rely heavily on statutory law, legal principles and precedents when making decisions about damages awards, rather than considering broader social or cultural factors.

Nevertheless, public perception of justice and fairness can indirectly influence damages awards. Courts can be sensitive to public opinion and may seek to ensure that their decisions are perceived as fair and equitable by society at large.

Nuclear verdicts

Germany does not have a reputation for nuclear verdicts. It is, however, still possible for significant financial damages to be awarded in liability cases. German courts award substantial damages in certain cases, particularly in matters involving complex commercial disputes, product liability, medical malpractice, environmental harm and other serious issues.

The approach to awarding damages in Germany tends to be more conservative compared to jurisdictions with common law systems. The calculation of damages under German law is strictly based on compensating the actual losses suffered by the injured party rather than being punitive.

German law does not completely preclude the possibility of punitive damages, but the Federal Court of Justice has previously ruled that punitive damages awards are incompatible with domestic public policy. As part of this ruling, the court held that a foreign (US) judgment awarding punitive damages was therefore not enforceable in Germany.

Claimant strategy

Germany has a history of collective redress mechanisms and, as discussed above, the Federal Ministry of Justice register demonstrates that the full range of collective redress measures are being used across a variety of consumer actions. This suggests that further actions will follow, and in greater numbers. However, the restrictions on the level of success fee may temper the attractiveness of Germany as a forum for cross-border representative actions.

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Spain



Collective redress

In Spain, there are existing mechanisms to defend the collective interests of consumers. Currently, this takes the form of collective actions where consumers or consumer associations are entitled to claim compensatory damages where consumers have been affected by the same damaging conduct. However, this system is used infrequently, and is subject to various rules which are not dealt with under a unified system of regulation.

Collective actions pursued under the existing mechanisms have focused on litigation regarding financial products sold by banks to consumers and the private enforcement of competition law (e.g., claims for damages against the so-called “truck cartel”).

This existing system will be significantly altered by the transposition of the Representative Actions Directive (RAD) into Spanish law. The RAD has not yet been implemented in Spain, but the draft law is progressing through the Spanish legislative system. The Draft Law on Collective Actions was approved by the Council of Ministers in February 2025, and reviewed by the Congress Bureau in early March. However, despite indications that the process would be expedited, at the time of the writing, the draft law has not been passed.

The draft law would implement a specific, unified system for bringing class actions via a new Title IV to Book IV of the Code of Civil Procedure, replacing the current articles in respect of existing mechanisms.

The draft law, if passed in its current form, will include the introduction of the following changes in Spain:

- A new procedural regime for the protection of collective interests. This will not be limited to covering infringements of European Union law as set out in Annex I of the RAD but will cover any type of infringement in which the collective rights and interests of consumers have been harmed.
- Representative actions will be able to seek injunctive redress (including declarations), designed to prevent unlawful practices by companies, and compensatory redress, aimed at providing financial redress for damage suffered by consumers.
- In the interests of effectively managing these representative actions, 'individual intervention' in actions will not be permitted, leaving the management of the claims with the representative entity.
- The creation of a Registry of Representative Actions, for which the Ministry of Justice will be responsible, which will set out any updates on certified actions and details of any settlements.
- The introduction of litigation funding disclosure requirements.
- There will be bifurcation of proceedings where necessary, allowing for a liability trial first, followed by a separate quantum hearing.

The key element of the draft law is that representative actions will proceed on an opt-out basis as a general rule. As an exception, an opt-in system will apply to foreign consumers and, depending on the circumstances of the case, where the court considers it preferable (provided each represented claim amounts to at least EUR3,000).

The draft law also extends the requirements for cross-border representative bodies to those associations permitted to bring domestic actions, ensuring consistency. Spanish associations that would be granted standing as a domestic representative organisation include the Public Prosecutor's Office and recognised consumer associations.

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Litigation funding

Litigation funding is permitted in Spain, with no current limitations on the types of claims or disclosure requirements.

The draft law will introduce new requirements to avoid undue influence from funders, including:

- Within the statement of claim, it must be clearly identified whether there is any source of litigation funding (and identify the funder).
- When making an order to certify the representative action, the judge may be able to order the modification or rejection of the litigation funding if the judge finds that the funding may create a conflict of interests.
- The judge may also order modification or rejection of the funding if they believe that the management of the claim (including settlements) is influenced by the funder, causing detriment to the collective interests of the consumers concerned.

Emerging risks

Claims are not currently being brought before the Spanish courts in relation to PFAS, although this situation should be monitored as PFAS-related claims are already being brought in other European countries. However, the Spanish insurance market has introduced specific exclusions for PFAS in policies that could be of potential relevance to claimants and insureds if the risk of claims increases.

The limited number of significant climate change actions in Spain have been directed at governmental bodies, as opposed to private organisations. There are therefore no indications that Spain is a jurisdiction where company and director liability related to climate change issues is likely to generate increased claims numbers and costs in the near future.

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Public sentiment

Spanish courts are recognised as a friendly forum for those looking to pursue claims against banks, particularly in relation to financial products purchased by consumers.

However, as we have noted, collective actions in Spain are currently used infrequently. We wait to see whether the introduction of the new representative action regime will encourage more widespread use of this new mechanism.

Nuclear verdicts

Spanish tort law is based on the indemnity principle, with damages limited to placing the injured party back in the same position as if the damage had not occurred. Claims for personal injury are assessed using a tariff system (the Baremo). Out-of-court settlements involving insurance companies are incentivised by penalties for late payment of claims by insurers of up to 20%.

Punitive damages are not available under Spanish law. Therefore, there is no risk of nuclear verdicts in Spain in terms of figures comparable to those seen in the United States.

Claimant strategy

Civil claims in Spain are not subject to a jury trial, which, combined with the absence of punitive damages in the Spanish system, would suggest that claimants will not be incentivised to pursue actions in Spain.

However, the introduction of an opt-out system as a rule for Spanish claimants covering any type of infringement of collective interests will inevitably prompt interest in Spain as a favourable jurisdiction from parties such as funders and legal representatives.

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Italy



Collective redress

Italy operates what is referred to as a 'double track' of actions to protect consumers. The first track involves class actions, and the second track involves representative actions as envisaged by the Representative Actions Directive (RAD). Both mechanisms operate on an opt-in basis.

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Class actions / collective proceedings

Class actions (referred to as 'collective proceedings') were first introduced into Italian law within Article 140-bis of the Italian Consumer Code.

This mechanism was subsequently amended by Law no.31/2019 which applies to events occurring after 19 May 2021, and is now set out within Article 840 bis to seq of the Civil Procedure Rules. This sets out the process for bringing 'class actions' and was unaffected by the transposition of the RAD into Italian law.

Class actions can be brought by non-profit organisations or associations against companies or entities managing public services or public utilities. The non-profit organisation or associations must have statutory objectives which include the protection of the individual rights in question. Individuals may elect to opt-into a class action, but are also permitted to bring an action outside the class action framework, provided they have not previously opted-in.

The remedy sought in these class actions can be compensatory or injunctive, and an action is not limited by the subject matter.

In 2024, around 60,000 owners filed a class action against Volkswagen over the emissions fraud scandal, settling for EUR50 million. This was identified as a 'class action'.

Representative actions

Italy transposed the RAD into domestic law in June 2023 via Legislation Decree 28/2023, which inserted new articles into the Italian Consumer Code from Article 140-ter to 140-quaterdecies. The implementation of this legislation allows for both domestic and cross-border representative actions to be brought in Italy.

Domestic representative actions can be pursued by approved representative bodies registered in the list referred to in Article 137 of the Consumer Code.

Approved bodies currently include the following: the Association for the Defence of Users of Banking, Financial, Postal and Insurance Services, Altroconsumo Association, the Consumer User Protection Center Association, and the Consumer Movement Association and national independent public bodies (e.g., the Antitrust Authority and the Data Protection Authority).

Domestic representative entities can also seek to be registered as a cross-border representative, provided they also comply with the requirements set out in Article 140-quinquies of the Consumer Code.

Representative actions can pursue compensatory or injunctive measures, but are limited to the collective interests of consumers in respect of interests set out in Annex II-septies of the Consumer Code, which are those provisions of EU law set out in Annex I of the RAD.

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Litigation funding

Litigation funding is not prohibited, nor specifically regulated, in Italy.

For representative actions, following the transposition of the RAD, there are certain requirements to be complied with if litigation funding is used, but this stops short of a formal regulatory regime. Article 140-septies of the Consumer Code aims to avoid conflicts of interest by establishing some disclosure obligations. The amount of funding to be received from third parties must also be disclosed during the proceedings.

A representative action will be inadmissible where the lender is a competitor of the defendant or depends on the defendant.

Emerging risks

A recent decision in the Italian Court of Cassation has placed Italy at the forefront of climate litigation. The court handed down a judgment that will have wide-reaching implications for climate change litigation in Italy. Ruling on the procedural admissibility of a climate-related action brought by Greenpeace, ReCommon and 12 Italian citizens, the court held that the Italian judiciary has oversight on climate change-related issues, including compliance with international treaties such as the Paris Agreement.

Although the underlying claims remain outstanding, the Court of Cassation decision makes clear that liability may extend not only to the legal entity directly involved in climate-harmful conduct, but also to its dominant shareholders. Therefore, there is the possibility of a new category of liability borne by corporate executives of legal persons engaged in climate-negative practices.

In light of this decision, we expect that further climate-related litigation against corporates in Italy may be

pursued, and directors, officers and their insurers will need to be mindful of any increased risk.

There are expectations that the measures contained within the updated Product Liability Directive will, when implemented in 2026, increase the risk of litigation, in particular via forms of collective redress. In the meantime, a significant class action is underway against Philips relating to the manufacture of defective CPAP and BiPAP devices. The action, ongoing in the Court of Milan, seeks compensation for health damage caused by toxic foam degradation. The action is being pursued by the international Global Justice Network.

Looking to other liability risks usually associated with social inflation, claims alleging personal injury caused by glyphosate are not widespread in Italy, despite the introduction of a partial ban on use of the product in 2016.

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However, the risk of claims in relation to PFAS exposure or contamination is higher in Italy than in other jurisdictions. In Veneto, the drinking water of over 350,000 people was contaminated with PFOA, one of the members of the PFAS family. In the Court of Assise in Vicenza, criminal convictions were obtained against eleven managers of the Miteni S.p.A corporation. They had been charged with water poisoning, unnamed environmental disaster, unauthorised waste management, environmental pollution and bankruptcy offences.

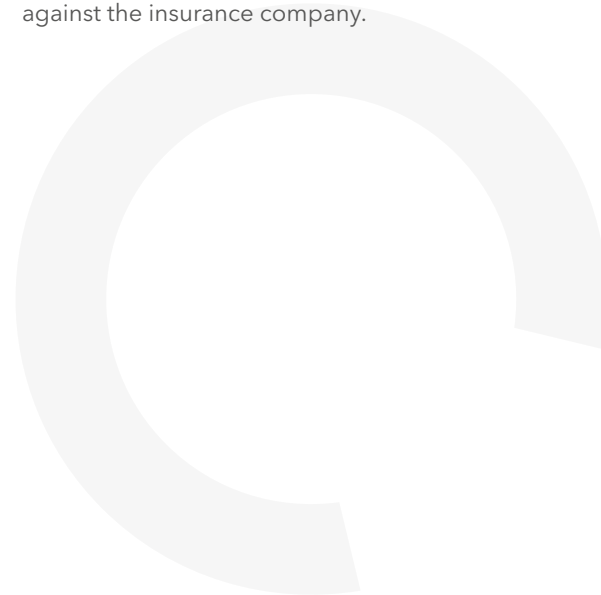
In addition, in a civil proceeding before a labour tribunal in Vicenza, an award for a survivor's pension was made to the family of a deceased employee of the Miteni company; the tribunal found that the worker's death was caused by exposure to PFAS substances during work activities.

As data breaches increasingly occur, there may also be an increase in data breach actions in Italy, particularly due to the class action regime which is available. Italian case law to date (Supreme Court judgment 29982/20) has set out that compensation of non-material damages arising from the unlawful processing of data is not triggered by the mere violation of privacy law. The ECJ decision in the 2023 Austrian Post claim agreed that not every GDPR infringement gives rise to a right to compensation on its

own, but found that there is no threshold of seriousness for non-material damage claims.

Finally, on more specific liability risks and pending legal reforms, we note the following:

- A recent judgment of the Supreme Court established that penalty interest now at about 12% (compared to legal interest at about 2.5%) applies to compensation for damages both in the case of contractual and extracontractual liability.
- By 31 December 2024, companies were required to take out insurance contracts to cover damage that could result to land and buildings, plant and machinery as well as industrial and commercial equipment when natural catastrophes occur.
- The implementing decree of Gelli law entered into force on 16 March 2024 and regulating medical professional liability provides that a patient who suffers injury from medical malpractice has a right to take direct action against the insurance company.



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Public sentiment

The Ministry for Business maintains a list of class actions and representative actions in Italy. A review of this list indicates that numbers of both class and representative actions have increased in recent years. The specific identification of representative actions confirms that this option is being used by representatives entities.

The emerging risk of PFAS at both an environmental and individual level is however the subject of negative public sentiment, particularly following the contamination in Veneto.

We await to see whether an increase in these types of actions will prompt increased risk and claims in relation to companies, and their directors and officers.

Nuclear verdicts

The courts in Italy normally do not award punitive damages. Damages in liability disputes are typically compensatory. Although punitive damages are not usually awarded, a recent judgment of the Court of Cassation in its joint division established that punitive damages awards would not conflict with the Italian legal system. However, in practice, punitive damages can only be pursued in cases where the Italian courts are asked to enforce a foreign judgment.

Certain provisions of Italian law have gradually recognised the right to obtain payment of amounts which exceed the mere compensation for the loss or damage suffered.

These provisions relate to specific subject matters, such as industrial property rights, labour law and financial intermediaries, and would not be applied more generally in claims for damages.

As expected in a legal system with no civil jury trials and no expectation of punitive damages, there is no track record in Italy for liability verdicts resulting in large financial damages awards which might be considered 'nuclear verdicts'.

Claimant strategy

Civil claims in Italy are not subject to a jury trial. Combined with the absence of punitive damages in the Italian legal system, claimants pursuing Italian liability claims are not incentivised to be influenced by legal representatives seeking greater amounts of compensation.

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Collective redress

Until recently there was no formal procedure for bringing class actions in Ireland. Multi-party litigation was dealt with by 'test cases', where numerous claims arise from the same set of circumstances but only one single 'test case' is run. This then acts as a precedent for the remaining cases. In addition, a basic form of 'representative action' was permitted under the Rules of the Superior Court, but did not apply to tort claims, and could not result in the award of damages.

The Kelly Report (Review of the Administration of Civil Justice Report) published in late 2020 expressed a preference for the introduction of a model similar to the GLO procedure in England and Wales, favoured over the US style opt-out class action model. Despite the publication of an implementation plan for measures within the Kelly Report, including multi-party litigation, no draft legislation has been published.

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The Republic of Ireland did pass the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 which introduced the EU Representative Actions Directive (RAD) into Irish law in April 2024.

The Act provides that representative actions in Ireland will be opt-in, and designates consumer associations and certain public entities as domestic representative entities in line with the certification requirements set out in the RAD.

To be a 'Qualified Entity' which can bring an action, an organisation must apply to the Minister for Enterprise, Trade and Employment Remedies for such designation.

Amongst other things a 'Qualified Entity' must be able to demonstrate 12 months of public activity in the protection of consumer interests and have a non-profit making character.

Settlements in representative actions taken under the 2023 Act will be subject to court approval and, once approved, will be binding on the Qualified Entity, the defendant entities and consumers. Qualified Entities, and not consumers, bear the costs of a representative action (save for the payment of any entry fee charged to consumers to join the representative action). The court has the power to make orders in relation to the costs of the proceedings on the basis that the losing party pays.

At the time of writing, the register provided by the Department of Enterprise, Trade and Employment confirms that only three organisations have registered as a 'Qualified Entity'.

In May 2025, in the first case of its kind in the jurisdiction, the Irish Council for Civil Liberties (ICCL) issued a class action law suit against Microsoft citing RAD and claiming that Microsoft is in breach of the General Data Protection Regulation (GDPR) through its use of 'real time bidding' in online advertising, a system that permits advertisers to bid for online ads based on traits and characteristics of the individual looking at a web page.

The ICCL alleges that the system collects too much personal data about internet users and loses control of it online, leaving it vulnerable to misuse by malicious actors. The ICCL alleges that Microsoft has no way of knowing what happens to the data after it is broadcast, leaving us all exposed to malicious profiling and discrimination which undermines European security.

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Litigation funding

Irish law prohibits litigation funding by a third party under the doctrines of maintenance and champerty, subject to certain exceptions. Legislation allowing third party funding in cases linked to international commercial arbitration was passed in 2023, but has not yet been brought into force, as it remains subject to commencement by way of Ministerial Order.

The Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (section 27) also permits the third party funding of representative actions “insofar as permitted under Irish law”.

In the event that an action is permitted to be funded by a third party, in line with the RAD, the court must ensure that any conflicts of interest are prevented, and the funding does not divert the action away from the protection of the collective interests of consumers.

In 2023, the Irish Law Commission published a Consultation Paper on the law governing litigation funding in Ireland seeking submissions from interested parties. The consultation closed in November 2023, but a final report setting out conclusions and recommendations has not been published at the time of writing.

The 2025 study ‘Mapping Third Party Litigation Funding in the European Union’ prepared for the European Commission identified Ireland as a distinct outlier in its ongoing prohibition of third party litigation funding.

Emerging risks

There has been climate change litigation commenced in the Republic of Ireland, however those actions have been directed at governmental bodies. Ireland does not have a formal mechanism permitting shareholder class actions, and it remains to be seen whether there will be a significant uptick in the number of climate-related claims being made in Ireland. However, directors of Irish companies may also be exposed to climate or ESG-related claims due to the various directors’ duties set out in the Companies Act, for example as at S228(1)(g) which requires the exercise of reasonable care, skill and diligence by the Director. Reported decisions in the Irish courts are limited but this could change in the future.

The Irish Data Protection Commission, reflecting the number of US companies with European headquarters in Ireland, has been responsible for a number of multi-million Euro fines in respect of GDPR breaches.

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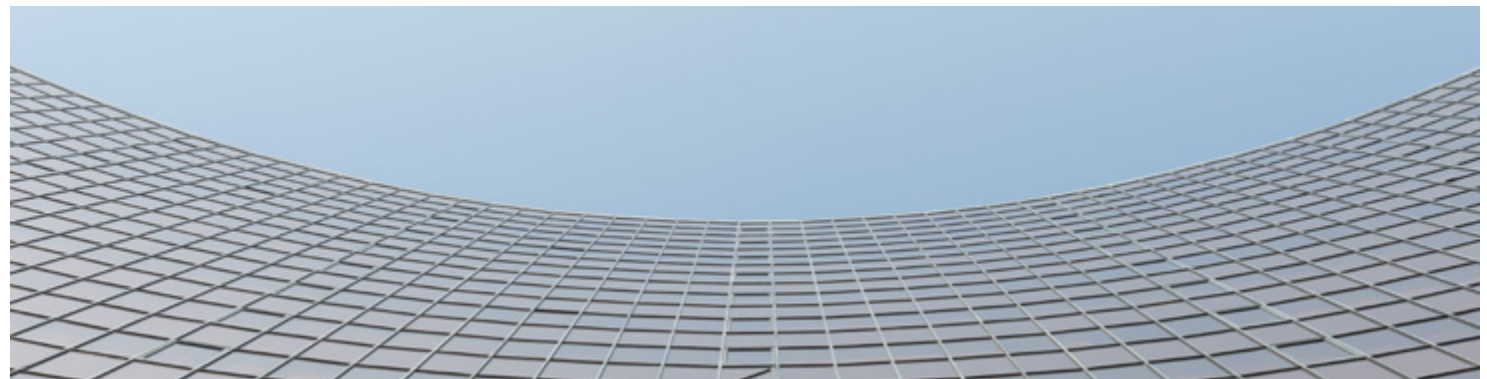
From an individual perspective, through the GDPR and the Irish Data Protection Act, parties who have suffered a data breach are entitled to compensation for material or non-material damage suffered as a result of a data breach. The Irish Supreme Court recently handed down judgment in *Dillon v Irish Life Assurance*, confirming that claims seeking compensation for “distress, upset and anxiety” are not personal injury claims. This decision confirms that claimants for this type of loss in a data breach context do not need to submit medical evidence to pursue a claim, arguably making such claims more attractive for claimants. However, the Supreme Court noted that claimants “cannot expect anything other than very, very modest awards” in respect of claims for distress, upset and anxiety.

The recent decision of *Nolan & Ors v Dildar & Ors* also offered a reminder to company directors, and their insurers, that they may be held personally liable for data breaches that take place while conducting the company’s business.

Liability risks which have emerged in other countries, such as the United States, have not yet been identified in the Republic of Ireland. The issue of PFAS contamination is acknowledged by the Irish Environmental Protection Agency including the current time-limited exemptions for various products including fire-fighting foam, semiconductor manufacturing and others. Studies have been undertaken into dietary (the ELEVATE study) and groundwater (the FUEL study) exposure with further monitoring proposed. However, to date, there have not been any significant legal actions in Ireland reported.

The Republic of Ireland was one of the EU nations which recently voted in favour of the renewal of the EU licence for glyphosate. There are examples of Irish legal firms suggesting the pursuit of personal injury damages relating to long-term glyphosate exposure, but to date there are no reported claims which have been successful.

Similarly, although trends in strong opioid prescribing in Ireland suggest an upward trend, there have been no reported claims similar to those seen in the US.



Public sentiment

The use of collective redress measures in the Republic of Ireland for large-scale liability actions is uncommon. In the absence of a change in the legislation allowing for the use of collective redress measures, it is difficult to quantify public appetite for pursuing new types of claims arising from new liability risks.

Interestingly, the Republic of Ireland could be said to have seen a recent example of 'social deflation' aimed at reducing insurance claims costs as a result of public sentiment.

The Irish Government set out in 2020 various aims within the Action Plan for Insurance Reform. These changes could be described as an attempt at social deflation by prompting reductions in liability costs and damages through legislation and regulation perceived as beneficial in public sentiment. These changes are like those undertaken by the UK Government in applying a tariff to short-term whiplash injuries (with the aim of lowering motor premiums) and the introduction of widespread fixed costs reforms.

Stated goals in the Action Plan included reducing insurance premiums. These objectives were as much prompted by societal considerations as issues such as climate change. Being seen to be dealing with the cost-of-living crisis and challenging perceptions of unmeritorious or unjustified personal injury claims can provide valuable political capital. Similarly, as a major international global hub for worldwide companies (such as Meta), observations around the prohibitive costs of insurance could impact Ireland's attractiveness for businesses.

The measures undertaken by the Irish Government include:

- The introduction in 2021 of a scale of lower ranges of damages across all categories of injury (up to 50% + reductions on applicable damages for soft tissue injuries).
- The Personal Injuries Resolution Board Act introduced an option of mediation for parties to an injury claim at the pre-litigation stage and established more onerous consequences for claimants who do not accept an assessment of damages made by the Injuries Resolution Board, and subsequently receive a lower award of damages in court.
- Radical changes to occupiers' liability legislation in favour of occupiers from July 2023, including limits on the circumstances in which a court can impose liability on the occupier of a premises where a person has entered onto premises for the purpose of committing an offence; and allowing for broader circumstances where it can be shown that a visitor or recreational user has voluntarily assumed a risk.
- Potential significant procedural reforms to avoid and reduce legal costs. In 2024, the Department of Justice published a report by independent consultants discussing options to control litigation costs. The preferred option was for non-binding guidelines with significantly enhanced transparency measures to apply. At the time of writing, no further developments since the publication have been reported.

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It is arguable that measures directed at reducing the number of personal injury claims have been successful, although it is unclear how much of the reduction is directly attributable to the post-COVID environment. The Injuries Resolution Board reported in May 2025 that motor liability claims submitted in 2024 represented a 30% decrease from 2019, with the total compensation value in 2024 of EUR106 million being significantly less than the EUR179 million in 2019. Statistics relating to public liability injury claims indicated a 40% fall in claims since 2019.

However, the available data points to an increase in the level of legal costs associated with personal injuries claims which proceed to litigation as well as an increase in the costs of motor damage claims. In January 2025, the Judicial Council proposed increasing the guideline figures for valuing personal injury claims by an average of 16.7%. However, this proposal was criticised by insurance and consumer groups and the Irish Government confirmed in July 2025 that it would not be approved.

In July 2025, the Irish Government published its latest Action Plan for Insurance Reform 2025-2029, aimed at creating a fairer and more transparent insurance market. The Action Plan reiterates the commitment to reduce insurance premiums through the following measures:

- Introducing a Transparency Code, particularly for motor insurance, to improve clarity around the pricing of insurance products.
- Enhancing the review process for the Personal Injuries Guidelines, strengthening the powers and remit of the Injuries Resolution Board, and commissioning a feasibility study on capping awards for certain categories of personal injuries.

- Reducing legal fees by recommending and developing guidelines for a scale of legal costs applicable to civil litigation, especially personal injury claims.
- Exploring tougher penalties for insurance fraud and implementing measures to reduce the number of uninsured drivers.
- Addressing the climate protection gap by collaborating with key stakeholders.

We now await the Government to implement these action points in full and it remains to be seen whether these measures will achieve their intended outcomes.

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Nuclear verdicts

The concept of nuclear verdicts is not applicable to the Republic of Ireland.

Although the jurisdiction does have jury trials for certain civil matters, it is limited to specific actions such as those of defamation. However, jury trials in High Court defamation actions are set to be abolished under proposed legislation currently being considered by the legislature. Punitive damages (referred to as 'exemplary damages' in Ireland) may also be awarded when it is considered necessary to punish the defendant and deter other individuals from similar behaviour. However, the targeted application of exemplary damages by the judiciary is not comparable to the widespread use in the United States, meaning that nuclear verdicts cannot be said to occur in Ireland.

Claimant strategy

For personal injury claims, the Republic of Ireland relies upon guidelines for the assessment of general damages in injury claims ranging from severe to minor. Therefore, techniques which may be used by claimant representatives in jurisdictions such as the United States are not appropriate, particularly due to the limited application of exemplary damages and the absence of widespread civil jury trials. In addition, there is no significant use of collective redress to pursue large numbers of liability claims for personal injury or other damages to date.

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Collective redress

Unlike other European jurisdictions, the Netherlands had a well-established class action regime prior to the introduction of the Representative Actions Directive (RAD).

In 2005, the Dutch Act on the Collective Settlement of Mass Claims (WCAM) introduced in article 7:709 of the Dutch Civil Code the concept of collective settlements into Dutch law. A representative entity, such as a foundation or association, could agree to a settlement with a defendant, and they would seek a declaration from the Amsterdam Court of Appeal that the settlement was binding on all persons affected by the incident.

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WAMCA

The Dutch Act on the Redress of Mass Damage in Class Actions (WAMCA) entered into force on 1 January 2020 and applies to events taking place on or after 15 November 2016. WAMCA facilitates collective actions for 'mass' damages. This led to the amendment of article 3:305a of the Dutch Civil Code, through which a class action had been introduced in 1994. An interest group can only start a class action when the matter at hand has sufficient ties or connection with the Netherlands. A sufficient connection can be said to exist if:

- the defendant is domiciled in the Netherlands and additional information suggests a sufficient relationship; or
- the event(s) triggering the action took place in the Netherlands; or
- the majority of claimants in the class action are domiciled in the Netherlands.

The most significant change that WAMCA has made to the landscape of class actions is that a representative entity filing an action on behalf of a group of injured persons can now seek damages in the collective action, thus establishing both the liability of the party causing the damage and the compensation in a single lawsuit.

Under WAMCA, the representative entity must be a non-profit organisation, be sufficiently representative and represent a suitably large group of aggrieved parties.

The interest group must also fulfil several other conditions, including having:

- a supervisory body;
- a suitable and effective mechanism for the participation or representation of the persons involved in the claim in the decision-making process of the interest group;
- adequate financial resources to bear the costs of the collective action;

- adequate experience and expertise to be able to conduct a collective action; and
- a publicly accessible web page presenting specific information relating to the structure and working method of the interest group.

In 2024, the Amsterdam Court of Appeal provided clarity on the admissibility of representative entities in *The Privacy Collective v Oracle/Salesforce*, emphasising the need for mechanisms of representation and adequate expertise and experience.

The court will decide on the scope of the collective action and for whom the representative entity will act. Injured parties residing in the Netherlands have the option to opt-out. Their interests will, in theory, be represented (by default) by the representative entity unless they indicate that they do not wish to be part of the group of represented persons. The court determines the opt-out period, which is at least one month. For non-Dutch parties to a WAMCA action, a party to the proceedings may request that they be added to the opt-out action.

The court will usually set a term for the parties to try to reach a settlement. If the court approves the settlement agreement, the collective settlement will be declared binding.

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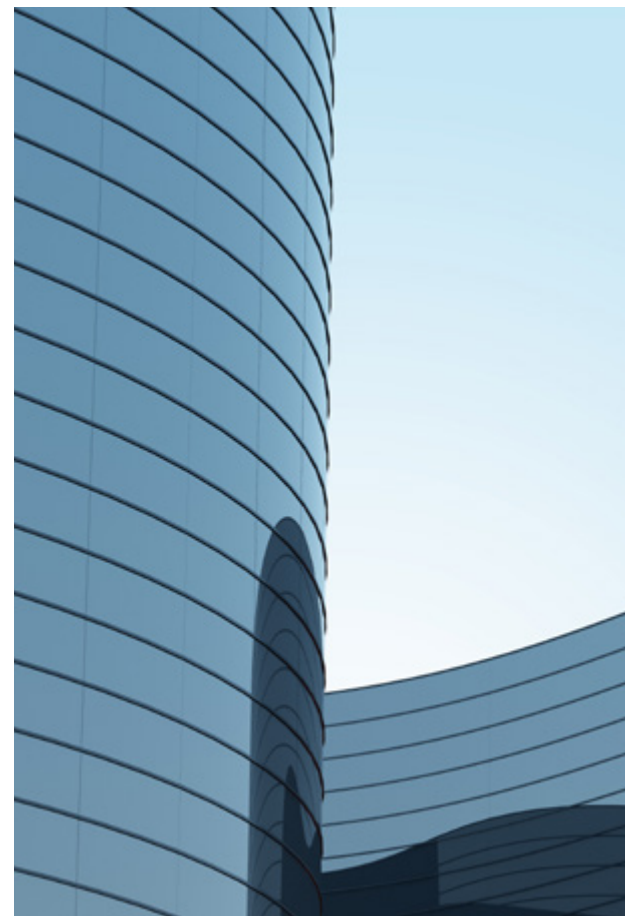
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The injured parties then have a second opt-out term, once again of at least a month, to decide if they wish to accept the settlement. If no collective settlement is reached or the court rejects the settlement, the proceedings will continue. The court may dismiss the collective claim, establish liability, or award damages if requested to do so. In this last case the court may use a compensation scheme with different amounts of compensation per category of injured persons. The court's ultimate ruling is binding on all Dutch injured parties who have not made use of the opt-out option(s), and on all foreign injured parties who have previously opted in.

Representative Actions Directive

The legislation adopting the RAD into Dutch law made slight amendments to the existing procedure under WAMCA. Funding of actions cannot be made by competitors of defendants or by a funder that is dependent on a defendant. Cross-border representative entities are not subject to the organisational requirements under WAMCA as they are granted mutual recognition across the European Union, if they fulfil the requirements to bring a cross-border representative action.

The ability for non-Dutch parties to be bound in an opt-out action is also not permitted for representative actions. In those claims brought on or after 25 June 2023 within the scope of the RAD, claimants who are not domiciled or resident in the Netherlands may be bound by an opt-in procedure.



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Litigation funding

Third party litigation funding is permitted in the Netherlands, both in civil proceedings as well as in arbitration. Dutch law does not specifically regulate third party litigation funding.

In practice, litigation funding is most often used in class actions and WAMCA established some obligations regarding the use of third party litigation funding. Those claimants who are represented by an interest group, association or foundation (a representative entity) must have appropriate and effective mechanisms to participate in the decision-making of the entity (article 3:305a, paragraph 2, subsection b of the Dutch Civil Code). The representative entity should have sufficient funds to progress the claims but also retain sufficient control over the class action. Simply put, third party litigation funders should not be the ultimate decision-making power in a class action.

Courts may also order representative entities to provide details of their funding arrangements, including funding structures and documents. Defendants can be provided with information on third party funding, but certain information may be withheld or redacted. This is to prevent the defendant identifying the funding available for the class action, which could lead to behaviour such as dragging out proceedings in the hope of exhausting those sums, resulting in a more favourable settlement for the defendant side.

As an example of how these obligations may apply, in 2023, the Hague District Court found that a representative entity had outsourced essential activities to a Bahamas-based law firm (who was also the entity's founder). In addition, a member of the Supervisory Board of the representative entity was found to be closely associated to the litigation funder. Therefore, there was a risk of the representative entity being influenced by the funder and it was inadmissible as the representative entity.

Following the passing of the Implementation Act relating to the RAD, an additional requirement was added to article 3:305a confirming that the financing of an action pursuing an infringement of European Union law per the RAD cannot come from a competitor of the defendant or a party reliant on the defendant.

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Emerging risks

The Netherlands has been at the forefront of climate and ESG-related litigation against both government and businesses, and we expect this risk to grow, which may increase corporate and D&O related insurance claims.

The climate activist group Milieudefensie pursued an action against Shell in 2021 which resulted in the company being ordered to reduce its carbon emissions. Although that decision was overturned in appeal in late 2024, the action offered a blueprint for ongoing and prospective actions against other companies seen as contributing to carbon emissions in the Netherlands, building on the landmark Urgenda decision by the Dutch Supreme Court in the case against the Dutch government. Similarly, Greenpeace successfully obtained an order compelling the Dutch state to proceed with nitrogen pollution reduction measures, with the aim of preventing the deterioration of nitrogen-sensitive natural habitats.

Milieudefensie has also issued proceedings against the Dutch bank, ING, alleging an inadequate climate policy. The action challenges ING's climate strategy and seeks to influence ING's policies towards the climate action of its large business clients. Importantly, the action is not only intended to be successful on its own merits, but also influences the corporate behaviour of other businesses, potentially leading to additional litigation.

In 2024, a Dutch court offered the first judgment on aviation greenwashing in *Fossielvrij v KLM*, underlining the serious reputational costs for those operating in the ESG space, and by extension, the risks of additional damages or penalties to be borne by their insurer. Although the airline was not penalised financially, this successful judgment may encourage further greenwashing actions, especially in the Netherlands which has a mature class action system.

Interest groups in the Netherlands are not necessarily limited to those seeking financial compensation, with some pursuing more noble-minded or idealistic actions. For example, the Animal Law Foundation is pursuing an ongoing action in relation to breeding practices for certain dogs. This highlights the prospect of ESG-related actions in the Netherlands. However, the courts have clearly emphasised that representative entities will only be granted that label and be able to pursue these actions if these actions were appropriate. An animal welfare action brought on by the Animal Law Foundation was dismissed on the basis that the foundation was inadmissible, as an equivalent legal remedy already existed in the form of proceedings before the administrative court.

More generally, the central register for collective actions maintained by the Ministry of Justice provides insight into those types of claims currently being pursued in the Netherlands and also emerging risks.

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Data and privacy-related collective actions are numerous. Companies facing data breach claims under the General Data Protection Regulation (GDPR) may have been reassured by the Austrian Post decision in 2023 which confirmed that a breach of the GDPR does not automatically give rise to a right to claim damages. However, this has not prevented the progression of several class action claims (under WAMCA) against various technology companies alleging breaches of the GDPR. As none of these claims have reached a conclusion yet, it remains unclear whether the court will hold that an opt-out claim under WAMCA for breaches of the GDPR is viable. Examples of ongoing privacy class actions being pursued include:

- The Data Privacy Foundation pursuing Meta for continued illegal processing of users' personal data in line with a 2023 finding that Meta had used the illegal processing for targeted advertising.
- Stichting Data Bescherming Nederland pursuing Amazon for the unlawful processing of personal data.
- The Consumers' Association and the Foundation for the Protection of Privacy Interests pursuing Google for alleged GDPR violations including tracking and profiling users.
- The Privacy Collective pursuing software companies Oracle and Salesforce for illegally collecting and processing the data of internet users in the Netherlands.
- Take Back Your Privacy pursuing Tinder for alleged GDPR violations through the collection and sharing of users' personal data.
- Initiatives Collective Actions Mass Damage pursuing the Netherlands Government following a data leak at the organisation responsible for the co-ordination of COVID-19 testing and vaccination.

If one of these actions is successful, then those pursuing existing actions will be encouraged, and new actions might be triggered.

Securities litigation is also advancing in the Netherlands, following the landmark EUR1.3 billion settlement of investors claims following the acquisition of ABN Amro Bank. Investors in Fiat Chrysler are pursuing an action against the legal successor, Stellantis, for alleged losses caused by the fall in share price associated with the installation and subsequent discovery of emissions 'defeat devices' in Fiat Chrysler vehicles.

Similarly, although a formal claim has not yet been commenced, a group of institutional investors have notified the technology company, Philips, of a possible claim for shareholder losses resulting from the manufacture of CPAP products (themselves the subject of product liability actions in the United States and Italy).

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More generally on emerging risks, the Supreme Court provided additional clarification in 2022 on how secondary victim shock damage will be assessed going forward. Key factors include:

- The circumstances and consequences of the unlawful act, including consideration of the intention of the perpetrator.
- The nature and severity of the suffering caused to the victim.
- How the secondary victim was confronted with the unlawful act and the suffering caused to the victim.
- The relationship between the primary and second victims.

Interestingly, in 2024, the Amsterdam Court declared that a foundation was permitted to bring a class action pursuing claims for damages caused by pain, suffering and grief. The Clara Wichmann Bureau Foundation was permitted to bring a claim against an implant manufacturer, whose products were alleged to have serious illness. The underlying action is ongoing at the time of writing.

Looking to those liability risks (product or otherwise) which are often associated with social inflation risk in the United States, glyphosate is banned for domestic use in the Netherlands, but there have been no reported examples of litigation alleging physical injury sustained through exposure, on an individual basis or via class action, being successfully pursued.

The litigation environment in respect of PFAS is advancing. In 2023, a Dutch court held the US chemical company, Chemours, liable for PFAS-related environmental damage in the municipality of Dordrecht. It is possible that this finding will open the door for compensatory proceedings for remediation work and potential personal injury claims. It was also announced in April 2024 that a group of eleven consumer groups are pursuing a claim against the state of the Netherlands for failing to take sufficient measures to limit and prevent the damage caused by PFAS. The action will pursue several declaratory findings in respect of PFAS exposures and seek a complete ban on all PFAS emissions in the Netherlands.



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The growing register of ongoing and settled WAMCA actions maintained by the Dutch government is a clear indication that the use of the WAMCA procedure continues to be popular. Over 100 WAMCA actions have been filed as at June 2025. However, there has been some criticism of WAMCA, particularly in respect of the time that the process takes, and the limited compensation paid through settlements or awards to date.

By extension, the Netherlands is a jurisdiction where class actions will be expected to increase in the coming years. The introduction of the representative action created by the transposition of the RAD is likely only to increase the public desire to pursue collective redress.

The register also demonstrates the diversity of actions that are being pursued. According to research released in 2023, technology, data and consumer claims together represented 95% of the total quantum in respect of class actions issued in the Netherlands. In addition, the recently concluded greenwashing action against KLM and other climate-related actions pursued by activists such as Milieudefensie illustrate the public emphasis on ESG and focus of actions being pursued in the Netherlands.

This diversity suggests an increasing familiarity (and positive association) with the WAMCA mechanism amongst the general Dutch population, activist groups and legal representatives. This may generate increased litigation.

Nuclear verdicts

Punitive damages are not available in the Netherlands. The starting point for any damages awards in the Netherlands is always the victim's distress, pain and suffering.

Claimant strategy

Civil claims in the Netherlands are not subject to a jury trial. Combined with the absence of punitive damages in the Dutch system, it could be argued that claimants are not incentivised to pursue actions in the Netherlands.

However, this jurisdiction arguably offers the most mature collective redress system, with clear rules, and experience in dealing with such claims. This makes the Netherlands an attractive destination for litigants, provided that an action can be pursued in the jurisdiction. The opt-out system in place (subject to the restrictions on non-Dutch injured parties) is also attractive to legal representatives and litigation funders looking to maximise financial gains in pursuing actions.

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Australia



Collective redress

Collective redress is permitted in Australia through class action regimes existing at both state and federal levels. Australia is considered a plaintiff-friendly jurisdiction and one of the most active class action markets in the world.

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Class actions in Australia are conducted as 'representative proceedings' where any person or entity can bring a claim on behalf of a class of group members. The threshold requirements to commence a class action are:

- seven or more persons with the same claim;
- the claims arise out of the same or related circumstances; and
- the claims give rise to a substantial common issue of law or fact.

The 'opt-out' system in Australia means that individuals are automatically included in a class action if they meet the eligibility criteria, unless they actively choose to opt out. However, Courts have also permitted classes to be defined in such a way that only group members who had entered into a litigation funding

Litigation funding

Third party litigation funding is permitted in Australia and is commonly used in insolvency-related and class action litigation. There is no limitation to the types of civil claims that may be funded.

In August 2020, regulations were introduced requiring third party litigation funders to hold an Australian Financial Services Licence (AFSL) or be an authorised representative of an AFSL holder. This regulation was short-lived, and in December 2022 the Australian Government introduced regulations that provided litigation funding schemes with exemptions from the requirement to hold an AFSL.

Litigation funders are required to manage conflicts of interest consistent with ASIC Regulatory Guide 248.

agreement with the funder could be a class member. This is, in effect, an opt-in arrangement operating within an opt-out system.

If a claimant is within the defined class but does not opt out before a time that is fixed by the court, then they will generally be bound by any settlement that is approved by the court or any judgment of the court if the matter does not settle.

At the time of writing, there are in excess of 200 live representative proceedings in Australia, with around 160 in the Federal jurisdiction.

Federal and state court practice notes also require litigation funding agreements to include provisions for managing conflicts of interest. Those same practice notes require disclosure of litigation funding agreements to the court and other parties in certain circumstances. The Federal Court of Australia's Class Actions Practice Note (GPN-CA) requires, subject to objection:

- confidential disclosure of any litigation funding agreement to the presiding judge before the first case management hearing; and
- disclosure of a copy of the standard litigation funding agreement to other parties, which may be redacted to conceal any information which might reasonably be expected to confer a tactical advantage on another party to the proceeding.

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Similar procedures are covered in state court practice notes.

For example, legislation in the State of Victoria now expressly permits lawyers representing a lead plaintiff in a class action to recover a contingency fee charged as a percentage of the amount recovered (referred to as a Group Costs Order). This is in substance a solicitors' common fund order. In 2025, the High Court handed down a judgment that solicitors' common fund orders are not available in jurisdictions that do not have legislation expressly permitting a solicitors' common fund order. Accordingly, absent legislative reform in this area in other jurisdictions, solicitors' common fund orders are likely only to be available in the State of Victoria.

The availability of solicitors' common fund orders in the State of Victoria remains subject to the Court being satisfied that the relevant orders are in the interests of justice in the circumstances of the case. The availability of solicitors' common fund orders in Victoria may have contributed to the higher number of class action filing in that jurisdiction.



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Emerging risks

Areas that have seen significant class action activity in Australia in recent years include: mass consumer claims, securities class actions, employment-related class actions (particularly for alleged wage theft and systemic underpayment), government-related class actions, and class actions relating to financial products. These are likely to continue, particularly as the recent loosening of regulation relating to litigation funding in Australia will generate further interest in class actions.

New areas of exposure are likely to include actions in relation to data breaches, cyber security, sports concussion claims, and ESG-related claims such as greenwashing. Further, the introduction of the new statutory tort for serious invasions of privacy in 2024 (which took effect in June 2025) now provides individuals the right to seek redress for privacy breach claims. This cause of action did not exist at common law in Australia and the legislative development has created a new area of exposure for businesses in Australia.

Australia is an active jurisdiction in respect of litigation relating to PFAS exposure, with class action firms active in this space. To date, claims involving PFAS exposure have typically settled before judgment, meaning there is currently an absence of authoritative judgments clarifying:

- when persons involved in activities with PFAS-containing products should have been aware of potential health and environmental risks;
- what reasonable actions these persons should have taken to mitigate these risks; and
- the types of injuries, damage and loss that can be attributed to PFAS contamination.

Clarification of these issues may generate more litigation in the longer term.

For insurers and certain product manufacturers, there have been positive outcomes in respect of possible emerging liability risks relating to pesticides and alleged carcinogenic effects in the past year. These decisions suggest that glyphosate litigation is not viable in Australia for the foreseeable future.

For example, in July 2024, the Federal Court of Australia dismissed a representative action following an adverse finding against the lead claimant, McNickle. The Court found that available evidence did not prove that the Roundup product, containing glyphosate, caused Mr McNickle's Non-Hodgkin lymphoma. The Federal Court of Australia then granted a further request by the manufacturer of Roundup in January 2025 to discontinue the sole remaining class action.

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Similarly, a number of securities class actions have been unsuccessful in recent years, including those involving Insignia Financial (formerly IOOF), Quintis, the Commonwealth Bank of Australia, Myer Holding Limited and Iluka Resources Limited. These judgments highlighted that the progression of a securities class action is no guarantee of success, and the subsequent dismissal of an appeal in the Commonwealth Bank of Australia action in May 2025 reiterated these risks. The applicants in the securities class action against the Commonwealth Bank of Australia have filed an application seeking special leave to appeal to the High Court of Australia. At the time of writing, it is not clear whether the High Court will grant special leave to hear the appeal.

There has been a surge in climate change and activist litigation brought against corporations and government bodies in Australia, particularly targeting the energy and resource sectors. Broadly speaking, there have been three main categories of cases seen in Australian courts:

- Investor or activist led claims: These aim to influence corporate and governmental practices through declaratory and injunctive relief rather than seeking compensation. The key ongoing action of Australasian Centre for Corporate Responsibility v Santos relating greenwashing, awaits judgment and will provide important clarity on the prospects of similar actions being successful. However, the recent decision in *Pabai Pabai v Commonwealth of Australia* highlighted the challenges in using common law negligence principles to challenge climate change-related government or corporate policy.
- Regulatory prosecutions: These focus on the accuracy of environmental reporting and compliance with emissions targets.

- Challenges to Government authorisations: These cases question approvals for energy and resources projects, citing concerns over climate change impacts, Aboriginal cultural heritage, and human rights. The action of *O'Donnell v Commonwealth of Australia* concluded with the parties making a public statement on climate change. However, these challenges are not necessarily a precursor to success. An unsuccessful claim by the activist Environmental Defenders Office challenging a gas development by Santos, resulted in an adverse costs agreement of AUD9 million. It is unclear whether this actions will serve as a disincentive for similar claims.

Public sentiment

There has been a degree of erosion in public trust and confidence in corporations and institutions in recent years. There have been a number of Royal Commission reports into institutional and industrial wrongdoing. This has contributed to an environment in which the Australian public is comfortable being part of class actions as set out in the emerging risks section, and becoming involved in activist litigation on issues such as climate change.

More generally, Australia has a strong culture of promoting access to justice. This is reflected in the low level of regulation of litigation funding and the requirement of internal dispute resolution processes for businesses operating in certain regulated industries (such as banking and insurance).

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Nuclear verdicts

Nuclear verdicts are not a feature of the Australian litigation landscape. The use of juries in Australia for civil trials is limited. Victoria is the sole Australian state jurisdiction where jury trials are generally available as of right on application by the plaintiff or defendant in civil claims. Ultimately, the court retains the discretion to direct a trial without a jury.

The awarding of punitive (or exemplary) damages is very rare and statutory intervention has abolished the availability of exemplary damages in many species of claims, including in claims for negligence resulting in death and personal injury.

It should be noted that there have been settlements of actions in Australia for significant financial sums, however, these have involved class actions as opposed to individual outcomes. For example, the Australian Government recently settled a class action over PFAS contamination on terms that required it to pay AUD132.7 million. There have also been examples of businesses being ordered to pay significant fines and penalties. For example: in October 2020, Westpac was ordered to pay a AU\$1.3 billion penalty for breaches of anti-money laundering and counter-terrorism laws; in August 2025, Qantas was ordered to pay a AU\$90 million penalty over its decision to unlawfully outsource ground handling jobs in breach of Australia's industrial relations laws; in June 2025, Optus agreed to pay a AU\$100 million penalty for selling telecommunications goods and services in breach of Australian consumer protection laws, subject to Court approval. Since 2020, Australia's Defence Department has paid out more than AUD366 million to settle class action lawsuits over its use of firefighting foam alleged to contain PFAS.

Claimant strategy

There is a healthy plaintiff Bar in Australia, yet similar to other jurisdictions, they have limited influence on the outcome of actions and judgments save for their representation. Strategies such as anchoring as seen in the United States are not applicable.

Australia has also established various consumer-friendly external dispute resolution forums that aim to promote fair resolution of complaints without the cost of legal representation. Indeed, many of these forums discourage or do not ordinarily permit the parties to be legally represented.

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Singapore



Collective redress

Singapore has a form of representative action which allows one or more persons to represent a group of persons with a common interest in proceedings.

Representative bodies can only bring actions on behalf of a class of persons such as consumers if the representative body or the representing person(s) has a common interest with the members of the class (O.4, r. 6(1), Rules of Court 2021). All members in the group must provide their consent in writing to the representative to represent them in the action, and the representative's name must be included in the list of Claimants (O. 4, r. 6(2), Rules of Court).

If there is a class of persons and all or any member of the class cannot be ascertained or cannot be found, the court may appoint one or more persons to represent the class (O.4, r. 6(4), Rules of Court 2021).

Any court-approved settlement is made in the form of an order, and an order given in a representative proceeding in which the court has appointed persons to represent a class would be binding on the class (O. 4, r. 6(5), Rules of Court 2021).

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Litigation funding

Litigation funding is permitted in Singapore, but only in relation to international and domestic arbitration, mediation proceedings relating to arbitrated disputes, court proceedings relating to arbitration, court proceedings in the Singapore International Commercial Court (SICC) and any appeals from such SICC proceedings to the Court of Appeal, and a range of claw-back court actions by liquidators in the insolvency context (Regulation 3, Civil Law (Third-Party Funding) Regulations 2017).

Those funders operating in this jurisdiction are required to satisfy certain criteria to be considered a 'qualifying Third-Party Funder' for the purposes of Section 5B of the Civil Law Act. Pursuant to Regulation 4(1) of the Civil Law (Third-Party Funding) Regulations, to be a 'qualifying Third Party Funder', the funder must:

- continue the principal business of funding dispute resolution proceedings; and either
- have a paid-up share capital of not less than: (i) \$5 million; or (ii) the equivalent amount in foreign currency; or
- have managed assets of not less than: (i) \$5 million; or (ii) the equivalent amount in foreign currency.

The Singapore Institute of Arbitrators (SIArb) established guidelines in 2017 for funders with the aim of promoting best practice, expectations of transparency and accountability. The SIArb website has a list of those funders who support the funding guidelines including major funders Woodsford, Burford Capital and Augusta Ventures Limited.

In accordance with Section 49A of the Legal Profession (Professional Conduct) Rules 2015, where dispute resolution proceedings before a court or a tribunal are being conducted, the legal practitioner must disclose to the court/tribunal and to every other party to those proceedings, the funder's identity and address.

Legal practitioners and law practices are also prohibited from holding any share or ownership interest in a third-party funder to which they have referred a client of their practice, or which has a funding contract with a client of their practice (Section 49B, Legal Profession (Professional Conduct) Rules 2015).

Relatedly, legal practitioners and law practices must not receive any commission, fee or share of proceeds from such a funder (Section 49B, Legal Profession (Professional Conduct) Rules 2015). This is consistent with Section 107(3A)(a) of the Legal Profession Act which states that a solicitor may introduce or refer a third-party funder to the solicitor's client insofar that the solicitor does not receive any direct financial benefit from such an introduction or referral.

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Emerging risks

Compared to other jurisdictions highlighted within this guide, there are no examples of liability litigation trends giving rise to social inflation in Singapore. This includes US-comparable risks such as opioids and glyphosate. Significant risk of PFAS features across many jurisdictions and Singapore is no different. The National Environmental Agency of Singapore recently confirmed the use of fire-fighting foams containing PFAS will be phased out from January 2026. However, there are currently no known examples of claims in Singapore specifically relating to PFAS contamination or exposure.

In relation to data breach claims, which have been seen in the UK and Europe, the Singaporean courts, via contravention of the Personal Data Protection Act (PDPA), do allow individuals who have suffered emotional distress as a result of a data breach to pursue an organisation for relief. This was affirmed by the Court of Appeal in *Reed v Bellingham* which held that emotional distress caused by unauthorised use of personal data constitutes “loss or damage” under Section 32(1) of the PDPA and may be compensable even without proof of financial loss. This was recently discussed again by the High Court in August 2025 in *Piper Martin v Singapore Kindness Movement*, which followed the position in *Reed v Bellingham*. However, due to the limited nature of collective redress available in Singapore, there have not been any significant examples of large-scale data breach actions to date.

From a climate change perspective, Singapore recently introduced local reporting standards for climate-related disclosures aligned with the International Sustainability Standards Board. From FY 2025, all listed companies in Singapore have been required to report on Scope 1 and 2 greenhouse gas emissions. From FY 2026, listed companies on the Straits Times Index (Top 30 listed companies by market capitalisation) will be required to disclose Scope 3 greenhouse gas emissions. From FY 2030, all large non-listed companies (revenue of >\$1 billion

and assets of >\$500 million) will be required to make similar disclosures, excluding the Scope 3 information. Failure to comply with these climate disclosure obligations may attract enforcement action by the Accounting and Corporate Regulatory Authority (ACRA) or Singapore Exchange (SGX), potentially resulting in financial penalties or public censure.

In addition, directors and officers of companies will increasingly be expected to consider their companies’ exposure to liability, as well as physical and transitional risks associated with climate change. The Monetary Authority of Singapore has also issued sector-specific Guidelines on Environmental Risk Management, underscoring the importance of climate-related risk integration in corporate governance. To date though, there have been no such actions reported in Singapore.

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Public sentiment

The use of collective redress measures in Singapore is uncommon. In the absence of widespread use, it is difficult to quantify public appetite for pursuing new types of claims arising from new liability risks. There is currently one high-profile representative action brought against a Singapore-incorporated blockchain company, Terraform Labs, by 376 claimants who claim to have been fraudulently induced into investing into the tokens sold by the blockchain company. If successful, this may pave the way for more such lawsuits in the future.

Nuclear verdicts

In the absence of jury trials, nuclear verdicts do not occur in Singapore.

In Singapore, punitive damages are available in tort but are reserved only for 'outrageous breaches or conduct' which warrant punishment, deterrence and condemnation. The Court in *ACB v Thomson Medical PTE Limited* confirmed that in the event of an award of punitive damages, "the sum awarded would be additional to, not in lieu of any compensatory award", thus making it an additional head of damages.

Claimant strategy

Singapore does not have jury trials for any court proceedings. For personal injury claims, similar to the UK, Singapore relies upon case precedents as well as published guidelines and actuarial tables for the assessment of general damages in injury claims ranging from severe to minor, and therefore, techniques which may be used by claimant representatives in jurisdictions such as the United States are not applicable. In addition, there is no significant use of collective redress to pursue large numbers of liability claims for personal injury or other damages.

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Collective redress

The Consumer Protection Law No. 24,240 allows associations of consumers and users to bring consumer claims before courts on behalf of a class of consumers and users. The General Environmental Law No. 25,675 also recognises the right to initiate an action to prevent or repair environmental damage, meaning that collective actions where environmental harm affects the public interest can be pursued.

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However, the procedural aspects of these class/representative actions have never been regulated by statute. The landmark Halabi ruling issued by the Argentine Supreme Court of Justice in 2009 established the following requirements for a collective action:

- Definition of the class.
- Same factual cause of loss. If the damage has been caused by the same cause of loss it may be reasonable for that breach to be considered in a single action/proceedings.
- Impairment of the class members' right of access to justice. The claim must be focused on the damage sustained by the group, rather than what each party could claim individually.
- A suitable representative.

The Argentine Supreme Court of Justice applied an opt-out mechanism in the Halabi decision.

The Supreme Court has also created the Public Registry of Class Actions.

These class/representative actions are organised in a manner consistent with ordinary commercial proceedings. However, additional specific rules apply, including that:

- Evidence must be provided that the representative party is qualified to act on behalf of class members.
- The Public Registry must be contacted in order to establish whether there is a substantially similar claim proceeding/concluded. If there is, the court in question may refer the action to the court dealing with/that dealt with the substantially similar claim.

Litigation funding

Litigation funding is permitted in Argentina. The use of funding is not regulated, and it is not limited to certain types of claims. Contingency fee arrangements are valid, although they are regulated in accordance with the Attorneys' Fee Law No. 27,423 meaning that a fee cannot ordinarily exceed 30% of the result of the lawsuit in national and federal proceedings.

In 2024, the General Arbitration Tribunal of the Buenos Aires Stock Exchange adopted new arbitration rules which required the disclosure of any third-party funding arrangements to avoid conflicts of interest.

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Emerging risks

There are emerging liability risks in Argentina, many based on new regulatory initiatives.

A bill to update the existing data protection law was introduced in April 2025. The draft bill will make a number of changes to the data protection landscape in Argentina, clarifying existing rights to rectification, objection and erasure. In addition, the bill will require prior communication and explicit consent if 'legitimate interest' is the legal basis used for processing. The bill will also raise the base value for calculating fines for breaching the law from AR\$10,000 up to AR\$100,000, with the base value updated on a semi-annual basis.

At the time of writing, the bill remains under consideration.

In respect of data breach and possible claims, the Argentinian Data Protection Authority currently has a variety of powers available to it including administrative fines. However, there have not been sizeable numbers of data breach actions in Argentina to date.

A series of rulings were issued by the Argentine Supreme Court of Justice late in 2023, which affirmed the 2009 Flores case, meaning that in the case of compulsory motor insurance policies, judgment is not enforceable against the insurer for a sum in excess of the limit of cover in the contract. Although such precedent is not binding, it is noteworthy and offers some reassurance to liability (re)insurers writing business in Argentina.

In addition, there has been a judicial ruling establishing that an insurance broker is jointly liable for breach of an insurance contract, based on the Consumer Protection Law.

Looking to those litigation risks present in jurisdictions such as in the United States, concerns around the use of glyphosate have been present in Argentina for some time, particularly due to the high usage of the weedkiller for Argentina's soy fields. Although the Argentinian region of Misiones has banned the use of glyphosate as of 2025, and concerns have been raised about the prevalence of certain illnesses close to locations where glyphosate is used, litigation has not followed. In June 2025, Argentina approved updates to its regulations for phytosanitary products such as pesticides, allowing for the introduction of rigorous criteria for both imported and exported products.

From a climate change perspective, several actions have been pursued against governmental agencies and corporations in order to block construction of energy projects including fossil fuel exploration. However, shareholder activism in Argentina is limited due to the nature and size of the market. Therefore, actions against companies, and their directors and officers, which may give rise to additional D&O risk and costs have not been identified to date.

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Public sentiment

Argentina does not have jury trials for civil matters, meaning that concerns around the influence of juries on damages awards are not applicable.

There are examples of Argentinian activists pursuing actions against corporations and governmental organisations. However, these have not translated to large numbers of claims likely to result in increased risk and claims costs.

Nuclear verdicts

Argentina allows for punitive damages under Consumer Protection Law No. 24,240, (i.e., for claims involving defective products). As expected, these awards may be made where the expected compensatory damages are considered insufficient to deter the wrongdoers. Furthermore, the wrongdoer's conduct must involve malice, recklessness, or gross negligence.

In 2022, important changes regarding the maximum applicable sanctions in consumer protection matters, as well as regarding punitive damages, were introduced. At the time of writing, fines and punitive damages would be capped at US\$1,860,600.

Punitive damages are not otherwise available in general civil law litigation in Argentina.

Claimant strategy

Argentina does not have jury trials for civil matters, meaning that concerns around the use of specific strategies to increase damages award are not applicable.

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Collective redress

Collective redress mechanisms are available in Mexico. Class actions are regulated by the Federal Civil Procedure Code (the Procedure Code), which provides three types of class action as follows:

- Diffuse Actions (Acciones Difusas): These actions involve rights where the individual parties are not identified, and the remedy sought is indivisible in nature (e.g., environmental claims). The primary purpose of these actions is to restore the situation to its state prior to the damage. Individual damages are not available in this type of action, as the relief sought is general, such as carrying out an environmental clean up.
- Strict Group Actions (Acción Colectiva en Sentido Estricto): These actions concern rights where individual parties can be identified, but the remedy remains indivisible (e.g., preservation of collective property). The main objective is for the defendant to repair the damages caused or to prevent further harm. Additionally, defendants are expected to indemnify each claimant for the damages suffered.
- Uniform Individual Actions (Acción Individual Homogénea): These actions involve rights where individual parties are grouped based on common circumstances, and the remedies are divisible, allowing for the payment of damages to each claimant within the group.

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The Strict Group and Uniform Individual Actions operate on an opt-in basis, but Diffuse Actions operate on an opt-out basis.

There are safeguards in the Procedure Code to limit the possibility of sponsoring or acting as a representative in a class actions. Standing is granted to the regulatory bodies of certain regulated markets, such as the Federal Consumer Protection Agency for matters related to consumer relations; the Federal Environmental Protection Agency for environmental matters; the National Commission for the Protection and Defense of Financial Services' Users for financial market issues; and the National Antitrust Commission for antitrust matters.

Private entities are also allowed to sponsor or act as a representative in these types of legal actions, but under very specific restrictions. For example, common representatives appointed by a group made up of at least thirty members, or non-profit civil associations legally incorporated at least one year prior to filing the action. The Federal Attorney General is also granted standing, as they are considered the representative of the public interest in Mexico.

Litigation funding

The New Code does not establish any specific rules regarding litigation funding, nor does it require the parties to disclose to the judge or the opposing party who is financing the legal fees or expenses of a legal action. Mexican legislation also does not limit the participation of third parties in the distribution of compensation obtained through litigation.

It should also be noted that in 2023, the National Code of Civil and Family Procedures (the New Code) was published in the Official Gazette of the Federation. Aiming to unify and modernise procedural rules in civil and family matters, the New Code replaced both local procedural codes and the federal code in these areas. Entry into force has been gradual, allowing federal entities to make the necessary legal, administrative, and budgetary adjustments for phased implementation, with the final deadline for full enforcement set for 1 April 2027.

Although the substantive content of the New Code does not significantly alter collective redress mechanisms in Mexico, its relevance lies in the effort to make civil procedures more efficient. The New Code follows the oral procedure model from the criminal and commercial arena, aiming to expedite proceedings and reduce the time required to reach a final resolution, excluding amparo proceedings, which are governed separately. For clarity, amparo proceedings are a legal mechanism that protects individuals' constitutional rights against violations by authorities.

The development of a comprehensive framework of collective redress mechanisms, along with the development and incorporation of the concept of punitive damages, are likely to make Mexico a more attractive proposition for litigation funders.

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Human Rights-based Protection

There have been several important legal and regulatory developments in Mexico that have increased the volume and cost of insurance claims, particularly in third-party liability contexts. Mexican insurance law has a regulatory framework designed to protect insureds and co-insureds by ensuring fair compensation and requiring transparent conduct from insurers.

A major shift relates to moral damages, where the Supreme Court has ruled that statutory caps on such damages are unconstitutional if applied without considering the specifics of each case. In Amparo Directo en Revisión 711/2023, the Supreme Court held that fixed limits violate the right to full reparation and undermine judicial fairness. This trend has opened the door to the potential for higher awards, depending on the circumstances of each claim.

With regard to limitation periods, Article 81 of the Insurance Contract Law provides a two-year limitation for bringing claims under insurance policies (except death cover). However, the Supreme Court has clarified that, for third-party beneficiaries under liability policies, the limitation runs from the date the claimant becomes aware of the existence of the policy. In Amparo Directo 8/2022, the Court ruled that, in the case of minors, the limitation period begins only once the minor turns eighteen, clearly reflecting a broader protection of indirect victims' rights.

Recent rulings have further extended these limitation periods. In Amparo Directo en Revisión 2128/2023, the Supreme Court held that in cases where injuries result in death, the standard two-year limitation for direct actions against insurers violates access to justice, and extended the period to five years. Similarly, in Amparo Directo en Revisión 2809/2023, the Supreme Court deemed the two-year limit inadequate for claims involving harm to personal integrity, honour, or dignity, and established a ten-year limitation instead.

These rulings reflect an increasingly claimant-friendly approach by the Mexican courts, resulting in extended timeframes and elevated awards, especially for moral damages. We expect this trend to continue, particularly in the current political landscape.

Judicial Reform

In 2024, judicial reform introduced the popular election of federal and local judges, including Supreme Court justices, magistrates and judges at all levels.

The number of Supreme Court seats has been reduced from 11 to 9, lowering the majority vote threshold to 6. Additionally, the eligibility requirements for judicial candidates have been relaxed, as there is no longer a requirement for candidates to have prior judicial experience or technical specialisation in the field.

These changes have raised concerns about the independence, quality, and impartiality of the Judiciary, particularly in complex legal matters. There is concern that newly elected judges may be more inclined to favour claimants and issue high compensation awards, especially in cases that receive substantial media coverage, enhancing their public visibility or chances of re-election.

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Climate litigation

At the federal level, a bill has been introduced to amend the Federal Consumer Protection Law in order to sanction certain environmental practices. The bill was submitted to the Senate of the Republic, and the draft opinion was approved by the relevant committee on 30 May 2025. It is currently in the process of being discussed and voted on by the full Senate. A similar initiative has also been introduced in the Legislative Assembly of Mexico City.

The proposed reforms aim to address these practices through administrative sanctions. However, they do not establish a legal framework that would allow affected third parties to seek compensation from those who engage in such practices.

Data Breach Actions

In March 2025, the new Federal Law on the Protection of Personal Data Held by Private Parties ("Data Protection Law") was published, replacing its 2010 predecessor. This reform is part of a broader legislative package that included reforms of Government's transparency mechanisms.

Public sentiment

There are no civil jury trials in Mexico; therefore, public sentiment does not have a direct impact on the outcome of legal claims. However, public opinion can indirectly influence the interpretation and development of the law, exerting pressure on courts to adopt particular approaches or to evolve existing jurisprudence through lawful means, in pursuit of greater coherence and legal certainty.

One of the most controversial aspects of this reform is the dissolution of the National Institute for Transparency, Access to Information, and Protection of Personal Data. Its functions have been absorbed by the newly created Secretariat of Anti-Corruption and Good Governance (and a new administrative body known as Transparency for the People). The changes are intended to increase efficiency, reduce costs, and eliminate redundancies. However, various sectors have raised concerns that the reform may undermine the effective protection of the rights to access public information and to personal data privacy, by weakening existing oversight and accountability mechanisms.

One area where public sentiment has already become a key factor is in the administration of justice. As previously mentioned, the restructuring of the judiciary has opened the door for public opinion to play a more prominent role in legal interpretation and dispute resolution by electing judges indicating an alignment with prevailing sentiments of the population at the time.

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Nuclear verdicts

While far away from the verdicts seen in the United States, the approach to damages in Mexico has evolved significantly following the 2011 constitutional reforms and subsequent guidance from the Inter-American Court of Human Rights. These reforms incorporated a new scope of human rights into the Mexican Constitution, including the right to fair compensation.

As a result, Mexican law has moved toward the recognition and application of punitive damages, primarily as an extension of moral damages, a category related to non-economic harm, such as injury to feelings or dignity. The Supreme Court has held that compensation for moral damages may carry a punitive element. While judgments awarding punitive damages remain relatively rare, their frequency is increasing.

In a key ruling, the Supreme Court held that when a claim for moral damages is presented, courts must assess whether it is appropriate to award punitive damages, particularly where the defendant's conduct was so serious that a higher award is warranted. This guidance has opened the door for judges to consider the application of punitive damages in certain cases when moral damages are sought. Furthermore, the burden of proof lies with the defendant to demonstrate either the absence of damage or that the harm is not sufficiently serious to justify punitive compensation.

Mexican courts have also adopted the principle of full reparation, which has paved the way for the recognition of "damage to life plans". This concept, rooted in the jurisprudence of the Inter-American Court of Human Rights, refers to the significant frustration of a person's personal and professional development. In Mexico, it has been recognised as a separate category of

damage, distinct from moral or economic loss, and grounded in the constitutional mandate for full and fair compensation.

The Supreme Court has clarified that integral reparation requires an assessment not only of the initial harmful event, but also of all long-term consequences that affect the life trajectories of victims and their families. In a 2025 precedent, the First Chamber of the Supreme Court held that authorities must evaluate how an individual's legitimate expectations were disrupted and incorporate these effects into compensation for non-pecuniary harm.

An illustrative case is *Amparo en Revisión 687/2024*, where a child suffered chronic kidney failure due to medical negligence at the Mexican Social Security Institute. The Supreme Court found that not only the child, but also his family members, had seen their life plans significantly altered: the father lost his job after donating a kidney, the mother had to abandon her studies and work to become a full-time caregiver, and the sister experienced disruptions in her education. The Supreme Court ordered a comprehensive reassessment and full reparation that expressly included damage to the life plans of the entire family unit.

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In the absence of jury trials in Mexico, litigators cannot employ emotional or strategic tactics commonly used in jurisdictions where juries assess damages. However, the growing recognition of punitive damages and damage to life plans in Mexico has created new opportunities for claimants to argue that the threshold for such awards has been met, particularly in cases involving serious or systemic harm.

As noted earlier, the 2024 judicial reforms have increased the likelihood that judges, whether intentionally or perceived, will favour claimants in high-profile or emotionally charged cases, particularly when such rulings could generate public support and enhance their chances of re-election. As a consequence, there is a growing concern that claimant firms may engage in forum shopping, deliberately filing claims in jurisdictions perceived to be more sympathetic to plaintiffs in order to secure larger damage awards.

However, to date, these concerns remain hypothetical. In the event that these concerns do prove to be justified even in the short-term, defendant lobbying for legislative or other regulatory responses to prevent forum shopping may be expected.



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Collective redress

Israeli law allows for group actions, in a number of circumstances. The class actions mechanism is governed by the Class Actions Law 2006, setting out a structured process for bringing class actions. Actions that can be brought under the Law are specified in a closed list contained within an appendix to the Law, such as securities and environmental claims.

Class actions are also permitted in respect of certain pieces of legislation such as the Insurance Contract Law and Banking Law.

Israeli law also permits mechanisms for collective compensation in certain areas such as labour disputes, where collective remedies can be pursued.

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The Class Actions Law operates on an opt-out basis, where potential class members are automatically enrolled in the claim by default, with explicit consent needed to withdraw. The courts do have the authority to order that a claim operates on an opt-in basis, whereby only individuals who have formally notified the court of their intention to join the class will be included in the class action.

Class actions in Israel can be pursued by:

- an individual or group of individuals, who must demonstrate their claim represents the interests of the entire class;
- consumer protection organisations; and
- non-profit entities, who must demonstrate their role and capacity to represent the interests of the affected class.

Relevant entities, such as the legal advisor of the government, may also submit their views to the court on matters relevant to a class action under the Class Actions Law. The court has the discretion to invite or permit these interventions, such as legal arguments or the provision of relevant information.

The Class Actions Law includes various control and supervisory mechanisms to ensure the proper handling of class actions, protecting the interests of both plaintiffs and defendants. These mechanisms are designed to balance the efficacy of class actions with protections for all the parties involved, such as:

- Judicial approval of motions to approve a claim as a class action, providing the class action satisfies specific criteria such as common issues among the class members.
- A preliminary hearing for the court to establish whether statutory requirements for a class action are met.
- The court will engage in continuous supervision of the proceedings.
- Any settlement agreement must be approved by the court, which will review the terms of settlement to ensure that it is appropriate and reasonable for the class members.
- Upon settlement, the law requires that class members must be properly notified, including information about their rights and options (such as opting-out of any settlement).
- Oversight of any fees payable to legal representatives to ensure that they are reasonable and proportionate to the outcome of the case.

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Litigation funding

Litigation funding is permitted in Israel, and is not limited by law to specific types of claim. As a relatively new and evolving area, there are currently no specific laws or regulations governing litigation funding.

Any applicable legal principles are derived from the existing framework of civil and contract law. The courts have the discretion to require disclosure of any funding arrangements to ensure transparency, fairness and the prevention of conflicts of interest. The Supreme Court of Israel has addressed certain aspects of litigation funding, generally endorsing the practice provided that ethical standards are upheld, and public policy is not violated.

The financing of class actions by litigation funders is not prohibited by the Class Actions Law, but any funding arrangements will be closely scrutinised to ensure it does not create a conflict of interest, compromises the interests of the class members or undermine the integrity of the legal process. The courts may also evaluate the fairness of any funding agreements. Recently, a District Court judge ruled that as the law does not state specifically that class actions can be funded by profit targeted companies, it is not allowed to fund class action claims and dismissed such a claim.

Emerging risks

Recent judicial decisions in Israel reflect a growing emphasis on protecting consumer and individual rights, data privacy and environmental standards.

The concept of 'damage to autonomy' is a novel aspect of Israeli law, a classification of non-pecuniary damage awarded for intangible harm. A person's autonomy is considered to be a fundamental right and any infringement of that right constitutes damage. For example, damage could be caused by emotional distress which violated of the victim's autonomy.

The theory developed as a response to certain malpractice actions where medical procedures were performed in the absence of the patient's full informed consent. In these actions, the Court recognised that the failure to provide adequate information, irrespective of whether the treatment was successful or caused no harm, violated a patient's autonomy and justified additional compensation.

Damage to autonomy has been increasingly applied to other areas of law such as consumer protection and data privacy actions. For example, the courts have recognised damage to autonomy in situations where consumers were misled or not fully informed about their products or services purchased, affecting their ability to make 'autonomous' purchasing decisions.

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This concept has also been raised in class actions involving alleged large-scale violations of individual rights, where plaintiffs have been unable to exercise their ability to make informed choices.

There are a number of continuing emerging risks present in Israel. The geopolitical situation means that insurance policies are often required to cover damage or disruption caused by war and terrorism. In addition, similar to other nations, there is an increased risk of disruption caused by cybersecurity threats, prompting the need for comprehensive cyber liability coverage.

Recent court decisions have expanded the scope of directors' duties and liabilities, emphasising the increasing importance of corporate governance, transparency and duties owed by directors to companies and shareholders. This expansion in scope of duties and liabilities increases the risk of shareholder derivative actions being pursued.

Derivative actions are brought by a shareholder or group of shareholders on behalf of a corporation against a third party, typically the corporation's own directors or officers, in order to address harm done to the corporation. Although these actions are not brought in significant numbers, they are complex matters involving lengthy proceedings, which carry their own implications in terms of financial risk and associated costs for insurers.

Public sentiment

Civil actions are determined by professional judges who, either individually or as a panel, evaluate the evidence, apply the law, and render a verdict or decision.

Judges have significant discretion in reaching their decision, meaning that judgments can take into account societal norms that emphasise social justice, fairness, and the protection of vulnerable groups. This approach can result in higher compensation in certain actions, particularly those involving human rights, discrimination, environmental harm, or consumer protection.

Some members of the judiciary may take a more conservative approach, reflecting different interpretations of the purpose and function of certain laws and regulation.

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Nuclear verdicts

In Israel, the primary aim of damages is to compensate the injured party for his actual loss rather than to punish the wrongdoer. This aligns with the broader principles of Israeli tort law, which emphasise compensation over punishment.

Punitive damages can be awarded in cases involving intentional acts to harm the plaintiff, such as terrorist acts, to provide additional compensation to victims, and to underscore the legal and moral condemnation of terrorism.

Claimant strategy

There are no civil jury trials in Israel, meaning that legal representatives are not able to employ specific tactics to encourage juries to award increased sums or punitive damages where available. However, plaintiff representatives can make representations to the court encouraging judges to consider societal norms when awarding compensation.



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