DAC BEACHCROFT

Social Inflation

A practical guide to thematic drivers, jurisdictional trends and emerging liabilities.

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Introduction

A strategic issue for insurers

Social inflation has become a familiar expression to insurers and claims professionals seeking to understand why claims costs continue to rise beyond what might reasonably be explained by economic inflation alone.

The term is usually traced back to Warren Buffett, a warning to Berkshire Hathaway shareholders of a "broadening definition by society and juries of what is covered by insurance policies." The concept has evolved considerably since that initial concern four decades ago.

Alternative terms, such as 'legal system abuse' and 'litigation abuse', are used to describe the more contentious aspects of social inflation, such as distinctive claimant strategies designed to increase damage awards. That said, 'social inflation' is still the favoured label when discussing increases in insurance claims costs arising from social, legal, and sometimes political circumstances that have altered how liability is perceived, pursued and compensated.

Reflecting these concerns, the significance of social inflation for insurers lies in its capacity to influence settlements and litigation, accelerate the development of new causes of action and generate new liabilities previously considered improbable or commercially insignificant. These developments can place pressure on reserves, affect pricing adequacy and create uncertainty around long-tail exposures. In certain sectors, they may also influence policy drafting and coverage interpretation.

Social inflation is not simply a claims issue for insurers to consider; it is a strategic issue to be addressed across underwriting, claims management, reserving and risk management functions.

It should also be viewed through the wider lens of claims inflation, which contains the three interrelated components of economic inflation, excess inflation and social inflation.

- Economic inflation reflects changes in claims costs arising from factors captured by conventional economic indicators, such as labour, medical treatment or repair costs.
- Excess inflation captures increases that extend beyond those economic indices, including market-specific developments, supply chain pressures, emerging claim types and changing patterns of loss.
- Social inflation can be considered a component of excess inflation, reflecting the impact of societal, legal and cultural developments on claims outcomes.

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.

Inside the guide: an interconnected landscape

Traditionally, discussion around social inflation has centred on the United States, due to the unique claims environment there. However, focusing too closely on one jurisdiction risks overlooking important developments elsewhere.

For example, while many legal systems do not permit punitive damages or allow for civil jury trials, they may nevertheless experience social inflationary pressures through different mechanisms. Therefore, social inflation should not be viewed solely as an American phenomenon, but as a broader collection of thematic drivers which manifest differently through the legal and cultural characteristics of a particular jurisdiction.

This guide has been prepared against that backdrop. The purpose is not merely to catalogue legal developments around the world but to assist insurers in identifying those trends that may contribute to claims inflation and future liability exposure. The guide examines social inflation from both thematic and jurisdictional perspectives. The thematic chapters focus on six key drivers that repeatedly emerge across international claims environments: collective redress, litigation funding, emerging risks, claimant strategy, nuclear verdicts and public sentiment. The jurisdictional chapters then analyse how those themes operate in practice across a range of key legal systems.

The themes examined in this guide do not operate in isolation; they are often inextricably linked. Collective redress may facilitate litigation funding. Litigation funding may support strategic claimant activity. Public sentiment may influence legislative reform around collective redress. Emerging risks may generate collective actions and attract funding.

Together, these developments create an interconnected landscape capable of increasing claims costs beyond traditional actuarial assumptions. Equally, the guide demonstrates that jurisdictions without civil juries, punitive damages or a culture of nuclear verdicts are not immune from social inflation. The drivers may differ, but the consequences for insurers can still be significant.

For the purposes of this guide, 'emerging risks' are not merely theoretical concerns or hypothetical future liabilities. Rather, they are risks that have already generated at least some form of litigation activity, regulatory scrutiny, representative or class actions or significant claims. In many cases, these claims remain untested or are still developing. Experience demonstrates that today's novel claim can become tomorrow's major source of liability exposure. The guide therefore examines risks such as PFAS, data breach claims, product liability developments, and more recent developments such as climate litigation, artificial intelligence-related exposures, social media litigation and other evolving areas where insurers may face increasing claims activity in the years ahead.

Understanding these risks is increasingly important for insurers operating in a rapidly evolving claims environment. This guide seeks to identify emerging liabilities, assess claims trends in the highlighted jurisdictions, and provide insurers with a better understanding of the thematic pressures that may shape future financial losses.

Ultimately, social inflation is best understood as a collection of interconnected forces that collectively influence the nature, frequency and cost of claims across the global insurance market.



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Collective Redress



The use of collective redress mechanisms is arguably the most noteworthy influence on social inflation.

Collective redress mechanisms allow claims to be brought on behalf of large groups or classes of individuals, where individual claims may not be sustainable. This supports a market for litigation funding and provides a platform for bringing claims across a wide base, from consumer protection to mass torts and emerging risks.

A crucial factor in how these collective redress mechanisms operate is whether they proceed on an opt-in or opt-out basis.

- Opt-in actions are brought on behalf of those claimants who have explicitly expressed their wish to benefit from the action. These actions require potential claimants to be proactive, whether joining or issuing proceedings themselves, or authorising a representative to act on their behalf. Opt-in procedures are distinguished as offering greater efficiency.
- 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.

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Key jurisdictions:

United States, England and Wales, the Netherlands and Australia at a glance

The United States, England and Wales, Australia and the Netherlands are considered particularly influential due to their well-established collective redress mechanisms. The US, England, and Wales have diverse mechanisms creating options for plaintiffs / claimants. Australia is considered a plaintiff-friendly jurisdiction and has one of the most active class action markets in the world. The Netherlands has a proven regime that functioned as a stimulus for the introduction of the Representative Actions Directive (RAD) across the European Union.

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. A number of 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 68,000 actions pending at the start of August 2026. By contrast, the Roundup Products Liability Litigation and GLP-1 Products Liability Litigation each had around 4,000 actions pending.

Since December 2025, there have been new rules-based practices and procedures for MDL, including the development of early case management plans.

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.
- Collective actions regime within the Competition Appeal Tribunal limited to collective proceedings for 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.

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As discussed within the jurisdiction section on England and Wales, a Law Commission consultation is underway at the time of writing to consider the benefits and risks of a collective class actions regime for consumer claims, including the scope, criteria, process and management.

In Australia, class actions at both state and federal level are conducted as 'representative proceedings' where any person or entity can bring a claim on behalf of a class of group members, provided that the threshold requirements to commence a class action are met. The use of an opt-out system for actions is conventional; courts have also permitted classes to be defined in such a way that only group members who had entered into a litigation funding agreement with the funder could be a class member. This is, in effect, an opt-in arrangement operating within an opt-out system.

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 above, this mature regime offered inspiration for the introduction of the RAD.



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European Union Member States

The jurisdiction-specific sections provide a more detailed discussion of the specific collective redress mechanisms available within the EU Member States contained in this guide, as well as any noteworthy representative actions brought. This section focuses on implementation of the RAD, and a brief consideration of other collective redress mechanisms available in those Member States.

As an EU directive, the RAD allows for each EU country to devise its own laws to achieve the goals set out within the legislative text. However, the key elements must be introduced into the domestic legislation of Member States. There has been almost total implementation of the RAD in Member States. For the purposes of the countries covered by this guide, and at the time of writing in October 2026, Spain is the only country yet to have transposed the RAD into domestic law.

The key elements of the RAD are as follows:

- 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.
- The RAD is intended to cover infringements of EU law set out within Annex I of the RAD.
- An alleged breach of any EU legislation set out in Annex I can therefore form the basis of a representative action. Member States are not prevented from permitting representative actions for other types of claims in their jurisdiction, as seen in Germany.
- A representative action brought via a representative entity can be undertaken on a domestic or cross-border basis.

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Cross-border or domestic representative action?

- 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 if consumers from more than one Member State 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.

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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Jurisdiction	RAD implemented	Opt-in or opt-out?	Types of action covered by legislation implementing RAD	Other collective redress mechanisms?
Italy	Yes	Opt-in	Designated qualified entitles 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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Jurisdiction	RAD implemented	Opt-in or opt-out?	Types of action covered by legislation implementing RAD	Other collective redress mechanisms?
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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Jurisdiction	RAD implemented	Opt-in or opt-out?	Types of action covered by legislation implementing RAD	Other collective redress mechanisms?
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 domestic implementation of the RAD raised discussions 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 RAD prescribes that they can only be brought on an 'opt in' basis, which has restricted the prospect of pan-European opt-out actions in the long-term.

Representative entities must establish the jurisdiction of the court where they seek to bring a claim. Together with the right to disclosure of funding arrangements established by the RAD in accordance with national rules, it is likely that claimants will favour jurisdictions with more flexible procedures. Furthermore, as noted in our thematic section on Public Sentiment, the willingness of claimants to pursue such actions will also depend on existing cultural issues.

In September 2026, the European Commission launched a call for evidence on the Brussels Ia Regulation, which sets out uniform rules on jurisdiction and the recognition and enforcement of judgments in the EU in civil and commercial matters. The call for evidence confirms that consideration will be given to specific new rules for collective redress claims within the Regulation.

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Other jurisdictions

Continuing in Europe, but outside the European Union, 'group proceedings' are the principal form of collective redress in Scotland. In practice, these actions can be pursued on an opt-in or opt-out basis, but the current procedural rules in place only allow for proceedings on an opt-in basis. In addition, group proceedings may be brought by a representative party, subject to court authorisation. Such a representative need not be a member of the group of claimants.

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 Hong Kong, collective redress mechanisms are limited, with representative proceedings offering the only route to plaintiffs with the same interest. This mechanism is considered outdated and is rarely used. Proposals issued by the Hong Kong Law Reform Commission in 2012 for the introduction of a formal class action regime have so far not been advanced.

In Israel, the law allows for group actions in various 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 it, 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 bureaus 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 new National Code of Civil and Family Proceedings will take effect nationwide on 1 April 2027. The Code will place safeguards on the sponsorship of, or choice of representative in, class actions, with standing being granted to the regulatory bodies of certain regulated markets based on the subject of the claim. One such example is standing being granted to the Federal Consumer Protection Agency for consumer matters. Private entities may sponsor or function as representatives 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 of 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 can be 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?

There is no universally accepted figure of the worldwide litigation funding market due to different methods for defining that market. The United States is widely identified as the centre of litigation funding worldwide, estimated to account for one-half of all global litigation funding activity.

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, or have introduced bans, such as North Carolina in June 2026.

In the UK, across Scotland, England and Wales, 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, with some funders choosing to collaborate with legal firms, allowing the funding of claims portfolios directly.

In European nations, the third-party litigation funding market remains smaller than in the United Kingdom and the United States. However, the market is expected to develop further as the anticipated impact of national laws implementing the Representative Actions Directive (RAD) and greater uptake of collective redress are experienced.

The Netherlands is the prototype for the use of litigation funding in Europe, permitting litigation funding and establishing a mature class action system prior to widespread transposition of the Representative Actions Directive. 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, Australia has 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 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.

Funding in Hong Kong is constrained by common law doctrines of maintenance and champerty. However, since 2022, funding has been permitted and regulated in arbitration. However, uptake has been limited according to available statistics.

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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.

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. The Bloomberg Law 2024 Litigation Finance Survey indicated that only 36% of respondents had been required to regularly disclose their financing arrangements.

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.

As an example of these types of state-level action, in February 2026, New York introduced its own regulatory framework via the Consumer Funding Litigation Act. Funders are now required to register with the Department of State, fees are capped at 25% of gross recovery from the litigation, and funding companies forbidden from unduly influencing claim strategy or settlement decisions.

Other states have taken a stronger approach to litigation funding. In June 2026, the Governor of North Carolina signed House Bill 315 into law. Formally named the Prohibit Litigation Investments Act, the legislation makes it unlawful for a person or company to engage in 'litigation investment' in the state. This includes direct payments, loans or investments to cover fees, costs and expenses in exchange for a right to receive payment or other consideration contingent on the outcome of the relevant proceedings. The policy statement accompanying the legislation identifies a number of alleged risks associated with litigation funding, including national security (also discussed below) and undue influence on the litigation process.

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.

In Scotland, third-party litigation funding is primarily regulated by the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018. Similar to England and Wales, there is no dedicated statutory licensing regime, but the sector is subject to transparency rules and voluntary standards.

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Based on current requirements, Scottish courts will consider whether a proposed representative party for a group proceeding has access to sufficient financial resource to conduct the litigation and any potential awards of expenses. In practical terms, a proposed representative will need to demonstrate that funding arrangements are in place, although the underlying details are not necessarily disclosed.

Similarly, 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%.

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 regulations, 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 protect 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 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.

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Due to the limited use of litigation funding in Hong Kong, regulation too is limited. In 2018, a Code of Practice was issued by the Department of Justice for Third-Party Funding of Arbitration, applicable to any agreements entered into after the Code was set down.

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.

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, with a number of bills advanced on related issues.

In February 2026, the Litigation Funding Transparency Act of 2026 was introduced in the House of Representatives in response to concerns about transparency of funding, specifically money received from foreign entities and governments. The bill's sponsors emphasised that commercial enterprises may be exempted if the agreement requires repayment of a loan or reimbursement of fees paid as opposed to those receiving "something greater in value than what was granted or given."

Two similar bills, the Litigation Transparency Act of 2025 and the Protecting Our Courts from Foreign Manipulation Act of 2025, were advanced in 2025 but, at the time of writing, have proceeded no further than preliminary legislative stages in the House of Representatives.

As noted above with reference to the differing approaches taken in New York and North Carolina, it is possible that further action will be taken by those US states who have not acted in respect of litigation funding to date.

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. In December 2025, the UK government announced it would legislate to reverse the effects of *PACCAR* and clarify litigation funding agreements are not damages-based agreements. However, there was no reference to any such legislation in the King's Speech in May 2026 and subsequent Parliamentary discussions in September 2026 indicated that no timetable for the introduction of the legislation exists.

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. An ongoing Law Commission consultation into consumer class actions, will consider the funding of any such claims, with reference to the CJC report on funding.

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In Scotland, parts of the legislation introducing the statutory regime for group litigation that relate to litigation funding have yet to be introduced. One section of that legislation, not yet in force, would introduce disclosure requirements including the identity of the funder and the nature of the financial assistance provided.

Looking to Europe, litigation funding is unlikely to be subject to European Union-wide regulation in the near future, despite a lengthy process in recent years considering whether such regulation was necessary.

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. This concluded with the publication in March 2025 of a Commission report, 'Mapping Third Party Litigation Funding in the European Union', which identified 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.

The light-touch measures aligned closely with the Principles Governing the Third Party Funding of Litigation published by the European Law Institute in October 2024 and offered similar principles to those discussed in the CJC report. This included suggested minimum content for funding agreements, and sample wordings also set out.

However, in November 2025, it was reported that Michael McGrath, the European Commission for Justice, had confirmed that the Commission did not intend to legislate around third-party funding. Therefore, we expect that regulation of third-party funding will be left with member states and domestic measures.

More specifically, 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 Reform Commission consultation on the law governing litigation funding is outstanding, with the Commission itself stating that it expects to publish its report in 2026.

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, Hong Kong, 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. Those emerging risks contributing to social inflation in one jurisdiction do not apply uniformly across all jurisdictions, and their influence changes as claims proceed through litigation.

For example, two major liability risks that have resulted in significant US class settlements and damages awards are glyphosate weedkiller and talcum powder. These outcomes have totalled hundreds of millions of dollars, with individual damages awards also attracting outsized punitive damages awards. In the case of glyphosate, this risk has been reduced considerably by the recent *Durnell* decision in the Supreme Court, discussed in the United States jurisdiction section.

To date, these risks have not had a significant financial impact outside the United States, due to differences between respective legal systems, such as the influence of jury trials, and strategies relating to causation that are open to claimant or plaintiff representatives.

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The first major European class action alleging a link between asbestos-contaminated talcum powders and certain cancers was recently subject to a Group Litigation Order in the High Court in London and is progressing through case management. An action considering similar allegations is also underway in Scotland. In the case of glyphosate, European discussions have addressed ongoing use and licensing with reference to possible adverse health effects, opposed to personal injury claims. Similarly, actions in Australia alleging a link between glyphosate and certain illnesses failed to adequately establish causation.

Those emerging trends which may give rise to the risk of social inflation vary from country to country, and this section highlights some of the common risks found across multiple regions.

For the avoidance of doubt, from a litigation perspective, certain high-profile risks, such as social media addiction claims, are principally concentrated in the United States. Actions have been brought by state attorneys-general, school districts and individual claimants with noteworthy judgments handed down and settlements reached. Similarly, claims seeking compensation from AI companies in respect of alleged personal injury have largely emerged in the United States. Discussion of these developments is therefore included within the United States section rather than here. In the other jurisdictions covered by this guide, activity in these areas has generally been focused on legislative and regulatory developments rather than widespread litigation and the associated financial risk to corporates and their insurers.

Climate change and the risks faced by corporates

A sizeable proportion of climate change litigation is aimed at national governments by activists seeking to drive changes in domestic or global policy and regulation.

In 2025, advisory opinions issued by 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. These obligations included the regulation of private actors such as companies. As a result of this climate-related litigation brought by activists, corporates are likely to find themselves in the regulatory crosshairs as states respond. It is apparent that, in many jurisdictions, companies and their insurers should anticipate stricter regulatory requirements and engagement in climate-related actions of their own.

In some jurisdictions, courts have already been asked to extend established legal principles to address climate-related issues or scrutinise government or corporate actions. Some have shown reluctance to do so. 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.

In contrast, the Italian Court of Cassation held in Greenpeace v ENI that tortious claims for climate-related harm could be pursued against companies in Italy, and potentially their directors and shareholders. This opens the door to the possible emergence of a new category of liability borne by directors of companies engaged in climate-negative practices in Italy, with the judgment in the underlying claim expected to be concluded in the coming year.

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Other actions have sought to challenge corporates and their directors directly, albeit with limited success to date. For example, the 2021 decision in *Milieudefensie v Shell*, long held as the exemplar of successful climate activist litigation against a company, was successfully overturned by Shell in 2024. Judgment is awaited on an appeal by Milieudefensie to the Dutch Supreme Court. That appeal was heard in May 2026, and a final ruling is expected in 2027.

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.

These actions, although largely unsuccessful on their facts, created wide-ranging discussion 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. Upcoming actions may change this:

- In the Netherlands, Milieudefensie has filed a second action against Shell seeking to prevent Shell from developing new oil and gas projects, and impose post-2030 emissions targets on Shell, in line with the Paris Agreement.
- Milieudefensie has also issued proceedings against the Dutch bank ING. Beyond seeking to compel specific climate reduction targets, the claim also demands that ING impose various measures on its large corporate clients, such as requiring a climate plan, ceasing finance to those that do not comply, and phasing out fossil fuel financing.
- In Germany, a new action *(Leghari v Heidelberg Materials and RWE)* seeks to rely on the principle established in *Lliuya*. Pursued by 39 Pakistani farmers affected by unprecedented rainfall in 2022, the action seeks damages on the basis that the defendants' respective and proportionate emissions increased the risk of destructive and extreme weather events.
- A similar action has been commenced in England and Wales, *Casquejo and others v Shell*. This action is pursued by members of Filipino communities affected by Typhoon Odette in 2021.
- In France, a number of actions are ongoing, often pursued with reference to the French corporate Duty of Vigilance. In June 2026, in Notre Affaire à Tous v Total, the Paris Judicial Court found that Total's vigilance plan was incomplete, as it failed to include the Scope 3 emissions associated with the use of Total's fossil fuel products. The company was ordered to complete an updated vigilance plan within 6 months, including appropriate mapping and measures related to climate risk. Total is appealing the decision . Another ongoing action, *Envol Vert v Casino*, will consider the liability of supermarkets for supply chain issues, and the possible application of the French Duty of Vigilance on an extraterritorial basis.

Across all jurisdictions in this guide, companies, directors and officers will be under increasing pressure to understand and address not only potential liability exposure but also the physical and transition risks posed by climate change.

Looking to other jurisdictions, litigation associated with climate-related issues may arise from other sources. In Hong Kong, for instance, the phased implementation of enhanced climate-related disclosure requirements continues. However, it is likely that such claims may give rise to increased exposure to claims for directors' and officers' liabilities, as opposed to liability claims.

United States and federal preemption

In the United States, a number of cities, municipalities and states are pursuing fossil fuel companies for their contribution to climate change, usually with associated damages being sought for a fund to cover climate-related damage or adaptation measures.

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Other states have introduced or are considering 'polluter pays' superfund legislation, requiring polluters to pay for climate-related harms. These claims and pieces of legislation have been 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. Although the courts have not, to date, ruled in favour of the Trump administration in these challenges, similar actions may follow.

Crucially, in February 2026, the US Supreme Court agreed to hear a petition brought by two major oil companies in relation to proceedings by the City of Boulder, Colorado. In 2025, the Colorado Supreme Court refused to dismiss Boulder's claim, which alleges that fossil fuel companies misled the public about the risks associated with fossil fuels, in breach of state law.

The Supreme Court heard oral arguments in October 2026. If the Supreme Court determines it has jurisdiction, and ultimately rules in favour of the fossil fuel companies, then other defendants are likely to rely heavily on the ruling in seeking dismissal of claims at state-level.

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, AFFF) continues, further individual claims for injury may follow dependent on the prevailing medical opinion.

In June 2026, the US Government reached an agreement with the chemical company, Chemours, in the sum of $450 million. The settlement covers four Chemours facilities, in West Virginia, North Carolina, and New Jersey, and includes civil penalties, programmes to mitigate PFAS discharge, and also requirements to supply clean drinking water to affected residents. This settlement followed a $2 billion settlement reached by Chemours, DuPont and Corteva with the state of New Jersey in August 2025 resolving all statewide claims related to PFAS, including AFFF claims.

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.

In May 2026, the Australian Government announced it had commenced legal action in the Federal Court of Australia against 3M Australia Pty Ltd and 3M Company for damages to recover costs relating to PFAS contamination at 28 Defence bases across Australia. The action seeks more than AU$2 billion in damages. If the action proceeds to judgment, it may provide authority on some of the issues raised above.

In the European Union, efforts have largely focused on possible regulation of PFAS as opposed to large-scale claims. A limited number of claims have been identified, often associated with consumer groups.

In March 2026, the European Chemicals Agency proposed an EU-wide restriction on the manufacture and use of PFAS, subject to specific derogations. Final opinions will be submitted to the European Commission, which will then advance a proposal to the REACH Committee, comprised of Member States. Such a move would go beyond steps taken by individual EU states.

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For example, the French Government has taken 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 have been banned, with all textiles containing PFAS banned from 2030. The phased ban may result in additional claims against non-compliant companies in the future.

This is in parallel to a growing trend of PFAS-related litigation in France. In January 2026, 192 claimants formally issued proceedings in Lyon against two industrial companies, Arkema and Daikin, alleging PFAS-related injury and associated damages. In May 2026, a number of environmental groups announced their intention to litigate against the French state in respect of alleged inaction as regards PFAS contamination.

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

In England and Wales, 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. It has been reported that a single claim has settled without prejudice to liability. A report from the UK Parliamentary Audit Committee issued in April 2026 argued that the government's PFAS Plan was disproportionately focused on monitoring and not remediation. Any change in this perspective may generate further claims.

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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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 for the pursuit of product liability actions. A review of MDL in the US emphasises the wide range of product liability actions, including in relation to talcum powder, polypropylene hernia mesh actions, 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.

In the European Union, the impact of the updated Product Liability Directive (PLD) will be closely examined, with implementation expected 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. A proposed class action advanced in Italy, relating to defective Philips CPAP machines, was ultimately ruled to be inadmissible.

In England and Wales, the Law Commission announced in July 2025 that it will be reviewing the product liability regime. A consultation document was published in October 2026 setting out a number of proposals similar in scope to those within the updated PLD.

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

- Talcum powder: In June 2026, the High Court granted a Group Litigation Order in respect of an action brought in England and Wales against Johnson & Johnson over alleged links between asbestos-contaminated talcum powder products and cancer. A similar action was commenced in Scotland in 2026 within the group proceedings framework.
- Glyphosate: A number of claims in Australia have pursued Bayer in respect of links between their Roundup glyphosate products and certain cancers. The McNickle decision ultimately brought these claims to an unsuccessful end. 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 and Wales across football, rugby union and rugby league. In Australia, the Rooke v AFL Group Proceedings will proceed to a 12-week trial in the second half of 2027.

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- 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 England and Wales on behalf of a number of claimants, with a claims cohort of between 2,000 to 3,000 affected individuals.
- Hernia mesh claims: Permission was recently granted in Scotland for a hernia mesh group action to proceed. Interestingly, permission was granted despite many of the claimants having used different hernia mesh products produced by the manufacturer. The court was satisfied that the action raised sufficiently similar or related issues.
- CPAP machines: Claims relating to defective Philips CPAP machines resulted in settlements in the United States totalling over $1.5 billion. As noted above, a proposed class action pursued in Italy was ultimately ruled to be inadmissible, but this decision does not preclude individual claims being brought, albeit subject to consideration of the financial implications.

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.

Corporate governance and securities litigation

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

In Australia, a number of unsuccessful securities class actions arguably affected the preparedness of plaintiff law firms and funders to pursue securities class actions to judgment. Until recent developments, there had been no securities class action in Australia that had succeeded at trial on liability, causation and loss. However, in April 2026, there was a landmark decision in *Southwoods v Brambles Limited*, the first judgment where a shareholder class action succeeded at trial in Australia.

Shortly after that decision was handed down, the full bench of the Federal Court handed down its decision in the shareholder class action appeal of *Crowley v Worley Limited*. In this instance, the court ruled in favour of the applicant on both causation and loss and arguably established a low threshold for establishing shareholder losses. Despite an appeal in Brambles, and an application for special leave in *Crowley*, insurers should prepare for renewed filings, more contested loss modelling and greater pressure on defence costs and settlements.

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. There are also often issues of preventing prejudice to ongoing parallel criminal proceedings, meaning it can be several years before cases are heard.

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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.

The Netherlands has also generated developments in securities litigation in recent years. Recent judgments have emphasised that Dutch courts will allow securities claims in principle, but the admissibility requirements under WAMCA must be adhered to before a claim can proceed. For example, investors in Fiat Chrysler in the Netherlands pursued an action under the WAMCA regime against the legal successor, Stellantis, for alleged losses caused by the fall in share price associated with the emissions 'defeat devices' scandal. However, the action was dismissed as inadmissible in 2025.

Finally, it has been reported that a group of over 100 institutional investors have notified Philips of their intention to pursue shareholder losses resulting from the defective manufacture of CPAP products, themselves the subject of significant litigation and settlements in the US.

Data breaches

The General Data Protection Regulation (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 continue to increase across all EU jurisdictions as the importance of data surges.

From a social inflationary perspective, it remains unclear whether an opt-out representative action in relation to breaches of the GDPR is permitted in those European jurisdictions where opt-out actions are available. A referral to the Court of Justice of the European Union (CJEU) has been made by the Rotterdam District Court, which should answer this question.

In England and Wales, a decision is awaited from the Supreme Court in *Farley v Equiniti*. The court heard representations in October on whether a threshold of seriousness applies to claims for damages under the UK GDPR and Data Protection Act 2018.

In the Netherlands, several class actions alleging breaches of the GDPR have been filed against various technology companies. At least one of these actions has been stayed pending the outcome of the above referral to the CJEU. There are also outstanding ongoing data-related claims in jurisdictions such as Italy and Germany being pursued on a representative basis.

In the Republic of Ireland in 2025, the Irish Supreme Court 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.'

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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. The first published judgment awarding injunctive relief was handed down in October 2025 and will provide a pathway for more claims to be pursued. In August 2026, a consultation was commenced relating to further proposed reforms of Australia's privacy laws.

Looking to the Americas, a longstanding draft bill to update the Argentine Data Protection Regulation would 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. More broadly, the SECURE Data Act (H.R. 8413) is a proposed federal privacy law that would establish nationwide rights of access, correction, deletion, portability and opt-out, while largely pre-empting state privacy laws. However, the bill does not contain a private right of action for consumers in respect of any breaches akin to the GDPR. The bill remains under congressional consideration and has not yet been enacted.

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

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Public Sentiment



Societal shifts in public sentiment over responsibility for certain risks form an important 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 no such 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 in the United States

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.
- On a similar note, millennials and Generation Z have also been disproportionately affected by cost-of-living concerns for several years and may hold negative perceptions towards organisations viewed as having 'deep pockets'.
- Studies by insurers have also indicated that factors such as educational attainment and political voting intention may also impact jury inclination in making higher value awards.
- Lower-income respondents have been found to support claims and broader corporate accountability.

Media coverage and plaintiff firm advertising around 'nuclear' awards arguably raise plaintiffs' expectations and make juries more inclined to award higher sums. A survey undertaken by the American Property Casualty Insurance Association and Munich Re indicated that over two-thirds of respondents agreed that advertising large verdicts desensitised the public to high jury awards.

Without broader awareness that nuclear verdicts are often substantially reduced on appeal, the public may assume that headline awards reflect typical outcomes, or that claims involving certain allegations are likely to succeed.

Notable examples show that substantial nuclear verdicts can be reduced on appeal, and that claims involving certain allegations can fail:

- In March 2026, a California judge set aside in full a jury's $950 million punitive damages award, leaving the deceased plaintiff's family with the $16 million compensatory award.
- In June 2026, a bellwether trial involving Johnson & Johnson and allegations of ovarian cancer concluded in favour of the manufacturer.

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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 dictate. Recent examples across several jurisdictions include:

- Mexico has seen notable changes in claims awards due to public policy issues. Discussed further under both the Nuclear Verdicts theme and Mexico jurisdiction, 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 2025, in *Lliuya v RWE*, a German court held for the first time that a large emitter may, in principle, be liable under German civil law for climate-change-related harm; and despite there being numerous large emitters, claimants could, in principle, seek a proportionate contribution to remedy their alleged damage. Following this decision, a further action has been brought that alleges that a cement producer and energy company respectively have partially yet materially contributed to climate change through their historical greenhouse gas emissions. This increased the risk of destructive and extreme weather events causing damage to 39 Pakistani farmers.
- Similarly, in the 2025 *Greenpeace v ENI* decision, the Italian court emphasised its supervisory role in climate-related matters, including compliance with international treaties. This finding may result in more climate-positive findings where the legal framework allows.
- In England and Wales, many of the COVID-19 business interruption decisions could be argued as being affected by considerations of public policy and 'fairness'.
- In Scotland, there are a limited number of claims decided by jury trials. When reflecting on those limited instances, it has been suggested that reasonable and fair-minded jurors may arrive at a different valuation of non-economic loss than that reached by a judge.
- 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. For example, the United States is widely acknowledged to have a system with several features that make litigation more common and more visible than other countries.

European Union

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 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. Actions pursued in the Netherlands cover a wide range of issues and are not limited to claims for injury and compensation, with consumer protection and public interest actions challenging unfair corporate behaviour well publicised. In addition, as noted below and elsewhere in this guide, landmark climate-related actions brought by activists have been pursued in the jurisdiction.

Germany is another jurisdiction with an established tradition of using collective redress mechanisms. There have been domestic representative actions commenced in Germany against Hansewerk Nature, EON and ExtraEnergie by the Federation of Consumer Organisations over energy prices. In 2026, a number of actions have been commenced on a number of other consumer issues, such as price increases, utility pricing, billing practices and web subscription agreements.

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

The impact of the RAD on claims numbers cannot be meaningfully measured yet, particularly as its implementation via domestic legislation is not complete.

It is likely that the representative action process introduced by the RAD will encourage more actions across a wide range of sectors. Whether those claims numbers will cause significant concern to insurers in the short-term remains unclear. The pursuit of a claim on a representative or collective basis does not guarantee success, and a recent action pursued in Italy reflects this reality.

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An action was commenced relating to the manufacture of defective CPAP and BiPAP devices by Philips. This action was 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. The claim in Italy was brought on behalf of European users who had suffered losses. The Court of Milan considered the admissibility of the action and, in December 2025, held the action was inadmissible. An appeal was rejected in April 2026, with the Milan Court of Appeal holding that the claims were structurally incompatible with the collective redress mechanism used. The damage suffered by each claimant varied significantly, requiring an individual assessment, and no consistent damage could be identified.

Other jurisdictions

In Australia, there is an established system for bringing class actions that is used 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.

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, England and Wales and Australia there have been examples of actions by non-governmental organisations seeking to compel companies to disclose their climate change plans or challenge net-zero plans, as opposed to claims for compensation or damages.

In the Netherlands, the first Milieudefensie action against Shell resulted in an initial groundbreaking decision which ordered Shell to reduce group-wide CO2 emissions by 2030. That initial order was successfully overturned on appeal by Shell but remains subject to a further appeal to the Dutch Supreme Court by Milieudefensie. Nonetheless, further actions have been issued by Milieudefensie seeking to influence the climate strategy of the Dutch bank ING, and to challenge Shell's future fossil fuel development plans.

In France, non-governmental organisations are challenging corporate conduct with reference to the corporate duty of vigilance. These claims are not confined to fossil fuel companies: one action concerns the alleged liability of supermarkets for harm said to arise from their extraterritorial supply chains.

In Ireland, Friends of the Earth announced in 2026 that it was pursuing the Commission for the Regulation of Utilities, in respect of a proposed roadmap for data centre expansion, which it alleges will lock Ireland into fossil fuel use for years to come.

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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 against chosen states, seeking to block those efforts.

In addition, following numerous attempts by fossil fuel companies to seek guidance from the US Supreme Court on the issue of state-law based climate litigation, in February 2026 there was an important development. The Supreme Court granted a petition issued by fossil fuel companies in February 2026 to review a Colorado Supreme Court decision, and the court heard oral arguments in October 2026.

If the US Supreme Court determines it has jurisdiction to hear the petition, it will deal with the crucial question of whether US federal law precludes state law claims seeking compensation for damage allegedly caused by the effects of interstate and international greenhouse-gas emissions. Any future ruling may resolve many conflicting rulings across the United States around the interplay of state and federal law. Any outcome is likely to prompt further activism and efforts to limit greenhouse gas emissions through the courts or other legal means.

Social deflation?

It can be argued that public sentiment can play a role in reducing the risk of social inflation. The Republic of Ireland, and England and Wales have seen examples of 'social deflation.' In those jurisdictions, this follows measures specifically aimed at reducing insurance claims costs, and by extension, insurance premiums.

In the Republic of Ireland, prompted by public perceptions around unmeritorious or unjustified personal injury claims, measures undertaken 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. However, available data points to an increase in litigation costs associated with personal injuries claims and an increase in the cost of motor damage claims. Proposals in 2025 to increase the guideline figures for valuing personal injury claims by an average of 16.7% were criticised by insurance and consumer groups.

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These changes were 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. The whiplash 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.

In January 2026, the Association of Consumer Support Organisations reported the number of personal injury claims recorded by the Compensation Recovery Unit had fallen by more than half in 2025 compared to 2018, with a 58% reduction in motor injury claims specifically. Consumer groups identify the whiplash reforms as the reason for this marked change.



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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).

In recent years, 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 in other regions is largely 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 civil jury trials, combined with 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 often in line with prevailing public sentiment.

Nuclear verdicts are not limited to specific types of risk either. Examples of individual claimants being awarded sums exceeding $10 million recently include:

- In December 2025, a Baltimore, Maryland jury awarded $1.56 billion to a female plaintiff who allegedly developed mesothelioma from talcum powder usage, with $1.5 billion forming the punitive damages element.
- In December 2025, a Minnesota jury awarded $65.5 million to a female plaintiff who allegedly developed mesothelioma, again from talcum powder usage.
- In March 2026, a California jury awarded $33 million to a male plaintiff who allegedly developed mesothelioma due to exposure to asbestos-insulated cables used for studio and theatrical lighting.
- In June 2026, a California jury awarded $52.1 million to a male plaintiff injured in a collision with a truck.

The application of significant compensatory or 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 Los Angeles; New York City; South Carolina (asbestos litigation); Louisiana (coastal litigation); Philadelphia Court of Common Pleas; St. Louis, Missouri; King County, Washington; and Cook, Madison and St. Claire Counties in Illinois have been identified as judicial hellholes.

Defendant activist groups, such as the American Tort Reform Association and US Chamber of Commerce Institute for Legal Reform, continue to push for tort reforms in various US states. There have been examples of states pursuing tort reform in order to mitigate the risk of nuclear verdicts, also discussed in the section on Claimant Strategy:

- 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.
- Senate Bill 413 in Kansas would have prevented legal representatives from making representations in respect of damages for noneconomic loss, but the legislation was not passed.
- 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.

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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.

The section on Public Sentiment also notes that a jury award, particularly those significant awards for punitive damages, is not necessarily indicative of the final sum payable by a defendant, as nuclear verdicts are often reduced on appeal.

Mexico as comparison

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. It has been expressly recognised that indirect victims, such as spouses and children, may claim compensation for moral damage where they can demonstrate actual harm. Under this approach, the purpose of compensation shifts away from a focus on damages such as treatment and injuries and instead concentrates on the disruption of life trajectories and family dynamics, resulting in the prospect of broader (and more costly) actions.

Therefore, although the likelihood of a 'nuclear verdict' (based on the definition for the United States) in Mexico is relatively 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.



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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.

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 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.' Punitive damages are not commonly awarded in Hong Kong and are limited in scope.

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. In Scotland, despite the availability of civil jury trials on a limited basis, damages are intended to be compensatory. Punitive damages are not available.

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 do not allow for punitive damages.

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Claimant Strategy



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

Anchoring argument and reptile theory

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 to use them 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 in 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.

There are increasing examples of resistance to these strategies. Georgia Senate Bill 68 prevents plaintiff legal representatives from 'anchoring' 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'.

In Kansas, a similar attempt to enact specific legislation to address 'anchoring' arguments failed in March 2026. Senate Bill 413 would have prohibited suggestions to a jury in respect of damages for non-economic loss, such as specific or ranges of dollar amounts, mathematical formulas or other objects or values.

In Pennsylvania, House Bill 1913 would allow both plaintiff and defence representatives to suggest and argue specific dollar amounts and mathematical formulas for non-economic damages during closing arguments. Arguing for a specific sum would have to be disclosed to the judge and opposing party prior to closing arguments. The bill remains subject to the legislative process.

Expert evidence/causation

The United States is also considered a novelty in that significantly conflicting expert evidence may be presented, provided any opinions meet any relevant admissibility standards applicable to the court in question, such as Federal Rule of Evidence 702.

As an example, the risk to humans from the pesticide glyphosate is subject to disagreement between various health organisations. Nonetheless, there have been a number of outcomes in the United States where substantial damages (both general and punitive) have been awarded to plaintiffs alleging a link between their exposure to glyphosate and illness suffered such as non-Hodgkin lymphoma.

There have also been recent examples where expert testimony alleging a link between a plaintiff's illness and products such as glyphosate has been excluded for not reaching the appropriate admissibility criteria. In 2025, the U.S. Court of Appeals for the Ninth Circuit in *Engilis v Monsanto* held that an expert's opinion was inadmissible where the expert failed to consider that a plaintiff's obesity was a potential independent cause of the cancer plaintiff alleged was caused by exposure to glyphosate. And, before the proposed settlement of the talc litigation against J&J, a federal judge presiding over one of the bellwether MDL trials raised concerns that expert testimony on behalf of the plaintiffs had been unable to completely rule out other causes of the plaintiff's ovarian cancer.

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The above examples reflect the appropriate restrictions in the United States on expert opinion but make clear there remains capacity for plaintiffs to mount successful actions which might otherwise fail in other jurisdictions. Considering the issue of glyphosate in particular, the Federal Court of Australia has previously found that the available scientific evidence does not support a link between use of the Roundup product and non-Hodgkin lymphoma diagnoses. This decision effectively brought glyphosate-related injury litigation in Australia to an end.

In our view, those bringing analogous claims in European nations would face similar difficulties due to causation arguments. The development of the ongoing claims in Scotland, England and Wales in relation to alleged illness caused by talcum powder usage will be awaited with great interest with reference to this issue.

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, Hong Kong, Argentina, Mexico and Israel.

Simply put, there can be no meaningful comparison between the strategies open to legal representatives in these jurisdictions and those available to legal representatives in the United States.

Compensatory strategies

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 largely prohibited or, where permitted, are limited to exceptional circumstances, as set out under Nuclear Verdicts.

In some jurisdictions, 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. Nonetheless, 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 in the section on Litigation Funding.

Strategic litigation

Claimant strategies also extend beyond monetary compensation. In Scotland for example, claimant-side tactics can involve orthodox procedural steps such as seeking a civil jury trial. In addition, there are examples of strategic litigation pursued in Scotland, such as judicial review. Although these actions have not specifically focused on the types of risks that may give rise to social inflation, insurers need to be aware of such challenges.

These strategic actions, including those advanced by activists, have occurred in other jurisdictions. Intended to influence domestic or international legal reform on certain issues, these claims 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-related claims brought by activists are a good example of strategic litigation, as discussed further under Emerging Risks and Public Sentiment.

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The European Court of Human Rights decision in *Verein KlimaSeniorinnen v Switzerland* provided an early example of attaining a specific aim through the explicit recognition of a link between climate change and human 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 a state's legal duties but also made clear these duties extend to the regulation of private actors such as companies in their jurisdictions.

The implications of these opinions are significant and especially welcomed by environmental groups looking to challenge domestic policymaking or corporate behaviour. The opinions placed corporates squarely within future regulatory crosshairs, and the subsequent risk of associated litigation, particularly those in jurisdictions that respond to these advisory opinions.

Against this backdrop, recent years have also seen strategically framed climate-related litigation brought in European courts against fossil fuel companies. The German judgment in *Lliuya* is one such example. A Peruvian farmer sought a proportionate sum from a German fossil fuel company to cover flood risk alleviation measures. Although the action was unsuccessful, the judgment confirmed that the claim, brought in Germany, was legitimate irrespective of national borders or distance between victim and polluter.

Since the decision in *Lliuya*, a further action has been commenced in Germany by a group of Pakistani farmers against two large companies, for their alleged contribution to climate change, which resulted in extreme weather and associated damage. That action seeks to rely upon the precedent established in *Lliuya*. A similar action has been commenced by a Filipino community in the High Court in London against a fossil fuel company, relating to damage caused by Typhoon Odette, an extreme weather event allegedly exacerbated by climate change. The Filipino community is seeking compensation from the fossil fuel company proportionate to its contribution to climate change.

As set out below, these actions have given rise to concerns as regards forum shopping for similar actions in the future.

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Forum shopping

In England and Wales, there have been examples of claimants pursuing actions that would have ordinarily been pursued where the damage or injury took place, such as Vedanta, Okpabi and the Fundão Dam action, and those climate actions mentioned above. 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.

Scotland has also seen an example of this type of forum shopping. The 2022 decision in Campbell v James Finlay (Kenya) held that a group of Kenyan tea plantation workers could bring a claim in Scotland against a Scottish company in respect of injuries suffered in Kenya.

Looking to mainland Europe, the introduction of the Representative Actions Directive (RAD) raised questions of the prospect of forum shopping across EU Member States. There remains a limited but growing list of representative entities currently qualified to bring cross-border actions.

We are yet to see the emergence of significant numbers of cross-border actions. The prospect of certain jurisdictions and types of actions attracting the interest of funders and legal representatives is considered further within the section on Collective Redress. In the absence of complete transposition, the absence of full implementation of the RAD across the European Union (such as Spain), with 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 jurisdiction where forum shopping has been discussed 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 those elected judges, whether intentionally or otherwise, will favour claimants, particularly where a decision could potentially increase chances of re-election.

It has been suggested that claimant firms could engage in forum shopping, deliberately pursuing claims in courts perceived as being sympathetic to claimants. However, to date, those concerns have proved to be hypothetical.

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United States



Collective redress

The US 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.

In December 2025, Rule 16.1 of the Federal Rules of Civil Procedure was implemented, introducing rules-based practices and procedures for MDL, including the development of early case management plans. Rule 16.1 offers flexibility for the courts in outlining steps that should be taken but leaving scope for judicial discretion.

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 scale of MDL, the Johnson & Johnson Talcum Powder Product Litigation had over 68,000 actions pending at the start of June 2026. By contrast, the Roundup Products Liability Litigation had around 4,000 actions pending, while the GLP-1 Products Liability Litigation had around 3,700 actions pending.

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 US 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 US 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.

Litigation funding falls into two distinct categories, consumer and commercial. Consumer funding exists between an individual plaintiff and funder, for example, the use of cash funding to assist with the pursuit of a personal injury claim. Commercial arrangements may also exist between funders and law firms directly (such as for mass tort actions) or through the financing of significant lawsuits brought by corporations. Both types of funding enable claims that might not have been ordinarily pursued, increasing claims numbers and costs.

Federal measures

Currently, there is no federal duty of disclosure when a funding agreement is in place for a federal claim that applies to all courts in the US federal system.

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 whether approval is 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 from entering into any funding agreements without judicial approval, to avoid 'predatory' funders offering advances on settlement sums.

The issue of disclosure, along with the source of funding, continues to receive the focus of congressional attention, with particular focus on the pursuit of mass tort and class actions.

Numerous bills have been introduced to bring greater regulation of this space:

- In February 2026, the Litigation Funding Transparency Act of 2026 was introduced in the House of Representatives in response to concerns about transparency of funding, specifically money received from foreign entities and governments. The bill would compel disclosure of a funding agreement where the action is a mass tort or class action, and the funder is a commercial enterprise, foreign state, foreign person or sovereign wealth fund not party to the action. A statement issued by the bill's sponsors emphasised that commercial enterprises may be exempted if the agreement requires repayment of a loan or reimbursement of fees paid, as opposed to those receiving *"something greater in value than what was granted or given."*
- A similar bill, the Litigation Transparency Act of 2025, was introduced in the House of Representatives in February 2025 and would require the disclosure of third-party litigation funding in all federal civil cases. At the time of writing, there have been no further developments since a consideration of the draft legislation held by the House Judiciary Committee in November 2025.
- The Protecting Our Courts from Foreign Manipulation Act of 2025, introduced in the House of Representatives in April 2025, 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. In November, a companion bill was introduced in the Senate. The House bill has been recommended for consideration by the House Judiciary Committee but has proceeded no further.

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These proposals are in step with public opinion on the issue of foreign influence on US litigation. 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.

State measures

A number of states have enacted their own legislation to respond to the increasing use of litigation funding, and concerns around the practice. 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 may also establish fee caps on the total amount to be repaid from any judgment or settlement or may choose to limit the annual fees charged against the original amount provided to the plaintiff.
- Disclosure of funding agreements: States including 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.

In February 2026, New York introduced its own regulatory framework for litigation funding via the Consumer Funding Litigation Act, combining the measures discussed above. Funders would be required to register with the Department of State, fees would be capped at 25% of gross recovery from the litigation, and funding companies would be forbidden from unduly influencing claim strategy or settlement decisions. Since the previous edition of this guide, states including Ohio and Louisiana have introduced similar measures, and other states, such as Maryland, are considering their own measures.

Currently, California permits the use of litigation funding with regulation drawn from existing consumer legislation and emphasis on ethical considerations for legal representatives. However, California Assembly Bill (AB) 2305 would introduce a comprehensive statutory framework for litigation funding in the state to specifically limit the influence of funders on actions. AB 2305 remains subject to the legislative process in the state.



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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.

Other states have taken a more direct approach to restricting litigation funding.

In June 2026, the Governor of North Carolina signed into law House Bill 315, the Prohibit Litigation Investments Act. The legislation makes it unlawful for a person or company to engage in 'litigation investment' in North Carolina.

'Litigation investment' is defined as including direct payments, loans or investments to cover fees, costs and expenses in exchange for a right to receive payment or other consideration contingent on the outcome of the relevant proceedings. The policy statement accompanying the legislation identifies a number of alleged risks associated with litigation funding, including national security (also discussed below) and undue influence on the litigation process.

Although the litigation funding industry in the US is robust, there are alternative means of funding legal actions. Some insurers offer judgment preservation policies which allow plaintiffs successful in securing significant monetary judgments – including at trial, on summary judgment, or at arbitration – to 'lock in' some or all of a damage award while appeals are ongoing.

Overall, the US houses a claims environment in which plaintiffs are comfortable seeking external financing. However, the use of external financing has given rise to broader concerns regarding transparency, fairness and the potential influence of funders, particularly those based outside the US.



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Emerging risks

The US is often at the epicentre of emerging liability litigation risk.

Product liability risk

A substantial proportion of MDL involves product liability. Therefore, insurers need to be mindful of product liability risks arising through the development of new products. In that regard, in June 2026, the US Supreme Court – in *Monsanto v. Durnell* – provided guidance on the risk of liability in future 'failure-to-warn' claims at state level.

Durnell involved claims against the manufacturer of the weed killer Roundup, now Bayer, for failing to include cancer warnings on Roundup products containing glyphosate, which plaintiffs allege causes cancer. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) gave the US Environmental Protection Agency (EPA) regulatory control over Roundup's labelling and packaging, and the EPA previously concluded glyphosate did not cause cancer. Consequently, the EPA did not require cancer-related warning labels on Roundup and the Court concluded that plaintiffs' state law 'failure-to-warn' claims were pre-empted by FIFRA.

Durnell is likely to have wider implications, particularly where federal laws do not require warnings and are found to pre-empt state laws that do. In the meantime, other longstanding actions continue.

The statistics report for MDL shows details of those significant actions proceeding within the US and provides guidance as to where further claims may arise. Examples include:

- Johnson & Johnson ("J&J") Talcum Powder Products Marketing, Sales Practices and Products Liability litigation.
- Polypropylene Hernia Mesh Products Liability litigation.
- Hair Relaxer Marketing, Sales Practices and Products Liability litigation.
- GLP-1 RAs Product Liability Litigation
- Juul Labs, Marketing, Sales, Practices and Products Liability litigation.

Liability risks

Touching on specific liability risks, the MDL against J&J relating to talcum powder marketing and liability involves claims by users of J&J's talc product alleging they developed mesothelioma and/or ovarian cancer.

In July 2026, it was announced that J&J had reached a proposed global settlement of the claims asserted within and without the MDL. The proposed settlement is valued at approximately $5.5 billion. The settlement is contingent upon 95% of plaintiffs accepting the terms. As of this writing, that threshold has not been met.

Prior to the proposed settlement, there had been a number of settlements, judgments, and jury decisions that had provided insight on how talc powder claims were addressed in the US, and the possible damages awards plaintiffs could expect in those cases. Specifically:

- In June 2024, J&J agreed to pay $700 million to settle an investigation by numerous US states into the marketing of its baby powder and other talc-based products blamed for allegedly causing cancer.
- In December 2025, the first bellwether trial forming part of the Californian Judicial Council Coordinated Proceedings against J&J (separate to the federal MDL) was decided in favour of two women who had allegedly developed ovarian cancer. The women were awarded total damages in the amount of $40 million. However, in June 2026, a second bellwether trial in California was decided in favour of J&J.

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- Individual claims against J&J are ongoing, often resulting in significant nuclear and thermonuclear verdicts. In December 2025, a Minnesota jury awarded $65.5 million in damages to a female plaintiff who allegedly developed mesothelioma resulting from her use of J&J baby powder. In that same month, a jury in Baltimore, Maryland, awarded $1.56 billion to a female plaintiff who also developed mesothelioma, with $1.5 billion of that amount reflecting punitive damages. It is understood that this decision will be appealed. As discussed in the section of nuclear verdicts, a significant punitive damages award made by a jury in California was dismissed by the judge in its entirety.

These outcomes will remain relevant as the proposed settlement will not bind future claims brought against J&J. Reflecting that, individual claims against J&J remain ongoing, often resulting in significant nuclear and thermonuclear verdicts.

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.

It is important to note that certain product liability risks are not necessarily the subject of MDL. Reflecting upon state-level actions can also provide an insight into emerging risks. One such example is silicosis / silica dust claims, which are not subject to MDL but have resulted in settlements or judgments in states such as California.

Litigation involving ultra-processed food (UPF) is also an emerging risk for manufacturers and distributors. The City of San Francisco commenced an action against a number of food and beverage companies in late 2025, but the first major product liability action brought by a consumer was filed in April 2025. The action, again brought against major food companies, relates to the alleged addictive nature of UPFs.

Glyphosate

Glyphosate-related claims have been the subject of both MDL (Roundup Products Liability Litigation) and individual claims. More than 4,000 actions remain in the MDL, with a larger number of claims being pursued through separate claims.

In February 2026, Bayer announced a provisional settlement proposal to settle current and future claims on a nationwide basis for approximately $7.25 billion. The proposed settlement would allow those individuals who can prove a diagnosis of non-Hodgkin lymphoma and exposure to Roundup to file a claim for a portion of the settlement for up to 21 years after the settlement. At the time of writing, the proposed settlement remains subject to challenge by plaintiff representatives.

As part of Bayer's wider approach to managing and mitigating the risks posed by glyphosate litigation, the company sought a favourable ruling in the US Supreme Court on a federal pre-emption question that would prevent state law 'failure to warn' claims from moving forward. These claims allege that Bayer failed to follow state laws when not including a cancer risk on its label. As noted above, the EPA has concluded that glyphosate does not cause cancer and has not required labelling warnings.

Bayer was successful in obtaining that ruling in *Durnell*, as the Supreme Court held that state-based 'failure to warn' claims are pre-empted by federal labelling laws. The outcome was received favourably by Bayer, which has stated that the decision should result in the dismissal of all warnings-based claims and prevent future claims on a similar basis.

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Social media addiction

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 allegedly 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 contains claims from state attorneys-general, and public nuisance claims from school districts and other municipal bodies.

As part of the MDL, judgment in a bellwether trial was handed down in March 2026. The judgment found in favour of the plaintiff, holding the social media companies liable for her injuries, including anxiety, depression and body dysmorphia. Total compensation of $6 million was awarded, split equally between compensatory and punitive damages.

A further action within the MDL brought by a number of US states against Meta also proceeded to trial. The states were seeking damages and also significant changes to the operation of Meta's platforms, such as the end of infinite scroll, and the implementation of age restrictions. In late August 2026, it was announced that a financial settlement had been reached in this action, as well as an agreement that Meta would implement a number of changes to its platforms in relation to child safety.

Judgments of interest have also been handed down in New Mexico. In March 2026, Meta was ordered to pay $375 million for alleged breaches of the New Mexico Unfair Practices Act and creating a public nuisance. In August, it was ordered to pay a further $567 million into a public fund addressing the alleged adverse health effects of its platforms.

Biometrics

The issue of biometrics remains relevant to those pursuing, funding and defending class actions, although the number of settlements to date may suggest that this issue is not necessarily a truly emerging risk.

The state of Illinois 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 were 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.

In August 2024, an amendment to BIPA changed 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.

It is 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. Another one of these states, Texas, also reached a $1.4 billion settlement with Meta relating to the state's Capture or Use of Biometric Identifier Act in 2024. A further $1.375 billion settlement with Google for claims alleging violations of this Act and the Deceptive Trade Practices-Consumer Protection Act was reached in 2025.

AI-adjacent risks

The integration of artificial intelligence (AI) may also prompt concerns about other types of claims. There is MDL ongoing against OpenAI relating to copyright infringement, and there is the emerging possibility of claims resulting from injury (such

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as mental health outcomes) or data loss resulting from the AI systems.

There have already been examples of claims brought against AI companies relating to personal injuries sustained as a result of interaction with AI models or chatbots. In January 2026, settlements were announced in actions brought against Google and Character.AI relating to allegations of harm to minors, including one instance of contributing to a teenager's suicide.

Similar actions have been filed since that settlement, including an action alleging that a chatbot instructed a user to commit suicide. In June 2026, the state of Florida announced its own action against OpenAI, alleging that ChatGPT had been aggressively marketed despite safety concerns.

Reflecting the growing range of actions that may include links to artificial intelligence, it was announced in the same month that a class action had been commenced by residents of Oxford, Mississippi. The action relates to alleged disturbance and public nuisance caused by excessive and offensive noise created by a power station providing for nearby data centres. Three residents filed the case on behalf of a class estimated at more than 10,000 members.

A number of securities class actions are also underway in the US 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.

Video game addiction

Video game addiction lawsuits are also being filed in the US. 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.

Numerous defendants in one of the actions proposed for consolidation, Angelilli v Activision Blizzard, were 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.

At the time of writing, numerous claims continue to progress with no major verdicts issued yet. However, actions continued to be filed, and the first major judgment is awaited with great interest.

Considering the intersection of technology and products, Tesla has faced 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 totalled over $240 million. In February 2026, a judge upheld the decision.

PFAS

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 they had reached an $875 million settlement with the state of New Jersey. The settlement related to claims including alleged pollution associated with PFAS. In June 2026, Chemours also announced a $450 million settlement covering four facilities located in West Virginia, North Carolina and New Jersey, including civil penalties and funding for PFAS remediation programs.

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Climate change litigation

Finally, the issue of climate change continues to generate concerns around increased risk and claims costs for corporates and their insurers in the US.

Noteworthy claims by activists in the US ruled on to date have focused on enacting legislative change at the state or federal level. A wide range of claims have been issued by states, counties and cities against fossil fuel companies, alleging responsibility for actual and proximate contribution to climate change, with associated damages being sought for a fund to cover climate-related damage.

Looking to the wider issue of policy interpretation, 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 insured were excluded.

These various 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.

In 2026, the state of Michigan brought an action against numerous fossil fuel companies pursuant to state and federal antitrust legislation, alleging an unlawful conspiracy to prevent meaningful competition from renewable energy and maintain dominance in primary and transportation energy. This action was dismissed in late September 2026 but demonstrates the range of legal remedies being pursued by a number of states in response to climate change.

In contrast, there have been a number of actions taken at both state-level and federally, to prevent the emergence or continuation of litigation risk which can contribute to social inflation.

Some states, rather than pursuing litigation against fossil fuel companies, are implementing measures designed to shield fossil fuel companies from liability for climate-related damages, akin to the aforementioned legislation for certain products such as glyphosate in select states. In Utah, House Bill 222 (Limitation of Actions) was signed into law by the state's governor in March 2026 to this end. Similar legislation also has been advanced in other states, including Tennessee, Iowa, and Oklahoma.

At the federal level, the US Department of Justice (DOJ) 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. The DOJ actions against Michigan and Hawai'i were dismissed, albeit the subsequent action pursued by Michigan was itself dismissed as set out earlier in this section. The DOJ commenced a similar action against the state of Minnesota in May 2026. The outcome of that action was not available at the time of writing.

In late August 2026. federal courts in New York ruled that the state's Climate Change Superfund Act was pre-empted by federal law, representing a significant obstacle for state-level climate-recovery legislation.

In February 2026, the Environmental Protection Agency (EPA) also announced the rescission of its 2009 Endangerment Finding, which had concluded that current and projected concentrations of GHG emissions posed a threat to public health and welfare, allowing the prescription of emissions standards. That decision is subject to challenge.

Finally, also in February 2026, the US Supreme Court agreed to hear a petition brought by two major oil companies in relation to proceedings by the City of Boulder, Colorado. In 2025, the Colorado Supreme Court refused to dismiss Boulder's claim, which alleges that fossil fuel companies misled the public about the risks associated with fossil fuels, in breach of state law. Oral arguments were heard in October 2026. If the Supreme Court determines it has jurisdiction to hear the petition and rules in favour of the fossil fuel companies, defendants are likely to rely heavily on the ruling in seeking dismissal of similar actions at state-level.

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Public sentiment

Public sentiment carries a disproportionately significant impact on civil claims in the US. Public willingness to pursue litigation increases claims. The availability of civil jury trials in the US 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 perceived fairness rather than legal grounds.
- Increasing mistrust of large businesses, corporations and the legal system itself in the US.
- 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 Gen 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.
- A September 2025 study published by Swiss Re on the behavioural factors affecting litigation indicates there was a correlation between income and support for litigation. Lower-income respondents to the study were found to be more likely to support claims, and broader corporate accountability.
- The APCIA / Munich Re survey referred to above suggests that public sentiment on certain issues such as litigation funding are in lockstep with legislative efforts to prevent third party foreign investors in civil claims.
- However, public sentiment on the issue of nuclear verdicts seems to vary dependent on the question raised. The APCIA / Munich Re survey highlighted a number of findings as follows:
- 75% of respondents believed that jury anchoring would increase the size of jury awards.
- 67% of respondents agreed that nuclear verdicts would increase the costs of insurance in the US.

In contrast, the Swiss Re study indicated that, in 2025, 73% of respondents believed that punitive damages against companies created corporate deterrence.

There appears to be an acceptance that claimant strategies (discussed below) would create increased awards, but that this is also the best way to deter corporate wrongdoing.

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Nuclear verdicts

This term, or the alternative term 'shock verdicts,' is often used to describe civil jury verdicts awarding damages of $10 million or more, usually in relation to a single verdict (the total sum agreed or awarded to a class or group of claimants 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 US.

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). The 2025-26 ATRF report on this issue highlights the following locations and courts as allowing innovative lawsuits and welcoming litigation tourism: Los Angeles; New York City; South Carolina (asbestos litigation); Louisiana (coastal litigation); Philadelphia Court of Common Pleas; St. Louis, Missouri; King County, Washington; and Cook, Madison and St. Claire Counties in Illinois.

Analysis by Marathon Strategies released in August 2026 indicates that the median value of nuclear verdicts increased from $44 million in 2023 to $51 million in 2024, before declining to $32.5 million in 2025. This decline is attributed to an increase in 'smaller' nuclear verdicts, specifically those barely clearing the $10 million threshold, and a change in the composition of cases.

Their figures also noted that 190 lawsuits had resulted in a nuclear verdict in 2025, an increase of around 40% over 2024.

As noted in the US section on public sentiment, nuclear verdicts are often reduced on appeal. One significant example was the decision of a judge in Pennsylvania in a glyphosate-related action to reduce a $2.25 billion award to $400 million in June 2024. Both punitive and compensatory damages were significantly reduced. As noted above, in March 2026, a judge in California dismissed a punitive damages award made by a jury in talc-related litigation in the sum of $950 million in its entirety, leaving the plaintiff's family with the compensatory award of $16 million.

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.

Fatal or serious road traffic collisions often generate significant nuclear verdicts, as with the significant award against Tesla noted above. In 2024, one such verdict in St. Louis resulted in a $462 million verdict against a trucking company, although it was reduced to around $120 million on appeal.

Tort reform

In response to nuclear verdicts and claimant behaviour in certain states, there have been considerable efforts by organisations such as the American Tort Reform Association to reform the civil justice system across the US to address nuclear verdicts. While a number of states have existing statutory punitive damage caps, many of the reforms being introduced are focused on the behaviours and wider environment driving nuclear verdicts such as litigation funding and claimant strategies.

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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 US 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. In Europe, similar claims would be unlikely to succeed without a causative link. However, in the US, substantial damages (both general and punitive) have still been awarded by juries to successful plaintiffs.

One claimant strategy, known as 'jury anchoring,' invokes 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 the introduction of Senate Bill 68 in Georgia in 2025. The Bill prevents plaintiff legal representatives from arguing the value of non-economic damages until closing arguments, with any such argument 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

In England and Wales, there are a number of established routes through which multi-party actions may be pursued, each with its own process and costs consequences. The courts have shown increasing willingness to adopt flexible case management approaches to accommodate large-scale, complex claims.

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 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 pursue an action on behalf of a defined class, with any decision binding on any other party affected, unless they choose to opt out to preserve their own rights to pursue the claim. Opt-out actions can significantly increase quantum exposure and settlement pressure for defendants.

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

- **Group litigation orders (GLOs):** CPR Part 19 Section III and Practice Direction 19B deal with GLOs. In short, GLOs manage multiple claims with "common or related issues of fact or law." The limited use of GLOs is indicative of the availability of more flexible approaches to collective redress in England and Wales.

  Claimants have to opt in to join the Group Register before a cut-off date decided by the judge. Actions where GLOs have been granted include vehicle emission 'defeat device' litigation, the PIP breast implant litigation, the British Airways data breach claim, and some financial services claims. In June 2026, a GLO was made in respect of The Johnson & Johnson Baby Powder Litigation.

- **Representative claims:** where one or more claimants has the 'same interest' in the claim, the court may order the claim to be brought by a claimant as a representative on behalf of all claimants. CPR 19.8(4) enables these claims to proceed on an opt-out basis. However, the authoritative decision in *Lloyd v Google* highlighted the difficulty of satisfying the 'same interest' requirement where damages require individualised assessment. The decision in *Lloyd v Google* and the subsequent decision in *Prismall v Google & Deepmind* emphasised the issues with bringing representative action for breaches of data protection legislation and for misuse of private information claims, respectively.

  Judicial findings in the dismissed securities claim of *Wirral Council v Indivior* highlighted that a court will consider case management - and whether the representative procedure is the most appropriate mechanism - when exercising its discretion whether to allow a representative claim to continue.

- **Multiple joint claims:** These claims involve multiple claimants using a single claim form (sometimes referred to as an 'omnibus claim form'), if they can show their action can be "conveniently disposed of in the same proceedings" (CPR 19.1). The recent decision in *Morris v Williams & Co Solicitors* emphasised that this mechanism is flexible and less restrictive than other routes. The question of 'convenience' will be determined on the facts of each case, and this route has become increasingly popular for large consumer, environmental and product-related claims.

  The BHP/Fundão Dam action, involving more than 600,000 claimants, is the largest single group claim in UK legal history. The action is brought by multiple claimants on an opt-in basis, and it illustrates the ability of the English courts to manage large, transnational, mass claims involving complex factual and expert evidence.

- **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, who may or may not be a member of the defined class. Claims 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, with certification acting as a key gateway stage focusing on suitability and funding arrangements.

  In February 2026, the Supreme Court offered clarity on the CAT's discretion to certify opt-out actions, emphasising that the merits of claims and opt-in practicability will influence the commercial viability of business-to-business collective actions, with opt-in models likely to play a more prominent role.

  The long-running *Merricks v Mastercard* action is the most prominent collective proceedings settlement. In May 2025, the CAT held the £200m settlement, which was considerably lower than the original £14bn claim, was "just and reasonable" to class members despite a challenge by the class's litigation funder.

  The CAT has delivered a handful of trial judgments, of which one, *Kent v Apple*, has been successful. Apple is expected to pay damages of £1.5bn (c.£40 per class member) for unfair pricing of apps sold on its mobile App Store, and clarification

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on the distribution of damages should follow later this year. While the pace of new claims has slowed in the last two years, there is a substantial pipeline of certified and pending claims, particularly follow on damages actions and claims against telecoms and tech giants Vodafone, Apple, Microsoft and Amazon.

Possible reform and future developments

Current trends for collective redress in England and Wales indicate a growing concentration of collective actions in areas such as competition law, data/privacy breaches, ESG-related disclosures, environmental harm, and consumer protection claims, which may create systemic exposure risks for corporate defendants and their insurers. In light of these trends, the need for effective collective redress systems is clear.

In 2025, the Department for Business and Trade commenced a call for evidence that closed in October 2025, directed specifically at the opt-out collective action regime in the CAT. Focused on concerns about costs, effectiveness and limited precedent on damages and distribution in the decade since its introduction, it is expected that a full consultation will follow.

In July 2026, the Department for Business and Trade commenced a formal consultation seeking views on proposals to reform the regime building on responses received to the initial call for evidence. The consultation document notes that the government believes that the threshold for certification is too low, requiring an amendment of the law. In addition, the consultation seeks views on allowing damages-based agreements (DBAs) for funding opt-out collective action claims.

Finally, in April 2026, the Law Commission announced that the government had tasked it with considering whether the way in which consumer laws are enforced could be strengthened by introducing a consumer class actions regime. The terms of reference confirm that the Law Commission will consider whether any such regime should allow for opt-in as well as opt-out claims. The Law Commission expects formally to start work on the project in autumn 2026, following industry responses to an initial scoping questionnaire.



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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 across individual claims and group actions. This has allowed claims to progress which previously may have failed due to lack of funds, or where it was considered uncommercial to bring individual claims. Funding is essential in group litigation to pay the claimants' costs and to cover liability for the defendants' costs should the claimants lose.

Currently, litigation funders in England and Wales are self-regulated. Some are members of the Association of Litigation Funders, which abides by a 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. 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, particularly where issues of security for costs, conflicts of interest or adequacy of funding arise.

Funding agreements usually result in the funder taking its 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 law 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 action lawsuits.

Post-PACCAR environment

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 that 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, thereby creating immediate uncertainty for both existing and prospective collective proceedings. The decision had significant consequences for collective redress mechanisms in England and Wales.

In December 2025, the government announced it would legislate to reverse the effects of *PACCAR* and clarify LFAs are not DBAs. This was reiterated in the consultation document issued in July 2026 on the efficiency of the opt-out collective action regime (discussed above in the collective redress section).

Nonetheless, there was no reference to any legislation in the King's Speech in May 2026 and Parliamentary discussions in September 2026 indicated that no timetable for the introduction of the legislation exists.

Pending the passing of the aforementioned legislation, 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. In *Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd*, the Court of Appeal held that LFAs where funders' fees were calculated

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based on multiples of outlay, subject to a cap, are not DBAs. Furthermore, conditional language allowing recovery based on damages pending future legislative change did not convert the LFA into a DBA, providing interim certainty and facilitating the continuation of funded claims.

Civil Justice Council

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, while recognising the need to enhance transparency, accountability and consumer protection. In addition to its recommendation to reverse PACCAR, it also recommended 'light-touch' regulations to replace existing self-regulation.

These would require that:

- 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.
- A King's Counsel should provide independent advice 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 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, and no further proposals have been published.

The government has stated it intends to introduce "proportionate regulation" of litigation funding, expected to include many of the CJC's "light-touch" recommendations although, as noted, the timing and precise scope of reform remain uncertain.

In July 2026, the Solicitors Regulation Authority launched a consultation on proposals to strengthen the regulatory obligations applicable to solicitors and firms when arranging funding for high-volume consumer claims.

The Law Commission consultation on consumer class actions, announced in April 2026, will also consider the funding of any such claims, with reference to the CJC report.

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Liability risks

Liability risks generating multidistrict litigation and mass tort actions in the United States, such as concussion, talcum powder and PFAS, are starting to be the subject of claims in England and Wales. However, to date, there have not been significant reported settlements or positive judicial precedents established.

Reported actions of this kind in England and Wales include the following:

- 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. In June 2026, a Group Litigation Order was made in respect of the claims designating them as The Johnson & Johnson Baby Powder Litigation. Case management of the actions continues.
- The legal representatives for The Johnson & Johnson Baby Powder Litigation 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. At the time of writing, no further developments had been reported.
- In addition, those same representatives also announced in July 2026 their intention to launch a potential claim related to social media addiction and associated harms. At the time of writing, no further developments have been reported.
- Group litigation test cases for sports-related concussion and head injury claims, covering football, rugby league and rugby union are currently progressing. The actions allege that the respective sporting governing bodies failed to implement adequate concussion risk management, despite a knowledge of the risk. At the time of writing, reporting indicates that the rugby-related actions have been the subject of further case management and developments are expected later in 2026.

PFAS

As concern grows over the impact of PFAS on both the environment and people, further regulations on their use (and exposure) may be introduced. The UK government published its PFAS Plan in February 2026, setting out a vision which would not only tackle existing PFAS risks, but also reduce and manage ongoing exposures.

In April 2026, the UK Parliamentary Environmental Audit Committee published a report on the risks posed by PFAS in the UK. The report concluded that the government's PFAS Plan was disproportionately focused on PFAS monitoring as opposed to remediation or preventing contamination. The report argued that self-regulation is not enough and called for stronger action. The government response to the Audit Committee in July 2026 suggested that closer alignment with the EU on these issues may be considered, but no commitments beyond those set out in the PFAS Plan would be made.

In any event, any additional regulations resulting from these discussions 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 portfolios from insuring such products or companies.

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Product liability

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, so does the risk of inherent defects generating litigation. In late July 2025, the Law Commission announced that it would be reviewing the law relating to defective products to consider technologies that have emerged since the current regime was introduced.

In October 2026, the Law Commission formally commenced that consultation on product liability reform in England and Wales.

Key issues to be considered as part of the consultation include:

- A broader, future-proof definition of "product" that includes software, AI systems and caters for features of social media and other online platforms
- An expanded definition of "supply", including by download or other digital means
- New categories of potentially liable persons including fulfilment service providers, online marketplaces
- A rebuttable presumption of defect and a risk-sharing mechanism in cases involving exceptional evidential difficulties
- A new framework for the compensation of psychiatric harm
- Compensation for destruction and corruption of data

It is reasonable to expect that any changes to the product liability regime in England and Wales will reflect or be consistent with those changes being introduced into EU Member States by the updated Product Liability Directive, with transposition required by December 2026. Those changes, among other things, will expand the definition of 'product' to include software and related services and make a wider range of parties liable to reflect online shopping.

Shareholder litigation

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.

Recently announced actions included alleged losses caused by reported breaches of sanctions, and losses resulting from the provision of incomplete information to investors.

These actions are expensive and complicated to defend, particularly given the limited judicial authority. They can also be long-lasting. In June 2026, it was confirmed that two FSMA actions would not be heard until 2028 and mid-2029 respectively, in order to prevent the risk of prejudice to ongoing linked criminal trials.

Referred to in the section above on collective redress, the High Court found in *Wirral v Indivior* that the representative action mechanism was inappropriate for that particular 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.

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Forum shopping

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 owed by 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 litigation

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 centred primarily on government actions or policies. For example, in 2025, an application was made to the European Court of Human Rights challenging the UK's NAP3 climate adaptation programme.

However, a recently commenced action highlights the diversity of risk faced by private companies from climate action in England and Wales, in particular due to extraterritorial considerations. In 2025, a claim was commenced against Shell by members of a Filipino community affected by Typhoon Odette in 2021. It is alleged that Shell materially contributed to climate change through historical greenhouse gas emissions, which in turn increased the likelihood and severity of Typhoon Odette; subsequent damage suffered by the claimants includes personal injury, property damage and bereavement. The outcome of this action is awaited with great interest.

Crucially, publicity is often second only to victory in this area of law, as activists continue to search for creative ways to circumvent existing obstacles such as the willingness of the courts to expand tortious boundaries to address issues such as climate change.

Public sentiment

In England and Wales, public attitudes towards business continue to shift negatively. The 2024 edition of the Institute of British Ethics survey on the public's attitude towards business indicated that, in 2022, 44% of the public believed businesses to be ethical institutions. By 2024, this had dropped to 35%.

However, unlike the United States, public sentiment cannot be said directly to 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 are also limited examples of the courts expanding 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."

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The *FCA Test Case* decision relating to COVID-19 business interruption could be interpreted as an outcome 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.

Claimant strategy

There are now many established UK-based claimant law firms specialising in litigating mass torts, class actions and group litigation.

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

However, it remains the case that 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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Scotland



Collective redress

Group proceedings are expressly permitted in Scotland. The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (the 2018 Act) introduced a statutory regime for group procedure.

This is the principal form of collective redress in Scotland and is currently available only in the Court of Session.

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Group proceedings framework

The legislative framework is contained in Part 4 of the 2018 Act, particularly sections 20 to 22, which establish the basis for group proceedings, the role of the representative party, and the power to make further procedural rules. Those detailed procedural rules are set out in Chapter 26A of the Rules of the Court of Session.

The 2018 Act permits both opt-in and opt-out group proceedings. However, in practice, the current procedural rules, which took effect from 31 July 2020, provide only for proceedings on an opt-in basis. The statutory framework nevertheless preserves the possibility of an opt-out model in future, and this could be introduced through new court rules rather than primary legislation.

The introduction and preparation of any proposed court rules would rest with the Scottish Civil Justice Council (SCJC). In October 2025, the SCJC issued a call for evidence in relation to group proceedings, with particular emphasis on the introduction of an opt-out procedure. That call for evidence closed on 23 January 2026. Any subsequent amendments to the rules are likely to be subject to public consultation.

Representative bodies are permitted to bring actions on behalf of consumers or other groups of claimants, subject to court authorisation. Section 20 of the 2018 Act provides that a representative party may bring proceedings on behalf of two or more persons with separate claims which raise the same, similar or related issues of fact or law.

Representative parties

The representative party need not be a member of the group, but there can be only one representative party, and proceedings may be brought only with the permission of the court. In deciding whether to authorise a representative party, the court considers questions of suitability, including whether reasonable efforts have been made to identify and notify potential group members.

A representative may be either an individual or a body. The courts have indicated that a law firm acting both as solicitor and representative party may not be suitable, as illustrated by Thompsons Solicitors Scotland v James Finlay (Kenya) Ltd.

Settlements

The rules also make provisions for settlement, requiring the representative party to consult group members on the terms of any proposed settlement before damages are distributed. The rules further provide for the effect of interlocutors made in group proceedings. As a general position, the outcome is binding on all group members unless they have withdrawn consent before the relevant court order is made.

The Scottish Courts and Tribunals Service maintains a register of permitted group proceedings.

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Litigation funding

Third party litigation funding is permitted in Scotland, and its use has increased in recent years.

It allows a third party with no direct involvement in the proceedings to fund some or all of the expenses associated with a claim, typically in exchange for a share of any recovery.

Third party funding is not confined to particular categories of dispute and has been used across a broad range of civil litigation. In the specific context of group proceedings, however, funding arrangements can assume particular importance. Under the 2018 Act, a party seeking to act as representative party must obtain the court's permission. In deciding whether to grant that permission, the court will consider whether the proposed representative can conduct the litigation effectively, including whether it has access to sufficient financial resources to meet any potential awards of expenses. In practical terms, this means that a proposed representative will often need to demonstrate that appropriate funding arrangements are in place, even if the underlying details are not always fully disclosed.

The 2018 Act also introduced success fee agreements, enabling solicitors to agree to receive a percentage of damages recovered. Although the 2018 Act provides a statutory framework in certain respects, Scotland does not yet have a single comprehensive regulatory code governing third party litigation funding. More generally, the position is shaped by the legislation, by the court's supervisory jurisdiction, and by general legal principles.

There are, however, restrictions relevant to funding and success-based remuneration. Under the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Success Fee Agreements) Regulations 2020, success fees payable to solicitors are capped at 50% of damages in commercial cases and 35% in employment cases, with personal injury cases subject to a sliding scale.

Disclosure requirements may become more significant in due course. Section 10 of the 2018 Act, which is not yet in force, provides that where a party receives financial assistance from a third-party funder certain information may require to be disclosed to the court, including the nature of the assistance, the identity of the funder, and any intermediary. The court may also make an award of expenses against the funder and any intermediary.

Certain forms of assistance are excluded from this regime, including funding under a success fee agreement, support from a trade union, support from family in family proceedings, and Scottish Legal Aid. The extent and timing of any disclosure obligation will depend on whether, and in what form, section 10 is brought into force, together with the court's approach in practice.

The SCJC consultation on opt-out proceedings also raised questions on the operation of litigation funding in group proceedings in Scotland, as well as issues of disclosure and confidentiality. As noted, any further draft rules covering litigation funding will be subject to public consultation.

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Emerging risks

Liability risks in Scotland broadly mirror those developing elsewhere in the other jurisdictions of the United Kingdom. This is reflected by the register of group proceedings which confirms that actions brought include:

- NOx emissions actions similar to those being pursued in England and Wales.
- An action relating to a data breach arising from a cyber attack in 2020.
- An action arising out of unsafe working practices imposed on Kenyan tea plantations by a Scottish company.
- Proceedings against a leading football club arising from historic abuse allegations within its youth teams.
- Proceedings against the manufacturer of hernia mesh which allegedly caused injury to users.
- In July 2026, permission was granted for group proceedings relating to claims arising from the use of Johnson & Johnson Baby Powder manufactured and distributed by the defenders and supplied for sale in the UK.

One procedural feature that creates particular risk in Scotland, however, is prescription. The doctrines of prescription in Scotland and limitation in England and Wales differ in important respects, and prescription continues to present a material source of uncertainty rather than an entirely new risk.

A particular issue in Scots law is that certain claims for economic loss may become time-barred before the claimant is aware that it has a claim. The courts have previously held that this reflected the correct interpretation of the statutory regime then in force, and the saving provisions have been interpreted restrictively. A recent example is Greater *Glasgow Health Board v Multiplex Construction Europe Limited*.

In response to these concerns, the Scottish Parliament enacted the Prescription (Scotland) Act 2018, which applies to obligations prescribing on or after 1 June 2022. The legislation was intended to introduce a knowledge requirement, so that the prescriptive period would not begin until the claimant knew that loss had occurred. However, the first judicial consideration of that requirement in the linked cases of *Ogilvie Construction Limited v M1 Re Glasgow Limited and Ogilvie Construction Limited v Leach Rhodes Walker Ltd* suggests that the new regime may operate in a way closely aligned with the previous law.

The result is continuing uncertainty in relation to a central aspect of Scottish civil liability. Unless and until the position is clarified more definitively, this creates scope for increased protective litigation, earlier raising of proceedings, and potentially disputes concerning the advice given around time bar, all of which may have implications for liability exposure and for insurers.

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Public sentiment

Civil jury trials remain a long-standing feature of the Scottish legal system. Historically, they were available only in the Court of Session, although more recently their availability was extended to the Sheriff Court system through the specialised All-Scotland Personal Injury Court.

Even so, civil jury trials remain uncommon in practice and are most often encountered in personal injury litigation.

There is limited publicly available data on the attitudes of Scottish civil juries, and there is no clearly established view that they are consistently claimant friendly. Jury trial is not the default mode of determination; rather, one of the parties must seek it. Given the relative rarity of civil juries, a party, most often a claimant, is likely to do so only where there are features of the case which suggest some tactical advantage. A particularly tragic factual background may be one such factor. More generally, juries may be viewed as more generous in cases perceived to be deserving, but potentially less sympathetic in cases perceived otherwise.

The present discussion around possible opt-out group proceedings may also increase claimant appetite for collective redress over time. Activism and wider public scrutiny may also contribute to the emergence of claims. Attention to historic abuse issues in the United Kingdom appears to have played a role in encouraging further claimants to come forward in the action brought against a leading football club. More recently, and as noted above, group proceedings were approved in relation to surgical mesh claims, an issue that has attracted sustained campaigning and media attention in the United Kingdom more broadly.

Nuclear verdicts

There is not a culture or risk of nuclear verdicts in Scotland, despite the availability of civil jury trials.

Punitive damages are not available in Scotland. Damages are compensatory in nature and are intended to restore the injured party, as far as money can do so, to the position they would have been in had the injury not occurred.

The compensatory principle is well established. In *Munro v Brown*, Lord Doherty stated that "damages in the law of Scotland are awarded as reparation, and not as punishment, vindication or example."

Scottish courts can and do award very substantial sums, particularly in catastrophic injury cases. However, such awards are not punitive and are not designed to punish the defender. Rather, they reflect the quantification of the pursuer's actual loss. This mirrors the prevailing view that damages should be fair, reasonable and proportionate to the loss incurred. In personal injury litigation, judges commonly rely on comparative awards and established scales, including the Judicial College Guidelines.

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Furthermore, as noted above, Scottish civil jury trials are rare, and the vast majority of civil cases are determined by judges.

That procedural reality materially reduces the risk of nuclear verdicts, and in those limited circumstances where a civil jury is used, awards remain open to challenge on the basis of excess and may be reviewed by the appeal courts. Judicial assessment and precedent continue to exert considerable influence over the valuation of damages.

In the small number of civil cases tried by jury, it is sometimes suggested that juries may better reflect current social attitudes than judges. In *Girvan v Inverness Farmers Dairy (No 2)*, Lord Hope of Craighead observed that reasonable and fair-minded jurors may properly arrive at a different valuation of non-pecuniary loss from that reached by a judge. Even so, this does not alter the broader position that Scotland remains fundamentally a compensatory jurisdiction rather than one in which punitive or exemplary damages drive outsized awards.

Claimant strategy

One of the principal tools available to pursuers seeking to maximise settlement pressure in Scotland is the tender process. A pursuer may lodge a pursuer's offer at any time before the court issues a final decision. Financial consequences may follow if the defender accepts the offer only after the date on which it ought reasonably to have been accepted, or if the defender fails to achieve a better outcome at proof. In those circumstances, the pursuer may seek an additional payment equivalent to 50% of its judicial expenses. This mechanism operates as a distinct payment rather than a simple uplift on costs and can therefore be used strategically to encourage early and favourable settlement.

Other claimant-side tactics include seeking a civil jury trial, where appropriate, and serving Notices to Admit narrowing the issues and expose weaknesses in the defender's position at an earlier stage. While these are orthodox procedural steps, they may nonetheless be used to increase settlement leverage in suitable cases.

Strategic litigation is also a recognised feature of the Scottish legal landscape. Claimants and public interest litigants may pursue proceedings with the aim of influencing legal reform or establishing precedent. Judicial review is a prominent example. In Scotland, a petitioner is not required to demonstrate a private right in the traditional sense but instead must show sufficient standing, including in appropriate cases that it is acting in the public interest on behalf of an affected section of the public. Examples include *Walton v Scottish Ministers*, concerning the environmental impact of a major road development in Aberdeen, and *Scottish Association of Landlords & Others v Lord Advocate and Scottish Ministers*, which challenged rent restriction and eviction moratorium measures.

Group proceedings may also create scope for more strategic claimant behaviour. Since the introduction of group procedure in 2020, and particularly if an opt-out model is adopted in future, there is potential for an increase in coordinated litigation. *Campbell v James Finlay (Kenya)* is an important example. In that case, a group of Kenyan tea plantation workers raised proceedings in Scotland against a Scottish company in respect of injuries said to have been suffered in Kenya. Although the action was stayed to allow the claimants to explore a work injury benefits scheme in Kenya,

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the defender's plea of forum non conveniens was unsuccessful. The development of group proceedings therefore appears capable of opening the door to at least some degree of forum-shopping risk.

Forum non conveniens remains an important control. A defender may argue that an action should be dismissed because there is another tribunal outside Scotland with competent jurisdiction and a more real and substantial connection to the dispute. If that argument succeeds, the Scottish court will ordinarily decline jurisdiction unless the pursuer can demonstrate that substantial justice would not be available in the alternative forum. Even so, the existence of the group proceedings regime has increased the prominence of Scotland as a potential forum in strategically selected cases.



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France



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 and allowed only claims for compensatory damages; group actions seeking injunctive relief were not permitted. An approved non-profit organisation could function as a representative in a group action if it had been in existence for five years and complied with other criteria.

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Following concerns about the effectiveness and use of the group action procedure, combined with the need to implement the Representative Actions 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 introduced several EU provisions (Dispositions d'adaptation au droit de l'Union européenne) and standardised the French group action framework (the DDADUE Law).

The DDADUE Law ensures compliance with the RAD and expands 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.
- The remedies available in group actions have now been widened to cover all types of damage. Claimants can now seek cessation of unlawful conduct and compensation for damages.
- Group actions can now be initiated by a wider range of entities, which may be granted standing to function as representatives if they meet the necessary criteria, as follows:
  - 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 Law 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 function 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.

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A number of Decrees have further clarified the scope and operation of the group action framework as follows:

- Specialised courts have been designated to hear group actions (including before the judicial courts), notably by Decree No. 2025-653 of 16 July 2025, with the DDADUE Law setting out in detail the process by which class actions will be dealt with.
- Decree No. 2025-734 of 30 July 2025 established the creation of a register of actions on the French Ministry of Justice website providing details such as the identity of the parties, nature of the breach, and alleged damage.
- Decree No. 2025-734 of 30 July 2025 also introduced (i) a fast-track dismissal mechanism for group actions that are manifestly inadmissible or manifestly unfounded, and (ii) a specific inadmissibility ground where the claimant representative entity is in a conflict of interest.
- Decree No. 2025-1191 of 10 December 2025 set out the approval procedure for those associations or entities seeking to bring representative actions and their financial transparency obligations. The authority considering approval or renewal of approval of associations is the Director General of Competition, Consumer Affairs and Fraud Control. Approval or refusals must be communicated within three months of an acknowledgement of an application, with reasoning required for any refusals. Any approved associations or entities are expected to report annually on their activity via electronic means to the Director General in accordance with approved procedures.

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 itself in a conflict of interest, preserving the group action from the influence of a third party to the proceedings.

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Decree No. 2025-1191 of 10 December 2025 also set out the disclosure requirements applicable to the financing of associations or entities approved to bring representative actions. These requirements include:

- A list of third parties from which the association or entity has received funding.
- Where the third party is a company inside or outside the EU, the company name, registered address and RCS number or equivalent must be provided.
- For private individuals, their full name and profession must be supplied.
- The amount or valuation of any funding received.

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 French Duty of Vigilance law and other legal obligations.

In June 2026, in *Notre Affaire à Tous v Total*, the Paris Judicial Court handed down judgment in an action brought by non-governmental organisation, which alleged that Total had failed to provide detailed information in its Duty of Vigilance plan on the reduction of emissions. The court found that Total's vigilance plan was incomplete, as it failed to include the Scope 3 emissions associated with the use of Total's fossil fuel products. The company was ordered to complete an updated vigilance plan within 6 months, including appropriate mapping and measures related to climate risk. Total is appealing the decision. Notwithstanding the outcome of the appeal, this decision is noteworthy for activists, emphasising that companies have a specific obligation to identify the climate risks associated with their activities in their vigilance plan.

Outstanding actions on similar issues include:

- *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 Duty of Vigilance, by causing harm to the environment in those nations, and human rights. It is understood that the case remains pending, with further hearings expected.
- *Notre Affaire à Tous et al v BNP Paribas* – an action by non-governmental organisations alleging the detail contained in BNP Paribas' vigilance plan on the climate risks of its activities is inadequate and in violation of the Duty of Vigilance.

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France was also the location of the first European greenwashing judgment challenging the net-zero claims of a fossil fuel company. The claimant, Greenpeace France, sought an injunction and moral damages against Total. In a judgment dated 23 October 2025, the Paris Judicial Court partially upheld claims brought by Greenpeace France, Notre Affaire à Tous and Les Amis de la Terre France against TotalEnergies for misleading environmental claims, ordering the removal/cessation of certain statements and granting moral damages (while dismissing other aspects of the claim). Total was found to have made misleading claims, which were ordered to be removed, at the risk of financial penalties. However, as Total noted in its response, many of the claims pursued were dismissed by the court.

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 have been 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 May 2026, a number of environmental campaign groups including Notre Affaire a Tous and Generations Futures announced their intention to pursue the French state in respect of alleged inaction regarding PFAS contamination. The action seeks an order from the Paris Administrative Court compelling the French state to halt all PFAS discharges into the environment and establish polluter-pays mechanisms to deal with the costs of remediation.

The activist groups PFAS contre Terre and Notre Affaire à Tous have also announced their intention to pursue group action against two industrial companies, Arkema and Daikin, alleging PFAS-related injury and associated damages.On 29 January 2026, 192 claimants (supported by several NGOs) issued civil proceedings in Lyon against Arkema and Daikin Chemical France, seeking over EUR 36 million in damages in relation to alleged PFAS contamination affecting residents of the 'Chemical Valley' area south of Lyon. Reflecting concerns about this area, the City of Lyon and the southern Lyon water

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authority had previously committed to undertake filtration work at water treatment facilities and a new pipeline from the north of the city to the southern suburbs.

In parallel, local public authorities have put in place an emergency response programme to restore compliance of drinking water supplies, including interconnection works and the roll-out of activated carbon filtration at the relevant treatment facilities (including the Ternay plant), with a view to improving water quality for affected communities.

Product liability

From a product liability perspective, Product Liability Directive (EU) 2024/2853 (PLD) (to be transposed by 9 December 2026 and applying to products placed on the market thereafter) is expected to 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 of 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 grow. This requirement applies only to legal persons and to individuals acting in the course of their professional activity.

Public sentiment

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

Therefore, shareholder and litigant activism combined with pressure from consumer groups has functioned as the primary form of influence of public sentiment on French claims. The actions identified within the Emerging Risks section highlight the impact of this activism on claims.

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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.

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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 position they would have been in had the damage not occurred, or in an equivalent position. 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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Germany



Collective redress

The model declaratory action

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 operates 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.

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.

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Representative Actions Directive

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.' Actions can be brought that seek both redress and also declaratory or injunctive findings.

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 not 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, the court must approve it. 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 and 'leading decisions'

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 several 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 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 participates in the continuing pursuit of the action, then any funding agreement must be disclosed.

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Emerging risks

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. In 2026, a number of model declaratory actions have also been commenced on a number of consumer issues, such as price increases or tariff adjustments to gas supply contracts, utility pricing and billing practices, and web subscription agreements.

Issues of data protection are also the subject of both model declaratory and redress actions. In December 2024, an action against Meta was commenced by the Federal Association of Consumer Centers and Consumer Associations in the Higher Regional Court of Hamburg. Pursued as a model declaratory action, and relating to a 2021 data leak, the action seeks a declaration that Meta breached the General Data Protection Regulation (GDPR) through its actions and also seeks a determination of minimum damage amounts depending on the specific user data affected.

A further action was also commenced against Meta in November 2025 brought by the Consumer Protection Association (VSV). This action alleges Meta's 'Business Tools', which allows business partners to integrate their applications and websites with Meta, is in violation of the GDPR. The claim seeks the personal data collected via the Business Tools disclosed to each respective individual consumer, a declaration that the disputed data processing is not permitted, and also compensation payments of between EUR5,000 and 10,000 depending on the age of the user at the time of their registration on Facebook or Instagram.

The outcome of these actions will be awaited with great interest.

Loss of control data breach claims

Decisions in Germany have also contributed to the evolving landscape as regards the award of non-material damages for the loss of control of personal data.

Following the *Austrian Post* decision, in which the Court of Justice of the European Union provided clarification and harmonisation of an individual's right to compensation for non-material damage under Article 82(1) GDPR, developments in Germany have contributed to issues of wider discussion. For example, in November 2025, the BGH acknowledged, in particular, the lack of consistency in the wording of CJEU case law on this issue, especially when comparing linguistic variations when interpreting the GDPR.

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 a greater number of product-related actions for redress.

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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 significant development, opening the door to climate attribution claims in Germany.

The prospect of these claims has been accentuated by the recent announcement of an action seeking to build on the foundations established in *Lliuya*. The action of *Laghari v Heidelberg Materials and RWE* is pursued by a group of Pakistani farmers affected by unprecedented rainfall in 2022. Their action alleges that the defendants (a cement producer and energy company respectively) have partially yet materially contributed to climate change through their historical greenhouse gas emissions, which increased the risk of destructive and extreme weather events. The outcome of this action is awaited with great interest.

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 EU Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD has a broader scope than LkSG covering supply chains and introducing stricter enforcement measures.

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 CSDDD was initially expected to be transposed into the law of member states by July 2026, but the deadline for transposition has been extended to July 2028, as part of the Omnibus I package of reforms. Companies will be required to comply with the CSDDD in respective EU countries as of July 2029. However, it should be noted that the scope of the CSDDD was amended by the Omnibus I package, reducing its scope and also the obligations on companies.

PFAS

To date, there have not been any significant (mass) liability actions involving PFAS in Germany, but the German Insurance Association is mindful of the risk presented and, in April 2025, published two model clauses for use within the General Terms and Conditions for Commercial Liability Insurance. These model clauses are both structured as broad exclusions with the flexibility to reinstate cover.

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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 BGH 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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The Netherlands



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 class actions had been introduced in 1994. An interest group can only start a class action when the matter 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.

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.

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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.

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 range of collective and other relevant claims in the Netherlands is significant, and therefore, this section is not intended to be an exhaustive reflection of all ongoing claims.

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.

Climate-related litigation

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 on appeal in late 2024, Milieudefensie has challenged that decision in the Supreme Court of the Netherlands. Final arguments were made in May 2026, and the court's final binding ruling is expected in early 2027.

Irrespective of the final outcome, that action has offered a blueprint for ongoing and prospective actions against other companies seen as contributing to carbon emissions in the Netherlands, building on the landmark 2019 Urgenda decision by the Dutch Supreme Court in a case brought against the Dutch government.

Milieudefensie formally commenced a new action against Shell in April 2026, seeking to prevent Shell from developing new oil and gas projects. In the initial notice of liability, Milieudefensie alleges that these actions are in breach of Shell's legal duty of care under Dutch law.

The action also seeks to impose post-2030 emissions targets on Shell, in line with the Paris Agreement. In challenging new oil and gas developments comprehensively, the action also marks a strategic shift away from focusing on specific projects. As an example, Greenpeace successfully obtained an order in early 2025 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 formal proceedings against the Dutch bank, ING, alleging an inadequate climate policy, challenging ING's climate strategy and seeking 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 February 2026, ING confirmed that it has submitted a Statement of Defence in this ongoing action.

Greenwashing

Adjacent to climate change, 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.

Actions involving other types of greenwashing are being pursued in the Netherlands, such as greenwashing within supply chains. In April 2026, the Clean Clothes Foundation commenced an action against a major clothing brand alleging that misleading claims were made to Dutch consumers around the sustainability of the brand's products and labour conditions in their supply chains.

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Data protection and privacy

Those 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 conclusive outcome 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 class actions relating to the collection and processing of personal data include a highly significant action currently awaiting guidance from the European Union Court of Justice (CJEU).

- Stichting Data Bescherming Nederland is pursuing Amazon for the unlawful processing of personal data. This claim is the claim currently subject to the referral to the CJEU on a number of questions relating to the interplay between WAMCA and GDPR, including whether or not an opt-out claim under WAMCA for breaches of the GDPR is viable.
- The Consumers' Association and the Foundation for the Protection of Privacy Interests is pursuing Google for alleged GDPR violations including tracking and profiling users. This action had been stayed pending a referral to the CJEU in respect of the Amazon action referred to above.
- The Data Privacy Collective is pursuing an action against AppLovin Corporation in May 2026, alleging that the unlawful collection and trading of personal data of Dutch citizens was conducted via tracking software in popular mobile games and apps. The same collective group continues to pursue software companies Oracle and Salesforce for illegally collecting and processing the data of internet users in the Netherlands. That action has been previously dismissed and reinstated on appeal. A final outcome is awaited.
- The Data Privacy Foundation is 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.
- Take Back Your Privacy is pursuing Tinder for alleged GDPR violations through the collection and sharing of users' personal data.
- Initiatives Collective Actions Mass Damage is pursuing the Netherlands government following a data leak at the organisation responsible for the coordination 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.

The Bits of Freedom Foundation also commenced an action against Meta in September 2025 seeking an order that Meta offers users of its platforms the option of a feed not based on profiling. That order was granted and upheld after an appeal.

On the wider issue of privacy, in March 2026, the Amsterdam District Court ordered that X and the associated AI chatbot Grok halt the generation of non-consensual sexual imagery following an action commenced by Offlimits, an expert group on online sexual abuse.

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Securities litigation

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. Judgments to date have emphasised that Dutch courts will allow securities claims in principle, but the admissibility requirements under WAMCA must be adhered to before a claim can proceed. For example, investors in Fiat Chrysler in the Netherlands pursued an action under the WAMCA regime against the legal successor, Stellantis, for alleged losses caused by the fall in share price associated with the emissions 'defeat devices' scandal. However, the action was dismissed as inadmissible in 2025.

Linked to this action, albeit not alleging investor losses, are a number of actions pursued by consumers against a number of vehicle manufacturers in respect of the alleged use of emissions defeat devices.

Similarly, although a formal claim has not yet been commenced a group of approximately 100 institutional investors have notified the technology company, Philips, of a possible claim for shareholder losses resulting from the manufacture of defective CPAP products. The products themselves were the subject of an unsuccessful claim in Italy, discussed within that jurisdiction text.

Other liability risks such as PFAS

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.

In 2022, the Supreme Court provided additional clarification on the assessment of damages for secondary victim shock damage, including the consideration of key factors such as:

- 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.

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 caused serious illness. However, in December 2025, the action was dismissed, with the court finding that there was inadequate evidence demonstrating the physical symptoms suffered by the individual claimants were caused by the defective implants. In March 2026, it was announced the dismissal of the claim would be appealed.

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Consumer protection and public interest actions

A number of consumer protection actions against corporations are ongoing in the Netherlands. These actions often involve challenges against perceived unfair corporate behaviour. A number of examples of collective actions brought on such issues include the following, with the date that the summons was issued:

- Stichting Bescherming Consumentenbelang (Foundation for the Protection of Consumer Interest) in April 2026: An action pursued against a video streaming service alleging unfair subscription increases without adequate disclosure.
- Stichting Consumenten Competition Claim (Foundation for Consumer Competition Claims) in November 2025: This action alleges that a travel booking platform engaged in anticompetitive practices.
- *Stichting Multilateral Interchange Fees v Visa and Mastercard* in July 2025: These two separate actions relate to the charging of excessive transaction costs (interchange fees) to Dutch businesses.

Public sentiment

The developing register of ongoing and settled WAMCA actions maintained by the Dutch government is a clear indication that the use of the WAMCA procedure is growing. Over 100 WAMCA actions have been filed as of May 2026.

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. Nonetheless, 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 in the long-term. The register (and the previous section on emerging risks) demonstrate the diversity of actions being pursued. 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.

Further, the greenwashing actions against KLM and other companies, and the ongoing climate-related action pursued by activists, such as Milieudefensie, illustrate that ESG-related actions are of interest in the Netherlands.

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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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Spain



Collective redress

In Spain, there are specific limited mechanisms available 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').

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This existing system will be significantly altered by the eventual transposition of the Representative Actions Directive (RAD) into Spanish law. At the time of writing, the RAD has not yet been implemented in Spain, but the Draft Law on Collective Actions (the Draft Law) is progressing through the Spanish legislative system.

In April 2026, the European Commission issued a reasoned opinion to Spain for failing to fully incorporate the RAD into national law.

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

The environment for bringing claims on a collective or representative basis remains in a state of flux due to the delay in progressing the Draft Law. The landscape for emerging risks is likely to change significantly as and when the Draft Law is passed.

In the interim, reflecting on the types of claims brought in other jurisdictions, 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.

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.

It is also noted that Article 20 of the Insurance Contract Act provides for interest on damages to encourage insurers to settle first party and third-party claims within three months from the date of loss. If a settlement is not reached after those three months, then interest will be calculated at a rate of 50% plus the current interest rate for two years, with a rate of 20% for any period after two years.

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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.

A recent decision in the Court of Milan, discussed in more detail within the Emerging Risks section, clarified the interpretation of 'similarity' required for individual actions forming the collective proceedings. That decision affirmed that in order to bring collective proceedings, there must be:

- A single set of common facts,
- Uniform damage, and
- The ability to assess the damage through common criteria

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 association 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 on an opt-in basis.

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.

The underlying action brought by Greenpeace remains outstanding, and it has been reported that a ruling is expected in January 2027.

Irrespective of the outcome, the Court of Cassation decision has made 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 Italy.

However, as noted above, within the section on Collective Redress, a recent decision made in the Court of Milan has emphasised the potential limitations of using the collective action procedure in Italy, particularly in respect of defective products. An action was filed against Philips concerning the manufacture of defective CPAP and BiPAP devices. The claim was brought on behalf of European users of the devices who had suffered a variety of losses.

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The Court of Milan considered the admissibility of the collective actions, and in December 2025, held the action was inadmissible. This decision was upheld in April 2026 by the Milan Court of Appeal.

The courts held that the claims were structurally incompatible with the collective action mechanism, noting that the damage suffered by the individual claimants varied significantly, as did the compensation claimed. Each individual would require an individual assessment of their alleged injuries, which could not be standardised. Furthermore, there were clear differences between the allegedly defective machines (CPAP, BiPAP), meaning there was no consistent damage that could be identified.

The class representatives argue that the decision will prevent large-scale product liability collective actions from being brought in Italy, as the cost of pursuing actions individually will be prohibitive. The implications of this decision on other proposed actions will be monitored closely.

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.

However, the risk of claims in relation to PFAS exposure or contamination is higher in Italy than in other jurisdictions. In Veneto, 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-related actions in Italy, particularly due to the collective redress regimes that are available.

Following a hearing in December 2025, the Ordinary Court of Milan declared in April 2026 that a representative action brought against Meta by the consumer protection group Verbraucherzentrale Südtirol was admissible. The action relates to a leak of user data from Facebook in 2021. Those identified as being within the class of claimants can register to join the action, and a further hearing has been scheduled for October 2026 where it is understood that the issue of compensation for those affected will be considered.

On that note, 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.

Therefore, 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 may 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 regulates 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 representative entities.

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

We wait 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'.

On the issue of damages more generally, a potentially significant development for personal injury and insurance litigation occurred in April 2026, concerning the application of the Tabella Unica Nazionale (National Unified Table, or T.U.N.), introduced by Presidential Decree No. 12/2025. The T.U.N. is intended to provide a uniform national framework for the assessment of compensation for serious bodily injury arising primarily from motor liability and medical negligence claims.

The Supreme Court has now confirmed that it has wider application and should serve as the principal benchmark for personal injury damages under Articles 1226 and 2056 of the Italian Civil Code. The T.U.N. can be applied by courts as a guide for quantifying damages in personal injury claims not only within its express legislative scope, but it can also be applied to incidents occurring prior to its entry into force on 5 March 2025.

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The Supreme Court has indicated that courts remain free to depart from it and apply alternative judicially developed valuation methodologies, including traditional court-created tables such as the Milan Tables. However, they may only do so where they provide clear and reasoned justification based on genuinely exceptional circumstances.

This decision will promote greater uniformity and predictability in damages awards across Italy, by reducing the scope for regional differences in valuation unless supported by compelling case-specific reasons.

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 Ireland had no formal class action procedure or comprehensive collective redress mechanism for damages claims. 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) 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, no draft legislation has been published as of May 2026.

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Representative Actions Directive

The Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (the 2023 Act) 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,' an organisation must apply to the Minister for Enterprise, Trade and Employment for such designation. As part of that designation process, 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.

At the time of writing, the register provided by the Department of Enterprise, Trade and Employment confirms that five organisations have been designated as Qualified Entities.

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.

First representative action

In May 2025, in the first case of its kind in the jurisdiction, the Irish Council for Civil Liberties (ICCL) issued a representative action against Microsoft citing the RAD. The action alleges 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. Further, it alleges that Microsoft has no way of knowing what happens to the data after it is broadcast, creating exposure to malicious profiling and discrimination which undermines European security. The action seeks declaratory and injunctive relief but does not seek any redress measure.

Early guidance on operation

In September 2026, the High Court delivered its first judgment, within a preliminary ruling on *ICCL v Microsoft*, on how the representative actions procedure will operate in practice, and the interaction between the GDPR, the 2023 Act and the ordinary rules governing pleadings. In addition, new guidance within the Rules of Superior Courts governing representative actions came into effect in October 2026.

More generally, while the 2023 Act permits representative actions seeking injunctive measures, redress measures, or both, the current funding position is likely to make non-redress claims more attractive in practice. That is because claims for redress are likely to involve greater cost and administration, including consumer opt-ins, proof of entitlement and loss, and distribution of any compensation recovered. As set out below, third-party litigation funding remains largely prohibited in Ireland, and the EUR25 cap on fees that Qualified Entities may charge consumers is likely to limit the ability of Qualified Entities to fund large-scale redress actions through consumer participation fees alone.

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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".

If 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 Law Reform Commission published a Consultation Paper on the law governing litigation funding in Ireland, seeking submissions from interested parties. The consultation closed in November 2023, and it is expected that the final report will be published at some point in 2026. At the time of writing, the report has not been published.

The report will be eagerly awaited, particularly due to Ireland's stance relative to other European nations. The 2025 study 'Mapping Third Party Litigation Funding in the European Union', prepared for the European Commission, identified Ireland as a distinct outlier due its ongoing prohibition of third-party litigation funding.

Emerging risks

Climate change and associated litigation have commenced in the Republic of Ireland, with actions largely directed at governmental bodies, whether by non-governmental bodies, or more recently, by energy companies.

- In April 2026, Friends of the Earth Ireland, Friends of the Irish Environment and ClientEarth brought High Court proceedings challenging the Commission for Regulation of Utilities' (CRU) Large Energy Users Connection Policy for data centres. The action relates to the CRU's decision on grid connection requirements for large energy users, which the applicants allege risks locking Ireland into fossil fuel use for years to come.
- In May 2026, Lansdowne Oil and Gas announced that the International Centre for Settlement of Investment Disputes had registered its request for arbitration against Ireland, as part of a dispute under the Energy Charter Treaty relating to the Barryroe oil and gas field. Lansdowne states that it is pursuing a claim of at least US$100 million plus interest.

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Ireland does not have a formal shareholder class action mechanism. Although derivative actions may be available in appropriate cases, it remains to be seen whether there will be a significant uptick in the number of climate-related shareholder or company law claims. 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 under 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.

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 handed down judgment in *Dillon v Irish Life Assurance* in 2025, 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.

Many of the liability risks which have emerged in the United States and other countries have not yet been the subject of litigation 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 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, despite an upwards trend in strong opioid prescribing in Ireland, there have been no reported claims similar to those seen in the US.

The Central Bank of Ireland recently surveyed Irish specialty and reinsurance firms on their exposure to US social inflation. The Central Bank published the findings in the December 2025 Central Bank Insurance Newsletter. The survey identified Australia and the UK as the next two jurisdictions most exposed to social inflation issues for the firms surveyed. This suggests that, for Irish insurers and reinsurers, social inflation risk arises less from domestic verdict trends and more from underwriting exposure to jurisdictions where social inflation has developed further.

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Public sentiment

In the absence of a range of collective redress measures and availability of litigation funding to support claims, it is difficult to quantify public appetite for pursuing new types of claims arising from new liability risks in the Republic of Ireland.

Interestingly, the Republic of Ireland could be said to provide an example of 'social deflation' via reductions in liability costs and damages through legislation and regulation. 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.

Action Plan for Insurance Reform

In 2020, the Irish Government set out various aims within the Action Plan for Insurance Reform, with the stated objective of reducing insurance premiums.

The measures undertaken by the Irish Government included:

- 2021 damages reforms: lower damages guidelines across injury categories, including cuts of up to 50% for soft tissue injuries.
- Personal Injuries Resolution Board Act: introduced pre-litigation mediation and stronger cost risks for claimants who reject an assessment but recover less in court.
- Occupiers' liability reforms (July 2023): narrowed occupiers' liability, especially where entrants were committing offences or had voluntarily assumed risk.
- Costs reform: a 2024 Department of Justice report proposed non-binding guidelines and greater transparency to help control litigation costs, but no further developments have been reported.

It is arguable that efforts to reduce the number of personal injury claims were successful. 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 litigation costs associated with personal injuries claims and an increase in the cost of motor damage claims.

In July 2025, the Irish Government published the latest Action Plan for Insurance Reform covering 2025 to 2029. Aimed at creating a fairer and more transparent insurance market, the Action Plan again reiterates a commitment to reduce insurance premiums. The government hopes to achieve this through the following measures:

- Introducing a Transparency Code, particularly for motor insurance, to improve clarity around the pricing of insurance products. In May 2026, the Department of Finance announced that companies representing 98% of gross written premiums had agreed to implement the Code.
- 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.

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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.

Judicial Council (Amendment) Bill 2026

In 2025, proposals to increase the Personal Injuries Guidelines by an across-the-board 16.7% attracted criticism from insurance and consumer groups which warned that the increase could undermine insurance reform and put upward pressure on premiums. The Minister for Justice laid the revised Guidelines before the Oireachtas on 17 September 2025 but did not bring forward a resolution seeking approval. The Minister confirmed in January 2026 that the amended Guidelines could not therefore come into effect and that the existing Guidelines remain in place.

In early 2026, the Government published the General Scheme of the Judicial Council (Amendment) Bill 2026, which proposes changes to the process for reviewing the Personal Injuries Guidelines. The guidelines would be reviewed on a five-year basis (as opposed to three years). In addition, the Personal Injuries Guidelines Committee will, as part of its function in proposing amendments to the guidelines, conduct appropriate research. This would include the levels of damage awards both inside and outside Ireland, details of settled personal injury claims, and also the level of damages assessed by the Injuries Resolution Board. At the time of writing, the proposed legislation has progressed no further than General Scheme / pre-legislative scrutiny stage.

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, use is limited. The Defamation (Amendment) Act 2026 provided for the abolition of juries in High Court defamation actions. The reform applies to defamation actions brought on or after the commencement of the relevant provision.

Punitive damages (referred to as 'exemplary damages' in Ireland) may 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.

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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.



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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 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. As of October 2025, 47 of those federal actions were addressing issues of employment and industrial relations, with 38 considering consumer protection issues.

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 obligated to manage conflicts of interest consistent with ASIC Regulatory Guide 248. The Guide sets out a series of procedures to satisfy this obligation including identifying, managing and disclosing conflicts, protecting members' interests and recruiting prospective members.

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

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to confer a tactical advantage on another party to the proceeding.

Similar procedures are covered in state court practice notes.

The recent High Court decision of *Hunt Leather* confirmed, in instances of nuisance, that litigation funding commissions are not recoverable as damages by class action members. This means that the litigation funding commissions in this case were to come out of (rather than be added to) the damages otherwise payable. Although the outcome is limited to private nuisance, the decision is likely to apply to other types of actions too and is consistent with the orthodox view on damages in Australia.

The High Court confirmed in a decision in 2025 that the Federal Court has the power to make a Common Fund Order (CFO) at the conclusion of proceedings, but not at commencement. A CFO allows deductions from group members' recoveries to remunerate third-party funders. In the same decision, the High Court also confirmed that solicitors' common fund orders are not available in jurisdictions that do not have legislation expressly permitting a solicitors' common fund order. A solicitors' common fund order is a CFO made in favour of the applicant's solicitors (i.e. a lawyers' commission calculated as a percentage of the settlement proceeds).

Presently, the State of Victoria is the only jurisdiction that has enacted legislation that 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.

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 filings in that jurisdiction.

In New South Wales (NSW), the Association of Litigation Funders of Australia has recently made a submission to the Attorney General on a variety of funding arrangements. The submission states recent developments in Victoria have led to a shift in class actions being filed outside NSW. This has led to a reduction in access to justice for NSW residents and prevented the NSW Supreme Court from managing nationally significant class action litigation. The submission sets out a number of proposed reforms in NSW which would "expand funding options, reduce procedural uncertainty, and enhance access to justice for NSW residents." The submission does not press for the availability of solicitors' common fund orders in New South Wales.

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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 given the availability of third-party litigation funding generally, and solicitors' common fund orders in Victoria.

Securities litigation

In recent years, there were a number of unsuccessful securities class action judgments in Australia, which arguably had a dampening effect on the preparedness of plaintiff law firms and funders to run securities class actions to judgment. Indeed, until recently, there had been no securities class action in Australia that had succeeded at trial on liability, causation and loss.

Two recent developments have changed that landscape. In April 2026, there was a landmark decision in *Southwoods v Brambles* Limited, being the first judgment in Australian history where a shareholder class action succeeded at trial. Importantly, the court accepted market-based causation (or indirect causation) and found that the applicant had established loss.

Shortly after *Brambles* was delivered, in May 2026, the full bench of the Federal Court handed down its decision in the shareholder class action appeal of *Crowley v Worley Limited*, ruling in favour of the applicant on both causation and loss. The full court unanimously endorsed market-based causation, and its findings arguably establish a low threshold for establishing loss.

It should be noted that an appeal in *Brambles*, and an application for special leave in Crowley, mean uncertainty will persist, but insurers should prepare for renewed filings, more contested loss modelling and greater pressure on defence costs and settlements.

Settlements of securities class actions will likely increase while these decisions remain good law. Corporates and their insurers will be keenly waiting on the High Court to weigh in on these issues when it delivers judgment in the *Zonia Holdings v Commonwealth Bank of Australia* class action, heard in the High Court in June 2026.

Institutional abuse

In the area of institutional abuse, in February 2026, the High Court delivered its decision in *AA v The Trustees of the Roman Catholic Church,* which had the effect of lowering the bar for plaintiffs to succeed in cases alleging historical institutional abuse. The High Court overruled longstanding precedent and established that a non-delegable duty of care can extend to the intentional criminal acts of employees, delegates and/or third parties. This case has materially expanded the scope of liability for religious and other organisations that have or do deal with vulnerable people.

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Serious invasions of privacy

Beyond securities class actions and institutional abuse, 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.

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 in Australia, and the legislative development created a new area of exposure for businesses in Australia.

The first published judgment considering this statutory tort was delivered in the District Court of New South Wales in October 2025. The plaintiff in the case successfully obtained interlocutory injunctive relief on account of the new tort. While the decision will not be binding on courts that are of a higher jurisdiction, such as the state and territory Supreme Courts and the Federal Court of Australia, the decision nevertheless provides a pathway for more individuals and companies to pursue privacy claims.

In August 2026, a consultation was commenced relating to further proposed reforms of Australia's privacy laws.

PFAS

Australia is an active jurisdiction in respect of litigation relating to PFAS exposure, with class action firms active in this space against public institutions. 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.

The Australian Government settled a class action brought by landowners affected by PFAS contamination in May 2023 on terms that required it to pay AU$132.7 million. Since 2020, Australia's Defence Department has paid out more than AU$366 million to settle class action lawsuits over its use of firefighting foam alleged to contain PFAS.

In May 2026, the Commonwealth of Australia commenced Federal Court proceedings against 3M Australia Pty Ltd and 3M Company for damages to recover costs of PFAS contamination at 28 Defence bases across Australia. The claim is seeking more than AU$2 billion in damages to recover significant past and future expenses incurred by investigating and managing contamination resulting from the historical storage and use of 3M's aqueous film-forming foam. If this case proceeds to judgment, it may include findings that clarify some of the issues outlined above and provide a path for future claims in this space.

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Other liability risks

In respect of herbicide related litigation, in July 2024 the Federal Court of Australia dismissed a representative action relating to the use of the herbicide product 'Roundup'. The court found that the available expert evidence did not prove that the Roundup product, containing glyphosate, caused the lead applicant to develop 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. These decisions suggest that glyphosate litigation is not viable in Australia for the foreseeable future.

It was also recently announced that a concussion injury-related class action brought by a number of former Australian Football League players against their clubs and the league will be subject to a 12-week trial in the second half of 2027. This followed an unsuccessful application to have the case "declassed," which would have prevented the matter from proceeding as a class action in Victoria.

If this matter proceeds to judgment, the findings will no doubt be considered closely by plaintiff firms for the purpose of exploring claims in other sporting codes where concussion is a risk.

Climate change and activist litigation

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 four 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. Recent decisions have demonstrated the difficulties for those bringing these actions. In 2026, the Federal Court of Australia dismissed an action by the Australian Centre for Corporate Responsibility (ACCR). The ACCR alleged that the Australian energy company, Santos, had made misleading and deceptive representations in its climate strategies and other public statements. The Court found that companies could issue ambitious targets and forward-looking statements provided they were based on reasonable grounds and accompanied by clear risk disclosure. Failing to achieve those targets was not necessarily misleading or deceptive.
- The 2025 decision in *Pabai Pabai v Commonwealth of Australia* also 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 AU$9 million. It is unclear whether these actions will serve as a disincentive for similar claims.

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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).

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. The court retains the discretion to direct a trial without a jury.

The awarding of punitive (or exemplary) damages is 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, such as the Australian Government's PFAS settlement referred to above.

There have also been examples of businesses being ordered to pay significant fines and penalties. For example: in June 2025, Optus agreed to pay an AU$100 million penalty for selling telecommunications goods and services in breach of Australian consumer protection laws; in August 2025, Qantas was ordered to pay an AU$90 million penalty over its decision to unlawfully outsource ground handling jobs in breach of Australia's industrial relations laws; and in December 2025, the Australia and New Zealand Bank Group was ordered to pay a combined AU$250 million in penalties for widespread misconduct and systemic failures.

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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.

In jurisdictions where there are ordinarily no cost consequences and claimants are encouraged or required to be self-represented, there has been a noticeable increase in the number of claims, and the complexity of those claims, since the public release of artificial intelligence (AI) platforms. Those jurisdictions are observing that AI is assisting self-represented claimants in lodging claims, and that those claims often include lengthier submissions and greater volumes of information than was the case before AI platforms were freely available to the public. This is increasing the caseload in these jurisdictions and the work required to be completed by defendants and their representatives to respond to such claims.

In recent years, legislation has been introduced in Queensland, New South Wales and South Australia to prohibit claims farming in certain personal injury claims.



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Mexico



Collective redress

Collective redress mechanisms are available in Mexico. Class actions are regulated by the National 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 conducting 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 damage caused or to prevent further harm. Additionally, defendants are expected to indemnify each claimant for the damage 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.

The National Code of Civil and Family Proceedings (New Code) was published in the Official Gazette of the Federation on 7 June 2023 and formally entered into force on the following day. It aims to unify and modernise procedural rules in civil and family matters, replacing both the local procedural codes and the federal code governing these areas. However, its effective application is neither immediate nor uniform, but rather gradual, both at the federal level and within each federative entity, through the corresponding declarations of applicability, with a nationwide deadline of 1 April 2027. In the case of Mexico City, its entry into force is subject to phased implementation, whereby certain matters began to be governed by the New Code as of 1 June 2026, while others have been deferred until 15 November 2026.

There are safeguards in the New Code to limit the possibility of sponsoring or acting as a representative in a class action. 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 function as a representative in these types of legal actions, but under extremely specific restrictions. For example, common representatives must be appointed by a group made up of at least thirty members, and non-profit civil associations must be legally incorporated at least one year prior to filing the action. The Federal Attorney General is also granted standing, as it is considered the representative of the public interest in Mexico.

Although the substantive provisions of the New Code do not significantly modify collective redress mechanisms in Mexico, its relevance lies in the broader effort to make civil proceedings more efficient. The New Code adopts the oral procedure model already used in criminal and commercial matters, with the aim of expediting proceedings and reducing the time required to reach a final resolution, excluding *amparo* proceedings, which remain governed separately. For clarity, *amparo* proceedings are a legal mechanism designed to protect individuals' constitutional rights against violations by authorities.

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.

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

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Emerging risks

Human Rights-based protection

There have previously 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 fair compensation 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 Supreme 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.

Other 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.

In another landmark decision, the Supreme Court has once again confirmed that full reparation in Mexico must be interpreted considering Article 1 of the Constitution, rather than through a restrictive view of damage. The Supreme Court expressly recognised the right of indirect victims – the spouse and children in a case involving serious bodily injury - to claim compensation for moral damages, emphasising that the emotional and familial harm suffered by closely related third parties cannot be artificially excluded from reparation. For purposes of social inflation, the implication is clear: the potential pool of compensable claimants is expanded, even where the direct physical harm is suffered by a single individual.

Moreover, the Supreme Court has established as binding precedent that, in cases of civil liability for death, compensation must be calculated based on the Unit of Measurement and Update (UMA), rather than the minimum wage. This criterion is grounded in the constitutional reform published in 2016, pursuant to which the minimum wage can no longer be used as a unit of reference for purposes unrelated to its nature, having been replaced by the UMA as the applicable unit of accounts for concepts other than wages. This understanding was further reinforced by the 2018 amendment to the Federal Civil Code, which harmonised the quantification of damage by providing that compensation should be determined in accordance with the Federal Labor Law, using the UMA as the basis.

In this regard, the Supreme Court clarified that fair compensation for death does not constitute remuneration for work, but rather a measure of damage reparation. Accordingly, its quantification must be based on parameters that ensure proportionality, fairness, and ongoing adjustment. As the UMA is updated annually based on the National Consumer Price Index, it allows for the preservation of the real value of compensation and

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strengthens its reparatory effectiveness, consistent with the current constitutional framework.

Through the UMA, judges retain broad discretion to determine compensation amounts, define the applicable methodologies, and establish the scope of loss of profits (loss of earnings), its duration, and the relevant variables. This strengthens the possibility of assessing damages based on criteria consistent with the civil nature of liability and aligned with the prevailing constitutional framework.

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.

Additional reforms have postponed the next judicial election, originally scheduled for 2027, until 2028, with the objective of enhancing the system's technical and organisational viability.

Constitutional adjustments were also introduced in areas such as the recall of mandate, in order to align it with the corresponding electoral cycles, as well as in relation to the Evaluation Committees, judicial districts, and ballots - that is, aspects linked both to the selection of candidates and to the practical operation of the voting process.

Climate litigation and environmental policy

At federal level, the proposal to amend article 32 of the Federal Consumer Protection Law to address greenwashing has made some procedural progress but has not been enacted into law. After the relevant Senate committees approved a positive draft opinion in May 2025, the bill advanced to first reading in the Senate on 24 March 2026. However, there is no indication that it has since been approved by the Senate's plenary, passed by the Chamber of Deputies, or published. Even if enacted in its current form, the proposal appears aimed principally at administrative enforcement against misleading sustainability claims, rather than creating a standalone compensation regime for affected third parties. Its main relevance for insurers would therefore lie less in direct statutory damages and more in the potential for regulatory scrutiny, reputational pressure and follow-on litigation risk.

In 2025, the Mexican Ministry of Environment and Natural Resources published its Sectoral Program for Environment and Natural Resources 2025-2030.

This program offers a detailed environmental strategy for Mexico, providing policy details and emphasising those areas in which corporates may find themselves subject to greater regulatory challenge, and also associated litigation risk.

One of the key objectives is to strengthen climate action, integrating the prevention of pollution to protect the population's health, as well as strategic infrastructure in response to climate impacts. The program also emphasises the importance of environmental justice, with a focus on ensuring compliance with regulations and effective application of the law. As part of the Vision to 2050, it is stated that Mexico will "fulfil its commitment to achieve the goal of net zero emissions, hand in hand with other government agencies and the private sector." For corporates and

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their insurers, it is clear that there will be increased regulatory expectations upon them to achieve these goals.

Data breach actions

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

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 Anti-Corruption and Good Governance Ministry, 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.

During the course of this year, legislative initiatives have been introduced in the Chamber of Deputies aimed at strengthening consumer protection in the digital environment. Taken together, two key proposals are aimed at enhancing transparency, control, and freedom of choice for users in the face of digital and commercial abuses.

Firstly, the proposal on deceptive digital design practices seeks to prevent banks, fintechs, and platforms from using interfaces that confuse, pressure, or manipulate users through unauthorised charges, hidden costs, pre-selected options, or mechanisms that make it difficult to cancel services. It also empowers financial authorities to issue regulations and supervise such practices.

Second, the initiative on unsolicited advertising seeks to prevent providers and companies from sending calls, messages, or promotions without the consumer's prior, free, informed, express, and verifiable consent, as well as to ensure that such consent can be revoked easily, immediately, and at no cost.

Additionally, the National Cybersecurity Plan 2025–2030 establishes a common framework for the prevention, management, and response to digital risks, with the aim of strengthening the reliability of public systems and enhancing institutional protection.

Its general objective is to implement a comprehensive cybersecurity framework for the Federal Public Administration, aimed at safeguarding digital rights, protecting governmental infrastructure and information, ensuring the resilience and continuity of digital services, and reducing the State's systemic risk. This is to be achieved through the adoption of differentiated controls, dynamic risk management, and continuous improvement mechanisms.

To this end, the Plan contemplates specific instruments, such as mandatory guidelines, training programs for public officials, incident reporting mechanisms, vulnerability alert systems, and the development of a future National Cybersecurity Strategy.

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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 area where public sentiment has already become a key factor is in the administration of justice. 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.

The restructuring of the judiciary 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.

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.

Additional reforms have postponed the next judicial election, originally scheduled for 2027, until 2028, with the objective of enhancing the system's technical and organisational viability.

Constitutional adjustments were also introduced in areas such as the recall of mandate, in order to align it with the corresponding electoral cycles, as well as in relation to the Evaluation Committees, judicial districts, and ballots - that is, aspects linked both to the selection of candidates and to the practical operation of the voting process.

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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 towards 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 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 fair compensation, which has paved the way for the recognition of "loss of life plan." This concept, rooted in binding precedents 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 fair compensation 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 assess 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 fair reparation that expressly included damage to the life plans of the entire family unit.

Recent decisions from the Supreme Court and the federal courts in Mexico reflect a clear evolution toward a broad and substantive concept of fair reparation of damages. Such reparation is no longer limited to immediate physical harm or direct economic loss, but must also encompass familial, emotional, existential, and long-term consequences arising from the harmful event.

Under this approach, compensation shifts away from focusing exclusively on treatment costs or immediate and visible injury, and instead extends to the disruption of life trajectories, the transformation of family dynamics, and the long-term consequences of the event. This, in turn, opens the door to broader, more narratively sophisticated, and potentially more costly claims.

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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 other heads of damage (such as loss of life plan) have 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 raised concerns 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.

To date, these concerns have remained 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

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 historic *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, but subject to additional specific rules, 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 similar claim proceeding or concluded. If so, the court in question may refer the action to the court dealing with/that dealt with the similar claim.

No comprehensive legislative reform of class actions has been enacted as of 2026; however, there are signs of increasing use of collective claims in areas such as securities and consumer disputes. This indicates a latent scalability risk: while still limited, an expansion of procedural rules could materially increase claim frequency and severity.

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.

No significant further regulatory developments in litigation funding have been identified as of 2026. Litigation funding remains a neutral factor in social inflation in Argentina (unlike in other jurisdictions).

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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.

The data protection reform bill remains pending as of 2026 (not yet enacted). Multiple proposals aim to align Argentina with GDPR-style standards, including:

- Mandatory breach notification,
- New rights (e.g. portability, objection to automated decisions), and
- Enhanced enforcement powers.

Increased regulatory attention is being directed toward AI and algorithmic decision-making, which may create new liability exposures. Once enacted, these reforms are expected to be a material driver of social inflation, particularly via collective and consumer claims.

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. To date, there have not been many data breach actions reported in Argentina.

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 at 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, significant changes regarding the maximum applicable sanctions in consumer protection matters, as well as regarding punitive damages, were introduced. The fixed cap framework was effectively replaced by a dynamic, inflation-indexed system linked to the basic consumer basket. Sanctions and punitive damages are increased automatically with inflation, including monthly adjustments.

At the time of writing, fines and punitive damages would be capped at US$2,189,016.

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 awards are not applicable.

Broadly, claimant strategies are increasingly focused on: (i) consumer protection frameworks (which offer cost advantages and punitive damages), and (ii) exploiting inconsistencies in interest rate and inflation adjustments.

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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) have 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 to the extent as directed by the court (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 an insolvency context (Section 144 Insolvency, Restructuring and Dissolution Act 2018).

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:

- Conduct 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 the funder's identity and address to the court/tribunal and to every other party to those proceedings.

Legal practitioners and law practices are also prohibited from holding any share or ownership interest in a third-party funder which they have referred to 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).

Similarly, 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 third-party funder may be referred to a client by the solicitor insofar as 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.

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. 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 the judgment of *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 considered by the High Court in August 2025 in *Piper Martin v Singapore Kindness Movement*, which re-affirmed the position in Reed v Bellingham, while emphasising the high evidentiary threshold for establishing emotional distress.

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 more than $1 billion and assets of more than $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 or Singapore Exchange, 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, 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.

The Monetary Authority of Singapore sought public views in December 2025 on its proposal to improve retail investor recourse by allowing an approved independent representative to bring collective legal action, offering co funding for meritorious cases, and removing certain procedural barriers that currently hinder civil claims. These proposals are aimed at addressing long standing access to justice gaps for retail investors, particularly where individual losses are too small to justify standalone litigation. If implemented, the framework would represent a significant shift in Singapore's traditionally conservative approach to collective redress, while retaining regulatory oversight to mitigate unmeritorious or speculative claims. It also signals an increased policy focus on balancing investor protection with market confidence.

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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 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 in the tokens sold by the blockchain company. This action, which is the first cryptocurrency representative action heard by the Singapore International Commercial Court, has already resulted in significant findings on liability and damages. 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* [2017] 1 SLR 918 at [209] 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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Hong Kong



Collective redress

Collective redress mechanisms in Hong Kong remain limited.

The only available collective redress mechanism is representative proceedings, under which a plaintiff may bring a claim on behalf of persons with the same interest. Judgments are binding on represented parties, but enforcement is limited to those formally joined to the proceedings. In practice, this mechanism is considered outdated and is rarely used.

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In 2012, the Hong Kong Law Reform Commission (HKLRC) recommended several measures which would result in the creation of a formal class action regime. The proposals within the HKLRC Report on Class Actions included:

- The regime would cover tortious and contractual claims made by consumers in relation to goods, services and immovable property.
- Class action proceedings would not be permitted to proceed on that basis unless certified by the court.
- The procedural rules accompanying the regime would facilitate active case management.

Since the publication of the report, there have been no efforts to implement the proposed framework.

There have been limited regulatory developments in specific sectors. In 2022, the Securities and Futures Commission consulted on enhancing its ability to act on behalf of investors, but no formal regime has yet been introduced.

The imposition of a HKD1 billion fine on a professional services firm in relation to the Evergrande collapse, intended to compensate minority shareholders, may illustrate a developing regulatory willingness to pursue outcomes akin to collective redress.

Litigation funding

Third party litigation funding in Hong Kong remains constrained by the common law doctrines of maintenance and champerty, which continue to apply and may give rise to criminal liability if breached. Limited exceptions have been recognised; most notably in insolvency proceedings, where liquidators are permitted to enter funding arrangements to pursue claims and share in recoveries.

Since 2022, third party funding has been permitted and regulated in arbitration. However, uptake has been limited in practice. Data from the Hong Kong International Arbitration Centre (HKIAC) indicates the limited use of funding arrangements in this context. One funding agreement was disclosed annually between 2023 and 2025.

Similarly, although outcome-related fee structures are permitted in arbitration, usage remains low. Of the new cases reported by HKIAC in 2025, there were only 7 disclosures of cases using outcome-related fee structures. Outside arbitration and insolvency contexts, funding remains restricted and largely undeveloped, with no general disclosure obligations applying to funding arrangements in insolvency proceedings.

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Emerging risks

Several regulatory developments are introducing new potential liability risks in Hong Kong. The phased implementation of enhanced climate-related disclosure requirements for listed companies commenced on 1 January 2025. These requirements align Hong Kong more closely with international standards, including IFRS S2, and may give rise to increased exposure, particularly in the context of directors' and officers' liability.

In addition, the Protection of Critical Infrastructures (Computer Systems) Ordinance came into force on 1 January 2026. The legislation introduces a new cybersecurity regulatory regime, imposing obligations on designated operators across key sectors, including banking, energy, transport, healthcare, and telecommunications. Breaches may attract significant penalties, including fines of up to HKD5 million and continuing daily penalties. The designation process for critical infrastructure operators is expected to commence during 2026.

There have not yet been any recent significant court decisions on liability claims in Hong Kong that would qualify as requiring observation as an emerging risk.

Courts in Hong Kong consider developments in England and Wales, whose jurisprudence continues to be persuasive in shaping the evolution of liability principles.

Public sentiment

Civil jury trials are generally not available in Hong Kong, except for limited cases such as defamation claims. As a result, public sentiment does not play a direct role in determining liability or the quantum of damages in most civil proceedings.

Public sentiment is not a key driver of claims trends, particularly due to the absence of a formal class action framework and the limited use of representative proceedings. Similarly, there is no significant history of activism driving large-scale liability or other types of claims.

It is also notable that the increasing popularity of arbitration in commercial disputes, with the HKIAC reporting an increase of new cases from 503 in 2024 to 582 in 2025, will shield larger settlements or awards from the public eye in the long term.

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Nuclear verdicts

Nuclear verdicts, as seen in jurisdictions such as the United States, are not recognised as having a meaningful effect in Hong Kong.

Punitive damages are not commonly awarded and remain limited in scope. Damages are generally compensatory in nature, and there are few social or cultural drivers that would significantly inflate awards.

Claimant strategy

Claimant strategies aimed at maximising damages are not a prominent feature of the claims landscape in Hong Kong. Techniques associated with other jurisdictions, such as the US, have limited relevance given the absence of jury trials.

Litigation is not typically used as a mechanism to drive broader legal reform or create precedent in a systematic way. Forum shopping is also not a significant concern, although Hong Kong is widely regarded as a preferred jurisdiction for dispute resolution in the region. The independent judiciary and well-established common law system continue to attract parties to include Hong Kong jurisdiction clauses in commercial contracts.



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Israel



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 (the 2006 Law), setting out a structured process for bringing class actions. Actions that can be brought under the 2006 Law are specified in a closed list contained within its appendix, such as securities and environmental claims.

Class actions are also permitted in respect of certain pieces of legislation such as the Insurance Contract Law, Banking Law and Economic Competition 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 2006 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 2006 Law. The court has the discretion to invite or permit these interventions, such as legal arguments or the provision of relevant information.

The 2006 Law includes various control and supervisory mechanisms to ensure the proper handling of class actions, protecting the interests of both plaintiffs and defendants. As noted within a 2023 Ministry of Justice examination of the operation of the 2006 Law between 2016 and 2021, only about 22% of class actions concluded with an outcome that benefited the represented class, with the overwhelming majority of the class actions not warranting the filing of a class action at all, either because the claim was baseless or because it could have been resolved more efficiently without burdening an already overloaded judicial system. The protective mechanisms include:

- 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, that the class members will be properly represented, and that the action is the most appropriate and efficient method for resolving the disputes.
- A preliminary hearing for the court to establish whether statutory requirements for a class action are met.
- Continuous court supervision of the proceedings.
- Approval of any settlement agreement by the court, which will review the terms of settlement to ensure that it is appropriate and reasonable for the class members.
- Proper notification of class members on settlement, 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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The 2023 Supreme Court decision in the *Tnuva* class action also reflected that the courts may adopt a cautious approach in respect of certain types of claims brought on a class action basis. The certification of a class action against a dairy over the price of certain products was overturned. Although the dairy had been the subject of separate antitrust investigations, the Supreme Court held that courts must adopt a particularly cautious and restrained approach when adjudicating a class action that concerns an allegation of the setting of an exceptionally high and unfair price.

Litigation funding

Litigation funding is permitted in Israel and is not limited by law to specific types of claims. 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 2006 Law, but any funding arrangement will be closely scrutinised to ensure it does not create a conflict of interest, compromise 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 profit-targeted companies can fund class actions, it is not allowed to fund class action claims and dismissed such a claim.

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Emerging risks

Judicial decisions in Israel reflect the emphasis on protecting consumer and individual rights, as well as developing risks such as data privacy and environmental standards.

On the issue of environmental rights, 2026 has seen the filing of the first petition in Israel from environmental NGOs against the climate policies in the country. The petitioners, Green Course and the Youth Climate Protest, sought clarification why the 2030 emissions reductions target is 27% as opposed to the UN recommended 43%. Following this petition, the government was ordered to clarify what it considers to be the 'bottom line' for the government's setting of targets and further detailing the relevant measures that have been taken and the current status of the Climate Bill.

Although this decision is not indicative of increased claims for damages against companies, any increased regulation of businesses generated as a result of similar challenges could result in claims challenging corporate policies from activists or affected individuals.

More broadly, 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 the victim's autonomy. During 2026, a District Court ruling denied a NIS 13 billion complex class action claim concerning an allegation of loss of autonomy of 500,000 citizens in the north of Israel due to alleged air pollution by industrial plants, imposing NIS 1,000,000 expenses on the plaintiffs.

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.

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.

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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 consider 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.

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

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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