



# BERMUDA MARKET PREDICTIONS 2025

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of predictions for 2025.



## 1. The wave of biometric class actions will intensify

The growing wave of class actions in the United States related to biometric data privacy violations will continue to rise, with the state of Illinois at its forefront with its Biometric Information Privacy Act. There have already been a number of significant settlements with companies like Facebook, Google, TikTok and Meta in various states, with further actions expected. Enforcement efforts are expected to continue, particularly in California, with clarity on enforcement expected from its Supreme Court. Legal challenges over insurance coverage for biometric data privacy claims will also develop as jurisdictions interpret cover for novel actions.

## 2. Momentum will continue to build in 'polluter pays' climate litigation

While activist litigation has been high profile across several jurisdictions in 2024, 'polluter pays' litigation based on contribution to harm caused by climate change will continue to progress. In the US, a series of claims have been issued by states and municipalities against fossil fuel companies, including in *City & County of Honolulu v Sunoco LP*, based on the defendant's allegedly deceptive marketing and its failure to warn of the climate change impacts of its products. A petition filed by the defendant arguing that the claim should be dealt with federally is outstanding in the US Supreme Court and, in June 2024, the Supreme Court invited the Solicitor General to file a brief expressing the views of the US. Other actions do not seek damages, but rather funds for remediation. Outside the US, we continue to watch similar cases brought by individuals (often from the Global South), such as *Lliuya v RWE*, which has now reached the evidentiary stage. This stage itself has the potential to effect substantial change and momentum as further information comes to light. If successful, these claims will result in significant damages awards against carbon majors and precedent for yet further classes of action.

## 3. PFAS litigation expected to grow in number, while issues narrow

PFAS litigation citing environmental contamination and product-related exposures is predicted to rise as states and municipalities in the US enforce regulations and pursue actions regarding contaminated water. However, the prominent multi-district litigation in South Carolina leading the pack has narrowed, both in terms of active defendants (following recent substantial settlements) and scope (focusing on certain classes of alleged bodily injury). Nevertheless, new plaintiff groups will continue to emerge and new defendants will likely also enter the litigation arena as the scientific research and regulatory scrutiny intensifies.

## 4. London arbitration will become quicker, cheaper and more inclusive

Improvements under the Arbitration Bill were reintroduced in the King's Speech. Key proposals include a new general principle to disclose circumstances that might reasonably give rise to justifiable doubts about an arbitrator's impartiality; the governing law of the arbitration defaulting to that of the seat of the arbitration; and the inclusion of an explicit power for arbitrators to dispose of disputes summarily, where a case has 'no real prospect of success'. As a result, we are likely to see applications for summary disposal at an early stage, clarity over the applicable law, and a wider array of potential arbitrators. The key question that should be on all parties' lips when negotiating a contract should be: "what dispute resolution process should we choose? Is arbitration easier to enforce and better for this contract?" For those already facing arbitration, the improvements proposed by the Bill serve as a reminder that there is no 'one size fits all' arbitral procedure and early consideration should reap dividends further down the line.



## 5. COVID claims will progress to reinsurance markets

As the litigated claims for COVID-19 related business interruption losses complete their journeys through the Commercial Court and the appellate courts during 2025, insurers' attention will naturally switch to their own outwards reinsurance recoveries. As losses crystallise, an ever increasing flow of claims into the reinsurance and retrocessional markets will see a spotlight fall on claims presentations to excess of loss catastrophe contracts. Underwritten on a 'Named Perils' basis, the contracts only provide cover for loss caused by the perils specifically listed as covered (in contrast with 'All Risks' coverage, which applies to loss from all causes not specifically listed as excluded). Those contracts typically provide cover for "Natural Perils, including but not limited to..." and "Non-Natural perils as follows" and a key battleground will be whether COVID-19 is a Natural Peril where the list of Natural Perils is typically limited to seismic, flood, weather, and fire related perils (i.e. natural perils that arose by way of physical natural catastrophe).

## 6. Reinsurer focus on Russia/Ukraine related aircraft leasing losses will intensify


Reinsurers and retrocessionaires will spend 2025 with an intensified focus on monitoring and engaging with the issues emerging from the litigated claims regarding Russia/Ukraine related aircraft leasing losses which have dominated the aviation/specialty insurance market since the conflict began in February 2022. The long awaited 'mega trial' in the Lessor Policy claims, listed for 11.5 weeks in the Commercial Court from 2 October 2024, and the operator policy claims following some time thereafter are proving to be increasingly absorbing for reinsurers and retrocessionaires. The gradual resolution of the underlying claims, whether through settlement or judgment, should provide increased clarity as to potential ultimate exposures and the many and labyrinthine routes through the retro market by which those exposures will reach reinsurers/retrocessionaires.





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