



# ENVIRONMENT PREDICTIONS 2025

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## AVIATION

### 1. UK VTOLS are go!

The UK's regulatory framework for VTOLs (vertical take-off and landing aircraft) is promisingly taking shape. In September 2024, the Civil Aviation Authority (CAA) announced the establishment of two key working groups and it is now focused on introducing regulations that are in step with other regulators (principally the US and EU) but appropriate for the UK environment. In January 2024, the CAA consulted on (i) the handling rules for VTOL aircraft using battery power for propulsion and (ii) design proposals for vertiports at existing aerodromes. All this bodes well for the UK's ambitions to lead the way in this important sector of the aviation industry, while maintaining its usual high regulatory standards. As outlined in the UK's Future of Flight action plan (a Government-Industry Statement of Intent, published in March 2024), piloted eVTOL flights in the UK are identified as a key aim in 2026 "as a first step to scaled operations and a sustainable industry". The plan envisages a partnership between government, the CAA and industry to forge operational capabilities, physical infrastructure and the nurturing of associated manufacturing and technological development. As we look to the next 12 months, the UK's position of prominence in the VTOL space looks assured.

### 2. Towards a sustainable use of (outer) space

The Zero Debris Charter will set bold standards in the management of space debris and the support of long-term space sustainability. Six decades of space exploration has given rise to an "exponential growth" of debris population that, according to the European Space Agency (ESA), "will pose an ever-increasing hazard to satellites and astronauts and could render some orbits entirely unusable". The Charter is a global initiative, facilitated by ESA, to drive forward ground-breaking technologies for satellite end-of-life disposal, in-orbit servicing, and active debris removal. While it is not legally binding, those signing up to the Charter agree to adhere to its guiding principles towards space safety and sustainability, with the Charter setting out jointly defined targets for 2030. On 22 May 2024, 12 nations (including the UK and 11 European states) pledged, together with ESA, to adhere to the Charter. More than 40 key space industry players have also signed up. A further 100 organisations have advised of their intention to sign.

## BERMUDA MARKET

### 3. 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.

### 4. 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.



## CONSTRUCTION AND ENGINEERING

### 5. Rooftop revolution will have significant implications

Labour's plan to encourage millions of homes to be fitted with solar panels (the so-called rooftop revolution) and create more solar farms will lead to more claims. Technology is developing at pace; initial installation costs are high; not all roofs are suitable; safety and fire risks are high; and the skilled workforce is unlikely to be able to meet anticipated output. While the industry gets to grips with all of this, we predict greater risks for insurers that all stakeholders will need to consider. Construction all risks underwriters need to consider their exposure carefully and ensure wordings and premium accurately reflect the risks involved.

### 6. Insurers will revisit pollution wordings

We will continue to see insurers amending their pollution and contamination (and other) exclusions following the decision in Brian Leighton (Garages) Ltd v Allianz Insurance plc. The case concerned a sharp object that penetrated a fuel pipe, resulting in contaminated insured property. The Court of Appeal allowed the insured to recover, even though the policy excluded "damage caused by pollution or contamination". The majority held that the exclusion requires pollution or contamination to be the proximate cause, and the exclusion did not bite because the proximate cause was the penetration of the fuel pipe. As most pollution/contamination incidents are initially caused by something else, insurers who do not intend to provide cover in such circumstances will need to revisit their wordings.

## D&O AND FINANCIAL INSTITUTIONS

### 7. The increase in climate and ESG-focused corporate disclosures will fuel shareholder litigation

The 'anti-greenwashing' rules recently announced by the Financial Conduct Authority (FCA), aimed at ensuring that managers of UK based investment funds are correctly labelling their investment products, are a further example of the FCA's hardening approach to companies that make misleading statements to their customers. With a greater focus on climate and wider environmental, social and governance issues, corporate disclosures and statements are being closely scrutinised for accuracy and they are providing fertile ground for shareholder litigation in England and Wales. Claims are typically pursued under s90 and s90A of the Financial Services and Markets Act 2000, which provide a path to redress for shareholders of listed companies if they have allegedly suffered loss due to untrue or misleading statements. Activists are increasingly buying stakes in companies in order to use their shareholding to hold officeholders to account and challenge corporate behaviour. The increase in regulation, alongside an increasingly active investor population, will continue the growth of shareholder litigation.

## INSURANCE ADVISORY

### 8. The FCA will actively police sustainability claims made by the firms it regulates

The Financial Conduct Authority (FCA) is under pressure from climate activists, like ClientEarth, calling for guardrails to combat the prevalence of 'transition-washing' (the provision of transition finance to entities not genuinely transitioning to align with the Paris Agreement) and the rise in 'greenwashing'. In 2024, the FCA produced a package of measures (widely known as the 'greenwashing rules') to improve the trust and transparency of sustainable investment products. The rules require firms to ensure their sustainability references are fair, clear and not misleading, and proportionate to the sustainability profile of the product and service. The launch of these new rules coincided with the FCA's confirmation that it had opened its first climate-related enforcement investigation against a company - a clear signal that the FCA is looking closely at sustainability claims by firms.



## INTERNATIONAL CASUALTY

### 9. 'Just transition' claims will become more prominent

The transition to renewable energy will generate litigation based on the environmental and pollution risks involved in increased mining and extraction of transition-necessary materials. A number of such climate-related actions have been identified as 'just transition' claims. These actions are directed at the behaviour of governments and companies engaged in pursuing the development of renewable energy, while aiming to protect local communities and environments from any adverse effects. One lithium extraction project in the United States is being challenged, despite the extraction method being identified as less-environmentally damaging than traditional mining methods. Looking forward, liability insurers need to be mindful of their exposure to such claims.

### 10. Glyphosate resolution may be found in the Supreme Court

Recent successes in strategic glyphosate litigation may prompt Bayer to push for a US Supreme Court ruling that federal law supersedes conflicting state law requiring glyphosate-based products to carry warnings of cancer risks on their labels. During the registration of Roundup weedkiller, the Environmental Protection Agency approved product labelling omitting a cancer warning under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Bayer accepts that current claims may be settled where there is an economic advantage. However, the company publicly states that "a favorable [sic] ruling by the US Supreme Court on the federal pre-emption question could largely end the Roundup litigation".

## MARINE, ENERGY AND TRANSPORT

### 11. The transition to renewables will unearth new risk exposures

While the output from renewable energy is green, the same is not true for every aspect of the process. The mining and extraction of rare earth materials required may generate significant carbon emissions and create various additional risks. Litigation or allegations relating to breaches of sustainability regulations could generate financial losses for companies. These losses may not only be direct, but also as a consequence of reputational harm. Those financial losses could generate claims from shareholders who have been adversely affected, leading to claims under directors and officers policies. Mining and extraction may also involve dangerous working conditions and raise questions around the human rights of inhabitants of these locations. Litigation relating to the placement of renewable energy infrastructure is also likely to increase. There is also a disconnect between the ambition of the circular economy and recycling of equipment that is now reaching end-of-life. Looking forward, managing expectations around renewables should form part of the ambit of risk manager, broker and insurer discussions.

### 12. Climate change will increase ports and terminals risks

Climate change induced increases in extreme weather events coupled with rising sea levels are necessitating ports and terminal operators and their insurers to re-evaluate their range of exposures. Located on exposed coasts or in low lying estuaries, ports have always been vulnerable to windstorms, flooding and storm-surge. Climate change will only increase that vulnerability. This is particularly so with older infrastructure, which was designed and built using now outdated assumptions about extreme weather exposures. For example, once in 200 year storms now arise more frequently. Insurers and risk engineers should work with ports and terminals operators to develop adaption and resilience plans to mitigate against the amplified risks to this critical infrastructure.



### 13. The dark fleet will continue to pose additional risks

The imposition of further sanctions from Western nations against Russia, affecting its oil and gas industry, will cause the dark fleet to remain in operation for the purposes of circumnavigating those sanctions. Most of this dark fleet have substandard maintenance with no insurance, posing a major risk for the environment in case of an oil spillage and a lack of recourse to other vessels following collision incidents. The main risks will come from the highly dangerous and environmentally perilous ship-to-ship transfers on the high seas with no proper oversight. With no realistic end in sight for the Russia-Ukraine conflict, the risks posed by the dark fleet regrettably appear here to stay in the short-medium term and the insurance industry will need to consider the level of capacity it can and will allocate to this area.

### 14. 2025 will see energy being put into arbitrations

COVID-19 and the invasion of Ukraine have disrupted the global energy market and in turn caused several countries to invest in their own oil and gas industries. This threatens walking back on policies to support and grow renewable energy. Such actions have already led to numerous disputes (often subject to 'confidential' arbitration), for example between joint venture partners, and we are likely to see a sharp increase in 2025. For insurers, there is still a risk of price volatility arising from the ongoing invasion of Ukraine, which would have a knock-on effect for energy producers and their insurers, in turn increasing the cost of their policy programmes in respect of critical oil and gas facilities across the globe. While the insurance market - especially the marine and political violence arenas - have stepped up to ensure Ukrainian-linked risks can, where possible, benefit from continued insurance provision, this potential knock-on effect has more wide-reaching consequences.

## POLITICAL RISK, TRADE CREDIT AND POLITICAL VIOLENCE

### 15. Climate change will drive increasing political unrest

Climate change could develop a direct and more obvious correlation with political violence. The effects of climate change are well known - drought, famine and mass migration. Each of these may have a significant impact on the already heightened world tensions and predicted increase in political violence. Already unstable governments may struggle with the increasing needs of their populations in response to a heating planet and changing international views on the subject of foreign aid. The political violence and terrorism market will need to be wary in the coming 12 months when it comes to risks located in areas bearing the brunt of climate change.

## PROFESSIONAL LIABILITY: CONSTRUCTION

### 16. A rich seam of claims caused by geotechnical issues

The effects of climate change and the continued drive to build housing stock and commercial premises on previously undeveloped land are likely to drive an increase in the number, type and scope of geotechnical claims. A good example is the increasing prevalence of sinkholes in the UK. When a sinkhole occurs it does so suddenly and can cause catastrophic damage to buildings or even collapse. The increased number of construction projects on land underlain by chalk on greenfield sites, together with more frequent heavy rain events are two key factors. Inundation of the soil/chalk leads to an increase in subterranean voids in the chalk which in turn enhance the risk of collapse, resulting in a sinkhole occurring at the surface. The extreme heat/heavy rain weather-cycle also negatively impacts slope stability resulting in the unwanted movement or collapse of railway/road embankments and cuttings (as well as triggering natural landslides). Geotechnical engineers will be in greater demand at the front end of projects to assess the ever changing landscape of geotechnical risk, but also at the back end when things go wrong and claims result.



## PROPERTY

### 17. Flood claims and recovery opportunities against government bodies

Having experienced another year of heavy rainfall and both local and regional flooding, we predict a rise in flooding claims next year. As insurers are continually facing more frequent and larger claims, they may be more likely to consider recovery opportunities against, in particular, local authorities and other relevant government agencies who either failed to implement appropriate flood defences or failed to properly manage the flood defences in place. This could include a failure to maintain overflow areas or decisions to raise/lower defences at the right time. Historically such recovery claims have been difficult to maintain, but the tide may slowly be turning after some more favourable recent decisions and we have already seen an uptick in enquiries from insurers to work with insureds and loss adjusters to ascertain the merits of potential recovery actions.

### 18. Water utility companies will come under increasing pressure of claims for nuisance

As extreme weather events such as flooding increase, pressure will continue on the water supply network in relation to repair and renewal of its infrastructure. Delays in repair and renewal due to financial pressures, combined with a focus on restricting end-point cost to the consumer, may lead to an increase in claims relating to alleged water contamination and sewage pollution. Any discharge of pollutants or contaminated water supply has the capacity to affect a large number of people with an attendant risk of significant numbers of claims. The potential liability of water utility companies has been widened as a result of the Supreme Court decision in the Manchester Ship Canal case in 2024, as they can now be liable in nuisance for pollution caused by discharges of foul water even where there has been no negligence or deliberate misconduct. An increase in such nuisance claims is anticipated and first party property insurers are likely to want to put a renewed focus on pursuing subrogated recoveries for such losses.

## TRANSACTIONAL LIABILITY

### 19. ESG due diligence is increasingly important in M&A deals


Corporations recognise that tackling environmental, social and governance (ESG) issues can give them a competitive advantage and provide opportunities for growth. With greater scrutiny of ESG targets by consumers, employees, investors and regulators, ESG considerations are increasingly an important focus in M&A deals. Buyers are critically assessing sellers' commitments to sustainability and energy conservation, operational efficiencies and social responsibility as part of the acquisition process, to ensure ESG statements stack up and their merging corporate cultures will align. Significant differences in ESG ideology and performance criteria could be an obstacle to integration post-merger and may result in claims if mismanaged. ESG scoring – which uses quantitative measurements to independently verify ESG factors – is a growing market and it is expected to become more common place in the M&A due diligence process.





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