

# International and Complex Casualty Predictions 2026

## Litigation funding regulation in the UK/Europe will diverge from the United States

The regulatory approach to litigation funding in Europe and England and Wales is set to take a different path to the United States, following periods of uncertainty and multiple regulatory proposals. Reports from the Civil Justice Council and European Commission propose a series of light-touch regulatory measures, including disclosure obligations and appropriate financial regulation. While the European Commission did not make a formal recommendation, it emphasised the need to balance access to justice with the need to prevent abusive practices. This will be important as use of collective redress measures continues to increase in EU Member States. In the United States, individual states are expected to maintain a focus on matters such as funder registration, disclosure, and transparency. However, the prospect of federal regulation remains in play. Two legislative proposals have been put forward, although their enactment remains uncertain. Both would compel disclosure of funding agreements, with one proposal also focused on foreign involvement, including a prohibition on third-party funding by foreign states and sovereign wealth funds.

## Social inflation is coming full circle, with developments in Mexico serving as an example for the United States

Outside the United States, the impact of social inflation is seen most starkly in Mexico, and we predict that the way damages are awarded in civil litigation in Mexico may now influence the United States and other jurisdictions. Legislative efforts to challenge social inflation continue in the United States, with some states enacting legislation to mitigate the risk of nuclear verdicts, challenges to claimant strategies such as 'anchoring arguments' and the capping of non-economic damages in certain claim types. The risk of juries awarding outsized punitive damages awards will remain. However, with more pressure anticipated, plaintiff representatives may pursue damage concepts that prioritise compensating plaintiffs rather than punishing wrongdoers. In Mexico, although punitive damages are available as an extension of moral damages, human rights jurisprudence has led to the development and recognition of 'damage to life plans' awards. These awards are a category separate from moral or economic damages, designed to compensate the long-term effects on the future circumstances of victims and their families. Similar models may offer an alternative route to maximising compensation for plaintiffs in the United States.

## Federal pre-emption issues over glyphosates may have the same effect as causation challenges

Federal pre-emption arguments may clarify the prospect of further glyphosate actions against Bayer in the United States. Actions alleging a link between glyphosate and cancers have so far failed outside the United States due to a lack of expert evidence verifying a causative link. In the United States, state-based 'failure to warn' claims and the acceptance of conflicting expert evidence has resulted in substantial damages (both general and punitive) being awarded. However, the federal Environmental Protection Agency (EPA) has consistently approved glyphosate products without a cancer-related warning. Bayer argues that states cannot impose labelling requirements in excess of federal requirements. Some states agree, with North Dakota recently legislating that warning labels meeting EPA standards will be deemed sufficient. This measure effectively shields Bayer from glyphosate cancer litigation in the state. However, with conflicting circuit judicial guidance arising on this issue, Bayer has petitioned the Supreme Court, which has in turn sought the views of the Solicitor General. Further developments are expected in 2026.

## International climate change opinions will drive litigation and regulation

Landmark climate advisory opinions issued in 2025 by the International Court of Justice and the Inter-American Court of Human Rights will prompt both litigation and regulation targeted at corporates. The opinions clarified the obligations of states to respond to the climate crisis, including the regulation of private actors such as companies. These opinions will drive activist litigation against states to implement domestic policy change and are already being cited in a South African action challenging a government decision authorising fossil fuel exploration. Businesses will find themselves in the regulatory crosshairs if states are forced to respond. In addition, the opinions themselves will likely be used to supplement arguments used by activists and other claimants in wider climate litigation against businesses.

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### **Look out for extensions and postponements in PFAS regulation around the world**

Buttressed by stricter limits on drinking water, sector-specific regulation and expanded reporting requirements, the regulatory environment for PFAS will become more rigorous in both the United States and the European Union. However, a diverse and fragmented approach to PFAS regulation will still exist, with a significant number of PFAS-related bills having been introduced across a wide range of states in the United States. These efforts are filling a space increasingly vacated by the federal Environmental Protection Agency (EPA). EU Member States also voted in support of a Commission proposal to ban all PFAS in firefighting foams in April 2025, with a staged transition period and sector-specific extensions. However, compliance deadlines remain uncertain. The EPA is now expected to confirm in Spring 2026 that it will be extending the compliance deadline to achieve PFOA and PFOS Maximum Contaminant Levels in drinking water from 2029 to 2031. In the European Union, the outcome of proposals for a 'universal' PFAS restriction under REACH has been postponed, with the European Chemicals Agency's scientific evaluation now scheduled to conclude by the end of 2026.



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