



## International Casualty Predictions 2020

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From the US opioids crisis to climate change litigation, we offer our international experts' predictions on the opportunities and challenges that the international casualty market may face in the coming year and beyond.

### 1. US opioids crisis

Huge settlements look like they are here to stay in relation to the US opioids epidemic. Pharmaceutical companies, distributors and prescribers are involved in multi-district litigation by state departments for increased expenditure on public services, allegedly due to cynical marketing practices that created over-reliance on pain relief medication. One global healthcare company has filed an appeal to a recent US\$465m (£352m) judgment, and we expect to see more defendants choose to settle. A US\$48bn (£36bn) settlement framework has been proposed by two pharmaceutical companies and three distributors – it remains to be seen whether this will be an acceptable global deal for the plaintiffs. The knock-on effect is likely to be insurance coverage litigation over whether settlements reflect legal liability, given the damages claimed do not arise from injury suffered by the plaintiffs themselves. It is also debateable whether such liability would qualify as fortuitous or unexpected/unintended, if it is proven that the defendants continued to market products despite knowing about the risks of addiction.

### 2. Climate change – the force behind a new wave of litigation

Flooding, drought, forest fires, land degradation. Claimant lawyers are using the evidence on climate change to support a wave of litigation. In addition to regulatory and reporting requirements, companies will increasingly face the threat of damages to individuals. All eyes are on the German court's consideration of the case of a Peruvian farmer's claim against RWE for the alleged impact of its emissions on farming. Regardless of the outcome, we expect to see a surge in this category of litigation. State-owned companies in the fossil fuel industry are at heightened risk, particularly in Latin America and South East Asia, where there is broad recognition of the right to a healthy environment.

### 3. Environmental risk poses parametric challenge to traditional insurance products as wordings come under scrutiny

Environmental disasters are becoming more frequent and severe, resulting in an increased value of associated losses. In responding to pressure for faster payments, the insurance market must continue to innovate in areas including parametric policy triggers and artificial intelligence. Fundamentally though, we also expect to see a wholesale review of traditional and specialist insurance products for the transfer of environmental risks. Tightening regulations demand that businesses actively manage and report on their exposure to climate change. Increased litigation relating to environmental damage is likely to test how far general liability policies will respond, beyond the traditional triggers of third party property damage and bodily injury. Similarly, the wording of standard pollution exclusions used in first and third party policies will come under ever-increasing scrutiny. The insurance market is well-placed to respond. Around the world, penetration of specific environmental impairment liability cover remains low, and we expect to see this change.



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### 4. Forum shopping in the UK

The Supreme Court decision in *Vedanta v Lungowe* signals an increasing trend of foreign litigants being permitted to pursue group actions in the UK courts. At the heart of the decision to allow a group action by Zambian citizens to proceed against a UK-domiciled parent company and its Zambian subsidiary was the desire to ensure access to justice. The case also gives foreign claimants renewed encouragement to pursue UK companies by opening up the test for parent company control. Combined with the global reach of claimant law firms and litigation funding, we fully expect to see more claimants coming to the UK for their forum shopping.



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