Annual Insurance Review

2025

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We hope you enjoy reading the Annual insurance review 2025. You may wish to keep this printed copy as a handy point of reference. If not, please pass this on to someone else who might have an interest or, failing that, recycle.

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Introduction

With the Christmas and New Year festivities already becoming a blur in the rear-view mirror, what better way to blow away the few remaining cobwebs and see-off the January blues than to immerse yourself in RPC's Annual Insurance Review 2025.

As ever, we have gathered insights from the finest insurance market experts from within RPC and across our Global Access partner firms, to present you with our assessment of 2024's main events and our hopes (and fears) for 2025, across key international jurisdictions and countless business lines.

In our 2024 Annual Review we celebrated the diminishing impact of Covid on the insurance market, whilst acknowledging a host of growing risk-factors, including economic, climate, ESG and technological challenges.

This year you will read how these issues have, indeed, impacted the market, and are likely to continue to do so. The increased influence of AI, both as a driver of speed and efficiency within the insurance market and as a risk factor for claims, the systemic challenges it presents and its potential weaponisation by states as a cyber threat; the ongoing impact of higher-frequency extreme weather events; continued economic struggles across jurisdictions, including high rates of insolvencies; the growing risk of activist claims and regulatory intervention relating to ESG. You will see all of these topics featuring heavily in the articles that follow.

But perhaps more than anything, 2024 has transpired to be a year of conflict. Conflict in the physical sense has seen wars (or special military exercises, depending on your point of view) continuing, breaking out or threatened in more locations around the world than at any time in living memory. Conflict in a political sense has also continued to intensify with extreme polarisation of opinions and isolationism becoming the new norm, with consensus-building and internationalism seemingly fading in popularity. (It says something about political tensions across the world when the attempted assassination of the US president elect – twice – is somehow relegated almost to back-page news in the annual of the year's global events.)

These geopolitical tensions are set to continue, if not intensify, in 2025. How governments and regulators deal with more inward-looking societies is likely to play a big role in the claims environment going forward. You will read how sanctions, energy price disruptions and regulatory changes, amongst many other factors, are likely to impact different business lines – as well as the potential claims implications growing global conflict and volatility may bring.

As ever, insurance will continue to play a central role, not just in responding to conflict but also in shaping how businesses and individuals will be able to survive, recover and thrive in the coming years. RPC and our Global Access colleagues look forward to working with you to help you to navigate the year ahead.

WORKING TOGETHER

Working together with shared strategic objectives and values and the collective purpose of providing clients with Global Access to the best insurance law advice and client service wherever in the world they might need it.

We are more than a network.

43 OFFICES WORLDWIDE.

OVER 2000 LAWYERS.

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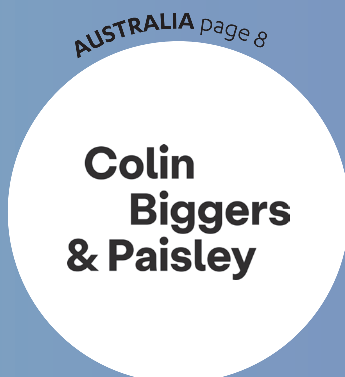


Asia

Rebecca Wong | Partner
Joyce Chan | Associate

Key developments in 2024

Insurance premiums

As the soft market continues, insurance premiums in Asia have consistently declined across all major product lines during Q1-Q3 due to increased competition and challenging economic conditions. The most prominent rate declines were observed in financial lines (including Directors and Officers insurance) and cyber insurance space, with reductions more noticeable than in 2023 given increased capacity driving market competition. In contrast, the declines in property and casualty insurance rates were comparatively more moderate.

Artificial intelligence

Last year we mentioned the growing interest among insurers in leveraging artificial intelligence to bolster claims processing, underwriting, pricing, and customer offerings. In 2024, many insurers have ramped up their investments in generative AI, embedding this technology into their distribution, operations and customer service to provide tailored solutions. Despite this, the level of "AI maturity" across the Asia insurance market remained relatively low. Insurers continue to grapple with challenges posed by a changing regulatory landscape, and data quality and processing issues.

Cyberattacks

In 2024, Asia saw a significant rise in cyberattacks (such as data breaches, cloud outages, and critical infrastructure failures), with an average of 2,510 weekly attacks per organisation in Q2 2024, marking a 23% increase from the same period in 2023. Notably, ransomware attacks surged by 38%, accounting for 16% of all global attacks. A plethora of public and private organisations have been hit by data attacks. For example, in Hong Kong, the Union Hospital fell victim to a malicious cyberattack that compromised its computer systems and resulted in a US$10 million ransom demand. Hong Kong Cyberport, the Consumer Council and Oxfam were targeted with ransomware attacks resulting in personal data leakages. The financial sector was also heavily targeted.

The surge in cyberattacks likely explained the 14% rise in large cyber claims in Asia during the first half of 2024. Demand for cyber insurance in Asia remained high, prompted by the need for robust cybersecurity, rate reductions and expanded coverage in the region. Many countries, such as Japan, South Korea and Singapore, have responded by tightening their data protection laws and imposing stricter data processing and breach notification requirements. Meanwhile, Malaysia has recently amended its personal data regulations to mandate breach notifications.

What to look out for in 2025

Insolvencies and trade credit insurance

The Asia market anticipates a rise in business insolvencies in 2025, driven by sluggish economic growth, uncertain economic conditions in China (partly due to debt and liquidity crises of major property developers), and ongoing geopolitical tensions in the region. For example, Chinese property giant Evergrande was ordered to be wound up in Hong Kong after failing to restructure its massive US$300 billion debt. Country Garden is also fighting a liquidation petition with an offshore debt restructuring proposal to its creditors. The ripple effects of these insolvencies are expected to contribute to a rise in corporate bankruptcies across Asia in 2025.

Amidst growing concerns among businesses to guard against payment defaults, the Asia trade credit insurance market is poised for substantial growth, with its value projected to increase annually by 13.5% from 2024 to 2031. As a result, underwriters may see increased claims in 2025 as businesses work to mitigate potential losses stemming from corporate insolvencies. This will likely result in a surge in D&O claims, as companies and their executives face increased exposure to claims for breach of fiduciary duties and insolvent trading.

Cyber insurance

The frequency and severity of cyberattacks are escalating as financial services become increasingly digitalised. Cybercriminals now leverage AI deepfake technology and social engineering tactics to create highly realistic videos and phishing attacks for malicious purposes such as identity theft and fraud. It hit the headlines in February 2024 that the Hong Kong office of a multinational company lost US$25.6 million to a deepfake video conference call impersonating its chief financial officer.

As a result, Asia's cyber insurance market is projected to triple by 2025, also driven by increased regulatory scrutiny. Regulators, such as the Securities and Futures Commission (SFC) in Hong Kong and the Monetary Authority of Singapore (MAS), have pledged to step up their efforts to combat cyber threats and related financial crimes. For instance, the SFC has issued a circular outlining expectations for licensed entities to mitigate AI-related risks, while the MAS has established the Cyber and Technology Resilience Experts Panel to advise on emerging cyber risks in the financial sector. Demand for cyber insurance is therefore anticipated to grow as businesses seek more robust cybersecurity measures and cover.

Climate change and catastrophe insurance

It is expected that climate change related weather events will continue, exerting claim pressure on the insurance sector. Aon reported that Asia's protection gap was substantial, with 91% of losses uninsured. As insurance claims continue to rise, some insurers are withdrawing coverage in high-risk zones, further widening the protection gap. This trend is likely to continue in 2025, putting pressure on insurers to enhance their efforts to mitigate climate risks. For instance, UN forum launched a global guide on transition plans for insurers at UN Climate Change Conference, Zurich and GoImpact partnered to help businesses in Asia to combat climate change. Also, insurance-linked securities (ILS) transactions are expected to increase, driven by investor interest and climate change implications. Taiping Reinsurance recently issued a US$35 million catastrophe bond, which is the sixth ILS issued in Hong Kong.

Digital or virtual assets insurance

The virtual assets market saw remarkable growth in 2024, driven by innovations in blockchain technology and decentralised finance (DeFi). In response, regulators have swiftly introduced new frameworks to regulate virtual asset activities and products, including imposing licensing regimes and related sanctions. For instance, the Hong Kong Treasury Bureau and Monetary Authority launched consultations on licensing stablecoin issuers and over-the-counter (OTC) trading service providers. Similarly, the MAS has consulted on regulating digital token service providers as a new class of financial institutions.

Asia's virtual asset insurance market in 2025 is poised for significant growth, as insurers are presented with significant opportunities to offer specialised coverage for digital assets, cyber risks, and operational liabilities, as well as to address regulatory exposures. They are looking to cover a wide range of risks for virtual asset service providers, including potential losses from cyber incidents such as employee fraud and loss of virtual assets, as well as third-party liabilities from claims related to intellectual property infringement, cyber incidents, fraud, scams, data breaches, and mis-selling of virtual assets.

Contacts

Carmel Green
Partner
+852 2216 7112
carmel.green@rpclegal.com

Antony Sassi
Managing Partner, Asia
+852 2216 7101
antony.sassi@rpclegal.com

Iain Anderson
Partner
+65 6422 3050
iain.anderson@rpclegal.com

Rebecca Wong
Partner
+852 2216 7168
rebecca.wong@rpclegal.com

Australia

Jonathan Newby | Partner

Key developments in 2024

It was a case of 'another year; another tough economic outlook' in Australia. Wafer-thin economic growth, cost of living pressure, higher than forecasted inflation, flatlining productivity and decade-high interest rates, combined with non-economic concerns around climate change, social inflation and cyber risk, has left the insurance industry with a smorgasbord of uncertainties to balance.

Insolvencies have continued to rise with the SME market worst hit. ASIC data shows ongoing record highs with 3,000 companies entering external administration each quarter since the start of 2023 - close to double the long-term average. With the majority of companies on the Eastern Seaboard, industries such as construction, food and retail services, and manufacturing are being hit the hardest. Insurers writing D&O and management liability cover for these companies will be keeping a close eye on trends in these industries.

The massive cost of input hikes has hit the construction industry particularly hard, with a number of high-profile companies leaving projects only part completed and owners and sub-contractors in limbo. While the true impact of this from a professional indemnity perspective is likely to be seen down the line, there has already been an impact where claims were already on foot.

Regulators have continued to broaden their oversight, as the wider community looks to this arm of the government to ensure that Australians get the 'fair go' that is entrenched in the domestic psyche and that companies are compliant and genuine in their claims. ASIC, ACCC and ATO have all been active this year.

ASIC had a significant victory in its continuous disclosure case against the ANZ over its $2.5 billion institutional share placement in 2015. On appeal, the Full Court of the Federal Court held that ANZ failed to fully disclose material information and was required to pay a $900,000 penalty (against a maximum fine of $1m per breach), plus ASIC's costs.

Greenwashing has been another hot topic, with ASIC and the ACCC having been separately pursuing cases both through investigations and court prosecutions. This year alone we have seen ASIC succeed against Mercer Super and Vanguard for greenwashing in the investment space, and ACCC commenced greenwashing proceedings against Clorox Australia Pty Ltd for greenwashing claims about its products.

The ATO is also increasing is regulatory enforcement, particularly over Director Penalty Notices (DPN) to directors and officers of impecunious companies. In 2023/24, the ATO issued in excess of 33,000 DPNs and garnishee orders to D&Os, a near-100% increase on the historical average.

Looking to cyber, the volume of incidents in Australia held steady with 87,400 reported for FY24. There have, however, been significant shifts in the legislative framework with the government going on a legislative blitz. In the past few months we have seen the introduction of a Digital ID Act, along with the AI Safety Standards setting the groundwork for more fundamental changes with the introduction of the long overdue first tranche of amendments to the Privacy Act. Passed in November, the changes to the Privacy Act introduce a tort of privacy. The amendments, however, fell short of removing a small business exemption (where turnover is less than AU$3 million) and employee records exemption which are expected in the next wave of amendments.

Also passed by the government was the Cyber Security Act which introduces mandatory reporting of ransomware payments for critical infrastructure assets or businesses with >AU$3m in revenue along with a framework for minimum security standards internet internet-enabled smart devices.

Cyber is another area of interest to the regulators, with ASIC issuing several pieces of guidance to companies and their directors to put them on notice that those who fail to adequately prioritise the risk, will be subject to prosecution in the event of an attack.

In the casualty market, economic pressures are also making an impact. This has been rising for several years and continues to do so driven by a range of factors. Cost of living pressures and rises in unemployment are one such factor, increasing the likelihood of plaintiffs refusing to settle early, and pushing through to litigation in the hopes of a bigger settlement. There is also a rising number of claims involving psychological injury which are often by nature more complex and take longer to resolve, and complex worker-to-work claims, involving the cross-over between workers' compensation and public liability insurance, driving claims costs and premiums up.

Institutional liability claims involving allegations of historical abuse against governments, faith-based institutions

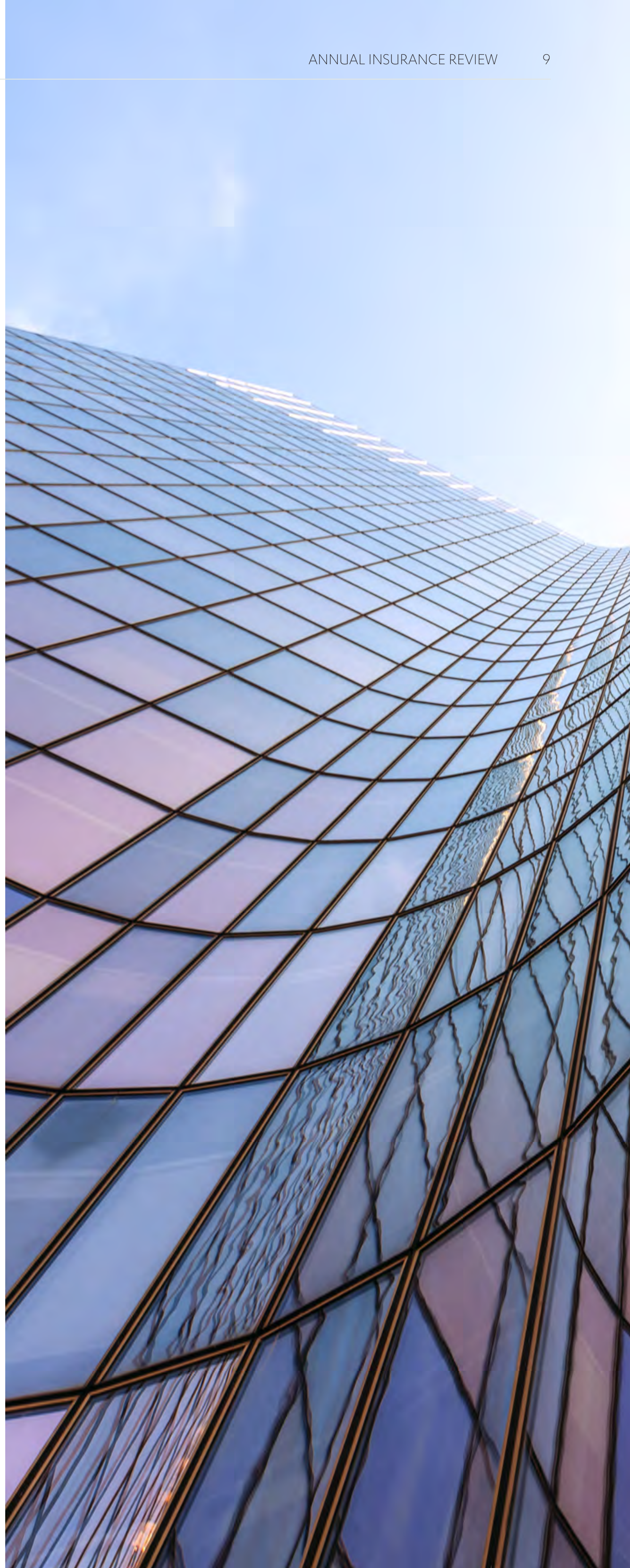
across denominations, schools, care homes, and other institutions continue to keep courts at all levels busy. In November, the High Court of Australia handed down three decisions that have been hotly anticipated by both sides of these matters.

The first, DP v Bird, considered the issue of whether a vicarious liability should be expanded beyond an employment relationship, an issue which the High Court unanimously ruled that it should not. This has been noted as out of step with the UK and Canada and has led to a push for legislative reforms on this issue.

The second two - Willmot v State of QLD and RC v Salvation Army - dealt with the use of permanent stays and affirmed that these will only be used in exceptional circumstances and be highly fact-specific, with the evidentiary onus on the defendant.

The NSW Supreme Court, EXV v Uniting Church in Australia Property Trust (NSW) heard the first case to consider Part 1C of the Civil Liability Act 2002 (NSW) which was introduced to enable prior deeds of settlement to be set aside in historical child abuse cases. The court found that it would be unjust and unreasonable to set aside the deed and disturb the legal rights and obligations of the parties contained in that document, a decision that stands in contrast to the approach in Victoria.

Finally, insurers succeeded in a test case involving claims by Melbourne businesses for business interruption losses they suffered during COVID-19 lockdowns. While the matter is on appeal, hopefully, it will be the last we see of the pesky bug for some time.



What to look out for in 2025

How the economy performs in 2025, and in particular how long businesses and consumers have to wait for much-needed interest rate reductions, will impact the performance of the Australian insurance industry in the coming 12 months. A looming federal election, likely to fall as early as May, will also have a bearing on the economy.

D&O insurers will continue to feel the pressure for the time being. While class action filings are down - in particular shareholder class actions - the economic climate will continue to throw up claims arising from insolvencies. The only positive point is the defendants' 5-0 result in recent shareholder class actions involving Myer, Iluka, Worley, Insignia and CBA, demonstrating the difficulties in establishing liability, causation and loss. However, class actions arising from employment issues, privacy and data breaches, consumer and products and mass torts are on the rise.

New mandatory reporting regimes in Australia will be on some insures watchlists. Climate-related disclosures will start from 2025, including financial disclosures mandated through amendments to the Corporations Act 2001 (Cth) and will require companies to issue an annual

Sustainability Report, which requires the director to issue declarations of reasonable steps of compliance. It is also expected that there will be an increase in the scope and obligations of mandatory reporting of data breaches under the Privacy Act and modern slavery under the Modern Slavery Act.

For cyber, we expect the push for legislative change will ease and the focus will shift to the implementation of the string of changes, and it seems unlikely that we will receive the second tranche of changes to the Privacy Act until 2026.

Cyber incidents will continue unabated, and evolve with multifaceted extortion and infostealer malware. We expect to see AI featuring more readily in breaches, increasing the speed at which vulnerabilities are exploited.

Economic challenges also present risks for other professions. With the increase in insolvencies, comes an increase in claims against business advisors, accountants and lawyers as directors, shareholders and creditors try to recoup losses and spread the losses by joining others in proceedings.

The expansion of the allied health and wellness industries is also resulting in emerging risks and increased claims, but in particular where rapid growth in market segments means the regulators are playing catch up. A particular issue here is where the name of the profession - for example, the use of the word "surgeon" - leads to the expectation of a certain level of training and qualification, with the reality not meeting this expectation.

Claims are continued to arise across the construction and infrastructure industries. In NSW, 2024 finished with a 4:3 split High Court decision in The Owners – Strata Plan No 84674 v Pafburn Pty Ltd [2023] NSWCA 301) which was confirmed that developers and head contractors cannot seek to exclude or limit their liability via the apportionment regime. Insurers and defence and plaintiff lawyers will be studying this judgment to understand how the majority and minority views might help or hinder claims waiting in the wings for mediation and hearings in 2025.

The construction sector continues to see increasing regulatory scrutiny (and regulation) which is starting to yield positive changes in practices, but picking the 'tipping point' as to when those cultural changes have become enmeshed will be the biggest challenge.

The workplace relationship landscape continues to ever evolve. The Right to Disconnect, having rolled out to large and medium businesses, will be extended to small businesses from August 2025 and other aspects of the Closing the Loop Act will come into effect, most notably a new federal criminal offence for wage theft and increased maximum civil penalties.

The institutional liability lists are now some of the busiest in the courts around the country, particularly in Victoria and New South Wales. Plaintiff firms are increasingly litigious including a number of class actions launched against a community legal center established at the time of the Royal Commission to assist survivors of child abuse and other plaintiff firms for "under-settling" claims. Consequently, plaintiff firms are reluctant to recommend settlement unless they can be shown to have extracted every possible dollar from the defendant. This is causing fewer matters to settle at mediations and to run to the first day of trial. We expect this trend to continue in 2025.

Further case law is expected to be set in 2025. The High Court will consider the issue of setting aside a prior deed in the matter of DZY (a pseudonym) v Trustees of the Christian Brothers, where a plaintiff is looking to relitigate a claim to seek damages for economic loss. And while the Victorian Court of Appeal reduced a jury award of record damages from $2.4M in total to just $550,000, there will still be a close eye kept on creeping quantum.

Contacts

Jonathan Newby
Partner
Colin Biggers & Paisley
+61 2 8281 4406
jonathan.newby@cbp.com.au

Keith Bethlehem
Partner
Colin Biggers & Paisley
+61 2 8281 4421
keith.bethlehem@cbp.com.au

Michael Russell
Partner
Colin Biggers & Paisley
+61 2 8281 4612
michael.russell@cbp.com.au

Canada

Mark Frederick | Partner

Canada faced significant challenges in 2024, with slow economic growth and a strained judicial system. Looking ahead to 2025, professional liability and construction claims are likely to remain on the rise, while the upcoming Canadian election could result in significant regulatory changes.

Key developments in 2024

Overall Weak Economic Growth

Economic growth in Canada remained sluggish throughout 2024, with real gross domestic product (GDP) expanding by only 0.5% in both the first and second quarters and slowing further to 0.3% in the third quarter. Notably, GDP per capita has declined for six consecutive quarters.[1]

Inflation, which had surged to a peak of 8% during the COVID-19 pandemic, has since dropped significantly to 1.6%.[2] In response, the Bank of Canada has reduced the interest rate over the past year, lowering it from 5% to 3.25%.

The Courts Continued to Move Slowly

The backlog in the Courts has continued to be a problem in Canada. In May 2024, there were 57 federally appointed judicial vacancies across Canada, with 19 in Ontario alone.[3] The issue has become so bad that Chief Justice Richard Wagner wrote to Prime Minister Justin Trudeau in 2023 stating that "The current situation is untenable and I am worried that it will create a crisis in the justice system."[4]

The Federal Court this year admonished the Federal Government, writing: "With the greatest respect, the Court finds the Prime Minister and Minister of Justice are simply treading water. They have failed [...] all those that rely on them for the timely exercise of their powers in relation to filling these vacancies. Also failed are those who have unsuccessfully sought timely justice in the Superior Courts and Federal Courts across Canada."[5]

A 2023 Report by the Advocates society found that it takes 1.5 hours for a motion longer than 2 hours to be heard in Toronto, more than 1.5 years after the trial management conference for a 3-week family law trial to be heard in Brampton and more than 4 to 5 years for a civil action to proceed from commencement to trial.[6]

This backlog went largely unaddressed in 2024 and it should be expected that long judicial wait time will remain a reality in the years to come.

An Insurer's Rate of Return May Be Awarded Over the Statutory Rate for Cost Awards

Aubin v Synagogue and Jewish Community Centre of Ottawa, 2024 ONCA 615 was an appeal of a personal injury action. The appellant sought a prejudgment interest rate of 8.46% based on their insurer's and their own investments' rates of return.

In Ontario, the presumptive prejudgment interest rate is 5% under the Courts of Justice Act, however, this rate can be deviated from. The Court found that the insurer's average rate of return was over two times the 5% presumptive rate and, given the circumstances, it would be unjust to apply the presumptive rate. As such, an 8.46% pre-judgement interest rate was awarded.

What to look out for in 2025

A Change in Government Could Result in Policy Changes Which Affect Insurers

Against the backdrop of weak economic growth, Canadian political parties have began ramping up for an election. Although the next election must occur by October 2025, it could be triggered earlier by a vote of no-confidence.

At this point, the Conservative Party, led by Pierre Poilievre, leads in the polls over Justin Trudeau's Liberal Party. A Conservative government could result in deregulation, however, risks may still arise from ongoing security class actions, climate change and environmental related torts, cybersecurity, and financial disclosure. Further, while this deregulation could possibly ease compliance requirements, it could also introduce volatility into market conditions.

Regardless of government change, underwriters should remain cautious of risks stemming from sustainability and ESG reporting, cybersecurity and global economic uncertainty.

Professional Liability Claims Are Likely To Rise

There are about 8000 medical complaints filed in Ontario per year, however, on average, only 54 medical professionals are subjected to any formal discipline per year. These statistics are similar for other professional bodies in different industries.

In light of this, many regulators are beginning to increase the amount of prosecutions in view of what they perceive to be falling standards. It should be expected that there will therefore be more formal disciplinary proceedings and claims made in this area.

Further, in light of increased issues of access, the Government has attempted to make services of some professionals more accessible by expanding their mandates. For example, as of January 1, 2023, pharmacists in Ontario are now able to prescribe for minor ailments. This change exposes pharmacists to additional risks as their responsibilities expand. As the Federal and Provincial government continue to address an overburdened healthcare system, insurers should carefully consider the increased risks that come along with these changes.

Construction Will Continue to be a Growth Area

With Canada's infrastructure struggling to keep pace with its population growth, infrastructure projects are expected to remain a key driver of economic activity. The federal government has pledged $200 billion toward new infrastructure projects over the next five years.

Canada is also grappling with a significant housing shortage, prompting many municipalities to adjust zoning laws to encourage the construction of new housing units. As a result, housing is likely to continue being a growth area.

Additionally, modular and prefabricated construction is gaining popularity. However, these projects come with unique challenges, such as supply chain disruptions, transportation issues, and scheduling complexities. Questions remain regarding the durability of these smaller homes.

The increasing frequency of extreme weather events is another growing concern for construction projects. In particular, mass timber projects are particular susceptible to wildfires.

Changes to Legislation May Considerably Affect Cyber Insurance

The Canadian Cyber Insurance market has continued to grown, with cyber crime on the rise. Canadian companies are paying an average of $7 million in data breach costs per breach, which is the third highest in the world.[7]

In late 2022, the Ontario Court of Appeal, in a trilogy of decisions,[8] addressed whether a company would be held liable for the tort of intrusion upon seclusion when their customer's data had been breached. The Court ultimately found that a company would not be held liable in this situation, however, that may change with upcoming legislation.

Bill C-27, if enacted, would overhaul PIPEDA and replace the privacy portion with three separate acts: the Consumer Privacy Protection Act, the Personal Information and Data Protection Act and the Artificial Intelligence and Data Act. The Bill includes a vicarious liability provision for contraventions of the Act by an employee or agent. With the looming election, it is unclear if the Bill will be passed or with what amendments, including with respect to third-party liability.

Contacts

Mark Frederick
Partner
Miller Thomson
+1 416 595 8175
mfrederick@millerthomson.com

Tom Whitby
Partner
Miller Thomson
+1 416 595 8561
twhitby@millerthomson.com

Latin America

Alex Almaguer | Latin America Practice Lead, Partner
Chris Burt | Senior Associate
Martín Jiménez | Associate

Key developments in 2024

The Latin American insurance market witnessed remarkable growth in 2024, reflected in an increase in product sophistication and robust premium growth. This is due to the continued economic growth in different countries, which has led to Latin America becoming one of the fastest-growing regional insurance markets in the world.

This year was marked by an increased frequency of extreme weather events which have been seen as linked to climate change, including hurricanes, floods, wildfires, and storms. These caused substantial economic losses and increased claims, particularly affecting property insurance lines. For example, Mexico was hit by a major hurricane for the second consecutive year; Bolivia experienced one of its most devastating wildfires; Brazil experienced record rainfall and flooding disrupting renewable energy projects, including hydroelectric plants, and Chile faced intense storms that left several places in the capital without electricity for almost two weeks.

The increase in frequency and severity of these events raised the question of whether the sector could absorb losses without significant adjustments to premiums and coverage limitations and without updating the insured values to prevent underinsurance. For instance, the aftermath of Hurricane Otis significantly influenced reinsurance renewals in 2024, highlighting the need for additional capacity to respond to such events.

Finally, economic instability in some countries further compounded the challenges, with an increase in social conflicts following presidential elections in countries such as El Salvador, Panama, Mexico, the Dominican Republic, Uruguay, and Venezuela. This has resulted in a rise in political violence-related losses in the region.

What to look out for in 2025

The Latin American insurance market faces a challenging, if dynamic 2025, shaped by global and regional factors. Geopolitical tensions, energy price disruptions, regulatory changes, and economic slowdowns are expected to influence the market. While premiums are projected to grow, the pace can be expected decelerate compared to 2024.

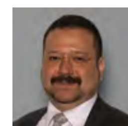
Slower economic growth in the U.S. and China, Latin America's primary trading partners, will likely affect export-dependent economies such as Mexico and Chile. Besides, geopolitical tensions and trade policy hostility will raise inflation across the region, increasing claims costs, particularly in Property and Casualty (P&C) insurance, due to rising repair and replacement expenses. However, nearshoring trends may offset some of these challenges, offering opportunities for regional growth.

The recognised need for additional capacity effectively to manage the increasing demand and exposure to large-scale claims will significantly expand the role of Managing General Agents (MGAs) in the region, driven by the region's economic growth and evolving risk landscapes. MGAs will play an essential role in providing capacity, managing risks, and filling coverage gaps by offering specialised solutions for niche markets like Nat Cat exposures.

Moreover, in response to rising claims and operational costs, insurers in Latin America will adopt technologies such as artificial intelligence and data analytics to automate claims processes and expedite settlements. Even though the region is still in the early stages, these technologies are expected to play a greater role in modernising claims handling across the region.

Finally, political violence-related claims, driven by cartel activity and social unrest, are expected to rise, particularly in Mexico and Ecuador. Insurance products covering property, political violence, kidnap and ransom, cargo and transit, extorsion, liability and cyber risks are poised for growth as businesses seek protection against these.

Contacts



Alex Almaguer
Partner, Latin America
Insurance Practice Lead
+44 20 3060 6371
alex.almaguer@rpclegal.com

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Middle East & Africa

Regina Gabbasova | Associate
Jack McAlone | Associate
Filippo Marchiori | Trainee Solicitor

Key developments in 2024

Middle East

In our last Annual Insurance Review, we predicted strong growth in the renewable energy sector in the Middle East, with solar and wind energy expected to play a major role in increasing the region's energy capacity, alongside a rise in investment and infrastructure development throughout 2024.

As anticipated, the Middle East built further on its renewable energy capacity during 2024, in particular in its solar power capacity. In Saudi Arabia, the large Al Shuaibah 1 solar plant reached its commercial operational stage in November 2024[1] and, in August 2024, China Engineering Group was awarded a contract to build another large solar plant which is expected to be operational by 2027 with an anticipated capacity of 2GW. Meanwhile, in the UAE, the Mohammed bin Rashid Al Maktoum Solar Park progressed to the final phase of development, and is reportedly expected to save 6.5 million tons of carbon emissions annually once complete[2].

As a result, demand for both construction and operational cover for solar projects increased over the course of 2024. That increase in demand, however, coincided with numerous extreme weather events which resulted in damage to renewable energy facilities in the region, including the Noor Energy 1 solar installation in the UAE. The risk of similar events going forward is likely to increase as more facilities are constructed in remote areas where limited data is available, and as a greater number of more extreme weather events occur due to climate change.

Africa

In our last Annual Insurance Review, we also anticipated that the insurance sector in Africa would further expand with the adoption of digital solutions, and that the regulatory regime in the region would continue to evolve.

Technology continued to play an important role in the insurance industry in Africa in 2024. Africa continues to have a significantly lower 'penetration rate' (only 1.47% in 2022) than other regions, owing to factors including poverty, a lack of awareness of the value of insurance and the products on offer, and a low level of trust in the industry. With a young population and expanding access to smartphones, technology is seen as a key mechanism to grow the insurance industry in Africa.

The regulatory landscape in the region has continued to develop, with Nigeria issuing revised market conduct standards in January 2024, which provides a new set of duties on insurers to ensure that customers are treated fairly. Similar TCF frameworks are already in place in jurisdictions including Kenya and South Africa. It is hoped that imposing these duties on insurers will help to improve customers' experience and, in turn, increase the level of insurance penetration in Africa. We anticipate that the regulation of the insurance industry, both in terms of solvency requirements and treatment of customers, will continue to grow in Africa over the coming years.

What to look out for in 2025

Middle East

It is anticipated that progressive changes in the regulatory frameworks in the UAE will introduce a more efficient operating environment and further growth of the insurance market in the region.

In July 2024, the Central Bank of the UAE issued the Insurance Brokers' Regulation 2024, which repeals the previous provisions and will take effect from 15 February 2025[3]. Key changes include a ban on brokers collecting claims settlements from primary insurers, with payments going directly from insurers to insureds (although note that this does not apply to reinsurance). The new Regulation also introduces new requirements concerning the conduct of claims, including a requirement to request missing documents from policyholders within two business days of receiving their formal claim application form, and to update clients regarding the progress of their claims every 15 days. It will be interesting to see how this tougher legal framework plays out in 2025[4].

Furthermore, as alluded to above, the region is continuing to witness significant investment into renewable energy infrastructure, such that there is likely to be continued demand for cover for these new facilities[5].

Africa

As extreme weather events continue to impact Africa, parametric insurance is playing an increasingly important role in the region. As an example of this, two insurance companies and a flood risk management firm have teamed up to develop parametric insurance products tailored for flood-prone communities in Ghana[6]. These products mark the conclusion of a two-year project led by Ghana's Minister of Finance, the UN Development Programme (UNDP), and the Insurance Development Forum (IDF), with funding from the InsuResilience Solutions Fund (ISF)[7].

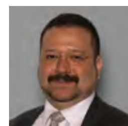
These policies pay out when certain pre-determined events take place – for example, when rainfall levels exceed a certain level or when flooding reaches a pre-determined extent. The fact that the policies respond when a pre-determined trigger is reached, as opposed to indemnifying insureds based on their assessed losses, means that payments under the policy can be provided more quickly, thereby reducing the disruptive effect of extreme weather events.

The Ghanaian government has also purchased drought risk insurance aimed at protecting vulnerable communities and the agricultural sector from the effects of extreme weather events. Other countries including Malawi, Mozambique, Zambia, and Zimbabwe have also signed similar parametric drought insurance policies, with demand for such products looking set to continue. With the increasing frequency of extreme weather events across Africa, we anticipate that the importance of parametric insurance for protecting vulnerable communities and the agricultural sector will remain a prominent theme in 2025.

The growing demand among insurers to write business in Africa was also reflected with the launch of the first Africa-focused Lloyds consortium on 1 January 2025. It will be interesting to see if further similar developments emerge in 2025.

Contacts

Toby Savage
Partner
+44 20 3060 6576
toby.savage@rpclegal.com



Alex Almaguer
Partner, Latin America Insurance Practice Lead
+44 20 3060 6371
alex.almaguer@rpclegal.com

Will Jones
Of Counsel
+44 20 3060 6938
william.jones@rpclegal.com

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Netherlands

Marit van der Pool | Partner
Floris van der Valk | Law student

Key developments in 2024

ESG, climate litigation and forever chemicals

In a class action brought by 'Stichting Fossielvrij' against KLM concerning greenwashing, the Court of Amsterdam ruled on 24 March 2024 that several of the advertisements run by KLM were misleading and therefore unlawful. The public attention for the harmful effects of PFAS also continued. In April 2024 eleven interest groups (including firemen, military personnel and residents living near airports) commenced a lawsuit against the Dutch State, asking the State to take faster measures to curb both the emissions and spread of PFAS. The lawsuit also calls for improved monitoring and quicker enforcement. Further developments will likely take place in 2025.

In November 2024, the Court of Appeal of The Hague overturned the 2021 ruling in Wconfirmed Shell's duty to align its business model with climate goals, particularly limiting global warming. While Shell's efforts to reduce direct (scope 1) and electricity-related emissions (scope 2) are in line with climate objectives, the court found no legal violation regarding Shell's scope 3 emissions, which stem from fossil fuel use by end-users (e.g., gasoline consumption). The court ruled that there is no clear standard for reducing these emissions and questioned whether a court order would effectively reduce global emissions, as other producers might compensate for Shell's reductions.

CSRD

Insurers faced pivotal changes under the Corporate Sustainability Reporting Directive (CSRD), requiring detailed disclosures on ESG impacts and value chain risks. Key developments included the integration of the European Sustainability Reporting Standards (ESRS) and intensified stakeholder scrutiny on climate-related risks.

Class actions (WAMCA)

Up until now, the class action procedures initiated under our new regime have consistently remained stuck in the formal phase, the admissibility phase. In many complex class action (or so-called WAMCA)-procedures, this formal phase has proven to take years. In 2024, the first judgement on the merits under the new regime for class actions took place. In this case, an energy company called Vattenfall was sued for overcharging companies for years. The Court of Amsterdam ruled that Vattenfall was allowed to charge these costs and did not act unlawfully. Furthermore, a notable judgement under the WAMCA concerning monetary damages was dismissed on substantive grounds, highlighting challenges in obtaining such awards. The case reflects the evolving nature of Dutch class action procedures, where outcomes are often tied to the specifics rather than procedural shortcomings. This suggests the framework of the new regime is maturing, but there are still hurdles in achieving financial compensation for claimants.

AI-Act

Dutch insurers are experimenting with AI and many are already using AI models in their business. It is currently most commonly used for customer service (i.e. chatbots), fraud detection and claims handling. With the AI-Act entering into force on 1 August 2024, a new legal framework has been created. Members of the Insurers' Association have already been bound since 2021 by the Ethics Framework for data-driven decision-making, requiring insurers to carry out additional checks when deploying automated decision-making, chatbots and other AI applications. This framework is based on the Ethics Guidelines for Trustworthy Artificial Intelligence, as commissioned by the EC, and hence based on similar principles as the AI-Act.

Developments in product liability

The rise of AI has led to significant developments in liability law. First and foremost, the long standing directive on product liability from 1985 has been amended through a new product liability directive (2024/2853) of 23 October 2024, which has been published in the Official Journal of 18 November 2024.

New unwritten ground for strict liability?

Furthermore, on January 12 the Dutch Supreme Court ruled that even if a building contractor has prepared and executed his work carefully, he may, under circumstances, be liable for damages that are the result of that work. This is significant, because in the Dutch legal system, one can only be held liable in case of either wrongdoing, or in cases of strict liability stipulated in our Dutch Civil Code. This potential ground for liability of a building contractor implies an unwritten ground for strict liability. The most notable circumstances mentioned, was the fact that a significant risk associated with the construction work materialized, that the contractor and the principal profited from the works whilst the party that suffered harm did not, and that the contractor and the principal could (or should) have insured themselves against liability.

What to look out for in 2025

ESG, climate change litigation and forever chemicals

In 2025, the first hearing will take place in the lawsuit that Greenpeace brought against the Dutch State concerning the mitigation of climate change in Bonaire was found admissible. We also expect further developments in the PFAS-claim against the Dutch State (see above) and the lawsuits against Tata Steel that were announced in 2023, as well as a verdict in a Greenpeace-case concerning the measures the Dutch government has implemented to reduce nitrogen emissions.

CSRD

Looking ahead to 2025, insurers should prepare for external mandates, expanded assessments, and closer alignments with global frameworks like the International Sustainability Standards Board (ISSB). Enhanced transparency in underwriting and investment decisions will be crucial as regulators and investors demand robust, credible sustainability strategies and disclosures.

Class action

The WAMCA system continues to struggle due to the limitations imposed on litigation funders in a few major decisions in the second half of 2023 (i.e. Airbus and Tiktok decisions). Courts are showing an increasing interest in capping success fees for litigation funders. Simultaneously, it is expected that the appointment of representative organisations will be tied to stricter registration and certification requirements to ensure effective representation.

Natural disasters and climate insurance

Insurers face significant challenges due to the increasing financial burden caused by natural disasters such as floods, storms, and heatwaves. Flooding, in particular, is expected to have increasingly disruptive effects in the Netherlands due to climate change. Insurers are likely to raise premiums to cover rising costs and impose stricter conditions, such as higher deductibles or exclusions for certain risks. Additionally, they will invest more in risk modeling and preventive measures to mitigate damage. Collaborations with governments and customers focused on climate adaptation will also play a larger role in their strategies.

AI-Act

The deployment of AI by insurers is expected to increase, although the Dutch Central Bank and the Authority for Financial Markets find that the impact of AI on the financial sector in the coming years is still difficult to estimate. In 2025 and 2026, most obligations of the AI Act will become applicable, which is particularly going to impact the usage of high-risk AI in the context of credit scoring, and risk assessment and pricing of life and health insurances. Insurers will need to timely start taking stock of their obligations under the AI Act.

Development in product liability

The new directive on product liability (2024/2853) needs to be implemented in the member states per 9 December 2026. Key changes of the new directive are that software and AI are now explicitly included within the scope of product liability. The range of liable parties is expanded to also include manufacturers' authorized representatives and service providers and there is a broader scope of damages (including lost data). The directive accommodates claimants in broader access to documents and a presumption of causality. The latter approach is also included in a separate proposal for AI liability, but this is not yet final and the outcome is uncertain.

New unwritten ground for strict liability?

As Dutch tort law usually requires a careless act, the ruling of the Dutch Supreme Court of 12 January has caused some controversy in the legal world. Some even wondered if that requirement could now be considered abandoned in general, as a result of this ruling. Even though the Supreme Court has definitely broken new ground, the scope of this ruling seems limited to (construction) cases that share the particular circumstances of this one. The impact of this ruling on the vast majority of tort cases should therefore not be overestimated too lightly, at least not until a more widely applicable ruling of the Supreme Court follows.

Contacts

Peter van den Broek
Partner, Attorney at law
kennedy van der laan
+31 20 5506 669
peter.van.den.broek@kvdl.com

Marit van der Pool
Partner, Attorney at law
Kennedy Van der Laan
+31 20 5506 838
marit.van.der.pool@kvdl.com

USA

Scott M. Seaman | Co-Chair of Hinshaw's Global Insurance Service Practice Group
Pedro E. Hernandez | Co-Chair of Hinshaw's Global Insurance Service Practice Group

In this chapter of our Annual Insurance Review 2025, we look at the main developments in 2024 and expected issues in 2025 for the USA.

Civil lawsuits and claims in the US continue to be fueled by social inflation and 2024 saw a record number of nuclear and thermonuclear awards and large settlements. Considerable attention continues to be devoted to cyber coverage and the systemic challenges associated with artificial intelligence (AI) and cyberattacks. COVID-19 business interruption, cyber and privacy, PFAS, traditional environmental and asbestos, opioids, lead paint, construction defect, weather-related claims, sexual molestation, and D&O/securities claims continued to dominate claims activities and court decisions. An unusually high number of US Supreme Court cases impacting insurers have been rendered the past couple of terms.

Social Inflation

Although economic inflation has dropped from a 40-year-high of 9.1% in 2022 to approximately 2.6 % in 2024, it remains more than double the rate of 2020. Social inflation continues to run ramped in the US, where a world leading 40 million lawsuits a year are filed. The tort system costs per household range from in excess of US$2,000 to $5,500 depending upon the state. According to one report, nuclear verdicts have increased 27 percent, and thermonuclear verdicts have reached record numbers.

Combating social inflation remains challenging in a legal landscape fraught with improvident legal and evidentiary rulings by judges coupled. Traditional rules of evidence and jury instructions have been ineffective in tapering the anti-corporate proclivities of younger jurors and in addressing the challenges presented in this instant information age. Third party litigation funding continues to be a scourge on defendants. The defense bar has pushed for courts to require disclosure of litigation funding. This a partial fix that has met with mixed success. A 2024 Louisiana law generally precludes litigation funders from controlling litigation or settlement and makes litigation financing contracts discoverable in civil cases. The law requires disclosure of litigation funding entities from "countries of concern" (including Russia, China, and Iran).

Defense lawyers have done a better job in countering plaintiff's reptilian tactics and anchoring damages, but defendants have not been effective in countering the US $1.5 billion annual spend by the plaintiff's bar in advertising to recruit plaintiffs and pre-condition future jurors to render large verdicts. Little meaningful tort reform has been enacted across the US in recent years, except for Florida where the early results have been somewhat positive.

ESG/Sustainability

The Biden administration and many states continued to advance environmental, social, and governance (ESG) criteria on a "whole of government" basis. The US Securities and Exchange Commission (SEC) issued its final climate-related disclosure rule in March, which is somewhat less onerous than the proposed rule as a result of receiving thousands of comments. The effective date has been deferred while litigation challenging the rule remains pending. SEC investment rules, which now allow for (but do not require) fiduciaries to consider ESG factors, are in effect. In September, the SEC announced it was disbanding its Climate and ESG Task force, but it has continued to investigate and penalize parties, such as Invesco Advisers for a $17.5 million civil penalty for misleading statements about integrated ESG factors in investment decisions.

Prior decisions by the US Supreme Court in West Virginia v EPA (striking down a rule promulgated by the EPA to address carbon dioxide emissions), Sackett v. EPA (narrowing the federal government's authority to regulate bodies of water and upending a Biden administration rule), and Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (striking down affirmative action admissions policies used by both Harvard and UNC, effectively barring the consideration of race as an independent factor in university admissions) have imposed some speed bumps on the ESG and DEI (diversity, equity, and inclusion) superhighways. The anti-ESG movement continues to have traction particularly in states with Republican governors.

The first Trump administration rolled back regulations substantially, but the Biden Administrated responded by increasing the regulatory burden to a record level. In 2021, for example, the Biden Administration promulgated over 3,250 regulations in contrast to 81 laws passed by Congress, meaning agencies accounted for over 97 percent of new laws adopted in the United States. The economic impact of regulation exceeds $1.9 trillion annually.

A trilogy of cases decided by the US Supreme Court in 2024 limited the power of administrative agencies in ESG, DEI, and extends across all subject areas of agency action. In Loper Bright v. Raimondo, the Court eliminated Chevron deference that sometimes-required courts to defer to agency interpretations of the statutes those agencies administer even when a reviewing court reads the statute differently. In SEC v. Jarkesy, the Court required administrative agencies to adjudicate matters involving the imposition of civil fines in federal court as opposed to "in-house." In Corner Post v. Board of Governors of the Federal Reserve System, the Court held that the default six-year statute of limitations for challenging federal agency actions begins to run when the plaintiff is injured by a final agency action (not when the final agency action is published), allowing decades-old regulations to be challenged. Notwithstanding these decisions, government agencies remain immensely powerful and enjoy significant advantages over regulated entities. However, companies challenging regulatory action may prevail in a higher percentage of cases than the 30 percent historical track record.

Climate Change and Weather Related Claims

The greatest impact that climate change has had on insurance claims has been as a phenomenon impacting the frequency and severity of weather events. California, Florida, and Louisiana have experienced the greatest impact on insurance availability and pricing. In the wake of several insurer insolvencies, Florida enacted two statutes interposing litigation reform impacting first-party claims, particularly with respect to claims involving roof damage and creating a US $2 billion reinsurance program. California regulators are working to afford insurers greater latitude in setting premiums after at least three major insurers announced last year that they would stop or limit writing homeowner's policies in California. The hurricane activity in 2024 is expected to yield a large number of claims.

The Hawaii Supreme Court determined that insurers had no duty to defend Aloha Petroleum in two climate-change related cases. The court ruled in favor of the policyholder on the occurrence issue, determining that an "accident" includes a policyholder's reckless conduct. It ruled in favor on the insurers on the pollution exclusion issue, determining greenhouse gases are "pollutants" as defined in the policies' pollution exclusions even adopting pro-policyholders positions such as holding pollution exclusions only apply to "traditional" environmental pollution. Despite all the climate change activities and underlying litigation, this represents only the second substantive US decision on coverage for climate-change.

Bankruptcy Decisions Involving Mass Tort Liabilities

The US Supreme Court ruled in Truck Exchange v. Kaiser Gypsum Co., that an insurer paying asbestos claims against the debtor is a party in interest that must be afforded an opportunity to raise issues and participate in proceedings that may impact their interests. Previously, many courts denied insurers standing where a Chapter 11 plan of reorganization contained an "insurance neutrality" provision. As the Court properly recognized, such provisions are not a substitute for an insurer's right to be heard.

In Harrington v. Purdue Pharma, the Court ruled that the US bankruptcy code does not authorize a release and injunction as part of a plan of reorganization under Chapter 11 that effectively would have discharged claims against a non-debtor (members of the Sackler family) without the consent of affected claimants. As a result, the $6 billion settlement of OxyContin opioid claims was invalid notwithstanding that more than 95% of voting opioid claimants voted to support the plan. The decision has parties scrambling to find work-a-rounds in non-asbestos mass tort bankruptcies and has some questioning the validity of consensual releases.

The Third Circuit affirmed the dismissal of the second Chapter 11 case involving Johnson & Johnson's talc liabilities early in the year. A couple of months later, J&J (through its Red River Talc unit) filed a third bankruptcy, this time it filed in the Southern District of Texas and avoided efforts to force the action to proceed in New Jersey. The matter is ongoing.

Artificial Intelligence

The New York State Department of Financial Services adopted a final circular about the "Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing," signaling the department's enforcement priorities. The circular follows the Colorado Division of Insurance release of its Algorithm

and Predictive Model Governance Regulation governing life insurance, the California Insurance Commissioner's Bulletin 2022-5 on Allegations of Racial and Unfair Discrimination in Marketing, Rating, Underwriting and Claims Practice by the Insurance Industry, and the Texas Department of Insurance Commissioner's Bulletin #B-0036-20 entitled "Insurer's use of third-party data." Fifteen states have adopted the NAIC Model Bulletin entitled "Use of Artificial Intelligence Systems by Insurers," issued in December 2023. In November 2024, the California Privacy Protection Agency issued a notice of the public comment period for its latest rulemaking package proposing expansive draft rules regulating technologies fueled by AI. The proposed rulemaking package includes updates to existing regulations and proposed regulations for cybersecurity audits, risk assessments, automated decision-making technology, and insurance companies.

COVID-19 Business Interruption Litigation

Approximately 2,400 COVID-19 business interruption coverage cases have been filed in the US since the pandemic. Many cases remain pending, but most have been resolved. No new actions are being filed as the suit limitations period in most first-party all-risk and BOP policies is one or two years.

Insurers have achieved overwhelming success in the litigation, prevailing in 69 percent of the 236 rulings on motions to dismiss in state courts across the country and in more than 86 percent of the 740 rulings in federal courts. These victories have been obtained on the grounds that the claims do not involve "direct physical loss or damage" to property as required by the language contained in most US first-party policies or based upon the application of virus or other exclusions. Insurers have prevailed in most summary judgment rulings and in most of the few trials.

Insurers have prevailed before in every United States Circuit Courts of Appeals. In 2024, the States Supreme Courts of Alaska, California, New Jersey, and New York joined the State Supreme Courts in Connecticut, Delaware, Iowa, Louisiana, Massachusetts, Nevada, New Hampshire, Ohio, Oklahoma, South Carolina, Washington, and Wisconsin in ruling in favor of insurers. Policyholders' prevailed before the Vermont Supreme Court and recently prevailed on the direct physical loss issue before the North Carolina Supreme Court, but lost in a companion case where the policy contained a contamination exclusion. Insurers have prevailed in most state intermediate appellate court decisions as well. Although policyholders may prevail in a small number of cases and states, it is fair to declare that insurers have won the COVID-19 business interruption coverage war.

Cyber

For the past 14 years, the U.S. has had the highest average costs in the world for data breaches. Most reported coverage decisions involving cyber issues have been so-called silent cyber decisions – decisions under traditional general liability, first-party, and crime/fraud policies.

The intermediate New Jersey appeals court affirmed the trial court decision in Merck & Co. v. Ace Am. Ins. Co., holding the 2017 cyberattack from malware known as NotPetya carried out by hackers acting on Russia's behalf was not barred by the hostile/warlike action exclusion. The New Jersey Supreme Court agreed to review the decision, but the case was settled before the court had an opportunity to issue a decision. Most insurers are adding updated War exclusions, many modeled on London forms.

In mid-2023, the US Securities and Exchange Commission adopted rules requiring registrants to disclose material cybersecurity incidents they experience. Additionally, they must disclose annually material information regarding their cybersecurity risk management, strategy, and governance.

Privacy

The US lacks an encompassing federal law comparable to the European Union's General Data Protection Regulations. Data breach notification laws, however, are in place in all 50 states. There are now several different comprehensive state privacy laws along with at least 25 different state data security laws.

Numerous rulings have been rendered under the Illinois Biometric Privacy Act demonstrating the broad scope of the act. Amendments to the Illinois Biometric Privacy Action in 2024 benefit businesses by allowing them to obtain written releases by electronic signature and limiting damages by restricting a single claim per section of the statute. The statutory damages remain harsh and still pose significant challenges for companies handling unauthorized biometric data. Although earlier coverage decisions were favorable to policyholders, insurers have prevailed in some recent Illinois Appellate Court decisions based on the "violation of law" and other exclusion and under cyber policies.

PFAS/Forever Chemicals

Per- and polyfluoroalkyl substances (PFAS), often referred to as "forever chemicals," have been around since at least the 1940s and have been used in so many products they are said to be ubiquitous. Thousands of PFAS cases are pending across the US, with numerous eye-opening settlements reached. Governmental regulators arrived late to the scene but are now locked and loaded on regulating PFAS chemicals. Numerous states are suing manufacturers and others for contaminating drinking water and damaging natural resources and are seeking to bar the use of these chemicals.

PFAS claims present numerous coverage issues. Several decisions have ruled on the applicability of various forms of pollution exclusions with mixed results. Various specific PFAS exclusions are included in policies of more recent vintage. Many claims potentially implicate legacy policies. Some forecasters believe PFAS losses may rival asbestos losses.

Traditional Environmental & Asbestos Claims

Notwithstanding the various emerging claim types, traditional asbestos and environmental claims continue to dominate with over 1300 Superfund cleanup sites and 22% of U.S. population residing within 3 miles of them. Approximately US $1 billion from the Infrastructure Investment and Jobs Act was allocated to the cleanup of 49 Superfund sites. Claims-made policies and issues are more dominant in environmental claims today than decades ago. There have been several coverage decisions rendered, but none have changed the course of coverage litigation.

Opioids

Opioid epidemic costs the U.S. approximately US $1 trillion annually. Approximately, 3,000 state and local governmental entities have been seeking to recover the costs of public services associated with opioids from drug manufacturers and distributors. Overall, policyholders have not fared well seeking coverage under general liability policies over the past couple of years. In 2024, a Florida federal court held that insurers of Publix Super Markets were not required to defend the grocery chain in 60 lawsuits brought by public entities because the underlying suits seek economic loss not for damages because of bodily injury. A Delaware trial court ruled that insures were not required to defend CVS against 218 opioid-related suits brought by municipalities, third-party payors, and medical providers on the same grounds, relying on the 2022 ruling of the Delaware Supreme Court in Rite Aid.

Lead Paint

Coverage issues relating to the US $400 million plus lead paint abatement fund ordered in California against three lead paint manufacturers has given rise to three separate coverage actions. Insurers previously prevailed in California, the policyholder prevailed in New York, and late this year the Ohio Supreme Court ruled in favor insurers on the basis that paying into an abatement fund for prospective harm does not constitute "damages."

Construction Defect

The Washington Supreme Court ruled that coverage for repairs to condominium's roof components was available under the resulting loss exception to the policy's faulty workmanship exclusion. The Seventh Circuit ruled faulty workmanship qualifies as an occurrence under Illinois law.

Sexual Misconduct Claims

A decision by an intermediate New York appellate court reversed dismissal of a declaratory judgment action brought by an insurer against the Archdiocese of New York finding the complaint sufficiently alleges that recovery would fall outside the scope of its duties to defend and indemnify if the archdiocese had knowledge of its employees' conduct or propensities. Another decision by the intermediate New York appellate court affirmed the trial court's ruling that the policyholder stated a cause of action for breach of the implied covenant of good faith and fair dealing. The Eighth Circuit affirmed a ruling that there was no coverage under an automobile policy for a claim that the plaintiff contracted a sexual transmittable disease from having sex in a car as it did not involve bodily injury arising out of the ownership, maintenance, or use" of the automobile.

Exhaustion, Recoupment, and Independent Counsel

The deterioration of California law on exhaustion continued with the California Supreme Court's decision in Truck Ins. Exch. v. Kaiser Cement & Gypsum Corp. Meanwhile, the Northern District of California upheld an anti-stacking provision.

The Sixth Circuit affirmed that an insurer may recoup amounts paid in defense after the underlying complaint was amended to remove the only potentially covered claims. The Ninth Circuit ruled that actress Amber Heard was not entitled to independent counsel for the defamation case brought by her ex-husband Johnny Depp.

Transactions Insurance

Transactions insurance, including representation and warranties, tax, and litigation insurance (judgment preservation insurance for plaintiffs and adverse judgment insurance for defendants) are being used in a larger percentage of M&A transactions, but M&A activity has been down the past couple of years. The claims volume has been manageable and only a few coverage decisions have been reported.

D&O & Securities Law

D&O and securities litigation raged forward in 2024. SPAC-related litigation continues with respect to both traditional securities and breach of fiduciary class action lawsuits. Greenwashing claims continue to be asserted, and artificial Intelligence or AI-washing claims have been added to the mix of D&O activity. Plaintiffs have filed dozens of pandemic-related securities actions, which have produced mixed results.

The Tenth Circuit held a fully disclosed corporate transaction cannot be "manipulative" under the Exchange Act as the conduct must be aimed at deceiving investors as to how other market participants have valued a security. Numerous decisions addressed policy exclusions such as the insured vs. insured and bump-up exclusions.

Reinsurance

Several decisions addressed arbitration and panel related issues, but there was a paucity of substantive reinsurance decisions of general interest rendered in 2024.

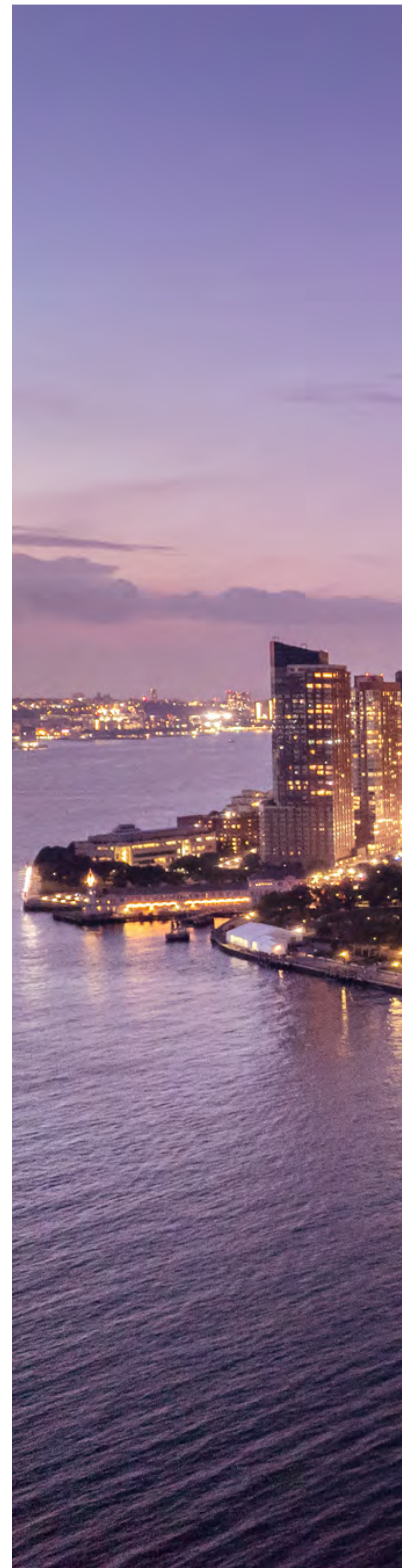
What to Look Out for in 2025

All the claim types discussed above are expected to be subject to additional decisions in 2024 with more decisions on cyber specific policies expected.

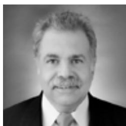
The election of President Trump coupled with a Republican majority in the U.S. Senate and the U.S. House of Representatives figures to have a significant impact on policyholder exposures and insurer claim experience, investment activities, and underwriting activities. The second Trump Administration is expected to usher in a more business-friendly business environment with the preservation of the 2017 tax cuts as well as additional tax cuts and credits. Although a substantial decrease in the overall regulatory burden is expected, there may areas such as cyber and AI where additional regulations are likely to be promulgated.

ESG is expected to be a targeted for a substantial regulatory rollback and budget cuts. There likely will be revisions to and elimination of a variety of ESG-focused rules promulgated by various agencies, including the climate disclosure rule. Green investment strategies may be impacted if the incoming administration reverses the 2022 rule allowing employee retirement plan advisers to consider ESG factors in their investment choices. Companies have to comply with international and state regulations. For example, the European Union's ESG disclosure requirements mandate U.S. based company compliance beginning in 2026. California also has a climate risk disclosure rule, and other states have ESG laws. In late September, the California climate bill became law and mandates large companies doing business in the state disclose their value chain emissions (something deleted in the final SEC rules) and report on climate-related financial risks.

D&O exposures related to compliance and enforcement risks spurred by government agency action are expected to decrease. Additional scrutiny and action from states and private actors could form the basis of D&O claims. President Trump is likely to pick up where he left off in his first term by Regulation of banks and other financial institutions likely will be eased with greater support of bitcoin and cyber currencies. The "war on the gas and oil industry" will be replaced with greater fracking freedom and "drill baby drill" in an environmentally responsible manner.



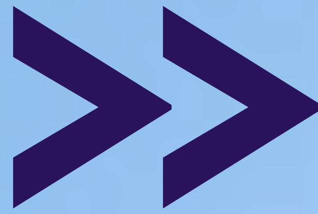
Contacts



Scott Seaman
Partner
Hinshaw & Culbertson LLP
+1 312 704 3699
sseaman@hinshawlaw.com

Pedro Hernandez
Partner
Hinshaw & Culbertson LLP
+1 305 428 5043
phernandez@hinshawlaw.com

Business line updates



Accountants

Patrick Paper-Barclay | Associate

Key developments in 2024

A key trend for the accounting world in 2024 was the sheer number of corporate insolvencies, and the knock-on effect of this in terms of claims against accountants. The number of corporate insolvencies continued to build upon the record levels already seen in 2023, which saw the highest number of annual corporate insolvencies for 30 years. The Insolvency Service's Annual Report in July 2024, for example, reported almost 11,000 new insolvency cases in the previous 12 months, an increase from just over 9,000 the previous year.

Where companies are failing, the work of auditors and other accounting professionals inevitably gets drawn into the spotlight. First, an increased workload for, and more pressure on, insolvency practitioners inevitably results in more claims against these professionals. Secondly, with more insolvencies there is an increased risk of insolvency practitioners investigating the work of other professionals, such as auditors, and pursuing claims against them. With the surge in insolvencies, it was no surprise that the previous government issued a consultation on the future regulation of the insolvency industry. However, it is unclear whether Labour will take these reforms forward as part of their plans.

For ICAEW members, professional indemnity insurance changes came into effect from 1 September 2024. Whilst the final changes were somewhat scaled back from the ICAEW's initial proposals, significant changes included an increase in the minimum limit of indemnity for most firms from £1.5m to £2m, and amending the maximum permitted excess to the higher of £3,000 or 3% of the firm's fee income.

What to look out for in 2025

Audit reform could represent a big development in 2025 for the accountancy field. This has been on the agenda for years, against the backdrop of multiple high-profile corporate failures over the last 10 years resulting in a conclusion that audit regulation was not fit for purpose, and a political imperative for reform. The previous government's plans, which have been in place since 2022, centred around the transition of the existing audit regulator, the Financial Reporting Council, into a new body, the Audit, Reporting and Governance Authority (ARGA). Following repeated slips in the timetable, however, the draft bill failed to make the King's Speech in 2023.

With the election of the new Labour government, the future progress of the reforms was uncertain. However, audit reform was the second item mentioned in this year's King's speech, and the documentation published alongside this confirmed that the government would be taking audit reform forward, and that its plans would specifically include the creation of ARGA. In December 2024 the government confirmed that we can expect to see a draft bill in 'spring 2025'. However, with the government welcoming extensive scrutiny of the draft bill from within the industry and beyond, it may still be years before any finalised legislation comes into effect.

We will need to wait for the draft bill to see what Labour's precise plans are for ARGA's powers and resources. However, on the basis of the previous government's plans, and government comments to date, we are anticipating increased investigation and enforcement powers, more resources, and increases in remit and scope, for example power to take action against non-accountant company directors. The reforms are therefore anticipated to raise standards and introduce new risks for accountants and others. It is also anticipated that increasing competition in the audit market will fall within ARGA's remit and objectives, including encouraging challenger firms to take over a greater proportion of audits of the largest and most significant companies (known as Public Interest Entities), an area currently dominated by the 'big 4'. This will bring further potential risks, as firms step up to deal with larger audits. Such risks were emphasised in the ICAEW's 2024 Annual Review, which noted that over 20% of audits reviewed were not satisfactory, in part caused by the shift of complex audits to smaller firms, due to market conditions and cost pressures. It will be interesting to see whether the implementation of ARGA will result in a similar dynamic.

Contacts

George Smith
Partner
+44 20 3060 6976
george.smith@rpclegal.com

David Allinson
Partner
+44 20 3060 6954
david.allinson@rpclegal.com

Tim Shepherd
Partner
+44 20 3060 7033
tim.shepherd@rpclegal.com

Antony Sassi
Managing Partner, Asia
+852 2216 7101
antony.sassi@rpclegal.com

Art & Specie

Karen Malik | Senior Associate

Key developments in 2024

Following reports in 2023 that the British Museum had discovered that around 2,000 artefacts were either lost or damaged, it has this year concluded its internal investigation. The Museum found that it had not been compliant with UK legislation regarding how such artefacts should be kept. The Public Records Act requires all UK museums and libraries to meet basic standards of preservation, access and professional care. The consequences of such failings can mean collections being transferred elsewhere or handed over to the National Archives, although it seems the British Museum may be spared this outcome. The Museum is working with the National Archives to ensure their future compliance. This will include the introduction of new policies, such as defining what comprises its collection, introducing a policy for registering items, and improving its policy for reporting unlocated items.

The key items targeted appear to have been unregistered items, mainly gems and jewellery. Around 600 items have been recovered. It is estimated that there will be a large number of items which cannot be recovered because they have most likely been sold for scrap.

The British Museum's failings and resulting loss of artefacts is a reminder to private collectors and their insurers of the importance of documenting and securing collections appropriately, especially where they include smaller items which may more easily disappear, whether through theft or otherwise. Documenting collections adequately not only reduces the likelihood of items becoming lost or stolen but will also ensure that if an item is stolen the chances of recovery are greatly increased.

What to look out for in 2025

Disputes over cultural property and calls to return artefacts to their country of origin will continue through 2025, with The Economist's World Ahead 2025 report perhaps rashly predicting that the Parthenon Marbles in the British Museum may be returned to Greece, albeit only as a loan.

A recent example highlighting the need for the calls for the repatriation of cultural property to be addressed by the industry, or else through legislation, has been the listing for sale of human and ancestral remains including shrunken heads and skulls. Labour MP Bell Ribeiro-Addy has asked the Deputy Prime Minister to commit the government to end the practice. Whilst the Human Tissue Act 2004 regulates the display of human remains it does not cover sales or purchases, and only applies to human remains under 100 years old so many historic remains fall outside of the existing legislation. It seems that new legislation may be required to close this loophole.

There will continue to be calls for items such as these to be repatriated to their country of origin. Some suggest that such items were given as gifts, or by way of barter, but it is acknowledged that others may have been taken away without the consent of their owners. There will be difficulties around how to establish whether items were collected ethically and how and to whom they should be returned, if at all.

Insurers will need to continue to be alive to the risks involved in insuring human remains and any cultural property, for example the value of an item may be impacted by increasing calls for items to be removed from sale and for repatriation.

Contacts

Rupert Boswall
Partner
+44 20 3060 6487
rupert.boswall@rpclegal.com

Davina Given
Partner
+44 20 3060 6534
davina.given@rpclegal.com

Aviation

Naomi Vary | Partner

Key developments in 2024

In this this inaugural aviation chapter of the Annual Insurance Review, it would be impossible not to focus on the continuing upheaval wrought by the Russian invasion of Ukraine. The aviation industry, which had largely weathered the disruption of the Covid pandemic, has been faced with new challenges since February 2022. Closure of European airspace to Russian aircraft, and of Russian airspace to aircraft from "unfriendly" countries, has forced route networks to adapt. Western sanctions which prohibited the supply of aircraft to Russian airlines have derailed longstanding relationships between Western aircraft lessors and their Russian customers. Prohibitions on the provision of insurance have similarly impacted aviation business models.

For aviation insurers, the conflict has led to multi-billion dollar litigation before the courts in England, Ireland and the United States. This chapter is not the place to debate the merits of this ongoing litigation but, to put points neutrally, the aircraft lessors, having requested return of their aircraft from Russia, brought insurance claims under various insurance programmes when those aircraft were not returned. These programmes include the "All Risks" and "War Risks" sections of the lessors' Contingent & Possessed policies, and the corresponding sections of the insurance and reinsurance policies issued to the Russian airlines themselves; this latter category involving around 90 separate actions before the English court, with trial expected to start in October 2026.

Trials on the Contingent & Possessed policies are underway in England and Ireland, with judgment expected (subject to a recent pause in the English trial) in the first half of 2025. Perhaps most fundamentally for the market, the judgment(s) will give certainty on the operation of the Contingent & Possessed policies; despite the fact that these are a standard part of the insurance package for any aviation lessor, the scope of the coverage provided by those policies is a point of significant dispute in the actions and has not been the subject of any previous judicial finding. In addition to this central issue, the litigation brings into focus the dividing line between the "All Risks" cover – which provides cover for All Risks of physical loss or damage unless excluded – and the named perils in the "War Risks" insurance, which are excluded from the All Risks insurance and covered by a separate policy, generally with a different market. The litigation is being fought as fiercely – and perhaps more so – between the All Risks and War Risks insurers as between the lessors and the insurance market, which is sorely testing the relationships in this historically amicable market.

What to look out for in 2025

Given the high profile of the litigation, it is easy to forget that these claims are unusual. The bulk of exposure on aviation policies concerns much more familiar matters relating to hull and liability covers. To highlight a few:

On the All-Risks side, industry reports note that one effect of Covid has been the loss of skilled personnel from the industry, and the interruption of training for essential pilots and crew. Smaller airlines may be tempted to use pilots or co-pilots with fewer flying hours, either overall or on type, in order to keep aircraft in the air. By doing so they may fall foul of insurance requirements in their policies, whether express or under an Open Pilot Warranty, leading to lack of cover in the event of an incident.

On the All Risks and on the liability side, the impacts of extreme weather can create havoc for an airline. 2024 has seen a number of reported incidents of extreme "clear air" turbulence, estimated by industry reports to cost the USA aviation industry around USD200million per year in a combination of airframe damage, additional maintenance requirements and liability claims for injured passengers and crew. Unlike more traditional extreme weather, clear air turbulence can be hard to forecast, and given its likely links to climate change the events of 2024 are unlikely to be isolated incidents.

Turning to the War Risks policies, the febrile political situation across the globe causes clear risks for air travel, either from conventional weapons or more subtle cyber warfare. Aircraft on the ground in war zones are highly likely to suffer damage if the aircraft cannot be extracted, and the common seven-day cancellation provisions for war risks insurance in the event of a conflict can leave airlines unprotected. Finally, it is to be hoped that despite the increasing rhetoric on all sides, the Five Powers war exclusion will not be brought into play over the war in Ukraine.

Contacts

Naomi Vary
Partner
+44 20 3060 6522
naomi.vary@rpclegal.com

Robert Morris
Partner
+44 20 3060 6921
robert.morris@rpclegal.com

Brokers

Daniel Charity | Associate

Key developments in 2024

The claims inflation seen in the market over recent years continues to pose a significant risk in relation to underinsurance, putting brokers at risk of negligence claims where an insured finds its cover insufficient to compensate for its losses. Industry research indicates that over 40% of commercial properties are underinsured, and claims managers are increasingly having to have difficult conversations with underinsured property owners. The impact of underinsured losses can be catastrophic for customers, particularly when policies contain average clauses. Insufficient property damage cover can also lead to longer business interruption periods, which are also not adequately insured. Brokers are playing a crucial role in seeking to tackle the underinsurance crisis and should continue to have frank discussions with clients and provide detailed advice on the implications of underinsurance in the event of a claim, including the application of average clauses.

Meanwhile, the use of AI continues to create opportunities and risks. Some brokers are using AI 'chatbots' to process first notifications of loss and streamline the early claims process, with touchless claims applications being introduced. Brokers are routinely using sophisticated AI tools in risk profiling and pricing, based on the vast amounts of data at their and insurers' disposal, which AI can digest in a matter of moments. The benefits of such automation include the fact that brokers now have more time available for in person meetings with both their clients and insurers.

An FCA review in 2024 identified some high-level trends from the first round of reports by insurance firms regarding their compliance with the Consumer Duty. The FCA appears to be placing emphasis on transparency and data from insurers being provided to customers, to ensure they are equipped to make informed decisions; whether on inception, renewal, or in the claims process. This duty extends to brokers, who should ensure they are asking the right questions of both insureds and insurers when placing cover. Although this has always been required of brokers, it will be more closely monitored and enforced under the Consumer Duty.

What to look out for in 2025

AI in the insurance industry is no longer in its infancy, with a RSA survey showing that 8 out of 10 brokers use it on a daily basis. Whilst AI pricing tools offer tangible benefits in terms of efficiency, risk and speed of data processing, this must be balanced against the need to consider the characteristics of individual customers and to tailor the service provided by brokers accordingly. Consumer groups have also raised concerns as to the lack of transparency in relation to complicated pricing algorithms and it is suggested that this could lead to discriminatory pricing practices. We anticipate that the regulator will remain keen to ensure that the increased use of AI in this context does not pose any risk of 'ethical harm' to customers.

The year ahead should bring further clarity as to how the FCA will be approaching brokers' compliance with the Consumer Duty. One key question is how brokers can meet the needs of insured clients while also avoiding tension with insurers. It remains to be seen whether the Consumer Duty will, for example, require brokers to take stronger stances against declinatures, on the basis that doing so is likely to always be in the interests of achieving a good outcome for the customer. BIBA's plea for proportionate regulation in the broking industry, following periods of significant regulatory change, may not be answered as the application of the Consumer Duty continues to evolve.

The High Court's decision in Norman Hay Plc v Marsh Ltd, concerning the loss of chance test for causation in brokers' E&O claims, will reach the Court of Appeal in early 2025. The first instance decision was a positive development for claimant policyholders, as it clarified that a claimant is not required to prove on the balance of probabilities that a putative insurer would in fact have indemnified the claimant, in circumstances whereby the broker's breach had led to there being no insurance policy in place. The outcome of the appeal could therefore have important repercussions for the brokers' E&O claims landscape with regards to the correct approach to causation.

Contacts

Tim Bull
Partner
+44 20 3060 6580
tim.bull@rpclegal.com

Kirstie Pike
Partner
+44 20 3060 6967
kirstie.pike@rpclegal.com

Kate Hill
Partner
+44 20 3060 6442
kate.hill@rpclegal.com

Class actions and collective redress

Lucy Dyson | Partner
Marcela Calife Marotti | Senior Associate

Key developments in 2024

The UK group litigation/class action landscape continues to expand, particularly in an environmental and consumer context. Whilst we still have no US-style "opt-out" class action regime for civil claims (opt-out class actions are only viable in respect of competition law infringements), the available mechanisms for seeking redress on behalf of multiple claimants, continue to be tested.

To re-cap, in England & Wales, there are essentially four mechanisms for bringing "group claims", the suitability of which depends on the legal issues, the volume of claimants and amount (and type) of damages at stake. These include: 1) group litigation orders (GLOs) where claimants must "opt-in" and be listed on the claim form; 2) groups of individual claims managed together (as in *Mariana-v-BHP*); 3) representative actions where claimants and/or defendants have the "same interest in a claim"; and 4) opt-in and opt-out collective actions for infringement of competition law.

GLOs continue to be the main legal mechanism for civil group claims in England & Wales, whereby claims are managed together provided claimants can satisfy the "common or related issues of fact or law" threshold. In recent years, claims have been brought in relation to the Post Office Horizon scandal, the contaminated blood products scandal, the metal on hips litigation and the VW Nox Emissions Group Litigation. In December 2024, the Court of Appeal in *Alame and others -v- Shell*[8] provided useful guidance on how claims involving multiple claimants should be managed. The claimants seek damages allegedly arising from multiple and repeated pollution events and although Shell argued that they should be managed as "global claims" when assessing causation (i.e. an all or nothing approach that the claims seek one amount which pertains to multiple alleged causes of loss). The court rejected this premise and held that the claims should be assessed by reference to "lead cases". The court further reiterated the importance of access to justice and not placing an overly onerous burden on the claimants in terms of evidence.

However, an ongoing challenge to bringing GLOs is the "opt-in" requirement which is onerous (as opposed to automatically belonging to a certified class) and requires the establishment of a claimant register. This might explain why only 194 GLOs have been made since 2000 (averaging five per year). So what is the best mechanism for mass claims?

On the face of it, a representative action under CPR 19.6 appears akin to a class action, given it permits an individual or entity to bring an action on behalf of others with the same interest, without establishing a claimant register. However, in practice, establishing common legal and factual issues amongst the group of claimants, has proven difficult. There have been various examples of consumer and environmental claims being dismissed for lack of commonality, complexity of individual circumstances and inadequate representation of the proposed group of claimants. Indeed, in *Lloyd-v-Google*, the Supreme Court confirmed that the circumstances in which representative claims will be allowed to proceed, are narrow (in this instance the claim failed because individual damages under the DPA 1998 would not have been evidenced by reference to wrongful use of data). In *Jalla-v-Shell*[9], claims concerning an oil spill in Nigeria was held not to meet the same interest test, given each claimant's circumstances were potentially different, including causation and the types of loss or damage allegedly caused.

In January 2024, the Court of Appeal unanimously upheld the High Court's approval to allow a representative action to proceed in *Commission Recovery Ltd v Marks & Clerk LLP & Long Acre Renewals (A firm)*[10]. The claim concerned 'secret-commission' arrangements related to IP services and was the first litigation funded claim filed pursuant to CPR19.8 that has been allowed to proceed. Unfortunately, although trial was listed for January 2025, the claim settled at the end of 2024. We will therefore have to wait for more guidance on the scope of representative actions, including whether damages can be awarded to all class members or if claimants would have to bring individual claims for quantum purposes.

Data protection group claims continue dominate the group litigation stage. In 2024, it was announced that online dating platform, Grindr, are facing a group action (totalling 15,000+ claimants) on behalf of platform users who allege their data was used in breach of data protection laws and sold to third parties without consent, including sensitive data such as HIV status. It will be interesting to see if this action proceeds as a representative action or a GLO.

In the context of mass claims, 2024 also saw the commencement of the much anticipated "mega trial" in *Municipio de Mariana -v- BHP* concerning the Fundão dam collapse in Brazil in 2015, which is

due to conclude in early 2025. The case is being heard as a group of individual claims (notwithstanding over 700,000 claimants seek damages in excess of £36bn). The claim was brought as a collection of individual claims (individuals and companies) and is being litigated before the English courts. This was despite a USD31bn settlement being negotiated between BHP and co-defendant, Vale, with the Brazilian government in order to compensate communities and remediate the damage caused to the local environment. It stands out on its own due to sheer size and for also bringing issues arising from another jurisdiction against an UK parent company.

Collective actions for infringement of competition law (introduced in 2015) remain the only true "opt out" route for class actions. Claims concerning consumer rights, environmental breaches and data protection are becoming more prevalent. December 2024 saw a £2.1bn class action being issued on an 'opt-out' basis against Microsoft in the CAT alleging Microsoft overcharged UK businesses who used rival cloud computing services for its Windows Server software. We also saw the settlement of the long-running *Merricks-v-Mastercard* opt-out collective action brought in respect of allegedly excessive transactional fees charged to consumers. It has been reported that the litigation funder who backed the case intends to challenge the settlement as premature, given £17bn was originally sought in compensation and the case is rumoured to have settled for in the region of USD200m. It will be interesting to see how this develops.

What to look out for in 2025

We await the outcome of the *Mariana-v-BHP* case and whether the trial will proceed to conclusion. This case has certainly paved the way for mass litigation in the toxic tort context. The long-awaited Pan-NOx Dieselgate GLO is also due to go to trial in October 2025.

We also await the outcome of the FCA's investigation into motor finance commission arrangements. It has been speculated that this will result in a consumer redress scheme similar to those devised for PPI claims.

Last year we commented on the Supreme Court's decision in *PACCAR*[11], which held that Litigation Funding Agreements (LFAs) are Damages-Based Agreements, and consequently unenforceable unless they comply with the DBA Regulations 2023. Unfortunately, there is no further clarity on the position regarding funding arrangements in the wake of PACCAR (and the Litigation Funding Agreements (Enforceability) Bill 2024 will now not be pursued). The CJC's Litigation Funding Review is due in November 2025 will provide much needed guidance on the regulation of funding arrangements and their status as DBAs.

8. [2024] EWCA Civ 1500
9. [2024] EWCA Civ 1500
10. [2024] EWCA Civ 1500
11. *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28

Contacts

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Climate risks and biodiversity

Lucy Dyson | Partner
Marcela Calife Marotti | Senior Associate

Key developments in 2024

2024 closed with the conclusion of COP29 and COP16 conferences. COP29 continued discussions in relation to financing greener energy projects and compensation of developing countries in the Global South for loss and damage as a result of extreme weather events. Although world leaders were able to commit to USD1.3 trillion per year as a new collective quantified goal for climate finance to support developing countries, no deal was concluded in relation to reductions in use of fossil fuels or phasing down. Climate and nature were also less prominent at COP29 than at COP28, leaving it to COP30 to increase momentum and link biodiversity pathways with climate action.

COP16 focused on biodiversity and the implementation and advancement of the Kunming-Montreal Global Biodiversity Framework (the "GBF"). Countries were expected to submit their national biodiversity strategies and action plans to align with GBF targets by the start of the summit. Disappointingly, by the end of the summit only 22% of parties (44 out of 196) had submitted new biodiversity plans. Countries were able to reach a consensus on a first ever agreement on a new sharing mechanism for genetic resources on plant and animal genetics. Countries were also able to agree to the establishment of a new permanent body for indigenous people, as key stewards in conservation efforts, who will be able to advise at biodiversity COPs.

2024 also saw further developments in relation to plastic pollution, both in terms of evolving regulations and litigation. In April 2024, the UK further implemented a ban on wet wipes containing plastic, adding to the list of banned and restricted plastic products in the UK. However, the end of 2024 saw postponement of both the finalisation of the much-anticipated plastics treaty. Negotiations at INC-5 unfortunately stalled in a blow to efforts to combat plastic pollution and implement global standards for plastic products. 2024 also saw the delay of the EU deforestation directive by one year (it will now come into force on 30 December 2025).

Climate impact cases against various energy companies concerning historic greenhouse gas (GHG) emissions, continue to progress through the US courts. These claims seek to establish corporate liability for past contribution to climate change. There have still been no findings on the substantive issues with the parties mainly arguing over which forum (state or federal court) should hear the claims. In Europe, there are now three historic emissions cases. In addition to Lliuya-v-RWE and Holcim, proceedings have been filed in the Belgian commercial courts in Hugues Falys-v-TotalEnergies. As with the other two cases, a farmer alleges that crop yield has declined due to climate change and seeks compensation commensurate with Total's 0.9% responsibility for global GHG emissions (using attribution science). To date, no historic GHG emissions claim have yet been filed in the English courts.

This year we also saw the advancement of the case of De Rezende before the Brazilian courts as the first Brazilian tort climate case. The Amazon Task Force, established in 2018 by federal prosecutors, has filed a claim against a Brazilian farmer for the deforestation of 2,488 hectares (equivalent to 4,650 football fields) between 2011 and 2018 in the Amazon for monetary damages totalling USD17million and an injunction for the removal of cattle from the farms.

Biodiversity cases are also gathering pace, including governments being targeted in relation to failure to halt projects which present danger to biodiversity. These lawsuits involve governments, corporations, NGOs or individuals seeking to enforce environmental laws, challenge harmful practices or strategically push for stronger environmental protections. The apparent trade-offs between climate grounded policies or projects and the need to protect biodiversity is exemplified in the Supreme Court case of M.K. Ranjitsinh and Others v. Union of India. The Indian Supreme Court, dealt with a balance of interests between the conservation of two endangered birds – the Great Indian Bustard and the Lesser Florican, and the undergrounding requirement of overhead transition lines in light of India's commitment to reduce emissions and move away from fossil fuel-based energy sources.

In March 2024, a legal opinion commissioned by the Commonwealth Climate and Law Initiative was published in the UK arguing that UK-based directors must consider nature-based-related-risks establishing perhaps a legal duty to manage nature and biodiversity risks. The case of Bloom et a –v- TotalEnergies before the Criminal Court of Paris is looking at the board of directors and main shareholders of Total for knowingly contributing to climate change.

As regards insurance coverage, the Supreme Court of Hawaii's decision in Aloha Petroleum Ltd -v-AIG and others is a very important decision in the context of climate impact litigation and insurers' duty to defend in US proceedings. The court focused on 1) the scope of an "occurrence" under an occurrence-based general liability policy and 2) the definition of "pollutant" in the context of a pollution

exclusion. The court held that the consequences of reckless conduct could qualify as an "accident" and therefore falls within the definition of an Occurrence for policy interpretation purposes. This was despite Insurers arguing that the consequences of the use of fossil fuels were known and foreseeable and therefore not "accidental". However, the court also held that GHGs qualify as pollutants and therefore the pollution exclusion applied to exclude coverage. As a result, Insurers were not obligated to defend Aloha.

The application of the pollution exclusion will therefore be crucial when considering climate impact claims. Moreover, it will be interesting to see whether insurers are able to rely on "deliberate acts" arguments in relation to reckless behaviour (particularly if there is no pollution exclusion), and how this might clash with the definition of Occurrence, in circumstances where reckless conduct constitutes an "accident" under local law.

What to look out for in 2025

January 2025 has commenced with unprecedented wildfires in the Los Angeles area of California. As this goes to print, losses are estimated in the region of USD135bn and murmurings that the insurance industry exposure will be significantly lower (albeit still between USD15bn to USD20bn).

In 2025, we are likely to see more climate impact cases brought outside of the USA and more focus on action to prevent loss of biodiversity. We should also see more regulation, in particular the long-awaited plastics treaty.

Contacts

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Construction

Sarah O'Callaghan | Senior Associate
Emily Snow | Associate

Key developments in 2024

This year the new Leasehold and Freehold Reform Act 2024 (the LFRA) enacted various amendments to the Building Safety Act 2022 (BSA), which came into force on 24 July 2024 and 31 October 2024. The key changes arising from the LFRA amendments include changes relating to building safety by increasing the duties of Insolvency Practitioners, and a change to the definition of "relevant defects". Insolvency practitioners are now under a duty to provide information to the local authority and fire and rescue service, and where the building is a higher-risk building (over 18m or 7 storeys high) they must also provide this information to the Building Safety Regulator. A previous conflict between Insolvency Practitioners' legal duty to creditors and their obligation to remedy defects has also been resolved through s.118 of the LFRA. Previously, under s.125 of the BSA, amounts recovered through the courts for remediation costs could be distributed to creditors in the first instance. However, s.118 of the LFRA now prevents funds being secured for creditors that should otherwise be used for remediation. Finally, s.114 of the LFRA introduces a new defined term of "relevant steps" to both s. 120 and the definition of "relevant measures" in Schedule 8 of BSA. The effect of this is to increase freeholders' and developers' responsibilities in preventing or reducing the likelihood, severity and potential harm caused by a fire or collapse of the building.

As per previous years, disciplinary investigations by regulators into construction professionals have remained high. This being the case, it is vital for construction professionals to keep abreast of professional developments, engage with their regulator when required and check what insurance they have available should any investigation be made into them.

Construction firm insolvencies have also stayed high, with high profile insolvencies like ISG having big knock-on effects for those further down the supply chain.

What to look out for in 2025

The Grenfell Tower Inquiry Phase 2 report was published on 4 September 2024. The Phase 1 report, published on 30 October 2019, focused on the events of the tragedy: how the fire started, how it escaped from the originating flat, and how it spread. Phase 2 of the Inquiry examined the underlying causes of the fire and the response of the authorities to the emergency. Recommendations put forward by the Inquiry panel include (a) centralising responsibility for all aspects of fire safety under one government department; (b) appointing a construction regulator to oversee all aspects of the construction industry; (c) introducing a licensing scheme for contractors wishing to undertake the construction or refurbishment of higher-risk buildings; and (d) introducing regulation and mandatory accreditation of fire risk assessors. The aim of these recommendations is laudable. There are however practical difficulties in their implementation, and we anticipate 2025 will see various discussions taking place on how the recommendations can be implemented.

In addition, the new government's plans will start to be implemented. The government has pledged: (a) a target of building 1.5 million homes over the next 5 years; (b) an update to the National Planning Policy Framework (NPPF); and (c) to streamline the planning process to reduce delays (planning delays having caused much pain to the construction profession). It has also committed to maintain and renew the road network and to launch significant infrastructure projects. Businesses could see increased pressure to comply with regulations, particularly around net zero requirements and social housing.

AI will continue to be much discussed. Whilst a report by the House of Lords Communications and Digital Committee in February 2024 suggested construction roles are among the least likely to be threatened by Artificial Intelligence (AI), we believe it will be increasingly embraced by workers in the pre-construction phase (at least). This could reduce project risks at the outset and improve safety and efficiency on site. On any basis, the next 1-5 years will see a significant increase in the use of AI across all industries; this will include construction.

Contacts

Alan Stone
Partner
+44 20 3060 6380
alan.stone@rpclegal.com

Ben Goodier
Partner
+44 20 3060 6911
ben.goodier@rpclegal.com

Tom Green
Partner
+44 20 3060 6536
tom.green@rpclegal.com

Zoe Eastell
Partner
+44 20 3060 6163
zoe.eastell@rpclegal.com

Contingency

Naomi Vary | Partner

Key developments in 2024

The contingency chapter of the Annual Insurance Review returns after a break. At the time of the 2022 update we expected the events market to rebound following the pandemic, although there remained lingering questions regarding entry requirements. Moving to 2024, the COVID restrictions appear to be a thing of the past, with attendance at events depending on a personal risk assessment rather than a vaccine passport or negative test. Despite the inevitable litigation following declinature of COVID claims, events and the contingency market have returned to normality.

This normality extends to the impact of extreme weather, which is regrettably becoming a common feature in the event industry. Weather patterns have of course always had a degree of unpredictability, but the last few years have seen increasing extremes which can threaten events. Theopening ceremony and outdoor events at the 2024 Paris Olympics faced major storm alerts, whilst competitors in the sailing events wore ice vests to deal with the heat. A number of the featured sports prohibited play should temperatures exceed a specific level. On a more local level, 2024 saw a rash of cancellations, ranging from summer fairs to Christmas markets, due to severe weather warnings, and any policyholder will need to check carefully whether their policy covers these last minute and pre-emptive cancellations.

What to look out for in 2025

Global politics might seem a long way removed from sporting and cultural events but the increasing polarisation of opinions, and the ease of organisation through social media, has turned these events into unexpected pressure points. In June 2024 the organisers of the Hay literary festival cut ties with the sponsor Baillie Gifford, over its links to Israel and fossil fuels. Baillie Gifford responded by cancelling all sponsorship of literary festivals. The same month, Barclays acceded to requests to suspend its sponsorship of Live Nation's UK festivals, after some acts had pulled out of the events in protest at Barclays' sponsorship; earlier in the year more than 100 artists had boycotted the Brighton Great Escape Festival, again due to Barclays' sponsorship. Barclays remains in the news, as pro-Palestine protestors urge acts and fans to boycott the Capital Radio Jingle Bell Ball as a result of the bank's sponsorship.

In September 2024 the RSPCA announced that it was cancelling a party to celebrate its 200th anniversary due to planned protests outside the event regarding allegations of animal cruelty at farms covered by RPCSA Assured. Screenings of gender critical films have been postponed or cancelled due to fear of protests.

This trend could lead to event organisers facing unattractive choices. Most, if not all, contingency policies exclude cancellations caused by lack of finance. Non-appearance cover does not extend to the voluntary withdrawal of an artist. Cancellation of events due to fear of disruption is similarly generally excluded. Event organisers may consider that they have valid reasons to cancel events, but should appreciate that this might be at their expense.

Contacts

Naomi Vary
Partner
+44 20 3060 6522
naomi.vary@rpclegal.com

Robert Morris
Partner
+44 20 3060 6921
robert.morris@rpclegal.com

Cyber and data

Elizabeth Zang | Associate

Key developments in 2024

Last year's edition of the Annual Insurance Review included predictions that 2024 would see a trend towards an increased general level of cyber security given (i) the importance placed on security measures by regulatory bodies such as the ICO and (ii) the focus cyber underwriters had placed on assessing prospective insureds' security before offering cover.

According to Sophos' report on Cyber Insurance and Cyber Defenses 2024 (the Sophos Report) which was based on surveys completed by organisations with between 100 and 5,000 employees across fourteen countries, this trend appears to have taken place worldwide. An impressive 97% of organisations that purchased a cyber insurance policy in the last year said they had invested in improving their defences in order to optimise their insurance position. Of those organisations, 99.6% said that this investment had a positive impact on their cyber insurance position and 76% said it enabled them to obtain insurance coverage they would not otherwise have secured.

Based on our own experience, compromise of account credentials remains a common method of entry. Whilst some threat actors use more sophisticated tactics to circumvent security protocols such as multi-factor authentication, having these measures in place will increase the bar required for threat actor access and contribute to a decrease in successful attacks.

What to look out for in 2025

Despite the improved security posture of organisations, we are continuing to see an increase in the number of ransomware incidents which have hit an all-time high over the course of 2024[12].

The NCSC has been clear that it "does not encourage, endorse or condone payment ransoms" and the ICO advised that "payment ransoms to release locked data does not reduce the risk to individuals" and that even if organisations pay ransoms because they think it is the right thing to do the ICO "will not take this into account as a mitigating factor". Despite this, the number of ransomware payments has increased.

Cohesity's Global Cyber Resilience Report 2024[13], which polled over 3,100 decision-makers across eight countries and multiple sectors, found 53% of UK-based firms that suffered a ransomware attack in the past year had paid a ransom, up from 38% in 2023.

The Sophos Report suggests that this propensity to pay correlates with insurance cover, finding that (i) 64% of organisations with a cyber policy made ransom payments whereas only 28% of organisation without a cyber policy did the same and (ii) organisations with a cyber policy were just as likely to pay the ransom to recover data as they were to use backups to achieve the same outcome.

However, it is possible that this trend will change in 2025. It may be impossible to rule out the payment of ransoms altogether. It is potentially true that if ransom payments were never made, this could end up reducing the motivation for threat actors to carry out ransomware attacks. However, there are considerable concerns with this approach. The effects of ransomware can potentially destroy a business and/or the service being provided. The potential position of business owners choosing between their business being wiped out or paying a ransom is invidious. Further, some services are particularly important to societal infrastructure. Allowing them to be destroyed might not realistically be plausible but allowing the providers of those services to be the only ones allowed to make ransom payments selects them as a more appealing target.

However, with three major UK insurance associations (the ABI, the BIBA and the IUA) joining forces with the NCSC "with the aim of toughening the sector's approach to ransom payments", there may be a shift towards ransom payments as an absolute last resort, rather than one of potential options for recovery. This may see fewer ransom payments being made.

12. https://jumpcloud.com/blog/ransomware-attacks-in-2024
13. Cohesity report requires sign up but here is the article that summarises it: https://www.infosecurity-magazine.com/news/over-half-breached-uk-firms-pay/#:~:text=It%20revealed%20that%2C%20in%20the,if%20victimized%20by%20ransomware%20actors

Contacts

Richard Breavington
Partner
+44 20 3060 6341
richard.breavington@rpclegal.com

Rachel Ford
Partner
+44 20 3060 6821
rachel.ford@rpclegal.com

Dan Guilfoyle
Partner
+44 20 3060 6912
daniel.guilfoyle@rpclegal.com

Jonathan Crompton
Partner
+852 2216 7173
jonathan.crompton@rpclegal.com

D&O

Jessica Pease | Associate

Key developments in 2024

2024 highlighted the importance of a directors' duty to consider or act in the interests of creditors where a company is insolvent or bordering on insolvency. The claim brought by the liquidators of BHS Group against certain of its former directors following the group's collapse into insolvency in 2016 saw the first time where a court held company directors guilty of "misfeasant trading". The directors were held to have not considered the creditors' interests before entering into an onerous and expensive secured loan which would exhaust the group's assets if it could not be repaid. The directors were therefore found to have acted against their statutory duties by entering into the loan instead of the group going into administration.

Wrongful trading cases are typically difficult to bring successfully. This decision may therefore encourage insolvency practitioners to bring claims for wrongful trading and misfeasance which, when coupled with the rise of litigation funders willing to take on such cases against directors following insolvency events, certainly makes this a development for directors and officers (and D&O insurers) to watch out for. In particular, it will be important for directors to monitor the financial position of the company and to show that they have acted with reasonable care, skill and diligence. This includes ensuring all advisors are provided with the requisite information to assist / provide guidance and that any informed professional advice taken / received is assessed and followed to demonstrate a director has properly discharged their duties rather than being a factor contributing to their potential liability.

The directors being found personally liable for a significant sum will also likely cause an uptick in D&O insurance to provide cover in similar situations (especially where the court held that the directors' liability could not be capped at the level of D&O insurance cover that each director had or was able to afford).

What to look out for in 2025

The FCA continues to show an increased focus on non-financial misconduct (including harassment and sexual assault) as being central to diversity and inclusion. The results of the FCA's survey of over 1,000 investment banks, brokers and wholesale insurance firms were published in October 2024. It was found that the number of reported allegations increased between 2021 and 2023. The most recorded concerns included bullying and harassment and discrimination identified mostly via reactive routes (grievances, formal processes or whistleblowing). The survey demonstrated how broadly "non-financial misconduct" is interpreted with the most common incident type in the responses being "other". This included the misuse of alcohol within the workplace, inappropriate or offensive language and employees acting in retaliatory behaviour in response to allegations.

The FCA considers healthy workplace cultures and "fit and proper" employees and senior managers to be essential and a focus point to limit harm caused to consumers or market integrity. In the absence of such cultures and/or people, company directors and officers can expect to be the subject of increased numbers of investigations and claims, particularly given how broadly non-financial misconduct can be interpreted. Directors and officers (as those responsible for company culture) will therefore need to ensure that reflecting on and monitoring the adequacy and flexibility of their processes for mitigating, reporting and investigating non-financial misconduct remains at the top of their priority lists. The absence of such procedures may imply a toxic environment and wider issueswhich could also lead to reputational damage and other decision making and risk management procedures being called into question and criticised.

The FCA's "final rules" following the survey are expected to be published by the end of 2024. The FCA has, however, previously confirmed its intention to include the concept of non-financial misconduct in the FCA Handbook and the regulatory framework in the Code of Conduct, the Fitness and Propriety test for employees and senior managers and the suitability threshold conditions that firms must meet to be or remain FCA authorised. These changes will increase the FCA's powers to investigate and take enforcement action in relation to non-financial misconduct, which reinforces the FCA's clear intention to be more active in preventing and tackling instances of non-financial misconduct in 2025.

Contacts

James Wickes
Partner
+44 20 3060 6047
james.wickes@rpclegal.com

Michael Newham
Partner
+44 20 3060 6018
michael.newham@rpclegal.com

Ben Gold
Partner
+44 20 3060 6282
ben.gold@rpclegal.com

Carmel Green
Partner
+852 2216 7112
carmel.green@rpclegal.com

Energy

Will Jones | Of Counsel
Jack McAlone | Associate

Key developments in 2024

In last year's Annual Insurance Review, we anticipated that we would see further growth in hydrogen power and that the renewable energy insurance market would continue to respond to this.

According to the Hydrogen Council, global investment in hydrogen projects reached US$680bn in 2024, an eightfold increase on the total figure for 2020[14]. Meanwhile, the number of clean hydrogen projects in the pipeline globally has risen from 228 in December 2020 to 1,572 in May 2024[15]. In response to that significant growth, the last few years have seen various insurers and brokers launching new facilities for blue and green hydrogen projects.

More broadly, the global move towards renewable energy has continued to grow momentum. This was underscored by the resolution at COP29 in November 2024 to triple the amount of climate finance made available by developed member countries to developing member countries by 2035.

The energy insurance market has responded positively to the developing focus on renewable energy - particularly in respect of those risks involving proven technology, with low natural catastrophe risk and good operating history[16]. The growing importance of renewables has also been reflected in the launching of new renewables-focused MGAs – Volt Underwriting and Novagen[17 and 18].

Notably, FM Global also announced the launch of a "Renewable Energy Unit" in May 2024 to assist its clients with the risk management aspects of moving to renewable technologies[19].

Whilst there are clear opportunities for insurers operating in the renewables market, there are inherent challenges and uncertainties in the underwriting of novel technologies - particularly as concerns pricing.

What to look out for in 2025

We anticipate that 2025 will see further growth in the energy insurance market - in terms of capacity, participation, and the nature and extent of risks covered.

In addition to the environmental concerns surrounding the use of fossil fuels, the combination of reducing interest rates, government incentives (e.g. tax breaks, funding schemes) and demands for energy security in Europe following the instability caused by the war in Ukraine has created additional incentives to invest in renewable energy as an area. This favourable environment has led some to predict an uptick in growth throughout 2025[20] for the sector, with a particular focus on important new technology such as battery energy storage systems (BESS) and carbon capture.

Furthermore, analysts expect that countries in the Middle East and North Africa will add to their renewable energy capacity significantly, with the International Energy Agency estimating that the region will add 62 GW to its renewable energy capacity over the next five years[21].

The above presents both opportunities and challenges for insurers. The further growth of the renewable energy sector will provide an opportunity to write business in a fast-developing and more 'ESG-friendly' market – thus providing an opportunity to grow premium income and enhance their standing as responsible businesses (which may be seen as increasingly important in light of recent Just Stop Oil/XR protests). However, that is to be set against the significant challenges from an underwriting perspective arising from the limited data available for different locations and new forms of renewable energy technology, combined with the historically high level of losses arising from weather and human error/ defect in the renewables sector[22].

Furthermore, as new technologies such as BESS are expected to become more prevalent over the coming years, it will be interesting to see the ways in which the insurance market responds – both as concerns the nature of the cover provided and, indeed, the appetite to underwrite these new risks.

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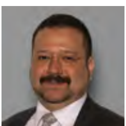
Contacts

Toby Savage
Partner
+44 20 3060 6576
toby.savage@rpclegal.com



Alex Almaguer
Partner, Latin America Insurance Practice Lead
+44 20 3060 6371
alex.almaguer@rpclegal.com

Will Jones
Of Counsel
+44 20 3060 6938
william.jones@rpclegal.com

Financial Institutions

Rebecca D'Silva | Associate

Key developments in 2024

As we predicted last year, ESG continues to be a source of risk for financial institutions. On 31 May 2024, the Financial Conduct Authority's anti greenwashing rule came into effect. The rule applies to all FCA-authorised firms, including UK asset managers, who make sustainability related claims about financial products and services. Under the rule, sustainability related claims must be fair, clear, and not misleading. In addition, the FCA has introduced naming and marketing requirements for asset managers, differentiating between products that have sustainability objectives and use a label, and products that have sustainability characteristics but do not use or qualify for a label. Following consultation in 2024, the rule looks set to be extended to portfolio managers in Q2 2025.

But, it isn't just regulators clamping down on greenwashing; international environmental law organisations also have ESG in their sights. In late 2024, ClientEarth submitted a claim against BlackRock, the world's largest asset management company, to the Autorité des Marchés Financiers, in respect of its sustainable funds. ClientEarth has indicated its intention to notify the European Securities and Markets Authority, the European financial regulator.

With anti greenwashing rules and guidelines coming into effect, we expect environmental claims against financial institutions will only increase further.

What to look out for in 2025

Further to our 2024 update, Authorised Push Payment (APP) fraud reimbursement protections commenced on 7 October 2024. The scheme administered by the Payment Systems Regulator applies to payments made on or after this date. All types of payment firms (from big banks to building societies and beyond), both sender and recipient, are brought under the scheme. Although the scheme is capped at £85,000, where more is lost and not reimbursed, a complaint can be made to the Financial Ombudsman Service, which has a £430,000 compensation limit. The impact of the cap may result in difficult issues as to the distribution of liability between the sending and receiving payment firms.

In 2025, we also anticipate significant vehicle finance exposures to lenders coming down the line, subsequent to several pending reviews/decisions. The FCA banned discretionary commission arrangements (DCAs) in 2021. There have been a large number of subsequent complaints from customers against motor finance lenders claiming compensation for commission arrangements prior to the ban. The FCA reports firms were rejecting most complaints as firms did not consider they had acted unfairly or caused customers loss given the applicable legal and regulatory requirements. The FCA is currently using its powers under section 166 of the Financial Services and Markets Act 2000 to review historical motor finance commission arrangements and sales across several firms.

The Financial Ombudsman Service (FOS) has considered some complaints rejected by firms. It has found in favour of complainants in at least two published decisions so far, which is likely to prompt an increase in complaints to firms and the FOS. However, in October 2024, Barclays Partner Finance judicially reviewed the FOS' decision against it. The awaited High Court decision will affect future complaints to lenders and the FOS, as well as the FCA's potential consumer redress scheme. Also relevant is whether the Court of Appeal's recent decision against FirstRand Bank Ltd and Close Brothers Ltd, finding it was unlawful for brokers to receive a commission (i.e. wider than just DCAs) from the lender without getting the customer's informed consent to the payment – will be successfully appealed to the Supreme Court. The outcome of all of these actions will have a significant bearing on how big the exposure will be for financial institutions with vehicle finance exposure and their FI insurers.

Contacts

James Wickes
Partner
+44 20 3060 6047
james.wickes@rpclegal.com

Ben Gold
Partner
+44 20 3060 6282
ben.gold@rpclegal.com

Michael Newham
Partner
+44 20 3060 6018
michael.newham@rpclegal.com

Carmel Green
Partner
+852 2216 7112
carmel.green@rpclegal.com

Financial Professionals

Esme Watson | Senior Associate

Key developments in 2024

In March 2024 the FCA published the findings from its Thematic Review of retirement income advice, looking at the landscape c. 9 years post-pension freedoms against the backdrop of an ageing population. No fundamental problems were identified but the FCA set out some areas for improvement, from more consistent fact finding to considering the value being provided in respect of any ongoing services.

The most significant issue for FCA regulated professionals in 2024 was the ongoing vehicle finance saga, which culminated in a Court of Appeal judgment in October 2024. The Court of Appeal heard three joint cases and decided that the commissions paid in those cases were either secret or partially secret. Crucially, it was held that the broker in each case owed a fiduciary duty to the claimant, and informed consent to the commission payment could not be obtained in the absence of full disclosure of the amount of commission to be paid. The individual remedy (generally being the commission plus interest) will generally be small but commentators estimate that the overall redress could be in the region of £30 billion.

Permission to appeal to the Supreme Court has been sought and would be expected to be granted but in the meantime there is ahigh, and growing, number of claims and complaints (with c. 30,000 new FOS complaints made in the three months to April of this year).

The issue is not specific to vehicle finance and, subject to any successful appeal, opens the door to scrutiny of commissions payments to brokers in general.

What to look out for in 2025

There is plenty to look out for in 2025, in large part thanks to new Government's agenda. Rachel Reeves' Mansion House speech in November 2024 signposted an intention to reform and modernise FOS in specific recognition that "challenges can occur" when mass redress events arise.

The proposed changes are to be driven in collaboration with the FCA and FOS. Following the Chancellor's speech a joint Call for Input on the modernisation of FOS was issued, with specific reference to mass redress events. Such events are particularly relevant given the volume of vehicle finance complaints pending at the FOS, as discussed above.

In principle, modernising FOS would seem to be entirely sensible and welcome but we risk a fixed 'one size fits all' approach which sits uncomfortably in a forum with jurisdiction to award redress up to £430,000 with limited (if any) oversight. However, modernising FOS may help the FCA to meet its secondary objective (being to facilitate international competitiveness and the growth of the UK economy), as it could give businesses (and consumers) greater certainty on how FOS will operate in achanging financial landscape.

Another issue to watch out for is the FCA's Ongoing Advice Review, which is looking at the quality of service and value for fees for ongoing advice in the financial services sector. The outcome of this is expected in 2025. As was also highlighted in the retirement advice review, scrutiny of ongoing advice and the fees charged is something that has come to the fore following implementation of the Consumer Duty and is drawing ongoing attention from the FCA.

Contacts

Rachael Healey
Partner
+44 20 3060 6029
rachael.healey@rpclegal.com

David Allinson
Partner
+44 20 3060 6954
david.allinson@rpclegal.com

Antony Sassi
Managing Partner, Asia
+852 2216 7101
antony.sassi@rpc.com.hk

General liability

Charles Appleby | Senior Associate

Key developments in 2024

This has been a dramatic year for cases involving fundamental dishonesty. In Williams-Henry v Associated British Ports Holdings Ltd, the King's Bench Division found that the Claimant, who had suffered a moderately severe brain injury, had dishonestly exaggerated her symptoms and attempted to inflate the value of her claim by over £1million. Although liability was admitted and, but for her dishonesty, she would still have been entitled to damages just under £600,000, the Court dismissed the whole of her claim. The Judge found that, given the extent of her deception, there would be no substantial injustice to the Claimant by her losing the genuine elements of her claim along with the dishonest ones.

A few months later, in Shaw v Wilde, a Claimant was found to have lied about the extent of disabilities arising from a significant motor incident. He advanced a claim in the region of £6.5million. The Court found that, notwithstanding that he had proved a genuine claim assessed at over £1.2million and depriving him of that claim would cause significant financial hardship, there would be no substantial injustice in dismissing the whole of his claim.

These cases show that, where Fundamental Dishonesty can be proved, a Claimant will have a high bar to overcome if they are to avoid an order under s.57 of the Criminal Justice and Courts Act 2015, dismissing the honest elements of their claim along with the dishonest ones. However, the stakes remain high for both parties. A Defendant that fails to make out allegations of dishonesty at trial risks significant judicial criticism and, in some circumstances, may face an order to pay Claimant's costs on the indemnity basis.

What to look out for in 2025

The pressure that the Courts can exercise on parties to engage in Alternative Dispute Resolution ("ADR") continues to increase. As of October 2024, the Civil Procedure Rules now include formal backing for the Court of Appeal's decision made in Churchill V Merthyr Tydfil CBC late last year. Judges will now, when giving directions, be obliged to consider whether to encourage ADR or to make an order formally compelling parties to engage in it.

The procedures that parties are directed to follow will vary depending on the circumstances of the case. In many instances, this may take the form of conventional mediation. In others, such as where Co-Defendants have a contractual relationship, the procedure may be one that they have formally agreed in advance. However, the Court can order a party to follow a unique procedure that they would not have been bound to follow otherwise, such as in Churchill, where the Claimant was required to use an internal complaints procedure.

We highlighted in 2023 that changes would likely be coming to the discount rate, which is applied when calculating the value of awards for future losses, and they have arrived this month. From 11th January 2025 the new rate has been set at 0.5%, a return to a positive rate following the previous minus 0.25% rate. The return to a positive rate may reflect improved investment market conditions and may help insurers mitigate the impact of claims inflation, which on the injury side has been largely driven by rising living costs, wage inflation and care and medical expenses. Time will tell whether there is an increased appetite for Periodical Payment Orders ("PPOs") or even challenge to the appropriateness of the rate on individual claims.

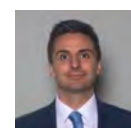
Changes have now also been announced in Scotland and Northern Ireland, with a new rate of +0.5% in both of those jurisdictions.

Contacts

Gavin Reese
Partner
+44 20 3060 6895
gavin.reese@rpclegal.com

Mamata Dutta
Partner
+44 20 3060 6819
mamata.dutta@rpclegal.com

Fiona Hahlo
Partner
+44 20 3060 6121
fiona.hahlo@rpclegal.com



Thom Lumley
Partner
+44 20 3060 6728
thom.lumley@rpclegal.com

Health and Safety

Rashna Vaswani | Associate

Key developments in 2024

Asbestos – Your Duty

As the single greatest cause of work-related deaths due to past exposure (according to HSE's Annual health and safety statistics 2024, there were 2,257 Mesothelioma deaths in 2022, with a similar number of lung cancer deaths linked to past exposures to asbestos), asbestos safety has been and remains a key focus for the regulator. In January this year, the HSE launched a new campaign labelled 'Asbestos – Your Duty' to highlight the risk of asbestos in buildings and raise awareness of the legal duty to manage those risks.

In a bid to emphasise the legal duties on anyone with responsibilities for buildings to manage asbestos (i.e. the 'dutyholder'), the HSE launched update information, new templates (which include an asbestos management plan) and explanatory videos on its website. Dutyholders could be the building owners, landlords, or a person or organisation with clear responsibility for maintenance and repair.

The regulator has also been keeping a closer eye on how asbestos is managed requiring dutyholders to ensure they have the right arrangements in place, as no doubt demonstrated by the enforcement action and prosecutions (10 in total) this year.

Annual Health and Safety Statistics – a mixed bag

On 24 November 2024, the HSE released its annual summary statistics for 2023/24, which showed a positive trend in reducing work-related ill health across Great Britain reduced to 1.7 million from 1.8 million the previous year. As a testament to their objective to reduce work-related ill health, with a specific focus on mental health, cases for Stress, anxiety, and depression dropped from 875,000 to 776,000, with new cases declining from 338,000 to 300,000.

However, workplace non-fatal injuries reported by the Labour Force Survey showed an increased 561,000 to 604,000 (albeit the current rate is below the 2018/19 pre-coronavirus level), which the HSE has declared as cause for concern given the greater awareness and preventative efforts, which should be driving numbers down.

HSE's statistics also reveal the impact work-related ill health and workplace injuries are having on costs to employers, individuals and the government. In 2022/23, the estimated annual costs of workplace injury and new cases of work-related ill health reached £21.6 billion, which is up from £20.7 billion from the previous year.

What to look out for in 2025

The role of wearable technology in Occupational Safety

The integration of technology in health and safety management is set to accelerate. Wearable internet of things (WIoT), a category that encompasses devices and other wearable technology such as smart clothing or exoskeletons, can be used to monitor body posture and identify movements in real time to provide feedback on ergonomics. Smart helmets and vests can detect fatigue, sending alerts to management to prompt breaks or alternative adjustments. In the construction industry, WIoT can identify of workers' specific locations, their body temperature, heart rate, stress level, and breathing rate, all of which can all be used to ensure that workers are in safe environments and good health conditions. This proactive approach helps prevent accidents before they occur, enhancing overall workplace safety.

However, the use of WIoT for health and safety monitoring also presents issues with privacy and security which need to be explored. As emerging technologies like IoT and AI become more integrated into workplace operations, workplaces must adapt their strategies to keep pace.

Contacts

Gavin Reese
Partner
+44 20 3060 6895
gavin.reese@rpclegal.com

Fiona Hahlo
Partner
+44 20 3060 6121
fiona.hahlo@rpclegal.com

Mamata Dutta
Partner
+44 20 3060 6819
mamata.dutta@rpclegal.com

The continuing focus on Mental Health

In our 2024 Annual Insurance Review we highlighted the HSE's increased focus on mental health matters, underpinned by it being a key strategic objective in its 10-year strategy (2022-2032). This is an ongoing concern, given annual summary statistics for 2023/24 indicating that there were an estimated 776,000 workers suffering from work-related stress, depression or anxiety. This represents 2,290 per 100,000 workers and resulted in an estimated 16.4 million working days lost. The average employee suffering from work-related stress, depression or anxiety took an average of 19.6 days off work.

In its 2024 to 2025 Business Plan, published on 4 November 2024, the HSE again outlined that this was a key area of work, and set out 6 actions related to mental health to deliver its objectives. Of note is the aim to deliver 14,000 inspections specifically targeted at sectors where there is evidence of high levels of incidence and risk. Industries with higher-than-average rates of work-related stress, depression or anxiety are public administration/defence and human health/social work.

International Arbitration

Ana Margetts | Associate
Tom Scanlon | Trainee solicitor

Key developments in 2024

The Arbitration Bill and Anti-suit Injunctions

The Arbitration Bill received its first and second readings in parliament in July 2024. Having first come before parliament in September 2023 under the UK's then Conservative government, it will once again proceed through the House of Lords and House of Commons, before receiving Royal Assent and becoming law.

A key point arising out of the Arbitration Bill is anti-suit injunctions (ASIs), which frequently arise in the context of maritime insurance policies. The purpose of an ASI is to restrain foreign proceedings when the parties have a valid arbitration agreement under English law. A Brexit benefit was the restoration of the power of English courts to grant ASIs within the EU, restraining the pursuit of EU proceedings in breach of an arbitration clause.

This year saw the Supreme Court in UniCredit Bank GmbH v RusChemAlliance reaffirm the willingness of the English courts to grant ASIs, even where the arbitration is seated in a foreign jurisdiction. In UniCredit, the English court granted an ASI restraining Russian proceedings in circumstances where: (i) the ICC arbitration was seated in Paris (meaning that French law governed the arbitration procedure); and (ii) English law governed the arbitration agreement.

Under section 6A of the Arbitration Bill however, the opportunity for parties in foreign seated arbitrations to obtain such relief from the English courts will be curtailed if there is no express agreement regarding the law governing the arbitration agreement. In these circumstances, the arbitration agreement will be governed by the law of the foreign seat by default.

Insurers may therefore wish to make express provision for the law of an arbitration agreement if they do not want to be subject to the proposed default provision under section 6A. Importantly, the choice of law provision in an arbitration agreement is distinct that of the main or "host" contract, which is treated as a separate agreement even if it is contained in the same document.

What to look out for in 2025

Report of the ICC Commission taskforce on corruption

There is plenty to look out for in 2025, in large part thanks to new Government's agenda. Rachel Reeves' Mansion House speech in November 2024 signposted an intention to reform and modernise FOS in specific recognition that "challenges can occur" when mass redress events arise.

The proposed changes are to be driven in collaboration with the FCA and FOS. Following the Chancellor's speech a joint Call for Input on the modernisation of FOS was issued, with specific reference to mass redress events. Such events are particularly relevant given the volume of vehicle finance complaints pending at the FOS, as discussed above.

In principle, modernising FOS would seem to be entirely sensible and welcome but we risk a fixed 'one size fits all' approach which sits uncomfortably in a forum with jurisdiction to award redress up to £430,000 with limited (if any) oversight. However, modernising FOS may help the FCA to meet its secondary objective (being to facilitate international competitiveness and the growth of the UK economy), as it could give businesses (and consumers) greater certainty on how FOS will operate in achanging financial landscape.

Another issue to watch out for is the FCA's Ongoing Advice Review, which is looking at the quality of service and value for fees for ongoing advice in the financial services sector. The outcome of this is expected in 2025. As was also highlighted in the retirement advice review, scrutiny of ongoing advice and the fees charged is something that has come to the fore following implementation of the Consumer Duty and is drawing ongoing attention from the FCA.

Contacts

Jonathan Wood
Consultant
+44 20 3060 6562
jonathan.wood@rpclegal.com

IP

Joshy Thomas | Knowledge Lawyer

Key developments in 2024

Since our 2021 Review we have returned frequently to Sky v Skykick, a trade mark dispute that has been ongoing since 2016. In November 2024, the Supreme Court overturned the decision of the Court of Appeal (see here) finding that an inference of bad faith may be drawn if sufficient evidence exists – as there was in this case – that the applicant had never had any intention to supply or provide certain goods or services for which it sought trade mark protection. Once an inference of bad faith has been drawn, this may prove grounds for a mark to be wholly or partially invalidated.

The decision seeks to draw a line under the practice of filing broad-spectrum trade mark registrations to use them as "legal weapons". Overly broad specifications, registered for less than 5 years, may now be more vulnerable to challenge on the grounds of bad faith especially where they are being used to enforce against third parties in relation to goods and services in which the trade mark owner does not trade and has no intention to trade. There is likely to be an increase in such claims in both the UK IPO and the courts. While this decision appears to provide for narrower protection going forward, brand owners of well known brands can utilise their trade mark's reputation for protection by arguing that the use of their trade mark on any product (not only the products for which they have a registration) would take unfair advantage of the brand's reputation.

Artificial intelligence (AI) was topical this year and the Court of Appeal's ruling in Emotional Perception AI on the application of the exclusion from patentability of computer programs "as such" (a computer-implemented invention is not excluded if it relates to something more than a program for a computer "as such") to artificial neural networks (ANNs) has left many in the field with huge challenges when protecting ANN developments within the existing IP framework, resulting in a need to rely on alternative rights and strategies to protect and enforce rights in some ANN-related developments. This decision is subject to appeal with a hearing expected in 2025.

What to look out for in 2025

The way generative AI models are trained using data sets comprised of IP works scraped from publicly available websites, and liability for AI generated outputs have continued to receive significant attention this year providing for a degree of uncertainty for both AI developers and IP rights holders.

Content creators such as news providers, authors and visual content agencies allege that their work is being unlawfully used to train AI models. The High Court trial of the Getty Images (US) Inc v Stability AI Ltd case, the most prominent case making these kinds of allegations in the UK, is expected in 2025 with the judgment to follow in 2026.

Some use of this content is expressly authorised and used under licence and licensing deals now appear to be becoming more prevalent with some high profile deals being reported since the summer. When licensing negotiations break down there is a risk of legal action being taken, such as that reportedly being taken by Mumsnet against OpenAI.

The issues were first highlighted in 2022 when the UK IPO signalled its intention to introduce a new copyright and database exception that would allow text and data mining (TDM) for any purpose including commercial use. The proposal was subsequently withdrawn pending an assessment of the implications for key stakeholders and since then a working group of key stakeholders has tried and failed to agree on an effective voluntary code of conduct to resolve the main issues of labelling and metadata for the outputs of generative AI, transparency of inputs, and licensing and permissions.

It is now widely accepted that these issues will require government intervention to move forward. The Labour government has confirmed that it is working with a range of stakeholders to provide a framework and aims to open a formal consultation to get input from stakeholders and experts "shortly" to put the government on a path to resolving the deadlock in 2025.

Contacts

Ciara Cullen
Partner
+44 20 3060 6244
ciara.cullen@rpclegal.com

David Cran
Partner
+44 20 3060 6149
david.cran@rpclegal.com

Legal practices

Will Sefton | Partner
Melissa Taylor | Associate

Key developments in 2024

A crumbling regulator? The SRA is facing difficult questions about its effectiveness as a regulator in the wake of the collapse of Axiom Ince, which led to the disappearance of £62million and the loss of around 1,400 jobs. Initially Insurers received a flood of claims totalling around £33million. In an unpopular move, the SRA announced the profession will cover the loss through a 270% rise in contributions to the Compensation Fund.

The Legal Services Board's report found that the SRA "did not act adequately, effectively or efficiently" and did not take all the steps "it could have or should have taken". The SRA denies any failings despite the report finding the SRA failed to carry out a basic accounts check in 2022. If that check had been carried out, it might have prevented any further money being drained from Axiom Ince's client account and it may have reduced the huge cost to the profession.

Topping off the SRA's tumultuous year, for only the second time in 20 years, the High Court overturned its decision to intervene in a law firm, Santer Solicitors. The SRA also came under fire after it spent ca £16,000 defending its decision to rebuke a solicitor for a minor infringement, despite its own investigations officer recommending that the rebuke should be overturned. These decisions only add to the SRA's woes and the LSB, in an unprecedented move, announced its intention to commence enforcement action under s32 of the Legal Services Act to ensure the SRA now makes changes to better achieve its regulatory objectives and to restore public confidence.

There has also been a focus on litigation tactics this year, in light of the Post Office scandal. US law firm McDermott Will & Emery was criticised by a Judge for sending a "disgraceful" and "improper" letter to its client's competitor. The Judge found MWE was attempting to put pressure on their client's competitor to pay without asking further queries. Herbert Smith Freehills have also been criticised for managing to spend £163.3m advising the Post Office on compensation relating to the Historical Shortfall Scheme. A leading academic has suggested that lawyerly zeal needs to be reined in and the culture of litigation should be revamped in an effort to avoid large firms appearing to have more power than the Courts.

What to look out for in 2025

The duty on employers to prevent sexual harassment is now in force and it has placed a proactive duty on employers to take reasonable steps to prevent sexual harassment. All employers should now start to update and review their company policies and procedures. We will start to see cases in which the Courts have to grapple with power imbalances, workplace culture and bullying, particularly in light of the recent criticisms of the use of NDAs.

The SRA has launched three consultations which include considering whether to change the way law firms hold client money. Fraudsters are becoming increasingly clever at finding new ways to target law firms. In France, lawyers do not have access to client money and it is held in a centralised system; it is mandatory to deposit funds in the system and not doing so leads to a disciplinary matter. A system like this would reduce the risk and associated PII premiums, but it would mean massive changes to the way solicitors operate and the initial response has been negative. The consultations will cease on 21 February 2025 – watch this space!

Contacts

Nick Bird
Partner
+44 20 3060 6548
nick.bird@rpclegal.com

Rhian Howell
Partner
+44 20 3060 6708
rhian.howell@rpclegal.com

Simy Khanna
Partner
+44 20 3060 6284
simy.khanna@rpclegal.com

Will Sefton
Partner
+44 20 3060 6924
will.sefton@rpclegal.com

Life sciences

Emma Kislingbury | Senior Associate
Florence Page | Senior Associate

Key developments in 2024

COVID-19 continued to dominate life sciences headlines in 2024.

The COVID-19 Inquiry has continued in earnest. Module 3, which focussed on the impact of the pandemic on healthcare systems has recently concluded. Damning evidence has been heard about the immense toll on healthcare staff, and the detrimental impact on NHS waiting times.

Alongside the Inquiry, around 50 families have begun a product liability group action against pharmaceutical giant AstraZeneca. They claim that the Oxford AstraZeneca vaccine caused a rare type of blood clot, combined with low platelet levels, which, for some recipients, caused damage in the brain and to multiple other organs. The group is seeking compensation under the Consumer Protection Act 1987, on the basis that the vaccine was "not as safe as persons generally are entitled to expect".

The claimants might have been expected to claim under the UK Vaccine Damage Payment Scheme (VDPS), which exists to provide financial support to individuals adversely impacted by vaccines. But the pandemic has identified serious shortcomings with the scheme. Delays in processing claims, a capped payment of £120,000 (which has not increased since 2007), and a 60% disablement threshold to qualify, have driven some of those impacted to try to pursue manufacturers directly.

The VDPS will be examined as part of the next module of the Inquiry, in early 2025. The findings, and any changes which might be implemented to the scheme as a result, will have a direct impact on future litigation, and on the potential risks for vaccine manufacturers.

What to look out for in 2025

The new UK Government has identified life sciences as a priority "growth-driving" sector. In October 2024, it published a Green Paper outlining its "pro-business" industrial strategy vision: "Invest 2035: the UK's Modern Industrial Strategy", which recognises that the life sciences sector "offers unparalleled opportunities for future economic growth". The industrial strategy and plans for each sector are due to be published in Spring 2025.

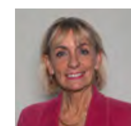
In addition, the recent: "Plan for Change: Milestones for mission-led government", published on 5 December, signposts the Government's intention to publish a 10-Year Health Plan, in Spring 2025. We predict that the widespread adoption of cutting-edge healthcare technologies, including AI, will play a central role.

These developments highlight the significance of regulation, with the MHRA having already set out plans to reform the regulatory regime for medical devices, which includes software and 'AI as a medical device' (AIaMD).

The MHRA's AI strategy confirms its intention to take a "proportionate approach" to the regulation of AIaMD, using guidance rather than rigid legislation, to avoid stifling innovation. The MHRA also launched its much anticipated "AI Airlock", which is a "regulatory sandbox" using real-world products, through which the MHRA aims to identify and resolve regulatory challenges specific to AIaMD. This pilot project is due to finish in April 2025, and the results will shape future MHRA guidance.

For those in the life sciences sector, including manufacturers of medical devices (and their insurers), it will be important to monitor how the Government's and MHRA's plans unfold in 2025, and the potential impact that any new policies or guidance will have on bringing new life sciences technologies to market

Contacts



Dorothy Flower
Partner
+44 20 3060 6481
dorothy.flower@rpclegal.com

Marine and shipping

Iain Anderson | Partner
John Paul Koh | Associate
Victoria Lawman | Trainee Solicitor

Key developments in 2024

Two words are dominating the shipping sector in 2024 – "shadow fleet".

The shadow (or "dark" or "grey") fleet is a reference to vessels which transport oil and petrochemical cargoes on behalf of sanctioned countries. Western economies finance, operate and insure the vast majority of the world's merchant fleet. Expansion of US, EU and UK sanctions means that, in general, vessels carrying cargoes from sanctioned countries cannot operate within the usual international shipping infrastructure. They are forced to go "dark" in a far more opaque part of the shipping sector. Until 2022 the shadow fleet was relatively small – restricted mainly to the carriage of Venezuelan and Iranian oil/petrochemical cargoes. The Russian invasion of Ukraine in 2022 – and the expansion of international sanctions against Russia – has vastly increased the shadow fleet.

The Increase in the Shadow Fleet

Under a G7/EU price cap implemented between December 2022 and February 2023, western marine service providers are prohibited from shipping Russian oil to third countries unless they can demonstrate it has been sold under a price cap (USD100 per barrel for refined products, USD60 per barrel for crude and USD45 per barrel for fuel oil). In 2021 Russian accounted for around 13% of global oil exports which in turn generated 60% of Russian export earnings and approximately 40% of Russian budget revenues. With maintained demand for Russian oil at attractive prices (China, India and Turkey now account for around 90% of Russian crude oil exports), Russia depends upon on a growing fleet of shadow vessels to deliver its oil and to maintain its oil export revenues. In March 2024 it was estimated that the shadow fleet stands at up to 1,600 tanker vessels, out of a global tanker fleet of around 7,500 vessels. If correct, we now have over 20% of the world's oil tankers trading in the shadow fleet.

Shadow fleet incidents

In March 2024, the 15-year-old tanker ANDROMEDA STAR collided with a small freighter off Denmark. The vessel was in ballast condition and headed to a Russian port to load oil. Had the collision occurred on the way out of the Baltic (fully laden with Russian oil) it would likely have caused a very significant international pollution incident. The vessel's insurance documents presented to Danish investigators were found to have expired.

In July 2024, a collision occurred near the eastern entrance of the Singapore Strait involving the Singapore-flagged HAFNIA NILE and the Chinese-owned shadow vessel CERES I. Both vessels were heavily laden with oil products - the HAFNIA NILE carrying 300,000 barrels of naphtha and the CERES I reportedly transporting two million barrels of Iranian crude. Salvage operations were promptly initiated with the assistance of the Singaporean and Malaysian authorities. Fortunately, despite the scale of the collision and the hazardous cargo involved, no pollution resulted from the incident.

In October 2024, an explosion occurred off the coast of Chattogram, Bangladesh, involving two LPG carriers, the CAPTAIN NIKOLAS and the B-LPG SOPHIA. A fire broke out during ship-to-ship transfer operations. Investigations revealed that the 32-year-old CAPTAIN NIKOLAS had a history of safety violations and had reportedly mis-declared its cargo. There are strong indications that its LNG cargo originated from Iran.

In December 2024 two aging (50+ yrs) Russian tankers, the VOLGONEFT 212 and VOLGONEFT 239, encountered severe weather while carrying a combined total of around 9,200 metric tons of oil products. The VOLGONEFT 212 broke up and the VOLGONEFT 239 ran aground, causing an oil spill that has reached the Russian Black Sea coast.

What to expect in 2025

We anticipate that the 'shadow fleet' will continue to take centre stage in 2025 as regulators look at ways to address the issues.

International regulations make it hard for coastal states to ban shadow vessels from their waters. The United Nations Convention on the Law of the Seas grants all vessels the right of innocent passage and to freely navigate through territorial seas (the first twelve nautical miles adjacent to its coast). Within a country's Exclusive Economic Zone (200 nautical miles beyond territorial waters), legal powers to police or restrict shadow vessel operations are also limited.

At present, international sanctions are the primary tool to try to restrict shadow fleet operations. Both the US and the EU/UK continue to add shadow vessels, their owners/operators and their domestic insurers to their lists of sanctioned/

designated entities. Once any vessel or entity is on the US/OFAC Special Designated National (SDN) List, it is becomes international persona non grata. Any company or person anywhere in the world will itself be at risk of designation by OFAC as an SDN if it engages with the sanctioned vessel or entity. However, vessel ownership and management structures adapt quickly and there are other shadow vessels to replace them. Also, whilst US and EU/UK authorities have been willing to add Russian insurance companies to their sanction lists, they are less keen to sanction other non-Russian domestic insurers.

Coastal states at the primary choke points on Russia's western export routes – the Strait of Finland, the Danish Strait and the English Channel – have implemented inspections of vessels within their territorial waters to verify insurance credentials. However, for many vessels the obligation to produce insurance documents is voluntary only. Vessels which ignore the request or the inspection may find themselves on a sanctions list. However, there are replacement owners and vessels ready to take their place. Also, many coastal states are reluctant to detain shadow vessels for fear of retaliations from Russia.

The International Maritime Organisation has sought to implement regulations to restrict, and to improved operational procedures for, ship-to-ship transfers. However, the enforcement of those procedures is debatable.

While the international measures in 2024 represent progress, it remains to be seen what further steps will be taken to enforce maritime safety and environmental standards. The effectiveness of these initiatives will depend on continued international collaboration and robust enforcement against the growing threat of the shadow fleet.

Contacts

Iain Anderson
Partner
+65 6422 3050
iain.anderson@rpclegal.com

Toby Savage
Partner
+44 20 3060 6576
toby.savage@rpclegal.com

Media

Megan Grew | Associate

Key developments in 2024

The Online Safety Act 2023 (OSA) introduced a suite of obligations for "user-to-user" services and search engines which target the UK and/or have a significant number of UK users. In 2024, secondary legislation and Codes of Practice published by the regulator, Ofcom, began the process of giving the OSA practical effect.

Services in-scope of the OSA must assess and mitigate the risks of users encountering illegal content, including terrorism, child sexual exploitation and fraud. Platforms likely to be accessed by children must also assess and mitigate risks of children accessing harmful and age-inappropriate content. Services which meet the "Category 1" threshold have additional obligations, including protecting journalistic or democratic content, empowering users to control the content they see and including certain information in their terms of service.

On 16 December 2024, Ofcom published its Code of Practice on Illegal Content. Service providers have until 16 March 2025 to complete their illegal content risk assessment. Ofcom recommends services carefully consider its Illegal Harms Register of Risks, which details the factors that increase the risk of each illegal harm, and its Risk Assessment and Risk Profile guidance, as the "risk profile" of a service must be considered in carrying out risk assessments. Ofcom also published its Enforcement Guidance setting out how it will use its enforcement powers under the OSA.

Keep an eye out for further developments in 2025. Ofcom presented draft regulations on the threshold of "Category 1" services (subject to the most extensive obligations) and will publish a register of categorised services in Summer 2025. Ofcom also expects to publish its child safety guidance in January 2025. Ofcom's full roadmap to implementing the OSA is available here.

What to look out for in 2025

After the Prime Minister's recent statement promising to "tackle the use of SLAPPs (Strategic Litigation against Public Participation) to protect investigative journalism", it is hoped that greater action will be taken in 2025 to combat claims designed to silence free speech on topics of public importance.

Unfortunately, little was achieved in 2024 in terms of legislative reform. The Economic Crime and Corporate Transparency Act 2023 contained the first anti-SLAPP provisions, though only for expressions combating economic crime so it has limited scope. The regime also requires amendments to the Civil Procedure Rules to have any practical effect. Limited progress was made in 2024, with the Civil Procedure Rule Committee pausing its work in this area in light of legislative uncertainty in the months after the general election. However, the Committee's most recent meeting minutes suggest those discussions are resuming for 2025. A Private Members Bill aimed at broader reform beyond economic crime also did not survive the Parliamentary washup before last year's dissolution of Parliament.

The Government has ruled out legislative reform in the current Parliamentary session, saying it "will not legislate in haste" and describing SLAPPs as a complex issue. In its "Future of News" report published last year, the House of Lords Communications and Digital Committee accused the Government of "failing to prioritise" this issue and has called for draft legislation to be published by the 2025 summer recess. The Committee also called for the Solicitors Regulation Authority's fining powers to be increased from £25,000 to £250 million for law firms found to be facilitating SLAPPs. Against this background, it is hoped that 2025 brings meaningful reform to tackle SLAPPs.

Contacts

Rupert Cowper-Coles
Partner
+44 20 3060 6295
rupert.cowper-coles@rpclegal.com

Alex Wilson
Partner
+44 20 3060 6397
alex.wilson@rpclegal.com

Medical malpractice

Genevieve Isherwood | Senior Associate
Bryce Jones | Associate

Key developments in 2024

2024 has seen an increase in the number of physician associates (PAs) working across the medical sector (NHS and private). Employment of PAs is considered a fast and cost-effective method of addressing workforce shortages and ever-growing healthcare demands. In June 2022, there were 1300 PAs in England and Wales, rising to over 3,300 by June 2024. The numbers are expected to increase.

PAs undertake significantly less medical training than doctors, and so there are specified restrictions on the scope of their practice, to ensure public safety. Each PA must be supervised by a qualified doctor, who should be confident that the PA has the necessary skills and knowledge to undertake any given task. Importantly for Insurers, when a patient is treated by a PA, the supervising doctor remains responsible for the patient's care. If treatment is negligent, and a claim pursued, the doctor will be on the hook.

There is therefore a strong possibility that Medical Malpractice Insurers are providing cover for the care of a much larger number of patients than they anticipated. For example, Insurers may think they are insuring one GP seeing about 30 patients a day, when, in fact, the GP is seeing 20 patients a day and supervising three PAs each seeing 30 patients. On the number of patients alone, Insurers' risk has more than tripled and this is before consideration is given to whether the GP can adequately supervise the PAs alongside their own practice.

To avoid falling foul of the Physician Associate risk, careful inquiry is required by Insurers at proposal stage, and it may be appropriate to offset the risk through increased premiums or limitations on coverage.

What to look out for in 2025

In November 2024 the Terminally Ill Adults (End of Life) Bill (the Bill) was introduced for Parliamentary review; it could be enacted in 2025. The Bill allows doctors to assist adults with a terminal illness to end their lives, subject to procedural safeguards and protections.

The proposed process requires assessment by at least two doctors, and the approval of the High Court, before the assisted death can happen. Medical assessments are likely to be performed by palliative care practitioners, but there are no qualification restrictions on which doctors may conduct assessments, so that additional liability risk could apply to any qualified doctor.

No practitioner will be obliged to participate in assisted dying; there will be a 'conscientious objection' provision, which means there should be no civil liability exposure for failing to do so, although a doctor might be expected to refer the patient to a doctor who will participate. There will be no criminal or civil liability for those who assist dying in accordance with the required procedures. If statutory procedures are not followed, however, an insured practitioner may face prosecution and/ or a civil claim.

Given the uncertainty over the final content of the Bill, and the extent of any resulting medical malpractice liability, Insurers may wish to consider their approach to offering cover for participation in assisted dying. In Australia, where assisted dying has been legal in various states since 2019, many underwriters are inserting exclusions into their policies, while others make no distinction between the provision of euthanasia and other medical practice. There may therefore be a niche in the market for a bold insurer willing to cover this risk!

Contacts

Dorothy Flower
Partner
+44 20 3060 6481
dorothy.flower@rpclegal.com

Sian Morgan
Partner
+44 20 3060 6953
sian.morgan@rpclegal.com

Pensions

Kerone Thomas | Associate

Key developments in 2024

A key development in 2024 has been the Court of Appeal's ruling in Virgin Media v NTL Pensions Trustees II Ltd [2024] EWCA Civ 843, which has significant implications for contracted out final salary pension schemes. The court confirmed that any amendments affecting guaranteed minimum in these schemes must be accompanied by a so-called Section 37 actuarial conformation. Without this confirmation, the amendment is deemed void, regardless of whether such confirmation would have been granted had it been sought at the time of the amendment.

In practical terms, this could lead to schemes identifying that incorrect benefits have been paid which may increase deficits and lead to claims against actuaries, lawyers, administrators and auditors.

For insurers this is a risk to consider for PTL policies (or ML where there is a PTL section) given the risk that members challenge their benefits or that trustees look to various extensions under PTL policies to address potential issues arising from the judgment (for example court application costs to determine if a Section 37 confirmation obtain after the effective date of an amendment is effective so as to remedy any defect from at least the date of the amendment).

In light of this ruling, pension professionals are considering how best to manage the retrospective implications, with the possibility that the government may introduce new legislation to address some of the adverse consequences of the decision.

What to look out for in 2025

2025 is shaping up to be a big year for pensions, with several key changes on the horizon. A major trend will be the push for consolidation of multi-employer defined contribution schemes into large "mega-funds" of at least 25bn as outlined in the Chancellor's Mansion House speech. The goal is to improve value for money (VFM) for members and give pension funds the scale they need to make a bigger impact on the UK economy. However, ensuring strong governance and returns as these funds grow will be a key focus. The government has set a target of having these mega-funds in place by 2030 – so expect to see action in 2025 to meet this deadline.

Another key development will be the Pension Scheme Bill, which is set to bring about changes in how DC schemes are managed. It will refine the VFM framework, potentially requiring employers to take VFM into account when selecting or reviewing pension schemes. This could have a big impact on the way pension providers, claims managers and underwriters approach pension scheme selection.

With increasing gilt yields buy-outs are likely to become an increasingly attractive option and often in the run-up to buy-outs issues with the governing documentation of pension schemes is identified leading to claims against pension professionals where issues are identified.

Contacts

Rachael Healey
Partner
+44 20 3060 6029
rachael.healey@rpclegal.com

Political Risk and Trade Credit

Naomi Vary | Partner
Gabriel Boutier-Downey | Senior Associate

Key developments in 2024

For the previous two years we have started our review with commentary on the war in Ukraine and, unfortunately, its continuation means we are obliged to do so again. Last year we indicated that positions were entrenched, but as we head into 2025 it appears Ukraine's prospects are becoming gloomier. Support from the United States is likely to be less forthcoming under the new presidency and if there is still territory to be gained it is likely Russia will take advantage of this. Accordingly, underwritten assets deeper into western Ukraine are increasingly becoming at risk of the types of losses seen across the market for the last couple of years.

In addition to the Russia-Ukraine war, we noted in our previous update that separate (but in some ways related) conflicts had and will continue to spike – placing pressure on War Risks books. This proved to be true across the globe, for example in relation to the Sahel and West Africa generally. What is more, we referenced the impact of war 'fatigue' in Europe and the potential ramifications of the US presidential election. The incoming Trump presidency has indicated US isolationism, and this will transfer into uncertainties on the China-Taiwan strait, as well as emboldened behaviour from North Korean military (noting involvement in the Russia-Ukraine War).

Despite the uncertainties of these military conflicts, trade credit finance has proved itself to have a relative state of resilience during 2024. The ICC has noted the low credit risk amongst trade finance agreements with defaults mainly from predictable geopolitical and economic influences. This is perhaps a reflection of the observed move towards more domestic and developed economies rather than riskier emerging markets. Although this is certainly not to say the year has been without its struggles. Company insolvencies remain a concern even as the COVID-19 pandemic slips into recent history. Insurers' clients are struggling with labour shortages, high energy costs, and even more recently an increase in taxation. These issues have and will continue to transform into insurance claims as defaults on agreements naturally follow suit.

What to look out for in 2025

The status of the international military conflicts already mentioned and the consequent claims arising from those are expected to persist; since preparation of the first draft of this chapter we have seen regime change in Syria, with likely effects to be felt over a much wider area. Furthermore, domestic political violence incidents may be of increasing concern for insurance policies placed closer to home. By way of example, there were notable political assassination attempts in the United States by citizens this year - which could be said to be driven by domestic political divisions. These divisions may be further widened by the influence of AI in algorithms which are designed to attract and thereby embolden fractious political polarities.

It is also worth noting the comments of Mi5 Director General Ken McCallum which refer to the threats being faced by European nations from multiple actors. The GRU's (Russian Military Intelligence) intention to cause mayhem on British and European streets, various Iran-backed plots, and threats from Islamic State are to name a few. The implications and format of any acts arising from such incidents is not clear, and we may see policy coverage being tested should political perils manifest themselves in unexpected ways.

Moving to trade credit insurance, we expect to see the sector grow further as the use of AI models continue to provide better strategic analysis for underwriters. The effectiveness of such technology and its ability to adapt will also be apparent over time. In a similar manner, supply chain complexities arising from sanctions and global tariffs will continue with insurers required to provide ever more adaptable products – the durability of which will be tested. All these adaptations will also be taken in the context of growing concerns about burgeoning government debts and a desire (forlorn or not) to reduce debt burdens.

Contacts

Naomi Vary
Partner
+44 20 3060 6522
naomi.vary@rpclegal.com

Robert Morris
Partner
+44 20 3060 6921
robert.morris@rpclegal.com

Iain Anderson
Partner
+65 6422 3050
iain.anderson@rpclegal.com

Procedure, Damages and Costs

Aimee Talbot | Knowledge Lawyer

Key developments in 2024

Alternative Dispute Resolution received a boost in 2024, when the Civil Procedure Rules were amended to expressly empower the court to order ADR. These changes follow the December 2023 judgment in Churchill v Merthyr Tydfil [2023] EWCA Civ 1416, in which the Court of Appeal concluded that it was lawful for the court to order parties to engage in ADR, provided the process does not interfere with the parties' access to a judicial determination.

On 1 October 2024, the overriding objective of the Civil Procedure Rules was amended to enable the court to promote or use ADR and the court's case management powers were expanded to expressly empower the court to order ADR. In addition, the court's powers to penalise parties who refused to engage in ADR were bolstered by entitling the court to take into account, when making costs orders, a failure to comply with an order to engage in ADR or an unreasonable failure to engage in ADR.

Like Churchill and the new pilot scheme automatically referring small claims to mediation, these amendments are part of the continuing shift to embed ADR as a natural part of the process of litigation. The involvement of an independent third party at an early stage in the process should help shift entrenched parties and, whilst truly unwilling parties will not be forced to settle, these measures should lead to more settlements. Overall, this is good news for insurers, who tend to be commercial and rational litigants.

What to look out for in 2025

The introduction of costs budgeting transformed civil litigation in 2013, and 2025 is likely to see the biggest change to budgeting since then. Just as 2023 was the year of fixed recoverable costs, 2025 is set to be the year of costs budgeting light. This new approach, which is a work in progress by the Civil Procedure Rules Committee, will enable the court to take a "lighter touch" approach to costs management in mid-range cases where between £100,000 and £1 million is claimed. These mid-range cases have been identified by the Civil Justice Council as the class of cases most at risk of disproportionate costs being incurred. Of course, sub-£100,000 cases now have no need of budgeting, since fixed recoverable costs apply. On the other end of the spectrum, we are also expecting that a lighter touch to budgeting will also be adopted for claims exceeding £1 million in the Business & Property Court.

While the details of the scheme are not yet known, we expect the scheme to be piloted for 5 categories of case, including QOCS claims, and a new form of Precedent H to be released. Depending on the details of the regime, this could lead to a modest increase in costs in the short term as litigators grapple with differing regimes during the pilot period and get to grips with the new rules, but overall a substantial decrease in the costs management process. However, it remains to be seen whether the framework will enable the court to reach the "sweet spot" of adequately controlling costs without forcing the parties to incur disproportionate costs on budgeting.

2025 may also be see more judgments dealing with the use of artificial intelligence in litigation. During the furore over the potential of the technology that has been ongoing since the release of ChatGPT in 2022, firms have been investigating and implementing the technology, which has particular potential for saving costs and time in the disclosure phase. As the use of this technology is in its relative infancy, we can expect judgments dealing with the use (or misuse) of AI in the coming year.

Contacts

Jonathan Wyles
Of Counsel
+44 20 3060 6415
jonathan.wyles@rpclegal.com

Product liability

Andrew Martin | Associate

Key developments in 2024

The Product Security and Telecommunications Infrastructure Act 2022 and The Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023 ("the Regulations") came into force on 29 April 2024.

The new regime applies to products, intended for use by consumers, that can connect to the internet or a network and includes products such as:

- Home automation and alarm systems.
- Connected cameras
- Smart home assistances
- Connected safety products, including smoke detectors and door locks.

There are different obligations for manufacturers, importers and distributors of these products to ensure they comply with security requirements. Products will also need a Statement of Compliance before being sold and records will need to be maintained of any failures with products, along with the outcomes of any investigations.

From an EU perspective, we mentioned the Product Liability Directive (**"PLD"**) in last year's review. On 10 October 2024, the Council of the EU adopted the PLD, which was subsequently published on 18 November 2024. Member states will need to enact the PLD within the next 24 months, i.e. by the end of 2026.

The PLD will introduce strict liability for software and AI manufacturers for defects in their products. Online platforms and fulfilment service providers will also be liable for defective products whose sale they support. This will require manufacturers and online platforms to reassess risks within the supply chain to ensure they are protected.

What to look out for in 2025

On 17 July 2024, the Product Regulation and Metrology Bill ("the Bill") was announced as part of the King's Speech. The Bill, seen by regulators as a seminal moment in product regulation, is aimed at modernising the UK's product regulatory framework to allow the UK to respond quickly to changes in technology and to keep pace with EU legislation.

The Bill allows the UK to adopt EU standards on product safety whilst maintaining flexibility to deviate from EU regulations when it is in the interests of UK businesses and/or consumers. It will be interesting to see how the UK wield this power and the impact it has on the trade relationships with the EU.

The Bill, as an enabling act, is extremely limited in terms of its content, but will allow secondary legislation, which can be passed much quicker, to improve the regulation of online marketplaces, AI and issues like Lithium-Ion batteries, which have received significant press coverage due to a rise in injuries caused by defective products.

It is anticipated that the Bill will be passed in Spring 2025 with secondary legislation coming into force in Autumn 2025. The likely focus of that secondary legislation will first be the regulation of online marketplaces.

Electrical Safety First want to ensure that *"the legislation is strong enough to prevent bad operators from endangering consumers."*

Contacts

Gavin Reese
Partner
+44 20 3060 6895
gavin.reese@rpclegal.com

Dorothy Flower
Partner
+44 20 3060 6481
dorothy.flower@rpclegal.com

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Fiona Hahlo
Partner
+44 20 3060 6121
fiona.hahlo@rpclegal.com

Property and business interruption

James Adams | Senior Associate

Key developments in 2024

Technip v MedGulf

Technip Saudi Arabia Limited v The Mediterranean & Gulf Insurance and Reinsurance Co. (MedGulf) [2024] EWCA Civ 481 concerned a dispute over coverage for a claim by Technip under its construction all risks policy with MedGulf written on an amended WELCAR wording. The claim arose from damage to a wellhead platform offshore of Saudi Arabia caused by a tug. The tug was chartered by Technip, who had contracted with the wellhead's owner, KJO, an unincorporated joint venture.

In the High Court, Jacobs J held that a claim against MedGulf failed due to the wellhead platform falling within the scope of a policy exclusion for damage to any property which the Principal Assured owns and is not otherwise provided for in the policy. Principal Insureds was defined in the Policy to include both Technip and KJO's joint venture partners, but Principal Assured was not defined. On appeal, Technip argued that Principal Assured in the endorsement did not mean the same as Principal Insured, but instead referred only to the insured entity making a claim. However, the Court of Appeal agreed with Jacobs J and MedGulf that Principal Assured should be read as Principal Insured, having regard to various factors, including that this interpretation did the least "violence" to the language used and best accorded with the apparent commercial rationale of the policy. Furthermore, although this was a composite policy giving rise to a separate contract with each insured entity, it did not follow that Principal Assured should be construed as referring only to the entity under each contract. Rather, Principal Assured had the same meaning across all contracts arising from the composite policy. The appeal was therefore dismissed.

This case provides helpful clarification for policies written on the WELCAR wording. More generally, it usefully illustrates how the courts can navigate linguistic inconsistencies in policy language.

COVID-19 business interruption

In 2024, the courts have seen swathe of further litigation involving disputes over coverage under business interruption (BI) insurance policies arising from the COVID-19 pandemic.

The year began with the Court of Appeal's judgment in *Various Eateries Trading Ltd v Allianz Insurance Plc* [2024] EWCA Civ 10 which concerned aggregation of losses under a clause providing cover for "enforced closure" due to COVID-19. For the purpose of applying the relevant limit, the policy provided losses "that arise from, are attributable to or are in connection with a single occurrence" were to be aggregated. The Court of Appeal upheld the High Court's decision which allowed for aggregation of losses by reference to government measures, but not by reference to the initial outbreaks in Wuhan or the UK, which were found to be too remote.

One key issue left unresolved by the COVID-19 BI Test Case brought by the FCA in 2020 was the approach to causation for clauses requiring disease "at the premises". This was addressed in a preliminary issue trial of several claims managed together. They progressed to the Court of Appeal in *London International Exhibition Centre Plc* (LIEC) *v Allianz Insurance plc and others* [2024] EWCA Civ 1026. The Court of Appeal confirmed that the approach to causation is to be determined according to the intentions of the parties as inferred from the wording of the policy properly construed. On this basis, it determined that the applicable test was the multiple concurrent cause approach to causation used by the Supreme Court in the FCA Test Case. It mattered not that the insured's losses were caused by Government restrictions made in response to all cases of COVID-19 throughout the country because a case at the premises would be regarded, along with all other cases, as an equally efficient cause of the restrictions.

In *Gatwick Investment Ltd v Liberty Mutual Insurance* [2024] EWHC 124 (Comm), the High Court judgment of Jacobs J addressed a number of preliminary issues arising in COVID-19 BI claims under prevention of access clauses. As with LIEC v Allianz, this trial involved a number of claims managed together. The issues are too numerous to detail here, but notably include a finding that a prevention of access clause requiring "action by the Police or any other Statutory Authority" was triggered by UK lockdowns and other restrictions, and that COVID-19 constituted a "danger" within a 1 mile radius of insured premises. The judgment also addressed whether limits could be claimed per premises, per insured or on an aggregate basis, with different conclusions reached on the differing policy wordings considered as part of the trial. The insureds also unsuccessfully sought to

challenge the finding of the High Court in Stonegate that furlough payments to the insured should be credited as a saving on employment costs.

In *Bellini v Brit and Others* [2024] EWCA 435, the Insured sought to claim under an extension to BI cover headed "Murder, suicide or disease", which provided that the insured would be indemnified for "interruption of or interference with the business caused by damage". Damage was defined in the policy as meaning "physical loss, physical damage and physical destruction". COVID-19 had not caused damage, so the Insured argued that a requirement for damage made cover under the clause illusory and its inclusion was therefore a mistake.

The Court of Appeal did not consider that something had obviously gone wrong with the language of the clause and, although the scope of cover was reduced by the requirement for damage, it did not render it illusory. The insured sought to rely on repetitive and inconsistent elements of the drafting of the policy in support of its construction of the policy. However, the Court of Appeal rejected those arguments, attributing such repetition and inconsistency to the "pick and mix" approach taken to the insertion of clauses into the policy. In conclusion, the Court was in no doubt that that reasonable reader would have concluded at the policy's inception the clause only provided damage-based cover.

One of the claims dealt with in the preliminary issues trial in Gatwick was *International Entertainment Holdings (IEH) & Others v Allianz Insurance PLC* [2024] EWHC 124 (Comm). The parties appealed on various issues which were dealt with at a separate hearing before the Court of Appeal. This claim involved a clause which provided cover in the event of a denial of access by a policing authority in response to an incident likely to endanger human life within a one-mile radius of the premises (the NDDA Clause).

Interestingly, the Court of Appeal adopted from Bellini v Brit the characterisation of the drafting as "pick and mix" and agreed that this weighed heavily against arguments for construing terms used throughout the policy according to a consistent meaning. On that basis, the Court of Appeal disagreed with Jacobs J's conclusion that COVID-19 did not amount to an "incident". However, it rejected the appeal against his finding that the Government was not a "policing authority" within the meaning of the clause. The Court of Appeal therefore upheld the conclusion that the NDDA Clause did not provide cover for IEH's losses.

In view of the above, issues as to the application of limits were moot points, but the judgment addresses them nonetheless. One issue was whether the "any one claim in the aggregate during any one Period of Insurance" limit should be construed with an "and" before "aggregate" or whether the words from "aggregate" onwards should be disregarded. Something had clearly gone wrong with the wording, but it was not clear which of the two competing constructions should be preferred, so insurers' construction was rejected.

COVID-19 has also raised difficult issues under contracts of reinsurance. In *UnipolSai Assicurazioni SpA v Covéa Insurance Plc* [2024] EWCA Civ 1110, the Court of Appeal confirmed that the onset of the pandemic in March 2020 was a "catastrophe" for the purpose of Covéa's excess of loss reinsurance held with Unipol. Unipol's challenge to an arbitral award which found that cover was triggered under the reinsurance therefore failed.

What to look out for in 2025

COVID-19 business interruption

Litigation over coverage issues arising in COVID-19 BI claims looks set to continue into next year, with the Court of Appeal due to hear an appeal from the above-mentioned High Court judgment in the Gatwick v Liberty Mutual in January 2025. The appeal is expected to address issues including the application of limits and the crediting of furlough payments.

Impact of climate change on property damage risks

In July, the Royal Meteorological Society published its annual State of the UK Climate report. Some may cheer the report's observation that the number of "pleasant" days (meaning a daily maximum 20°C) has increased by 41% when comparing the most recent decade with 1961-1990. Unfortunately, this is accompanied by an increased risk of potentially destructive extreme weather events.

The report records that 2023 was the second warmest year, June was the warmest June and September was the equal-warmest September on record in the UK. 2023 was also the UK's seventh wettest recorded year. Although causes of particular weather events are multifactorial, the report is quite clear that these extremes have been made more likely by climate change. There is a clear trend towards warmer and wetter weather in the UK. This makes weather events such as the floods caused by Storm Bert and Storm Conall all the more likely. It also increases the risk of extended periods of hot and dry weather, like that of summer 2022 which resulted in a significant surge in subsidence damage to buildings.

Insurers and policyholders alike will be keen to see these ever increasing risks mitigated by climate adaptation measures such as improved urban planning and strategic incorporation of green spaces into them, better flood defences, effective tree management and enhancements to the resilience of public infrastructure. Under the Climate Change Act 2008, the UK's Climate Change Committee is required to report to Parliament on the progress towards climate adaptation. Their 2023 Progress Report found "very limited evidence of the implementation of adaptation at the scale needed to fully prepare for climate risks facing the UK". Insurers and policyholders in the UK will be hoping for greater progress by the time the next Progress Report is published in April 2025.

Contacts

Victoria Sherratt
Partner
+44 20 3060 6263
victoria.sherratt@rpclegal.com

Catherine Percy
Partner
+44 20 3060 6848
catherine.percy@rpclegal.com

Andrew Roper
Partner
+44 20 3060 6930
andrew.roper@rpclegal.com

Restructuring & Insolvency

Will Beck | Of Counsel

Key developments in 2024

2024 has seen one of the most significant insolvency cases in recent years. In June, Justice Leech handed down his judgment on the claim brought by the liquidators of BHS against certain of its former directors for wrongful trading and misfeasance. This judgment is likely to have important consequences for the D&O market.

It was particularly noteworthy as it was the first time that the directors of a company had been found guilty of the novel claim of 'misfeasant trading'.

Once it becomes probable that a company will enter insolvent administration or liquidation (or the company is insolvent or is bordering on insolvency), the directors, when seeking to fulfil their duty to promote the success of the company, increasingly have to consider the interests of the company's creditors as well as its shareholders.

Should a court determine that this creditor duty is engaged, and the directors have failed to properly consider their duty to creditors and continued trading the company at a time when they objectively should have put it into administration or liquidation, then they could be at risk of being found liable for misfeasant trading. The liability trigger for misfeasant trading can arise at an earlier time than that for wrongful trading – i.e. before the insolvency of the company has become inevitable.

Any director found guilty of misfeasant (or indeed wrongful and/or fraudulent trading) can be required to contribute personally to the assets of the company. This was starkly demonstrated in the BHS case where the directors were ordered to pay compensation in the region of £110 million.

Importantly, from a D&O perspective, the Court also held that it would have not been prepared to reduce the level of the awards made against the directors to reflect any deficiency in their D&O cover. As such, we would expect that, post-BHS, directors will be increasingly concerned to ensure that D&O cover is obtained which is adequate to cover their potential risk exposure.

What to look out for in 2025

The economic outlook for 2025 remains uncertain.

The inflation rate rose in October by more than expected to 2.3%, with warnings that the cost of living crisis is not yet over. And whilst the number of registered company insolvencies in England and Wales in that month was less than in October 2023, they are still at a much higher level than that seen both during the COVID-19 pandemic and between 2014 and 2019.

Indeed, in the past few months, there have been a number of very high-profile insolvencies including ISG, Homebase and TFI Friday's. This suggests that, across various sectors such as construction, hospitality, retail and leisure, conditions remain challenging for many companies. The burden of increased costs, pressures in supply chains and managing, and potentially needing to refinance, high levels of debt are continuing to make trading difficult for some businesses.

We therefore expect that the R&I market will remain busy for the foreseeable future and that further high-profile insolvencies are sadly inevitable. This, in turn, is likely to lead to more claims being made against D&O and trade credit policies.

It will be important therefore for the insureds under those policies to keep a close eye on their trading counterparties to look for any possible signs that they may be in financial difficulty and to seek to mitigate their potential exposure. This could include, for example, seeking shorter payment terms or requesting payment upfront from their customers, obtaining improved termination rights which can be exercised pre-insolvency and strengthening any retention of title provisions in their applicable contracts.

Contacts

Finella Fogarty
Partner
+44 20 3060 6158
finella.fogarty@rpclegal.com

Paul Bagon
Partner
+44 20 3060 6646
paul.bagon@rpclegal.com

Surveyors

Annabel Gallocher | Associate

Key developments in 2024

The previous UK Government set a legally binding 'net zero' target to reduce the UK's net emissions by 100% by 2050 compared with 1990 levels. In the UK, an estimated 25 million homes require a form of energy improvement. In response to this target, the new residential retrofit standard was launched in March 2024 and came into full effect on 31 October 2024.

RICS members conducting retrofit surveys and delivery retrofit services to all types of residential occupiers are now required to follow the new standard, which outlines a comprehensive approach to retrofit assessments, planning and execution. The standard will enhance the quality of retrofitting services and will support RICS professionals to reflect RICS' current strategic objectives in sustainability.

In light of rising energy prices, retrofitting is an attractive way for homeowners to improve the energy efficiency of their properties and therefore keep energy costs down. It is also an attractive way for prospective sellers to increase the value and desirability of their homes. Paul Bagust, Head of Property Practice at RICS, said "Homeowners are increasingly exploring retrofit to improve energy performance. It's critical they receive advice from qualified professionals."

The standard has been developed through the collaboration of an expert working group comprising energy professionals, surveyors, lenders, real estate agents and academics, with legal input from RPC. This followed an extensive public consultation between July to September 2023, to ensure the standard would align with market needs and regulatory requirements.

For further information regarding the new standard, please see the following: https://www.rics.org/news-insights/rics-residential-retrofit-standard-takes-full-effect-on-31-october-2024

What to look out for in 2025

Following the creation of the RICS Home Survey Standard in 2019, which came into effect in 2021, RICS are undertaking a review of that standard with the aim of delivering a revised document for home surveys in 2025. The standard was created with the aim of setting mandatory standards for RICS members and regulated firms conducting residential property surveys, to maintain consistent and high-quality standards.

By updating the standard, RICS' goal is to deliver a revised document that:

1. Meets member requirements.
2. Provides a clear framework for qualified RICS members and regulated firms.
3. Considers consumer sentiment and sector developments.
4. Accounts for third parties working with the standard in their respective areas.
5. Reflects opportunities and risks in the sector.

The review of the standard follows a lengthy consultation with members of the RICS, and is being undertaken by an expert working group, which includes Alexandra Anderson, Partner of RPC. Once the draft is ready, the RICS will undertake a public consultation on its terms with a view to submitting the final version to the Knowledge and Practice Committee and the Standards and Regulation Board for approval and publication later in the year.

To read more, please see the following link: https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/building-surveying-standards/home-surveys/home-survey-standards

Contacts

Alex Anderson
Partner
+44 20 3060 6499
alexandra.anderson@rpclegal.com

Ben Goodier
Partner
+44 20 3060 6911
ben.goodier@rpclegal.com

Felicity Strong
Partner
+44 20 3060 6546
felicity.strong@rpclegal.com

Katharine Cusack
Partner
+44 20 3060 6965
katharine.cusack@rpclegal.com

Technology

Lauren Kerr | Associate

Key developments in 2024

There have been a range of court judgments in recent years concerning the interpretation and scope of contractual clauses intended to limit liability.

In the case of Tata Consultancy Services Ltd v Disclosure and Barring Service [2024] EWHC 1185, Tata Consultancy Services (TCS), a provider of business process outsourcing and IT services, had entered into an agreement with the Disclosure and Barring Service (DBS) to deliver a modernised IT system aimed at enhancing DBS's processes. The project was unsuccessful, leading TCS to claim £110 million in damages from DBS for significant delays and breach of contract. In response, DBS counterclaimed for losses due to delays and defective software.

The judgment concerned in part whether a limitation of liability clause operated across all claims in the aggregate or provided a separate limit in respect of multiple individual claims.

The judgment served as a reminder of the importance of clarity in the drafting of limitation of liability clauses.
Ultimately, it was held that the limitation clause applied to all claims in the aggregate. That was supported by the inclusion of the words "total aggregate liability" and the absence of the words "per claim".
This conclusion was not displaced by the reference in the clause to a cap consisting of fees paid during the 12 month period immediately preceding the events giving rise to the claim. It had been argued that this would necessarily involve a separate limit for separate claims as the fees paid could be different depending on when the events giving rise to each separate claim occurred. The Court accepted that the clause could have been clearer but gave weight to the clear meaning of the words "total aggregate liability". The interpretation of limitation of liability clauses can have a significant effect on the viability and quantum of the claim.
It is unlikely that this is the last case involving a detailed examination of the precise meaning of such a clause.

What to look out for in 2025

On 23 October 2024, the Data (Use and Access) Bill ('DUA Bill') was introduced, replacing the earlier Data Protection and Digital Information Bill ('DPDI Bill') which was prorogued, following a parliamentary change. Initially presented in the King's Speech as the 'Digital Information and Smart Data' Bill, the newly renamed DUA Bill introduces new rules for data sharing across sectors such as energy, finance, and law enforcement, aiming to enhance efficiency and reduce costs.

Two notable examples are (1) Open Banking, which allows users to consolidate account information from different banks into a single dashboard, and (2) a proposed data-sharing model within the energy sector which could provide customers with the ability to compare utility prices, find better deals, and reduce their energy use.

The DUA Bill will ensure that any data shared under these 'Smart Data' schemes is secure and will ensure that (i) who can access the data, (ii) how data is provided and (iii) the security measures in place, are regulated to a high standard.

The Government says that the DUA Bill will "unlock the secure and effective use of data for the public interest" and boost the UK economy by £10 billion over the next decade. The DUA Bill has been published, but still has to go through several stages before enactment.

Contacts

Richard Breavington
Partner
+44 20 3060 6341
richard.breavington@rpclegal.com

Dan Guilfoyle
Partner
+44 20 3060 6912
daniel.guilfoyle@rpclegal.com

Jonathan Crompton
Partner
+852 2216 7173
jonathan.crompton@rpclegal.com

Toxic torts and legacy exposures

Lucy Dyson | Partner
Marcela Calife Marotti | Senior Associate

Key developments in 2024

As predicted in last year's review, PFAS/ forever chemicals continued to dominate the toxic tort stage during 2024, with litigation rapidly expanding outside of the USA. Although PFAS claims are not "new" (starting in the early 2000s and recently producing some multi-billion-dollar water remediation related settlements), claims outside the USA are still at a comparatively early stage. Public awareness of both the ubiquitous and persistent nature of the chemicals and the allegedly harmful effects of exposure, continues to rise.

2024 saw an uptick in PFAS litigation in Europe concerning the alleged contamination of water courses and land adjacent to manufacturing plants. This follows cases already brought in Sweden, Belgium and the Netherlands against the main chemicals manufacturers, DuPont and 3M. In France, manufacturers Arkema and Daikin face claims for PFAS pollution of the Rhone Valley, including water courses, air and soil. In addition to the costs of clean-up of pollutants, compensation is being claimed for personal injury and diminution of value in property/ loss of livelihood, due to the presence of elevated levels of PFAS chemicals in soil (e.g. preventing agriculture). Claims have also been intimated against the German government in relation to alleged PFAS groundwater contamination originating from the US/NATO airbase Spangdahlem in Germany.

In a significant development for the UK, at the end of 2024, Leigh Day & Co and Mishcon de Reya announced that they intend to bring claims on behalf of residents living in Bentham, North Yorkshire, against fire-fighting foam manufacturer, Angus Fire. This is in relation to alleged groundwater pollution caused by PFAS chemicals which are reportedly 55,000 higher than the government recommended "safe" levels. Leigh Day & Co are also reportedly investigating potential claims against AGC Chemicals, whose operations in Lancashire have allegedly caused the release of PFOA.

Whilst the vast majority of PFAS litigation has focused on the main two long-chain PFAS chemicals, PFOA and PFOS, there are thought to be over 12,000 chemicals within the PFAS "family". Indeed, Chemours face litigation in the Netherlands concerning both PFOA and GenX discharges. Consequently, as other PFAS chemicals increasingly come under the spotlight, we can expect the remit of litigation (including the specific chemicals and industries which use them in their products) to expand.

As regards claims in supply chains, at the end of 2024, a US based carpet manufacturer brought a claim against three chemical manufacturers who supplied them with PFAS chemicals whilst allegedly knowing of the deleterious effects of exposure and the specialised technology required to remove PFAS from the environment. This is an interesting development in what will be a long-running set of cases between upstream and downstream manufacturers.

We have also seen consumer protection claims against companies alleging deceptive marketing practices, on the basis that products are marketed as "safe" and "organic". 2024 saw a putative class action filed against Health-Ade in relation to its kombucha products, for example.

In a similar vein to climate change cases regarding "duty to defend", claims by US insureds against insurers seeking indemnity for defence costs are also gathering pace.

Regulations for the use of PFAS chemicals remain in their infancy. The US Environmental Protection Agency has set water limits at 4 parts per trillion (ppt) for PFOS and PFOA (previously at 70ppt) and has also introduced limits of 10ppt for other compounds, including PFNA, PfHxS and HFPO dimer acid (the short chain, "Gen X" PFAS chemicals). However, there are calls for more radical regulations and wider bans on the use of PFAS, particularly in the face of the vast costs associated with remediating water courses and upgrading water systems. At present, there is a proposed bill "Poly and Perfluorinated Alkyl Substances (Guidance)" being considered by the UK parliament. Scientists have expressed concern over PFAS levels in sewage and the lack of requirements for sewage companies to monitor PFAS and limit its levels in water supplies.

What to expect in 2025

PFAS litigation will continue to expand during 2025 – both internationally and in terms of governments, local authorities and industries being targeted. In the US, the bellwether trials for personal injury claims brought by firefighters are scheduled to take place, although it remains to be seen if the parties will reach a settlement beforehand. These "test cases" are significant for the development of causation arguments in PFAS injury cases.

In Europe, we can expect further claims concerning PFAS contamination, personal injury and property damage. We await the development of the PFAS pollution claims in the English courts, including how the claims will be brought, i.e. whether as individual claims or via a group claim mechanism, by reference to statutory nuisance and other arguments.

Contacts

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Warranty & indemnity

Matthew Wood | Senior Associate

Key developments in 2024

We predicted last year that 2024 would see deal volumes increase, owing to improving market conditions. Indeed, a pullback in inflation (and stabilisation of the cost of capital) has led to a rising M&A market, with notable growth among larger deals. Among European markets, the UK has been particularly active, reflecting perceived political stability following the decisive general election result (2024 was a bumper year for elections, too).

The data suggest that W&I insurers have had a productive year, with the number of policies bound often running at record or near-record levels. Available capacity has also continued to grow, driving continued strong competition on rates.

We have also observed an uptick in claims volumes, especially in the second half of 2024. Most notifications continue to involve warranties pertaining to financial statements, tax, compliance with laws and material contracts. Our experience is that an increasing proportion of claims (especially financial statements claims) are being made by financial sponsors, who are sophisticated users of W&I insurance and often present claims in a particularly analytical and well-structured manner.

The English case law surrounding W&I claims continues to develop. In May 2024, the Court of Appeal gave judgment in Project *Angel Bidco v AXIS & others*. Whilst insurers' declinature of the claim under an anti-bribery and corruption (ABC) exclusion was upheld by a two-to-one majority, the court was troubled by the issue of whether the W&I policy "gave with one hand and took away with the other", where ABC warranties were covered, but in practice any claim thereunder would be excluded. Most recent wordings address this concern by making crystal clear that cover afforded under the cover spreadsheet is subject to the operation of the exclusions (albeit that was of course always the case).

What to look out for in 2025

Whilst competition in the W&I market remains vigorous, we anticipate that increasing deal volume and claims volume (and the growing sophistication of claims) will lead to some hardening of rates in 2025, and perhaps also to increasingly robust defence of claims, where justified on the merits.

We expect that claims valuation issues will continue to grow in prominence, especially in financial statements claims (where valuation can be particularly challenging, if breach of warranty is established). Insurers should continue to make sure they have a strong understanding of the buyer's valuation methodology at the underwriting stage, as this assists greatly in the event of valuation debates in the claims context.

The rapid evolution of AI can be expected to make its mark on M&A transactions (and underwriting processes) in 2025. Judicious use of large language models could drive cost efficiencies at the due diligence stage, but insurers will rightly be concerned to ensure that nothing is missed and the accuracy and completeness of due diligence is not compromised. Separately, as generative AI becomes embedded in the operations of target companies themselves, it will be important to ensure that the target's use of AI (and associated risks, such as IP and data protection risks) is robustly diligenced, and that insurers' exposure to AI-adjacent risks is appropriately managed.

Contacts

James Wickes
Partner
+44 20 3060 6047
james.wickes@rpclegal.com

Antony Sassi
Managing Partner, Asia
+852 2216 7101
antony.sassi@rpclegal.com

Contacts

David Allinson
Partner
+44 20 3060 6954
david.allinson@rpclegal.com

Alex Almaguer
Partner, Latin America Insurance Practice Lead
+44 20 3060 6371
alex.almaguer@rpclegal.com

Alex Anderson
Partner
+44 20 3060 6499
alexandra.anderson@rpclegal.com

Iain Anderson
Partner
+65 6422 3050
iain.anderson@rpclegal.com

Paul Bagon
Partner
+44 20 3060 6646
paul.bagon@rpclegal.com

Nick Bird
Partner
+44 20 3060 6548
nick.bird@rpclegal.com

Rupert Boswall
Partner
+44 20 3060 6487
rupert.boswall@rpclegal.com

Richard Breavington
Partner
+44 20 3060 6341
richard.breavington@rpclegal.com

Tim Bull
Partner
+44 20 3060 6580
tim.bull@rpclegal.com

Rupert Cowper-Coles
Partner
+44 20 3060 6295
rupert.cowper-coles@rpclegal.com

David Cran
Partner
+44 20 3060 6149
david.cran@rpclegal.com

Jonathan Crompton
Partner
+852 2216 7173
jonathan.crompton@rpclegal.com

Ciara Cullen
Partner
+44 20 3060 6244
ciara.cullen@rpclegal.com

Katharine Cusack
Partner
+44 20 3060 6965
katharine.cusack@rpclegal.com

Mamata Dutta
Partner
+44 20 3060 6819
mamata.dutta@rpclegal.com

Lucy Dyson
Partner
+44 20 3060 6308
lucy.dyson@rpclegal.com

Zoe Eastell
Partner
+44 20 3060 6163
zoe.eastell@rpclegal.com

Mark Errington
Partner
+65 6422 3040
mark.errington@rpclegal.com

Dorothy Flower
Partner
+44 20 3060 6481
dorothy.flower@rpclegal.com

Finella Fogarty
Partner
+44 20 3060 6158
finella.fogarty@rpclegal.com

Rachel Ford
Partner
+44 20 3060 6821
rachel.ford@rpclegal.com

Davina Given
Partner
+44 20 3060 6534
davina.given@rpclegal.com

Ben Gold
Partner
+44 20 3060 6282
ben.gold@rpclegal.com

Ben Goodier
Partner
+44 20 3060 6911
ben.goodier@rpclegal.com

Dan Guilfoyle
Partner
+44 20 3060 6912
daniel.guilfoyle@rpclegal.com

Carmel Green
Partner
+852 2216 7112
carmel.green@rpclegal.com

Tom Green
Partner
+44 20 3060 6536
tom.green@rpclegal.com

Contacts (continued)

Matthew Griffith
Partner
+44 20 3060 6382
matthew.griffith@rpclegal.com

Daniel Guilfoyle
Partner
+44 20 3060 6912
daniel.guilfoyle@rpclegal.com

Fiona Hahlo
Partner
+44 20 3060 6121
fiona.hahlo@rpclegal.com

Rachael Healey
Partner
+44 20 3060 6029
rachael.healey@rpclegal.com

Toby Higginson
Partner
+44 20 3060 6581
toby.higginson@rpclegal.com

Kate Hill
Partner
+44 20 3060 6442
kate.hill@rpclegal.com

William Hogarth
Partner
+44 20 3060 6240
william.hogarth@rpclegal.com

Rhian Howell
Partner
+44 20 3060 6708
rhian.howell@rpclegal.com

Will Jones
Of Counsel
+44 20 3060 6938
william.jones@rpclegal.com

Simy Khanna
Partner
+44 20 3060 6284
simy.khanna@rpclegal.com

Simon Laird
Partner
+44 20 3060 6622
simon.laird@rpclegal.com

Thom Lumley
Partner
+44 20 3060 6728
thom.lumley@rpclegal.com

Keith Mathieson
Partner
+44 20 3060 6486
keith.mathieson@rpclegal.com

James Mee
Partner
+44 20 3060 6424
james.mee@rpclegal.com

Sian Morgan
Partner
+44 20 3060 6953
sian.morgan@rpclegal.com

Robert Morris
Partner
+44 20 3060 6921
robert.morris@rpclegal.com

Karen Morrish
Partner
+44 20 3060 6521
karen.morrish@rpclegal.com

Michael Newham
Partner
+44 20 3060 6018
michael.newham@rpclegal.com

Catherine Percy
Partner
+44 20 3060 6848
catherine.percy@rpclegal.com

Kirstie Pike
Partner
+44 20 3060 6967
kirstie.pike@rpclegal.com

Gavin Reese
Partner
+44 20 3060 6895
gavin.reese@rpclegal.com

Andrew Roper
Partner
+44 20 3060 6930
andrew.roper@rpclegal.com

Antony Sassi
Managing Partner, Asia
+852 2216 7101
antony.sassi@rpclegal.com

Toby Savage
Partner
+44 20 3060 6576
toby.savage@rpclegal.com

Will Sefton
Partner
+44 20 3060 6924
will.sefton@rpclegal.com

Tim Shepherd
Partner
+44 20 3060 7033
tim.shepherd@rpclegal.com

Victoria Sherratt
Partner
+44 20 3060 6263
victoria.sherratt@rpclegal.com

George Smith
Partner
+44 20 3060 6976
george.smith@rpclegal.com

Naomi Vary
Partner
+44 20 3060 6522
naomi.vary@rpclegal.com

Jonathan Wood
Consultant
+44 20 3060 6562
jonathan.wood@rpclegal.com

Alan Stone
Partner
+44 20 3060 6380
alan.stone@rpclegal.com

James Wickes
Partner
+44 20 3060 6047
james.wickes@rpclegal.com

Rebecca Wong
Partner
+852 2216 7168
rebecca.wong@rpclegal.com

Felicity Strong
Partner
+44 20 3060 6546
felicity.strong@rpclegal.com

Alex Wilson
Partner
+44 20 3060 6397
alex.wilson@rpclegal.com

Jonathan Wyles
Of Counsel
+44 20 3060 6415
jonathan.wyles@rpclegal.com

Our Global Access Partners

Jonathan Newby
Partner
Colin Biggers & Paisley
+61 2 8281 4406
jonathan.newby@cbp.com.au

Mark Frederick
Partner
Miller Thomson
+1 416 595 8175
mfrederick@millerthomson.com

Marit van der Pool
Attorney at law
Kennedy Van der Laan
+31 20 5506 838
marit.van.der.pool@kvdl.com

Keith Bethlehem
Partner
Colin Biggers & Paisley
+61 2 8281 4421
keith.bethlehem@cbp.com.au

Tom Whitby
Partner
Miller Thomson
+1 416 595 8561
twhitby@millerthomson.com

Scott Seaman
Partner
Hinshaw & Culbertson LLP
+1 312 704 3699
sseaman@hinshawlaw.com

Michael Russell
Partner
Colin Biggers & Paisley
+61 2 8281 4612
michael.russell@cbp.com.au

Peter van den Broek
Partner, Attorney at law
Kennedy Van der Laan
+31 20 5506 669
peter.van.den.broek@kvdl.com

Pedro Hernandez
Partner
Hinshaw & Culbertson LLP
+1 305 428 5043
phernandez@hinshawlaw.com

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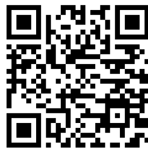

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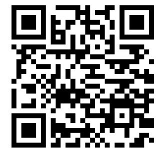

Rise

Are you a junior to mid-level insurance professional looking to grow your network and develop your career? Rise with RPC is the community for you. Since launching in 2022, we've built a network of over 500 members across the industry, including brokers, insurers, MGAs, forensic accountants, and loss adjusters

Our 2024 Highlights

This year, we've hosted events designed to inspire and empower, including:

- **Annual Summer Quiz**: A fun and informal way to connect with peers.
- **Senior Leadership Panel (with NGIN)**: Exclusive insights from industry leaders.
- **"Building Your Insurance Network" with Samantha Ridgewell**: Practical advice for building meaningful professional relationships.

With 265 members actively engaged this year and seven events held since our launch, Rise with RPC is the go-to community for junior to mid-level professionals looking to thrive in insurance.

Why Join Us?

Be part of a dynamic, supportive community where you can broaden your network, learn from industry leaders, and grow your career.

Find out more and explore our events at rpclegal.com/rise

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Notes

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