Global forecast 2024

Evolving insurance risks

Kennedys

Foreword

In this Forecast report, as in previous years, we examine the priority themes which we consider will have **the biggest impact on the insurance market** in the year ahead.

The environmental, social and governance (ESG) agenda, developing technologies, geopolitics and claims inflation all remain top concerns for the insurance sector. While these overarching themes are still relevant, the underlying risks and associated claims have evolved and diversified.

This report looks at the new risks emerging from under these themes, and what the insurance sector should consider when evaluating their business strategies and commercial response.

We also break these risks down and compare the responses from a recent global insurance market survey* with insights from some of our lawyers across the globe. We look at the areas of highest concern, the similarities and divergence of opinion between the commercial insurance and legal worlds, and evaluate how those risks translate across jurisdictions.

> Analysing these outcomes has allowed us to extract **five key takeaways for the insurance market to consider** as it enters an increasingly competitive, technology driven and unpredictable year.

> The starting point when considering the emerging priorities for insurers is to acknowledge that we sit at the centre of an uncertain macroeconomic and geopolitical landscape. Since 2020, the multiple and over-lapping crises that have battered the world economy have encouraged governments to develop policies designed to strengthen resilience at home.
>
> In particular, policies to support innovation, national security and build green economies are being added to the toolkit. Overall, such events have seen nations turn inwards with global cooperation becoming more divided.

Deborah Newberry
Corporate Affairs Director, UK

Global Insurance Law Monitor: Gracechurch interviewed 325 claims professionals in London, North America, APAC, Europe and LatAm through 2023

Executive summary




Insurers are continuing to operate in an **increasingly high-risk environment, navigating economic and political uncertainty.** Geopolitics, ESG and technology remain the priority concerns for corporates and their insurers. The risks that we have previously examined within these themes – such as supply chain disruption, climate change and cyber breaches – are all still firmly in place, but alongside these, we have seen an evolution of risk.

Technological change is at the forefront of operational and strategic decision making for all commercial entities across all global regions – as demonstrated by our survey results. The insurance industry is at a pivotal moment, having the opportunity to re-shape and transform the claims handling and underwriting processes. The shape this evolution takes can only be decided by individual insurance businesses re-aligning their strategic priorities to create their own innovative solutions.

The fragile geopolitical landscape is evidenced in the manifestation of acts of war, simmering trade tensions and instances of civil unrest. These events have led to a rewriting of global policies, leading corporates to review their business practices, particularly those operating across multiple jurisdictions. Local solutions and onshoring strategies could indicate a shift towards deglobalisation, bringing with it both challenges and opportunities as new commercial relationships are tested.

Climate change continues to be an ever-visible risk, with extreme weather events causing insured and uninsured losses to greater degrees. The results of both the insurer and legal survey across all regions reinforces the need to focus on the continuing impact of climate change on claims. In addition, we are beginning to see the impact of reducing global biodiversity. Biodiversity loss results in economic loss and to prevent this, global regulation will have to adapt and respond. This will require corporates to consider their own biodiversity risks.

We are also seeing a shift in the ESG framework, holding corporates to an increasingly higher standard. With ESG credentials becoming a driving factor of growth and profitability, not only is the regulatory compliance burden rising, so is the temptation to over-sell a brand's sustainability status. As interest, awareness and knowledge increases, so does the risk of being held to account by shareholders, employees and consumers.

Along with these concerns, we are beginning to see the rise of 'greenhushing' claims and concerns by corporates, which focus on questioning whether proactive stances on ESG properly align with increasing shareholder value.

The current regulatory environment across all these risks is at the forefront of the minds of our global lawyers, as evidenced by our survey results. The recognition that domestic and global regulatory frameworks are having to react and respond to change on a societal, technological and geographical level will inevitability lead to gaps, inconsistencies, ambiguities and legal challenges.

Commercial agility and strategic planning will provide insurers and their insureds with the confidence to respond to this ever-changing business landscape.

Key takeaways

The global risk environment has always required the insurance sector to react and adapt to new and emerging risks. **What is evident is that the pace of change is increasing.** This is true of risks falling under all key themes – ESG, geopolitics and technology. As a result, global regulators and law makers are striving to provide the necessary governance frameworks, whilst allowing growth and innovation to thrive.

Regulatory landscape

Global regulation is being reviewed, updated and created in order to keep up with the pace of change in data privacy, AI, cyber, climate change, sustainability, geopolitical tensions, trade relationships, diversity, equality and inclusion and more.

The provision of new regulations will assist in managing those risks. It will also create risk as global measures misalign, as new obligations are missed, and as gaps and inconsistencies appear.

Corporates and their insurers will need to keep a close watch on changes across all jurisdictions in which they operate.

Artificial intelligence

The risks arising from AI are evident – but so are the opportunities. AI will allow insurers to pay claims more quickly and get ahead of fast changing trends for pricing models. As the use of data results in insured risks becoming more predictable, this means that they can become more preventable, thereby minimising losses.

Embracing technological solutions can allow risk measurement tools to be improved, benefiting both insurers and corporates. These opportunities should not be overlooked; responsible AI provides huge potential for corporates and insurers, and the future may see claims presented if AI is not used in commercial processes.

ESG

The rise in ESG-related governance coupled with raised consumer knowledge and awareness is putting an increasingly high burden on all commercial entities.

This is developing alongside new and evolving risks, such as greenwashing and biodiversity, as well as rising concerns from shareholders about the extent to which ESG-related corporate initiatives are in the best interests of the company.

Reviews of internal and third party practices will take on an ever-increasing significance, and will come under heightened scrutiny from regulators and shareholders alike in the months ahead.

Geopolitics

The ripple effect of the internal and external relationships between countries and their leaders – whether that relates to trade relationships, climate commitments or economic policies – has an increasingly broad reach.

2024 is said to be the biggest global election year in history, including in the US, Europe and the UK: some counties will maintain a status quo; some will see a significant change; some outcomes are still entirely unknown.

This all makes for a challenging and unpredictable landscape for insurers to navigate.

Reputation

As corporates and their insurers grapple with the increasing breadth of new and emerging risks, so the risk to reputation rises. Not responding to a social movement quickly enough, not having adequate internal procedures in place to deal with a cyber breach, mis-judging your shareholders' interests in ESG-related issues, failing to comply with new regulations or over-selling your corporate response – all of these can damage a strong brand in no time at all. The use of social media and higher levels of consumer expectation add to this threat.

As well as staying ahead of legal developments, companies should embrace technological tools to protect their commercial and financial reputation.

Global survey: emerging issues impacting claims

Last year, Gracechurch Consulting surveyed insurance claims professionals across the globe to establish what emerging issues they considered would impact the future of claims. Most prominent was the expected role that technology will play in claims assessment and processing, but there were also consistent concerns about inflation and ESG-related claims.

> **The findings also show that perceived challenges vary widely across insurance hubs, something that Ben Bolton, Gracechurch MD, finds surprising:**
>
> *"It is unusual in professional communities to find such a lack of consensus around business challenges. The claims world is relatively homogeneous – people train in and work for the same types of companies, interact internationally and are collectively exposed to the same issues, media and peer views – which ought to lead to a common view. It could be that the sheer range of issues and overlapping definitions cause differences, but a bigger worry is that lower human interaction generally is leading to fragmentation of opinion and even a lack of a common language to describe the priorities."*

Global legal analysis

With an emphasis on regulatory reform, a selection of our lawyers from across our global offices highlight some of the developments, trends and events to watch in their jurisdictions. **All of these risks have cross border application – either now, or in the coming months and years.**

> There has been an increase in investment in technology that will continue as firms look to expand the use of AI and automation in their products and processes. Other priorities will include adapting to regulatory changes along with increased internal and external reporting demands, mitigating claims inflation and loss severity.

Julian Wallace
Partner, Singapore

Gracechurch report: results

We put the same question to some of our partners across our Asia Pacific, EMEA, Latin America, North America and UK offices – ***'Thinking about the market as a whole, what are the emerging issues that you think are going to have the biggest impact on the future of claims'.***

The use of technology and AI, along with ESG risks and inflationary drivers topped the responses given by our lawyers. What was also apparent were the associated risks of the changing regulatory landscape as it attempts to keep pace with these evolving risks.

*******Global Insurance Law Monitor: Gracechurch interviewed 325 claims professionals in London, North America, APAC, Europe and LatAm through 2023*

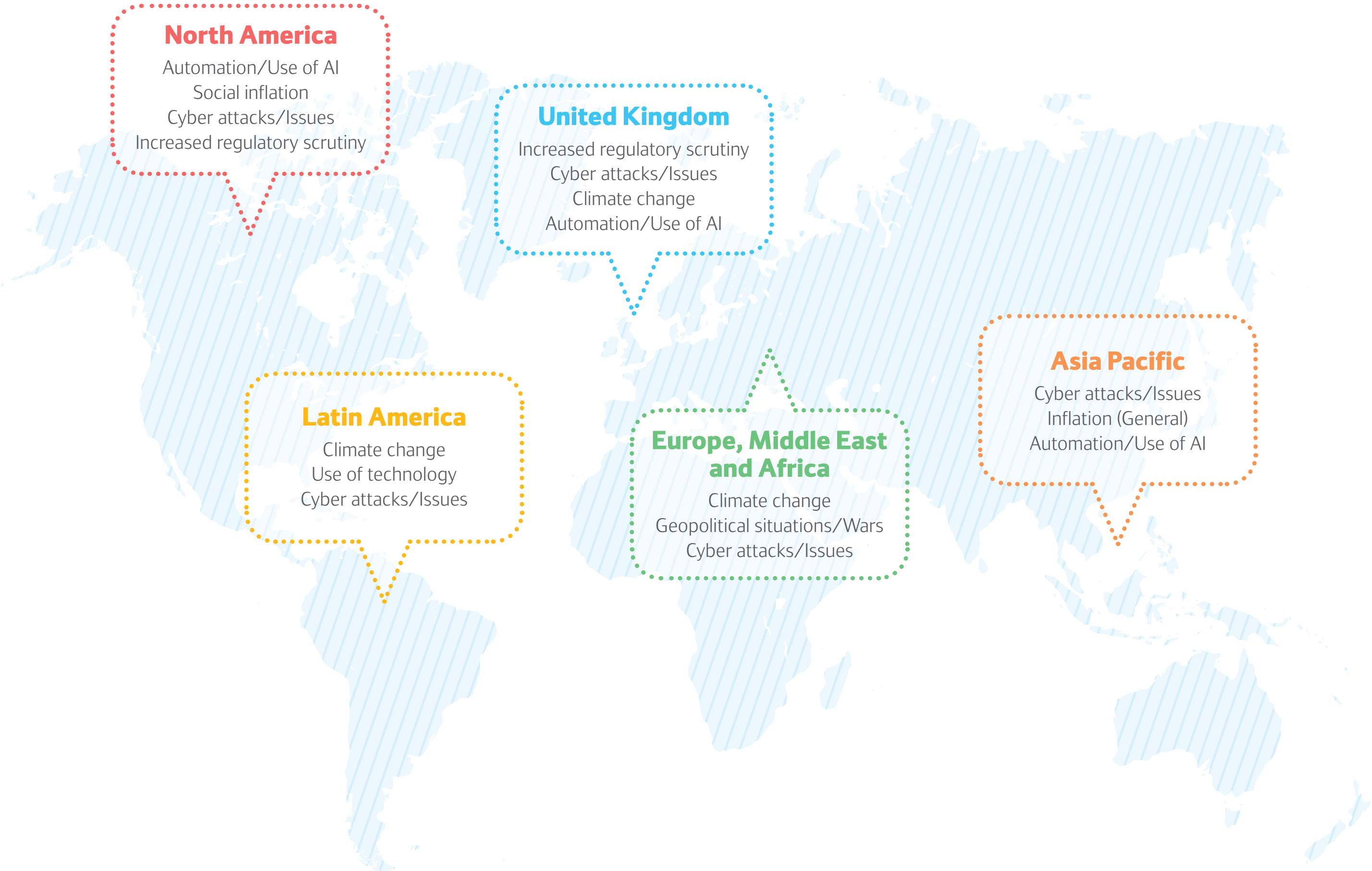
> In Europe and France, various regulatory developments are going to impact the insurance sector in 2024, particularly those linked to issues of sustainability and financial standards.
>
> The most impactful legal provision for the insurance sector is the Corporate Sustainability Reporting Directive (CSRD) on the publication of non-financial data. This will be implemented progressively from 1 January 2025 (based on 2024 data), and will require insurers in Europe to carry out a huge task of collection and processing data.

Safine Hadri
Partner, France

> The development and consolidation of insurtech and its regulatory framework in LatAm will have the biggest impact on the insurance sector in the year ahead.

Radoslav Depolo
Partner, Chile

Kennedys' view: These are the areas by region that a selection of our global lawyers see as having a significant impact on the future of claims:



As with the insurer findings, the prominent issues vary across our global network, with cyber attacks/issues being the only common trend across all regions. We agree with Ben Bolton, Gracechurch MD, that this is likely to be reflective of the vast number of factors currently at play, all of which the insurance industry has to manage.

> Cyber attacks will continue to have a major impact on losses, and the use of AI will have an exponential development on the part of insureds which will mean losses until now unheard of.
>
> In addition, we are expecting legislative change in Spain regarding class actions. These class actions will have a large impact on liability insurers, especially on product liability lines.

Alfonso De Ramos
Partner, Spain

The same issues **viewed differently**

Similarities

Insurers and lawyers alike all ranked the issues under the technology banner as having the highest impact on claims. Wherever you are and whatever business lines you cover, the use of technology itself – in the way claims are handled or how working practices have evolved – are currently presenting both challenges and opportunities.

Global regulators are cracking down on Big Tech for mis-using data giving rise to a heightened risk of group litigation. The Irish DPC's decision on 15 September 2023 to levy a €345 million fine mirrors the action taken by the UK's Information Commissioner's Office against TikTok earlier in the year when it issued a £12.7 million fine for misusing children's data. As regulators increasingly come down hard on businesses that fail to implement adequate measures to ensure the lawful processing of personal data, particularly in relation to child users, businesses need to be prepared for any consequential litigation, particularly group actions, given the numbers of users impacted.

Oliver Dent
Partner, UK

The impact of the use of technology, including AI, is reflected in our global lawyers' responses around cyber threats. The increased use of data extraction will result in opportunities for weaknesses to be exploited by cyber attacks across all sectors.

Reassuringly, ESG risks are also prioritised by both global insurers and our global lawyers. This highlights the necessity for consistent, worldwide governance to assist with identifying and managing these risks.

Our results show a higher importance placed on climate risks in LatAm countries, which is where the consequences are arguably more prominent. However, this should serve as a warning to other regions. The effects of climate change are undoubtedly progressing, and the impacts felt in LatAm are likely to be felt across all regions in the not too distant future.

Divergence

Inflation (general and social) was ranked as having a higher impact by insurers than by our lawyers across the globe. This is an expected and understandable outcome – claims inflation is part of insurers' day to day considerations, and fluctuations and variations have a significant impact on profitability and business strategy.

That said, our US lawyers did highlight the impact of social inflation on claims – a result of the staggering level of awards handed down by US juries – and the impact of excess claims inflation on injury claims was emphasised by our lawyers in Australia.

Peru is expecting a new regulation on data privacy, and its draft version is somewhat similar to the GDPR – extraterritoriality approach, duty to notify regulator and data subject of any breach, appointment of data officer.

It is expected that the local Data Privacy authority will be stricter in its auditing, investigations and in imposing fines. We expect this will drive an increase in demand for cyber coverage products, to respond to the rising risks.

Marco Rivera
Partner, Peru

The regulatory landscape will have the biggest immediate and future impact on claims. Regulations around diversity, equality and inclusion (DEI) requirements, the Consumer Duty, pension reforms, corporate governance, greenwashing and audit reforms will all impact the insurance sector in 2024.

Regulations touch everything and, from a professional liability perspective, regulatory duties and responsibilities have never been higher.

Claire Bushen
Partner, UK

Kennedys' view: priority issues by region

We asked some of our global lawyers to choose **only** three emerging issues that they felt would have the biggest impact on the future of claims. While their responses do not provide a definitive list of all key issues per region, they do provide a snapshot of some of the priority topics.

This table illustrates that the top issues identified globally based on the responses were cyber attacks, climate change, regulatory scrutiny and the use of AI.

Emerging Issues	APAC	EMEA	LATAM	UK	US	Global
Cyber attacks/issues	33%	20%	19%	17%	15%	19%
Automation /Use of AI	22%	13%	6%	17%	25%	17%
Increased regulatory scrutiny	11%	13%	13%	17%	15%	14%
Climate change		20%	25%	17%		13%
Use of technology	11%	13%	19%	8%	10%	13%
Geopolitical situations / Wars		20%	13%	8%	10%	11%
Inflation (general)	22%		6%	8%	5%	7%
Social inflation					20%	6%
ESG related claims				8%		1%

Top emerging issue(s) for each region

"There are a number of current and anticipated changes in regulation and legislation in the Middle East region.

The UAE's new Insurance Law came into force on 30 November 2023, introducing a new process for determining insurance claims. 2024 will be a year of familiarisation with the new regime.

2023 also saw the adoption of a new Civil Code in Saudi Arabia, which will bring more certainty in areas such as contract and policy interpretation.

Mehdi Seadon
Legal Director, UAE

Evolution of key themes

Geopolitics, ESG and technology remain the priority concerns for corporates and their insurers. The risks that we have previously discussed as sitting within these themes – **such as supply chain disruption, climate change and cyber breaches** – are all still firmly in place, but alongside these we have seen an evolution of risk.

Technology – AI

Generative AI may be in its nascent stages of development, but this technology is only going to get more effective. The application of AI across a multitude of sectors is already bringing new benefits and opportunities, which will continue to evolve at pace. Autonomous vehicles and healthtech provide some examples of how this technology is being applied.

Nevertheless, mitigating risk and achieving the global benefits of AI will present unique governance challenges, and will require global cooperation and representation.

In broad terms, AI risks fall into three categories:

- Failure of the AI – both human failure and technology failure
- Malicious use of AI by third parties
- Issues with data.

Governments around the world want to encourage the advances in AI to create jobs and realize the benefits, but they also recognize that there needs to be regulation to prevent against the very real risks that can arise.

The US government is trying to tackle the issue. On October 30, 2023, President Biden issued a landmark Executive Order to establish new standards for AI safety and security, protect Americans' privacy, advance equity and civil rights, stand up for consumers and workers, and promote innovation and competition.

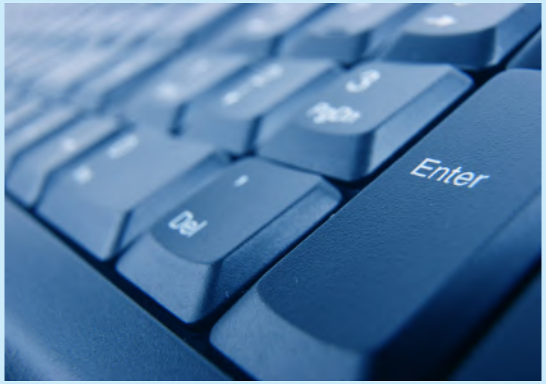
Maurice Pesso
Partner, US

Claims impact

The performance of AI in a manner that is not expected may lead to claims for:

- **Property damage:** A warehouse cleaning robot exploring its environment inserts a wet cloth into a live plug socket which causes a fire or flood.
- **Personal injury / bodily harm:** Self-driving car kills pedestrian because its machine learning system fails to account for jaywalking.
- **Reputational damage:** Smart conversational bot to promote company brand on internet goes awry.
- **Medical malpractice:** Misdiagnosis in medical screening as a result of malfunctioning AI system.
- **Cyber:** AI chatbot deployed by a bank hacked to make an unauthorised transaction.
- **Fraud:** AI generated deepfake digital content offered as evidence in support of a fraudulent claim.
- **Discrimination in hiring:** Unintentional bias in selecting applicants for employment.
- **Securities transactions:** Businesses may face investigations and/or fines for using AI tools that impermissibly manipulate the securities market.

A particular challenge of evolving AI capabilities is that the potential for AI failures do not neatly fit into existing insurance lines. For example, while cyber insurance typically covers data leakage, it will not typically cover bodily harm, brand damage or damage to physical property, which could occur from the same event.



> AI is the topic of the moment and offers insurers both opportunity and threat. Threats not only exist in the context of direct data and technology related risks, but also indirectly in new claims. We predict that future AI efficacy may create circumstances where liability arises due to a failure to use AI.
>
> However, the immediate and present danger for insurers is that their insureds' use of AI creates liabilities due to poorly conceived deployment, a lack of properly designed performance parameters and an over-reliance in the outputs. Human error at the deployment stage could have a significant, widespread impact if there is no additional 'human in the loop' factored in.

Martin Stockdale
Partner, UK

> Colombia has been increasing regulation in new channels of commercial insurance. This represents some challenges for insurers in respect of new technologies. This trend is likely to continue for the coming years as the focus remains on protection of consumers.

Monica Tocarruncho Mantilla
Partner, Colombia

ESG – greenwashing and greenhushing

Greenwashing is a term used to describe false, misleading or unsubstantiated statements or actions made by companies in relation to its environmental and sustainability practices, products and services. Greenhushing is a term used to describe situations where a company chooses to keep quiet about their sustainability efforts in order to avoid scrutiny.

Such practices are coming under increasing scrutiny by industry regulators across the globe, as well as other stakeholders including investors, shareholders, consumers and climate activists. This has led to the development of regulation and legislation intended to prevent greenwashing practices, enforce a higher level of corporate accountability and require greater transparency over environmental and sustainability claims.

Non-compliance, or a misrepresentation of ESG credentials, will expose corporates across all industries, including insurers, to a variety of risks, including financial loss, reputational damage and civil liability. Moreover, especially in the US, shareholders are increasingly scrutinising whether a company's stance on ESG and/or sustainability is truly in the best interests of the company, and ultimately enhances shareholder value.

Claims impact
Greenwashing is likely to be one of the biggest sources of class action claims in the coming months and years. The claims impact and consequential litigation risk is significant and has already materialised in many countries; the US, Europe and the UK have all seen class actions brought against businesses across multiple sectors.

For insurers, greenwashing is likely to give rise to claims under various lines of insurance, particularly D&O and professional indemnity.

// Those who do not respond to ESG concerns are being scrutinised and risk finding their non-compliant business practices exposed. Climate related risks are only part of the potential ESG exposure, and it is important that insurers do not lose sight of the pressure on insureds to also address social and governance issues. We anticipate that all regions will follow trends already being seen in the US in terms of shareholders lobbying boards and seeking to hold them accountable for failures to address systemic failures around governance.

John Bruce
Partner, UK

// The issues percolating in the UK are those stemming from class actions in central Europe and the US, such as the mass data breach class actions.

Another example is the building momentum around concussion claims. This is resulting in carriers looking at their potential exposures and ensuring their understanding of the current science and risks on both sides of the argument.

The electric car market could come under scrutiny for the misrepresentation of electric cars in terms of actual range and underplaying the battery life. This adds to the cynicism around the selling of 'green' products and will add weight to the anti-ESG agenda we are already seeing in the US.

Joy Middleton
Partner, UK

ESG – biodiversity

Most corporates and insurers now acknowledge climate change risks to their business. However, we see biodiversity loss emerging as a parallel challenge. Biological diversity – or biodiversity – is the variety of life on Earth in all its forms, and forms the foundation we depend on for so many aspects of life: food, water, medicine, and economic growth. For business and industry, it provides ecosystem services, such as timber, rubber and agriculture.

While human activity is the biggest driver of biodiversity loss, climate change and biodiversity are close bedfellows: just as climate change alters habitats and ecosystems, loss of biodiversity contributes to climate change and intensifies its effects.

As with climate change, there are three main risk categories to biodiversity loss – physical, transitional and liability.

Claims impact
There is a link between biodiversity loss and higher underwriting risks.

Deforestation, land-use change, pollution and climate change have already resulted in biodiversity losses. In turn, biodiversity risks may impact underwriting activities, including:

- Flood insurance: deforestation leads to increased flooding and potential damage of insured assets.
- Crop insurance: water scarcity and soil erosion threaten food production leading to a lower crop yield and higher insurance risks.
- Liability insurance: significant biodiversity damage due to company actions.

> In the transition to replenish our global biodiversity, global legislation and regulation will play a significant role – bringing challenges in themselves. As with climate change, the regulatory framework around biodiversity risks will need to evolve to ensure that corporates respond and are held accountable for their actions. Legal repercussions of non-compliance can be severe, ranging from litigation to fines; alongside associated reputational damage.

> ESG will continue to impact the US in terms of regulatory oversight, reporting and claims.
>
> The US Securities & Exchange Commission is expected to issue its long-anticipated rule on climate change, increasing public companies' financial reporting obligations.
>
> Individual states may also impose climate-related financial reporting for companies domiciled in or doing business with that state; California recently adopted a law that will require heightened reporting on greenhouse emissions by 2027.
>
> While these laws are likely to be challenged in the courts, it is clear that US government entities will continue to seek to hold corporations responsible for reporting to the public about the impact of their operations on the climate.

Eric Scheiner
Partner, US

Geopolitical landscape – deglobalisation

Recent factors such as the impact of the global pandemic, natural disasters and rising geopolitical tensions have begun to disrupt trade and global supply chains and support a shift towards a new 'deglobalisation era'.

This has resulted in a reconfiguration of trade and global supply chains, bringing with it more careful risk management characterised by local solutions, onshoring, nearshoring and border controls.

> For companies operating across borders, sectors and legal and regulatory regimes, the prospect of this new landscape brings the potential for a host of new risks, as well as complexity due to the interconnectivity of these risks.

Claims impact
Property, construction and transportation lines, such as cargo and logistics, will feel the impact of supply chain disruption alongside business interruption policies.

D&O and cyber risks are likely to be affected by the divergent, global regulatory landscape which is attempting to keep pace with technological transformation and ever increasing ESG oversight.

Woven within these global risks are regional tensions, particularly around the impact of climate change and growing anti-corporate sentiment. Firms will need to be alive to the potential increase of claims presented, as well as associated reputational risks.

Claims inflation

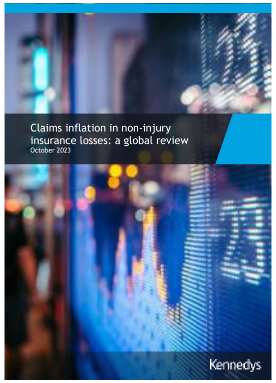
Excess claims inflation continues to test insurers across all business lines and all jurisdictions.

In the UK, the Bank of England's 'Dear CEO' letter in January 2024 reiterated that 'claims inflation continues to be a significant risk for general insurers'.

The risks discussed in this report, amongst many others, will continue to drive the volume, value and complexity of claims across global insurance markets.

Our two reports published in 2023 analyse the varying factors driving excess claims inflation across injury and non-injury business lines in multiple jurisdictions.

Click on each of the below to view the full report:



> Geopolitical instability will have the biggest impact on the insurance sector as a whole – particularly with the US elections in November, the risk of wider conflicts in the Middle East and Putin's on-going war in Ukraine. Coupled with this, the rapid development of AI and the changing climate are likely to result in impacts not yet fully understood.

Denise Eastlake
Legal Director, UK

> Claims inflation is one of the most concerning issues confronting insurers – particularly medical indemnity insurers – in Australia. Special damages are increasing significantly in line with the increased costs of medical treatment, equipment, labour and care; plaintiff costs have been steadily increasing over the last 5 years.
>
> A recent review of legal costs in Victoria has resulted in the incorporation of a new scale of costs which will commence 1 January 2025. We expect this to have an adverse costs impact on matters involving complex personal injury or high value claims.

Cindy Tucker
Partner, Australia

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