THE GENEVA ASSOCIATION

INSURANCE FOR A BETTER WORLD

FOREWARNED IS FOREARMED:
Emerging commercial liability trends

March 2023

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Darren Pain
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The Geneva Association

The Geneva Association

The Geneva Association was created in 1973 and is the only global association of insurance companies; our members are insurance and reinsurance Chief Executive Officers (CEOs). Based on rigorous research conducted in collaboration with our members, academic institutions and multilateral organisations, our mission is to identify and investigate key trends that are likely to shape or impact the insurance industry in the future, highlighting what is at stake for the industry; develop recommendations for the industry and for policymakers; provide a platform to our members and other stakeholders to discuss these trends and recommendations; and reach out to global opinion leaders and influential organisations to highlight the positive contributions of insurance to better understanding risks and to building resilient and prosperous economies and societies, and thus a more sustainable world.

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Foreword

Liability lines of business are an increasingly challenging area of insurance, with corporate customers facing a host of new and emerging risks as well as an ever more hostile legal environment.

Re/insurers need to continually screen their liability exposures. Based on a survey of Geneva Association members, this report provides a snapshot of the issues that are currently top of mind among liability experts in the insurance industry. Identifying these key areas of corporate risk aims to help insurers both leverage the opportunities presented by the evolving risk landscape and adequately price for future trends.

The most immediate concern is social inflation – the tendency for insurance claims to rise above general economic inflation: an increasingly plaintiff-friendly litigation environment and changing societal attitudes to business seem set to continue to fuel outsized settlement awards, especially in the U.S. The worry also persists among re/insurers that this may spread internationally.

Macrotrends are also laying the foundations for future liability claims. Digitalisation and technologies like artificial intelligence increase corporates' exposure to intangible risks, such as intellectual property breaches, and the evolving legal and regulatory environment in areas like cybersecurity, privacy and data protection presents an added layer of complexity. Looking further ahead, the metaverse presents as-yet-unknown but potentially far-reaching liability risks to address.

As climate change litigation continues to expand to include a broader range of claimants, defendants and geographies, corporates will face claims that they failed to prevent or adapt to climate change or to adequately disclose climate-related information.

Finally, public attitudes to corporate responsibility for environmental harm as well as social and governance issues are also changing. This will only be reinforced by new regulations in the pipeline to mandate environmental, social and governance (ESG) disclosures.

In the face of this changing liability landscape, insurers are already adapting their solutions. In addition to traditional responses such as adjusting terms and repricing, investing in modelling, product innovation and collaboration will help ensure the industry continues to fulfil its vital role in society – ensuring victims are adequately compensated while also incentivising actions to reduce the risk of harm.

Jad Ariss
Managing Director

Executive summary

Liability insurance is an important class of business for re/insurers. In terms of direct premiums, U.S. commercial liability policies were collectively worth close to USD 230 billion in 2021, or around 30% of all property and casualty (P&C) insurance. However, while premiums are usually collected annually, some liability claims can take years or even decades to develop fully given delays in recognising an insurable event has occurred and the lags in settling claims if they are disputed and result in lengthy litigation. Moreover, new risks may arise and legal liability standards can change between the inception of the insurance policy and final settlement of any claim.

This long-tail nature of liability risks puts added emphasis on re/insurers understanding and evaluating both current and potential liability exposures, so that their pricing and reserving remain appropriate over the entire lifetime of their policies and their capital providers are adequately compensated for covering any unexpected losses. Equally, re/insurers need to scan the horizon in order to spot future business opportunities and ensure their products and services remain relevant for policyholders.

To shine more light on some of the current uncertainties affecting future commercial liabilities over the medium-to-long term, The Geneva Association (GA) surveyed a selection of its member firms. The responses from around 24 firms – that probably account for around a quarter of the global P&C insurance market – provide a unique, collective perspective from the insurance sector. Compared with other surveys about emerging corporate risks, the Geneva Association Liability Trends Survey focuses specifically on firms' future liability exposures and the fallout for their insurers. Moreover, while some other surveys concentrate on particular areas of liability insurance such as directors and officers (D&O), this survey focuses on the full range – both casualty and managerial/professional lines – providing a more complete take on the contours of the commercial liability risk landscape.

The underlying drivers of future corporate liability are varied. Legal/litigation considerations are, however, the highest-ranked issue, with close to 40% of survey respondents citing this as the top influence on future corporate liabilities. This chimes with recent re/insurer worries about a re-emergence of social inflation in the U.S. – the tendency for insurance claims to rise over and above general economic inflation – and its potential to spread to other countries. Social inflation is often linked (in part at least) to developments in litigation practices and legal doctrines that shape and ultimately impact insurers' liability claims costs.

Looking at the survey results in more detail, the following key themes stand out:

- *The civil litigation environment increasingly favours claimants.* A number of legal/litigation trends are coalescing to create an ever more plaintiff-friendly environment. These include the impact of more expansive judicial interpretations/juror attitudes about the perimeter of corporate responsibilities, more aggressive tactics of the plaintiffs' bar and the development of third-party litigation funding (TPLF) models. These factors are most prominent in common law jurisdictions, especially the U.S, a situation that is expected to persist. However, initial worries that the COVID-19 pandemic could amplify prevailing trends in litigation and compensation awards appear to have receded; the majority of survey respondents believe this is unlikely.

- *Ongoing digitalisation is reconfiguring the liability risk landscape.* As digital ecosystems develop and become increasingly connected virtually yet more dispersed geographically, organisations are exposed to greater intangible risks, especially those linked to cybersecurity, privacy and intellectual property breaches. Over 90% of survey respondents report that digitalisation is a significant factor that will shape the liability outlook. In terms of specific technologies, most attention is currently concentrated on relatively mature technologies such as cloud computing and artificial Intelligence (AI), with more than three quarters of respondents highlighting these as important influences. But re/insurers also need to stay alert to more nascent developments such as the metaverse, which though still highly uncertain could develop rapidly and have far-reaching liability implications.

- *Climate change litigation against companies is growing in importance and scope.* Once a mainly U.S. phenomenon targeting companies in the fossil fuel sector, climate change litigation has expanded to incorporate new types of plaintiffs, claimants from different industries as well as other national jurisdictions. While the total number of lawsuits remains small, more than 90% of survey respondents cite failure to prevent/mitigate climate change as a significant liability risk for companies. The precise pathways to legal liability remain uncertain. Arguably, the most immediate threat may come via claims that companies miscommunicated or failed to disclose adequately climate-related information to protect consumers, shareholders and investors. Around 90% of survey respondents believe climate-related 'greenwashing', where a company publishes unsubstantiated or misleading information about its environmental performance or green commitments, could significantly impact future corporate liability, including under various new environmental, social and governance (ESG) regulations.

- *Industrial contaminants are rising up the liability risk agenda.* Close to 50% of liability insurance experts highlight industrial pollutants (e.g. per- and polyfluoroalkyl substances (PFAS) and microplastics) as a very significant influence on the medium-term commercial liability outlook. Toxicological evidence is growing about many of these chemicals, which has prompted an increase in litigation and heightened regulatory scrutiny. The extent to which any liability claims for harm caused by emerging contaminants is covered by companies' insurance will depend on the terms of their policy and their future interpretation in court or arbitrage. This could lead to legal disputes over coverage, especially over the applicability of specific pollution exclusions.

- *The focus on corporate social responsibilities and governance is intensifying.* Investors, employees and consumers increasingly expect companies and their executives to live up to the full range of their corporate responsibilities. This extends beyond the 'E' in ESG to include, for example, promoting diversity, equity and inclusion (DEI) and implementing prudent cybersecurity. Firms that fail to meet the expected standards open themselves up to the risk of litigation and/or regulatory action, challenging, for example, the veracity of ESG statements or the propriety of the firm's activities and performance. A large proportion of surveyed liability experts highlight a lack of transparency and specificity around DEI standards and breaches of directors' fiduciary duties to manage companies responsibly as bases for potential ESG-related liability. Likewise, around 80% of respondents expect data security/privacy regulations to have a significant bearing on future corporate liability.

Against that background, responses to the survey suggest re/insurers recognise the need to continually adapt their products and solutions to the emerging liability risk landscape. They point to a wide range of ways they can align exposures with their risk appetite and risk-absorbing capacity. While mainstay approaches like repricing available cover (including adjusting policy limits) and refining policy language inevitably feature highly in the survey results, they are by no means the only mechanism liability re/insurers expect to implement. Other methods such as investment in improved exposure modelling, partnerships to gather relevant data/intelligence and share risks as well as product innovation (e.g. more bespoke and modular affirmative covers) are equally cited as effective complementary strategies. Successfully executed, such innovations will help ensure liability insurance maintains its socially useful function: ensuring victims are adequately compensated while also incentivising policyholders to take steps to reduce the risk of harm to themselves and others.


1

1. Introduction

Societies are complex and economic and technological development, as well as changes in prevailing social customs and institutional structures, continue to add to that complexity. Outsourcing and interdependent supply chains, for instance, increase interconnectivity while new digital technologies provide unprecedented access to information and globalise potential problems. As a result, the ways in which individuals, companies and other legal entities may cause harm to third parties, whether bodily injury, physical damage or financial loss, is expanding and with it the potential to be held liable to compensate victims. Put differently, the causal chain between behaviour and harm is changing because tasks are increasingly distributed across multiple parties, making liability harder to determine. Such liability risks may be related to the property people own or control, or to their activities (including driving a vehicle, providing professional services, manufacturing products, or being involved in e-commerce) and may sometimes arise whether or not the wrongdoer is at fault.

1.1 Drivers of commercial liability

The liability risk landscape typically changes slowly over time, although large economic and societal shocks such as we've seen over recent years, including the COVID-19 pandemic and the global financial crisis, can often accelerate developments.[1] Broadly, corporate liability risk exposure can be traced to one or more of the following five underlying drivers:

- **Socio-economic/political context**
  Developments in the way economic activity is organised and how individuals/firms behave or interact will influence the type and scale of harm or damage that can occur as well as societal attitudes to risk bearing. For example, past periods of industrialisation, electrification, urbanisation and, more recently, digitalisation all shape the commercial risk environment and potential liabilities firms may incur.

- **Technology**
  New materials, techniques or methods open up new ways of producing, working and communicating yet they may not work as intended and/or have unexpected damaging side effects. For example, the use of a new medical device or procedure could create unforeseen bodily injuries to patients.

- **Environmental hazards**
  Private actions that threaten the surrounding natural environment or adversely affect peoples' health can create liability and a corresponding claim for compensation. Industrial pollution is a classic example, giving rise either to temporary, localised harm or contributing to secular adverse shifts such as climate change and biodiversity loss.

- **Legal/litigation practices**
  The pursuit of claims and the success of victims in establishing liability will depend on the types of cases litigated and any associated extension in the scope of legal doctrines (e.g. negligence under tort law) and practices that support the cause of action.[2] For instance, a plaintiff may bring lawsuits under novel legal theories, or procedural mechanisms may develop that allow combined legal actions by a group of claimants, which can strengthen the chances of a successful claim.

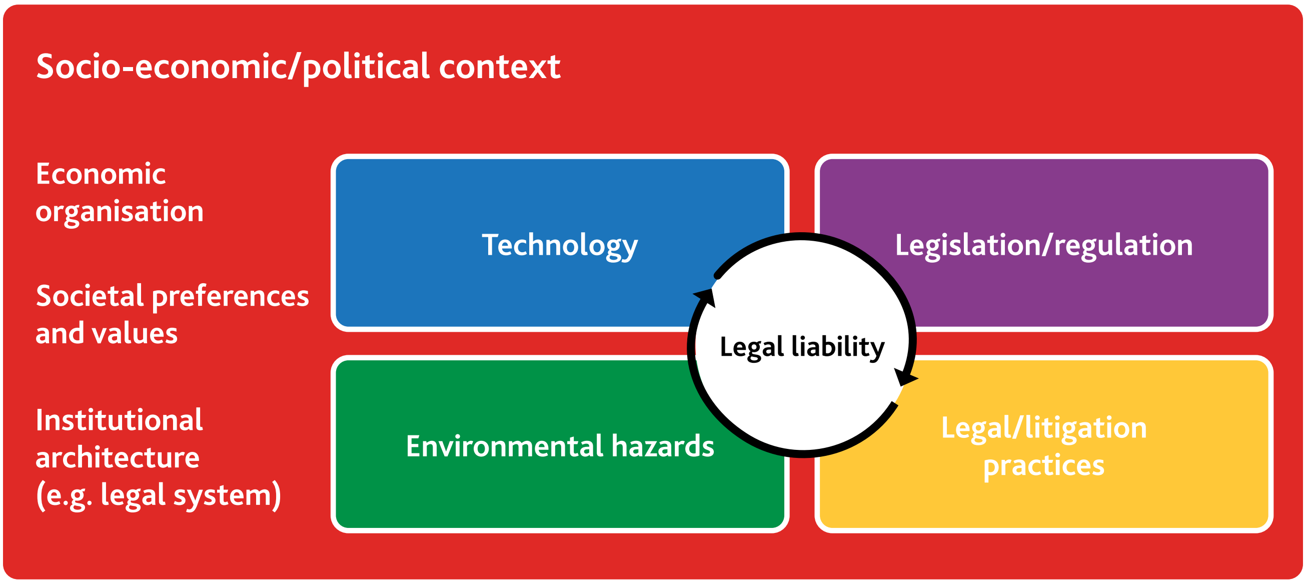
- **Legislation/regulation**
  Legislatures codify individual rights and legal obligations in statutes or regulations and impose sanctions against those who breach the rules. Statutory and regulatory infringements may give rise not only to enforcement actions but could also form the basis of civil (and

1 For a discussion of how broad socio-economic developments influence liability regimes, see Liedtke 2005.
2 A cause of action is a legal claim that allows a party the right to seek a remedy because of the act or omission, failure to perform duty, or breach of obligation of the defendant towards the plaintiff.

criminal) lawsuits. Examples include claims under consumer protection legislation, against issuers of securities who may have misled investors or claims based on breaches of directors' duties under company law.

These drivers are not independent but interact (Figure 1). Socio-economic/political conditions often set the backdrop to the adoption of technological innovations as well as shifts in business activities that impact the natural environment and/or human habitats. To the extent that those developments harm others in society, this may create an obligation on individuals or firms who are responsible to compensate victims, or at least curtail the activity. However, legal liability will only attach if some law or regulation has been broken and/or a cause of action can otherwise be established against the culprit – for example, a claim for negligence or nuisance.

FIGURE 1: UNDERLYING DRIVERS OF LIABILITY



Note: The colours refer to the broad categories of underlying liability drivers. These apply throughout the report

Source: The Geneva Association

Thus, while the introduction of a new technology might unexpectedly create harm, victims seeking legal redress may not necessarily succeed if culpability cannot be linked to a particular wrongdoer and no duty of care or obligation was breached. Similarly, although a polluter may be morally answerable for any environmental destruction/impairment, they may not always be legally liable for reparations to victims, especially if harm was accidental and reasonable precautions were taken. They may, though, be subject to fines and penalties if a specific statute or regulation was contravened.

By the same token, laws and regulations are not static. New legislation is passed, novel cases are litigated and legal accountability determined through judicial adjudication. Different legal systems place more or less emphasis on the role of the courts versus legislators and judges versus jurors in that process, but ultimately the law changes over time to reflect societal preferences over what is perceived as fair, who is best placed to absorb risk and who should be accountable for harm or damage caused to others. In this way, legal responsibilities and liability standards – including the relevant basis of fault, evidentiary rules of causation and the appropriate burden of proof – as well as available legal remedies, all evolve, often in response to shifts in economic activity, use of technology, new environmental hazards and society's customs, ideals, norms and moral values.

1.2 Role and types of liability insurance

A liability insurance policy will typically provide protection against claims resulting from injuries and damage to third parties and their property/assets. This includes any legal costs and payouts an insured party may incur if they are found to be legally liable for losses suffered by another party. Such policies help ensure that innocent victims are appropriately compensated, regardless of the financial well-being of the insured. Furthermore, well-designed terms and conditions in insurance contracts incentivise policyholders to take steps to reduce the risk of harm or injuries in the first place. For instance, through increasing premiums, reducing limits of liability, restricting coverage terms or refusing to underwrite certain risks altogether, insurers ensure policyholders face some of the potential liability costs, which in turn may encourage them to take preventive actions.

Although definitions differ across countries and insurers, commercial liability insurance can broadly be distinguished between casualty and management/professional lines. Casualty policies protect against liability for physical damage to other people's property or bodily/psychological injuries arising from regular business activities or the use of a product. Management/professional liability policies cover third-party claims for financial losses (see Table 1).

TABLE 1: SCOPE OF COMMERCIAL LIABILITY INSURANCE COVERAGES

	Policy type	Coverage
Casualty lines	**Commercial general liability**	Bodily injury or property damage to a third party caused by an 'occurrence' – an accident, including continuous or repeated exposure to substantially the same general harmful conditions. Also covers medical expenses and attorney fees that may arise following an incident. Claims made against the insured firm by its own employees or their dependents are usually excluded.
	Public liability	Similar to general liability insurance except narrower in scope. Cover for claims that arise when working with the general public or third parties at the premises of the business.
	Workers' compensation/ employers' liability	Medical costs and lost wages of an employee injured or killed while carrying out work duties. Should the claim allege negligence by the employer and lead to litigation, the legal expenses associated with the lawsuit and associated settlements, including damages for pain and suffering, are covered.
	Environmental impairment liability insurance (EIL)/pollution legal liability (PLL)	Covers the cost of repairing damage caused by environmental accidents, such as pollution of land, water or air, and biodiversity damage.
	Medical malpractice	Cost of civil liability claims arising from an act, error or omission in the provision of professional healthcare services that lead to physical injury, mental anguish, mental illness, disease, disability, sickness, shock, and even death.
	Product liability	Injuries arising from a faulty product that a business designs, manufactures or supplies.
Managerial/ professional lines	**Employment practices liability (EPLI)**	Wrongful acts arising out of employment processes such as improper hiring/firing or promotion, sexual harassment, hostile work environment and discrimination.
	Errors & omissions (E&O)/professional liability	Errors and/or omissions made by professionals and business owners (including employees or contractors working for the company) that lead to financial losses.
	Directors & officers (D&O) liability	Wrongful conduct in office by company directors and officers. Protects the personal assets of individual directors/officers in the event they are sued and also covers any losses the firm itself might suffer as a result of legal action against their directors/ officers.
	Cyber liability	Legal costs of a cyber liability lawsuit resulting from a data breach or cyberattack, including any settlements or judgments.
	Intellectual property	Patent, trademark or copyright infringement claims brought against policyholders.

Source: The Geneva Association (based on publicly available information)

1.3 A survey of re/insurers

Liability insurance is an important class of business for re/insurers. In terms of direct premiums, commercial liability policies in the U.S. – the largest liability insurance market – were collectively worth close to USD 230 billion in 2021, or around 30% of all P&C insurance.[3] However, while premiums are usually collected annually, some liability claims can take years or even decades to develop fully given delays in recognising an insurable event has occurred and the lags in settling claims if they are disputed and result in lengthy litigation. Moreover, new risks may arise and legal liability standards can change between the inception of the insurance policy and final settlement of any claim.

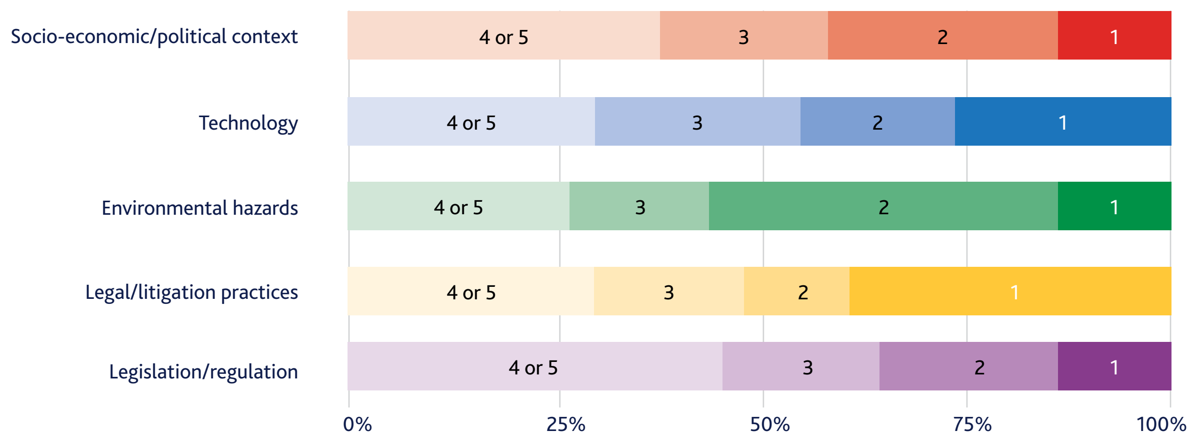
This long-tail nature of liability risks puts added emphasis on re/insurers understanding and evaluating both current and potential liability exposures, so that pricing and reserving remain appropriate over the entire term of their policies and their capital providers are adequately rewarded for covering any unexpected losses. Equally, re/insurers need to scan the horizon in order to spot future business opportunities and ensure their products and services continue to remain relevant for policyholders.

To shine more light on some of the current uncertainties affecting future commercial liabilities over the medium to long term, the GA surveyed its member firms. The responses not only provide a unique, collective perspective from the insurance sector, but compared with other surveys about emerging corporate risks, the Geneva Association Liability Trends Survey focuses specifically on firms' potential *liability* exposures and the fallout for their insurers. Moreover, while some other surveys concentrate on particular areas such as D&O,[4] our survey focuses on the full range of liability insurance – both casualty and managerial/professional lines – providing a more complete take on the contours of the commercial liability risk landscape.

The online survey was conducted in Q2 2022 and responses were received from 54 liability experts spanning 24 re/insurers from around the globe. In aggregate, the companies represented account for almost USD 500 billion in non-life gross written premiums (GWP), approximately half of the total non-life GWP of all GA member firms and probably around 25% of the world's P&C insurance market. In terms of geographical reach, the majority of respondents worked in roles with a global focus. The Appendix provides further details about the sample size and composition of the survey.

In terms of their relative importance for future commercial liability, each of the five drivers outlined above – socio-economic/political context, technology, environmental hazards, legal/litigation practices and legislation/regulation – were all ranked highly by at least some survey respondents (Figure 2). Legal/litigation practices appear to be the top influence, with close to 40% of respondents ranking this the highest. This chimes with recent re/insurer worries about a re-emergence of social inflation in the U.S. – the tendency for insurance claims to rise over and above general economic inflation – and its potential to spread to other countries. Social inflation is often linked (in part at least) to developments in litigation practices and legal doctrines that shape and ultimately impact insurers' liability claims costs.[5]

FIGURE 2: OVERALL RANKING OF UNDERLYING DRIVERS OF FUTURE COMMERCIAL LIABILITY



Note: The numbers in the bars indicate the score (5: least important; 1: most important)

Source: The Geneva Association

3 National Association of Insurance Commissioners (NAIC) 2022.
4 For example, WillisTowersWatson publishes an annual Directors' Liability Survey Report. See WillisTowersWatson 2022a.
5 For a fuller discussion of recent social inflation trends, see The Geneva Association 2020. Author: Darren Pain.

1.4 Structure of the report

The rest of the report explores the survey results in more detail. Given the important interactions across various underlying drivers affecting the commercial liability outlook, it takes a thematic approach. Each of the following chapters synthesises a key theme underpinning surveyed re/insurers' views on future corporate liability trends and their links to the most important drivers (summarised in Table 2). In doing so, the discussion seeks to integrate the quantitative and qualitative responses to the questionnaire with recent external commentary on selected developments in liability laws and insurance. This helps to contextualise the survey findings and illuminate the developing narratives surrounding emerging commercial liability risks.

In light of the developing liability themes, the penultimate chapter reviews initiatives re/insurers are taking to monitor, evaluate and adapt to the liability risks they underwrite. This is followed by some concluding remarks.

TABLE 2: MAPPING THE SURVEY THEMES AGAINST UNDERLYING LIABILITY DRIVERS

Theme \ Driver	Socio-economic/ political context	Technology	Environmental hazards	Legal/ litigation practices	Legislation/ regulation
The civil litigation environment increasingly favours claimants	✓			✓	
Ongoing digitalisation is reconfiguring the liability risk landscape	✓	✓			✓
Climate change litigation against companies is growing in importance and scope	✓		✓	✓	✓
Industrial contaminants are rising up the corporate risk agenda			✓		✓
The focus on corporate social responsibilities and governance is intensifying	✓	✓			✓

Note: Tick marks indicate major drivers of a particular theme

Source: The Geneva Association


2

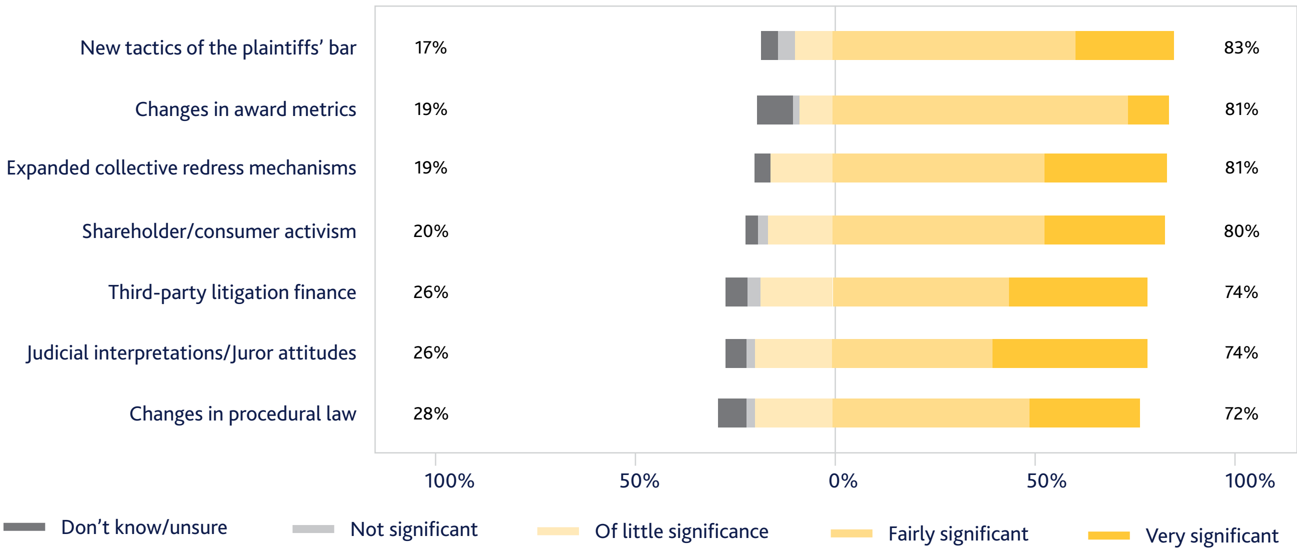
2. The civil litigation environment increasingly favours claimants

Various factors underpin re/insurers' concerns about the influence of legal/litigation trends on future liability claims (Figure 3). These include: the impact of more expansive judicial interpretations/juror attitudes about the perimeter of corporate responsibilities, more aggressive tactics of the plaintiffs' bar in pursuing claims on behalf of their clients and the development of third-party litigation funding (TPLF) that provides upfront financing for often expensive and drawn-out litigation in return for a percentage of the proceeds from the case.[6]

> *"Litigation trends will lead to an increase in the number and intensity of claims, affecting all products, as consumers are more aware that they can make a claim, and that institutions support them."*
>
> **Respondent to the GA Liability Trends Survey**

FIGURE 3: SPECIFIC LEGAL/LITIGATION INFLUENCES ON FUTURE COMMERCIAL LIABILITY

% of responses (sample size: 54)



Notes: The percentages on the right-hand side (left-hand side) indicate the share of responses reporting a factor as fairly or very significant (insignificant or unsure).
New plaintiffs' tactics include aggressive advertising for potential claimants and attempts to expand the scope of liability standards.
Award metrics refer to, for example, bodily injury compensation rules.
Collective redress mechanisms allow litigation brought on behalf of a group of claimants.
Changes in procedural laws refer to, for example, lengthening statutory limitation periods – the maximum amount of time that parties in a dispute have to initiate legal proceedings.

Source: The Geneva Association

6 Precise financing arrangements differ but plaintiff-side funding in commercial disputes is typically a non-recourse investment. That means the funder recoups only if the claimant recovers, as opposed to a loan that must be repaid regardless of the outcome. See Stuice and Parente 2021.

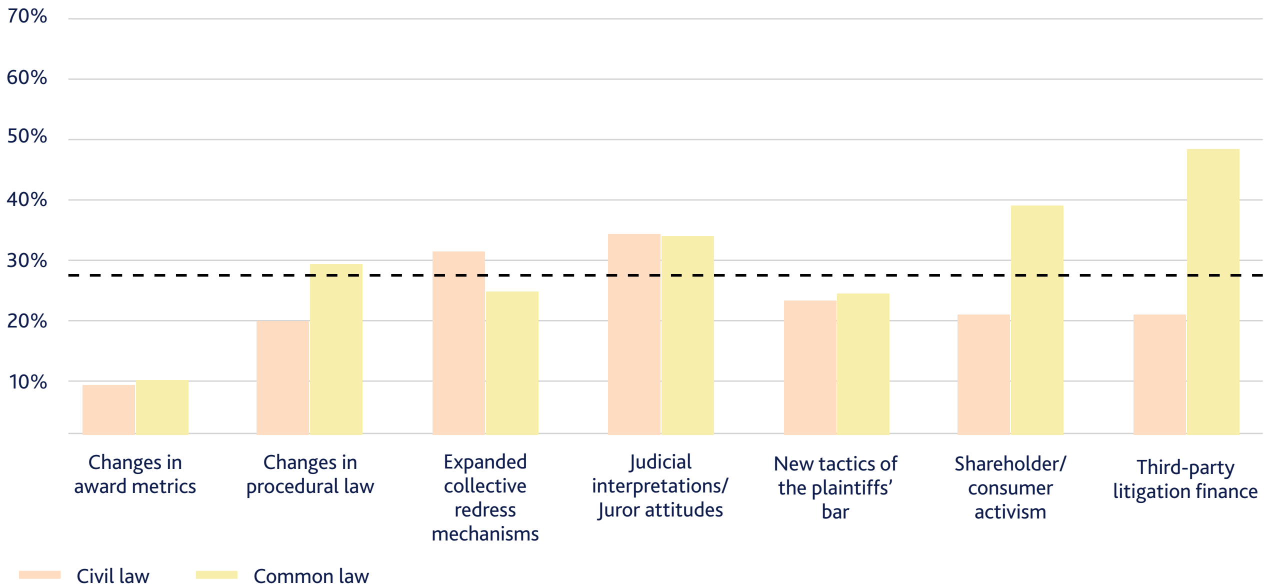
All of these factors potentially sway the outcomes of litigation in favour of claimants and against defendants as well as boost compensation awards. However, their overall impact might not always be to the ultimate benefit of third-party victims. For example, while TPLF may permit individuals to pursue litigation they otherwise could not afford, some worry that it diverts a greater share of the legal awards to the funder rather than the plaintiff.[7]

2.1 Plaintiff-friendly litigation practices are set to remain most prominent in common law jurisdictions

Developments in the litigation environment are especially significant in certain jurisdictions and seem likely to remain so. In particular, re/insurers perceive heightened litigant activism and growth in TPLF as most important for the liability outlook in common law regimes, perhaps reflecting the inclination and encouragement of claimants in those jurisdictions to pursue litigation to recover compensation for any harm or loss suffered (Figure 4). In fact, the two could be connected, with TPLF often a catalyst for organising consumer and shareholder class actions, whereby one or more plaintiffs pursue a claim on behalf of a larger group.

FIGURE 4: SPECIFIC LEGAL/LITIGATION INFLUENCES ON FUTURE COMMERCIAL LIABILITY, BY LEGAL SYSTEM

% of respondents reporting very significant (sample size: common law – 20; civil law – 34)



Notes: The black dashed line indicates the average percentage of respondents reporting very significant as their answer for legal/litigation topics, across the full sample.
Legal system based on respondents' main geographical area of responsibility. Respondents with a global focus were allocated to the legal system of the firm's HQ.

Source: The Geneva Association

Within common law countries, the influence of litigation practices in shaping corporate liability is most acute in the U.S., not least because of the proliferation of mass tort lawsuits and the pre-eminence of the jury system there. Plaintiffs' attorneys in the U.S., often working on a contingency fee basis and/or with the backing of third-party finance, actively try to stir anger amongst trial jurors against defendants in order to encourage outsized compensation awards.[8] In the U.S., too, class actions are almost always initiated on an 'opt-out' basis, meaning that all putative claimants are assumed to be a part of a certified class unless and until they opt out or leave. This not only increases plaintiffs' settlement leverage but potentially larger aggregate damages also improve the economics of prospective cases for lawyers and their financiers.

The U.S.-style litigation culture and widespread use of multi-party legal procedures has yet to develop to the same degree in other countries. Residual worries nonetheless persist about the potential for increased international contagion, at least for certain types of claims. Many U.S.-based plaintiff lawyers and funding firms have opened offices in different

7 Swiss Re 2021a.
8 Ibid.

jurisdictions in order to expand their geographical reach, which could encourage mass litigation activity.

> *"The growing social and also institutional awareness of corporate liability is promoting the development of mechanisms to facilitate claims, and of course, the increasing international and global scope of corporate liability is giving rise to a continuous review of the amounts that companies must compensate for the damage caused."*
>
> **Respondent to the GA Liability Trends Survey**

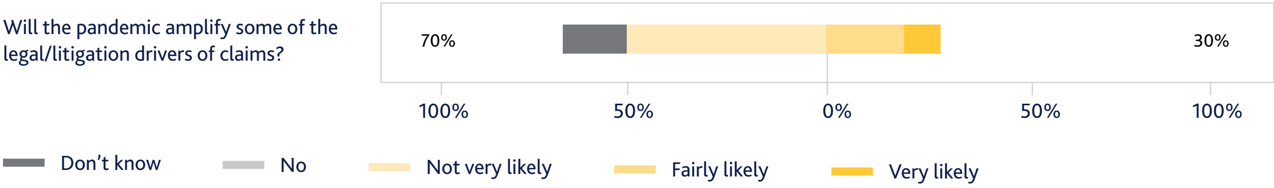
In Australia, class actions have existed for over 30 years and TPLF has a long pedigree, especially in financing investor and shareholder class actions. Several survey respondents highlight more recent moves to introduce collective redress mechanisms elsewhere, most notably in the U.K. and the EU, though so far their scope and admissibility remains limited. For instance, U.K. courts currently apply a narrow interpretation of claimants who can be included in representative civil actions, while formal collective proceedings can be used solely for private competition litigation.[9] Similarly, the EU Directive on Representative Actions only allows certain qualified entities to sue on behalf of consumers, applies narrowly to violations of consumer protection laws and discourages punitive damages.[10]

2.2 COVID-19 seems unlikely to have a durable impact on liability-related litigation

These legal-sector dynamics pre-dated COVID-19, but in the early days of the pandemic there were fears within the insurance sector that the episode could accentuate societal division, increase anti-corporate sentiment and ultimately lead to a flood of liability lawsuits and outsized compensation awards. That risk has yet to materialise, in large part because of the significant legal hurdles plaintiffs must overcome in order to establish corporate responsibility for harms suffered during the pandemic, especially proving that companies failed to uphold appropriate standards of care or were somehow negligent in allowing the disease to spread.

It is possible that the COVID-19 experience will spur further litigation and extensions in liability theories that support plaintiffs' claims. Some noteworthy recent cases have developed novel criteria for establishing causation – for example, demonstrating a defendant's actions increased the likelihood of infection or were part of a wider set of concurrent factors that contributed to the victim contracting the disease – which could form the basis of future COVID-19-related lawsuits.[11] Litigation is also pending in the U.S. over whether employers can be sued for the infection of a worker's relative – so-called 'take-home COVID'. And sufferers of long-COVID might establish that they have a recognised disability, meaning that employers that do not make reasonable adjustments in their practices might be sued for failing to ensure a suitable work environment.

FIGURE 5: RE/INSURER VIEWS ON THE COMMERCIAL LIABILITY IMPACT OF COVID-19
% of responses (sample size: 54)



Note: The percentages on the right-hand side (left-hand side) indicate the share of responses reporting a factor as fairly or very significant (insignificant or unsure)

Source: The Geneva Association

At this stage, however, considerable uncertainty remains about whether or how far the pandemic will lead to any fundamental shift in the law and associated legal liabilities. The results of our survey indicate that re/insurers do not anticipate a noticeable and durable impact. More than half of respondents believe it is unlikely that COVID-19 will amplify the prevailing legal/litigation drivers of liability, including shifts in the burden of proof for causation in favour of victims or new duties of care (Figure 5).

9 Sanger et al. 2022.
10 Member states may, of course, implement reforms beyond the minimum procedural standards required by the Directive, including 'opt-out' collective redress regimes. This raises the prospect of forum shopping within the EU in mass consumer actions against businesses with international operations. Pinsent Masons 2022.
11 See further discussion of recent COVID-19 case law developments in the U.K. in Howarth 2023.

3

3. Ongoing digitalisation is reconfiguring the liability risk landscape

Digitalisation is transforming all areas of economic activity, resulting in important changes to companies' risk profiles. The bulk of new value creation now emanates from intangible assets such as data, software, brand recognition, human capital and customer relationships rather than physical assets like property or machinery.[12] Correspondingly, as digital ecosystems expand and become increasingly connected, organisations expose themselves to new types of intangible risks, including liabilities to third parties harmed by their actions. For example, cybersecurity failures could intrude on others' privacy, damage reputations and/or infringe intellectual property (IP) rights, all of which could lead to possible legal claims. Similarly, the application of new digital technology can give rise to new forms of liability for material damage caused by a firm's own product failure or improper or negligent professional behaviour.[13]

More than 90% of our survey respondents report that digitalisation is a significant factor that will shape the liability outlook. Almost as many (70%) highlight the influence of platformisation – the penetration of the infrastructures, economic processes and governmental frameworks of platforms in different economic sectors and spheres of life.[14] That probably reflects actual and prospective legislation as well as ongoing litigation in various jurisdictions that will likely impose significant new affirmative duties and legal responsibilities on online intermediaries to prevent and mitigate harm caused by their customers and suppliers.[15]

From a liability insurance perspective, shifts in the technological landscape could lead to major unexpected claims. The ubiquity of digital technology and connectivity increase the volume and severity of potential individual claims as well as the scope for losses to escalate. Many of these developments may give rise to both first- and third-party losses, which increases the complexity of exposures. As an illustration, a cybersecurity breach arising from an infrastructure outage could lead to loss of personal data, result in business interruption costs as well as cause mental stress and anguish, all of which might trigger different liability claims.

"Risks associated with new technology can evolve rapidly and often in ways that re/insurers don't anticipate."

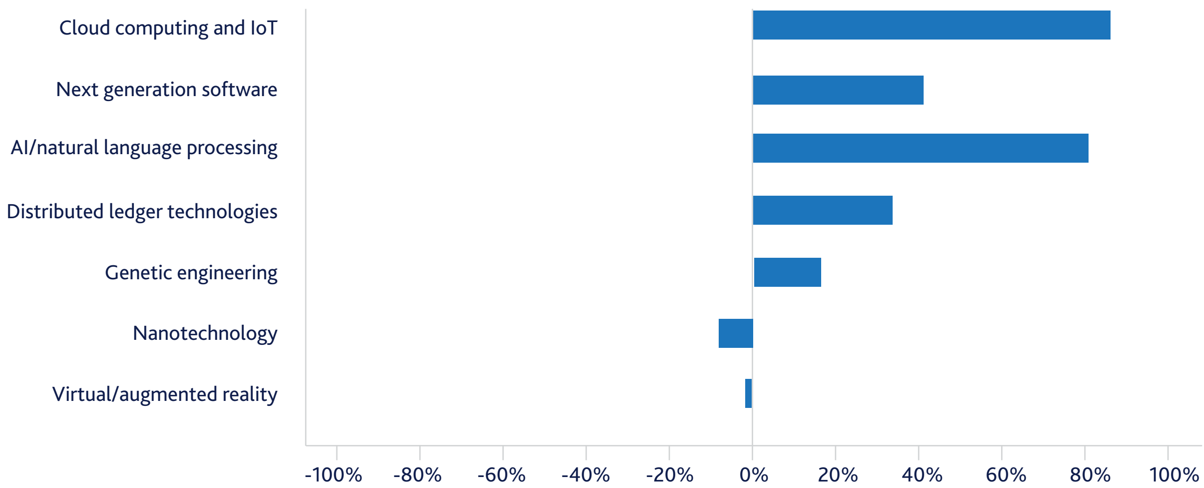
Respondent to the GA Liability Trends Survey

3.1 Cloud computing, IoT and AI are key technology-related risks

Among the current crop of new technologies, cloud-based computing and the Internet of Things (IoT) as well as the development of AI capabilities standout as key influences on future liability risks. More than three quarters of survey respondents cite these factors as significant for corporate liability trends (Figure 6). This is true for liability experts polled from both casualty and managerial/professional lines.

12 According to some estimates, intangible assets now make up around 90% of the total value of firms in the U.S. stock market, up from less than 20% in the 1970s. Ocean Tomo 2020.
13 For a fuller discussion of the implications of digitalisation on commercial liability insurance, see The Geneva Association 2021a. Author: Darren Pain.
14 Poell et al. 2019.
15 For example, federal legislation has been introduced in the U.S. that seeks to reform Section 230 of the Communications Decency Act to restrict the liability immunity of online platforms. Similarly, the EU's Digital Services Act, which came into force at the end of 2022, fundamentally alters the liability framework for online intermediaries, especially around how they manage illegal and harmful content published, as well as goods and services sold, via their services.

FIGURE 6: SPECIFIC TECHNOLOGY INFLUENCES ON FUTURE COMMERCIAL LIABILITY
Net % balance of responses (sample size: 54)



Note: The net % balance is calculated as the percentage difference between very/fairly significant and no/little significance responses

Source: The Geneva Association

Cloud computing offers companies the ability to outsource applications, platforms and infrastructure. This can include services like email, accounting software, account management systems and even file servers. Many firms assume that they have transferred their risk when their data are in the hands of third-party vendors. The reality is that, in most cases, companies outsource the service but retain the risk; the legal obligation remains with the company that accepted the data rather than the cloud providers who host the data.[16]

In the case of AI, responsibility for damage or harm arising from mistakes or errors might shift from the user to the producer of the software. However, the inherently adaptive nature of AI – predictive algorithms are constantly evolving as more data are amassed – means this transition may not sit easily within existing legal theories that still tend to hinge on attaching liability to the human developer behind the software.[17] Similarly, it is not clear how far the use of copyrighted materials for the limited purpose of training a machine learning model infringe property rights under existing IP legal regimes.[18]

> *"AI potentially introduces new liabilities for anyone involved in the AI value chain, as well as the broader environment."*
>
> **Respondent to the GA Liability Trends Survey**

The use of data analytics and cognitive software in automated and semi-automated decision-making creates new forms of algorithmic liability risk. Incomplete, outdated or insufficiently representative data sets, for example, could lead to biased and discriminatory predictions, the consequences of which could be especially serious in healthcare (e.g. incorrect or poor guidance, misdiagnosis, failure to achieve timely interventions) and investment management (e.g. inadvertent asset allocation behaviour and portfolio rebalancing).[19] Liability might also arise from defects in the software code if a defective connected device causes physical damage to a third party's property or if the developer or IoT provider fails to exercise sufficient care in designing and securing the device. And users of generative AI models – which use machine learning tools to generate original content such as articles or images – should reckon with reputational and legal risks involved in unintentionally publishing biased, offensive or copyrighted material.[20]

Policymakers in various jurisdictions are currently wrestling with the ramifications of digital technologies for liability regimes with a view to updating relevant statutory laws and regulations. For example, the EU recently put forward the AI Liability Directive proposal, the aim of which is to create uniform rules applicable to non-contractual, fault-based civil claims involving AI, including lowering evidentiary hurdles.[21] In addition, the EU proposed to upgrade its existing no-fault (i.e. strict) product liability legislation to allow claims to be made

16 Floresca 2020.
17 Tanebaum et al. 2022.
18 Vincent 2022.
19 Zurich 2021.
20 McKinsey 2023.
21 European Commission 2022a.

for defective products that cause 'loss or corruption of data', with the definition of 'product' expanded to apply to software, AI systems, AI-enabled goods and digital manufacturing files.[22]

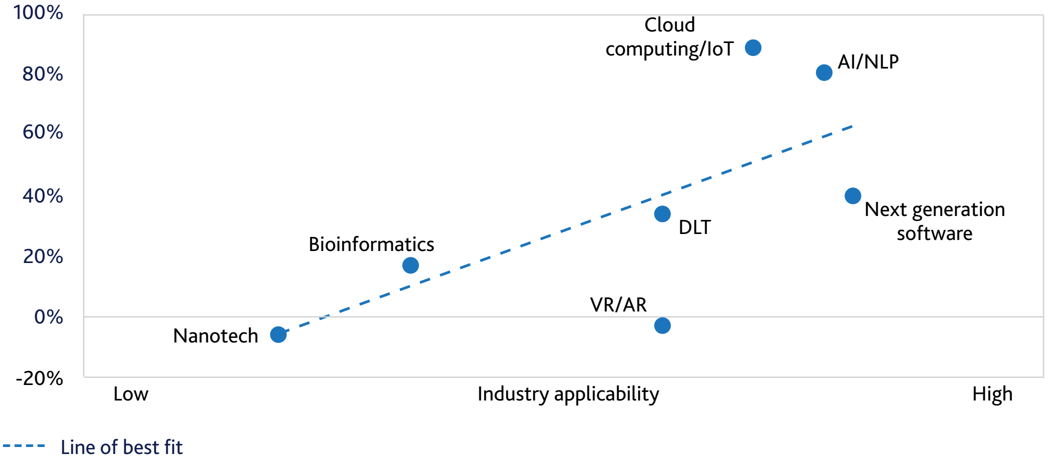
Legislative initiatives are also underway in certain regions aimed at placing additional regulatory responsibilities on computer hardware/software manufacturers and distributors to strengthen cybersecurity. In particular, the U.K. Product Security and Telecommunications and Infrastructure Act and the European Commission's proposals for a Cyber Resilience Act both create duties relating to security requirements and compliance that aim to ensure the security of internet-connected products.[23]

3.2 Future liability concerns correlate with the degree of technological diffusion

Re/insurer views about the relative importance of different technologies for liability risks tend to correspond with the degree of commercial adoption (Figure 7). Compared with cloud computing/IoT and AI, nanotechnology and bioinformatics, for example, remain niche and are seen as having less significant influences on future liability, at least over the next 5–10 years. The one possible exception is augmented and virtual reality (AR and VR, also known collectively as extended reality (XR)), which are becoming well established in various applications but have yet to really appear on the liability insurance risk radar.

FIGURE 7: RE/INSURER VIEWS ON SPECIFIC TECHNOLOGY DRIVERS OF FUTURE COMMERCIAL LIABILITY AND INDUSTRY APPLICABILITY OF EMERGING TECHNOLOGIES

Net % balance of survey respondents



Notes: The net % balance is calculated as the percentage difference in responses between very/fairly significant and no/little significance.
Industry applicability is based on McKinsey tech trends index.[24]
DLT refers to distributed ledger technology.
NLP refers to natural language processing.

Source: The Geneva Association and McKinsey 2022

Part of the reason why liability re/insurers may currently be relaxed about XR could be the limited experience with associated cases. So far, only a few lawsuits – mostly focused on VR technology manufacturers and developers – have been brought. While XR-related insurance claims are reportedly accelerating, they remain small and relate mostly to accidental property damage.[25]

More broadly, considerable uncertainty remains about how XR, in combination with other new digital technologies, will influence economic and social activity, especially in creating immersive virtual environments where individuals/firms interact in social and business settings – the so-called 'metaverse'. Most configurations have thus far been limited to interactive online games such as Second Life, Fortnite, Roblox and VRChat, but additional use cases are developing in business and commerce. The outlook is far from clear but, as explained in Box 1, the metaverse raises novel and complex legal issues which, if it achieves mass adoption, could have important ramifications for corporate liability.

22 European Commission 2022b.
23 DAC Beachcroft 2022.
24 McKinsey 2022.
25 According to U.K. insurer Aviva, claims involving VR headsets rose 31% in 2021 with an average value of approximately GBP 650. Gangcuangco 2022.

Box 1: The metaverse and liability risks

Loosely defined, the metaverse refers to a digital ecosystem built with various kinds of 3D technology, real-time collaboration software and blockchain-based, decentralised finance tools. In this environment, users adopt digital versions of themselves (avatars) and navigate virtual experiences that mimic real life.[26] 'The' metaverse does not currently exist. Indeed, many of the foundational technologies have yet to be fully understood in isolation, let alone how they can be combined to define the architecture of fully immersive virtual ecosystems. Nonetheless, if the metaverse develops as some predict – by 2026, Gartner expect 25% of people will spend at least one hour a day in a metaverse for work, shopping, education, social media and/or entertainment – it could have important liability implications.[27,28]

Data security and privacy

Metaverse users will face novel privacy risks involving unauthorised transfers of personal and biometric data (e.g. facial expressions, gestures) to third parties. Cybersecurity and data privacy breaches may also take on a more complex form. Phishing attacks, malware intrusions, as well as hacked avatar accounts will likely be harder to detect, manage and attribute.[29] In a closed system that limits participation to a certain proprietary platform, it might be reasonable to expect more accountability from the owner of the platform. But in an open system that allows interoperability across platforms, separating the legal responsibilities of the provider and participants will be difficult, especially given the metaverse transcends geographical and jurisdictional boundaries.[30]

Property rights

Unlike in the real world, 'ownership' in the metaverse does not confer legally enforceable rights to any physical property referenced by virtual assets, such as non-fungible tokens (NFTs).[31] This complicates issues relating to potential infringements of copyright and trademarks. For instance, in the case of NFTs, the original creator is the copyright owner who retains the exclusive right to copy, distribute, modify and publicly display the asset. Consequently, an NFT purchaser who believes the rights associated with the underlying asset were misleading, and who incurs a loss, might sue the NFT seller.

User interactions

When users interact through their avatars, some kinds of exchange can occur that would equate to breaking the law if they took place in the real world. Such incidents could be in breach of tort law (for civil claims such as negligence, defamation or nuisance) or criminal law (involving illegal acts and crime such as assault, murder, burglary or rape).[32] These avatar interactions raise all sorts of legal uncertainties about who might ultimately be held responsible for virtual wrongdoings. For example, users in the metaverse could wear haptic vests which would actually allow them to feel the sensations if they were touched.

Source: The Geneva Association (based on publicly available information)

26 Ara et al. 2022.
27 Gartner 2022.
28 A recent survey by KPMG found that 59% of U.S. adults expect a significant impact from the metaverse in the next five years, with 48% anticipating a significant impact in the next 12 months, although there are hurdles to overcome and some skepticism about the path to greater adoption. KPMG 2022.
29 Sivell and Fei 2022.
30 Karanai Margan 2022.
31 As opposed to fungible tokens such as cryptocurrency, or even fiat currency, where all tokens have the same value and are mutually interchangeable, these assets are 'non-fungible' in the sense they are unique and are not mutually interchangeable or replaceable.
32 Cheong 2022.


4

4. Climate change litigation against companies is growing in importance and scope

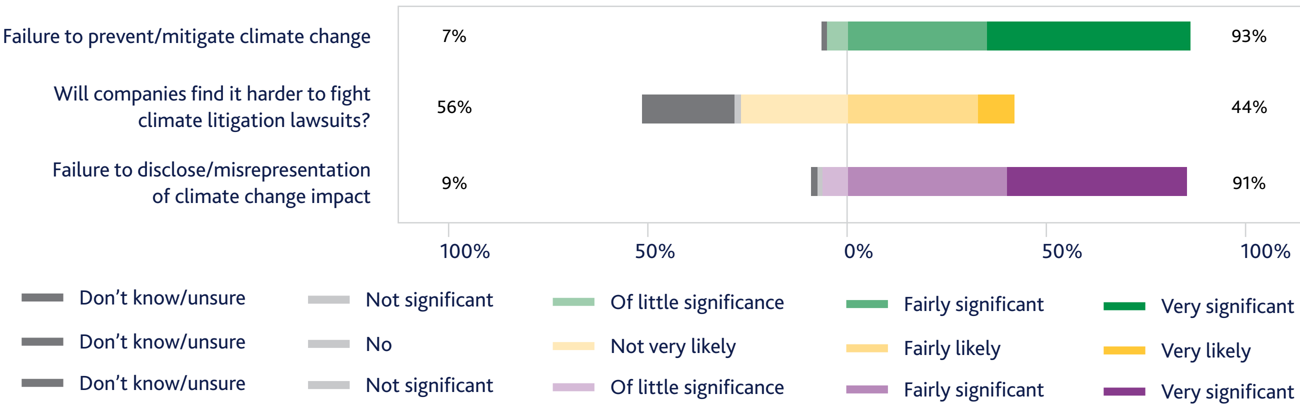
As explained in Box 2, lawsuits against companies alleging liability for climate-change-related issues have picked up sharply over recent years. Once a mainly U.S. phenomenon targeting companies in the fossil fuel sector, litigation has expanded to incorporate new types of plaintiffs, claimants from different industries as well as other national jurisdictions. Legal arguments put forward have also broadened beyond historic pollution to include human rights, corporate and financial market cases and, more recently, lawsuits alleging that a firm failed to anticipate and adapt its facilities and operations to prepare for the effects of climate change.[33]

The total number of cases remains small, but a number of landmark cases have prompted some commentators to highlight this as an important area of future commercial liability, with claimants increasingly likely to turn to the courts to enforce climate commitments and hold corporates to account.[34] This sentiment is echoed in our survey, with more than 90% of respondents reporting failure to prevent/mitigate climate change as a significant liability risk for companies, over half of whom describe it as very significant (Figure 8).

> *"As the scale of environmental impacts continues to accelerate, the focus will be more and more on finding the deepest pockets to compensate for the losses."*
>
> **Respondent to the GA Liability Trends Survey**

FIGURE 8: RE/INSURER VIEWS ON CLIMATE CHANGE AND FUTURE CORPORATE LIABILITY

% of responses (sample size: 54)



Note: The percentages on the right-hand side (left-hand side) indicate the share of responses reporting a factor as fairly or very significant/likely (insignificant/unlikely or unsure)

Source: The Geneva Association

33 Zurich 2022a.
34 Setzer and Higham 2022.

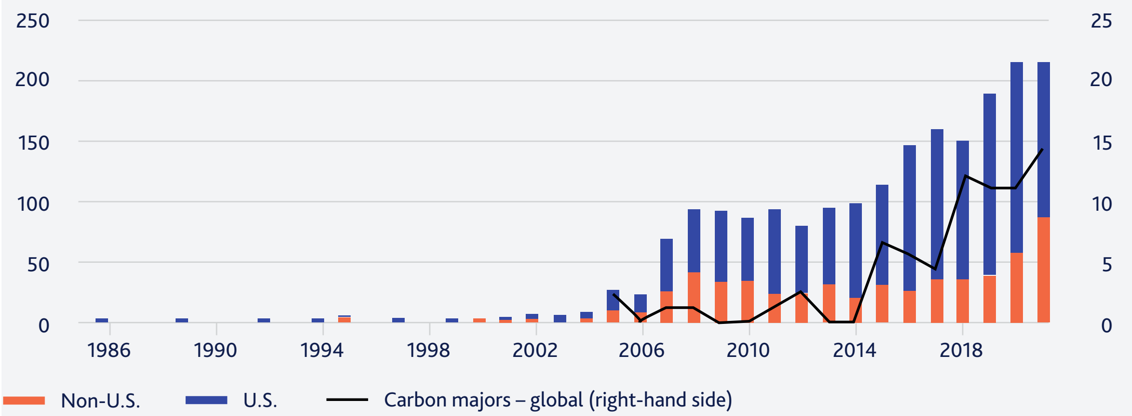
Climate change liability is a complex topic that has the potential to touch on almost every part of a business's operations, from company stewardship through to employee and supply chain management. As a result, it has implications for a wide range of liability insurance spanning both casualty and managerial/professional lines.[35] As well as the more obvious environmental liability claims, manufacturers could face accusations that they use materials or products that contribute or do not adequately respond to climate change. For example, litigation could arise from products that damage the environment, or where the rush to switch to greener products results in defects or unintended consequences.[36] Failure to manage and mitigate climate risk may also constitute a breach of the directors' duties to the corporation, giving rise to D&O insurance claims. Similarly, providers of professional services may face liability claims if they are negligent or they breach contractual commitments in failing to prepare sufficiently for climate change.[37]

Box 2: Climate change litigation

Climate change litigation is a broad term and can encompass a range of cases, including those which are not centrally about the effects of climate change but nonetheless raise material issues of law or fact relating to the mitigation, adaptation or the science of climate change. Lawsuits may be brought before administrative, judicial and other investigatory bodies, financial supervisory authorities and ombudsman schemes or in domestic or international courts and organisations.[38]

The pace of climate change litigation has picked up sharply over recent years, with the total number of such cases more than doubling since 2015 (Figure 9). The majority of cases are in the U.S., although climate change litigation is spreading internationally. The highest annual number of cases outside the U.S. was recorded in 2021, particularly in Australia, the U.K. and the EU.

FIGURE 9: TOTAL NUMBER OF CLIMATE CHANGE LAWSUITS, BY MAJOR REGION AND THOSE INVOLVING CARBON MAJORS



Source: Setzer and Higham 2022

While defendants are mostly nation states or subnational regional governments – accounting for just over 70% of cases outside the U.S. – companies are also targets.[39] Unsurprisingly, carbon-intensive sectors (especially companies with the highest historical emissions; the so-called 'carbon majors') are often in the cross hairs and such cases continue to proliferate. The range of corporate defendants and the types of claims pursued are nevertheless broadening.[40]

35 For a comprehensive review of existing climate change litigation and the potential implications for commercial liability lines, see the discussion in Climate Financial Risk Forum (CFRF) 2022.
36 Zurich 2022a.
37 The Geneva Association 2021b. Authors: Maryam Golnaraghi et al.
38 The Geneva Association 2021c. Authors: Maryam Golnaraghi et al.
39 Setzer and Higham 2022.
40 Of the 38 cases filed against corporate actors in 2021, more than half involved defendants in other sectors, with food and agriculture, transport, plastics and finance all being targets in multiple cases. Ibid.

Previous research by the GA found that cases against companies tend to fall into four main categories: lawsuits arguing that firms, through their actions/inactions, directly contributed to climate change; those where companies (or their fiduciaries) allegedly miscommunicated or failed to adapt to climate change risks; cases seeking to force companies to align their emissions plans with the Paris Agreement; and litigation challenging companies' projects that might have an impact on the environment.[41] The most prominent cases involve novel causes of action based on the application of established legal duties in areas such as tort and company law. Spurred on by lawsuits against governments, however, some litigants have recently invoked human and constitutional rights to argue that corporations have a positive duty to reduce emissions and mitigate the effects of climate change.[42]

In some jurisdictions, recognition of companies' human-rights (and sometimes environmental) responsibilities have also prompted domestic legislative initiatives aimed at strengthening due diligence required by companies. Several governments have recently enacted, or are planning to enact, laws that require corporations to safeguard human rights and the environment, including in their global supply-chain operations (e.g. in Australia, France, Germany and the EU).[43] Such legislation could be a catalyst for future climate change litigation.

Source: The Geneva Association

4.1 The precise pathways to legal liability remain uncertain

Earlier tort-based claims for negligence or nuisance against carbon emitters were largely unsuccessful either because the cases raised political questions that were inappropriate for judicial review or plaintiffs lacked legal standing (i.e. no legally protected interests entitled them to bring the claim). Demonstrating a direct connection between defendants' actions and plaintiffs' injuries in particular has been an important procedural obstacle for climate change litigation.[44] Many of the more recent lawsuits against companies are at the early stages of adjudication and have therefore yet to be fully litigated. Even if they progress to full trial, such cases must still overcome significant evidential barriers in order to successfully substantiate claims for compensation. In particular, proving the standard of care exercised by a company fell short of what could be reasonably expected and that ultimately caused harm to the claimant is challenging.[45]

Nonetheless, some legal scholars argue that better exploitation of the existing findings of attribution science, as well as future research in the field, could bolster climate change litigation for compensatory damages and regulatory actions.[46] Such advances may not only enable plaintiffs to substantiate better a concrete causal chain between company (in)actions and specific losses incurred by the claimant but also improve the foreseeability of climate change impacts. The latter could be especially important in substantiating cases claiming a company's adaptation policies were inadequate.

Moreover, the law doesn't exist in a value-free vacuum and is influenced through social perceptions of the effects of climate change and the role of the judiciary and legislators in addressing them. The prospects of climate change litigants could ultimately improve depending on the extent to which climate change shifts from being seen as a primarily physical problem with a technical solution to an issue of equity and justice over who should bear the cost of possibly irreversible environmental degradation.[47]

In light of such legal ambiguities, which may not be quickly resolved, it is perhaps unsurprising that re/insurers are not confident about the path corporate liability for climate change will take nor the horizon over which any liability risks will emerge. Roughly as many survey respondents (44%) think companies could face a sterner legal test than in the past in defending lawsuits as those that think this unlikely (32%). On top of the quarter that say they don't know or are unsure, this underscores the considerable uncertainty about the outlook for climate change liability (Figure 8).

4.2 Miscommunication and 'greenwashing' claims represent a significant risk

In contrast, re/insurers seem more convinced about the potential liability firms and their directors might incur if they miscommunicate or fail to disclose adequately climate-related information to protect consumers, shareholders and investors. Companies may have to defend allegations of misleading or false advertising around their carbon emissions pledges and their assertions about the environmentally beneficial qualities or characteristics of their goods and services. Such claims are likely to be given a boost by various new ESG regulations being implemented in many countries. Around 90% of survey respondents believe climate-related 'greenwashing', where a company

41 The Geneva Association 2021b.
42 Most notably, Urgenda Foundation v The State of the Netherlands upheld an obligation of the Dutch government to protect individuals from climate change. Ibid.
43 Guruparan and Moynihan 2021.
44 Burger et al. 2020.
45 A key challenge relates to 'collective causation'. Climate change harm is caused by actions and omissions of many actors, making it difficult to attribute specific climate impacts to individual emitters. See Nedeski and Nollkaemper 2022.
46 Stuart-Smith et al. 2021.
47 Otto et al. 2022.

publishes unsubstantiated or misleading information about its environmental performance or fails to match its green commitments with action, could have a significant impact on future corporate liability (Figure 8).

Greenwashing claims could potentially affect a number of liability insurance lines, but D&O policies could be particularly impacted. D&O insurance will typically respond in the event of claims made by shareholders or third parties for alleged wrongdoing by company executives that led to a financial loss. This may include reimbursing legal defence costs as well as expenses arising from regulatory investigations and enforcement. But the extent of cover depends on the precise policy terms, including cover for any administrative fines and penalties (see Box 3). Disputes may arise as to how far traditional environmental pollution exclusions are applicable to climate change.

"How companies respond to climate change, along with how they disclose their risks and responses, will undoubtedly present additional exposure for D&O insurers."

Respondent to the GA Liability Trends Survey

Box 3: ESG and D&O insurance

Company directors and officers may face claims for harm/financial loss arising from breaches of their fiduciary duties to their corporation and its shareholders. This includes regulatory investigations and actions. There are two primary types of claimants: shareholders who sue directors and officers in their own right or on behalf of the corporation itself – so-called 'derivative lawsuits' – and claims asserted by third parties, such as the company's creditors, suppliers, customers, employees or government agencies.[48]

In general, D&O insurance will cover harm resulting from 'wrongful acts' by directors and officers during the normal course of the duties. Definitions vary, but wrongful acts usually refer to any actual or alleged error, misstatement, misleading statement, act or omission, or neglect or breach of duty. As such, provided there was an insured loss, D&O policies are likely to respond to ESG-related claims, including cover for defence costs, monetary damages, settlements and awards. For example, claims could follow revelations about apparent weaknesses in a company's business practices or products (leading to 'event-driven' litigation) or be linked to alleged misstatements in public disclosures (prompting 'disclosure-related litigation' and/or regulatory investigations and proceedings).

Unlike certain other types of insurance, however, D&O policies are not standardised. Instead, the extent of coverage varies widely depending on the specific contract language. In relation to ESG-related claims, the following exclusions will often apply:

- *Bodily injury/property damage.*
- *Pollution.* Excludes coverage for claims linked to the release or dispersal of pollutants, including specified contaminants.
- *Conduct.* Criminal fines and penalties for deliberate or egregious acts (including aiding and abetting) are excluded, although some carriers will provide affirmative cover for civil administrative fines (in jurisdictions where these are insurable in law). 'Employment practice wrongful acts' will often exclude claims alleging discrimination.[49]

More generally, ESG regulatory and disclosure regimes as well as associated litigation are still developing. Consequently, the implications for commercial liability insurance are still not fully understood, especially how they will affect existing fiduciary duties of company directors and, in turn, D&O claims. Indeed, recent litigation suggests that directors who proactively pursue ESG objectives may still face lawsuits if their seemingly worthy initiatives create other harms for the business (e.g. reputational damage) that they failed to take into account and/or if they did not adequately disclose the risk.[50]

Source: The Geneva Association (based on publicly available information)

48 For a primer on D&O claims and associated insurance, see Allianz 2022a.
49 GB&A.
50 LaCroix 2022.

5

5. Industrial contaminants are rising up the corporate risk agenda

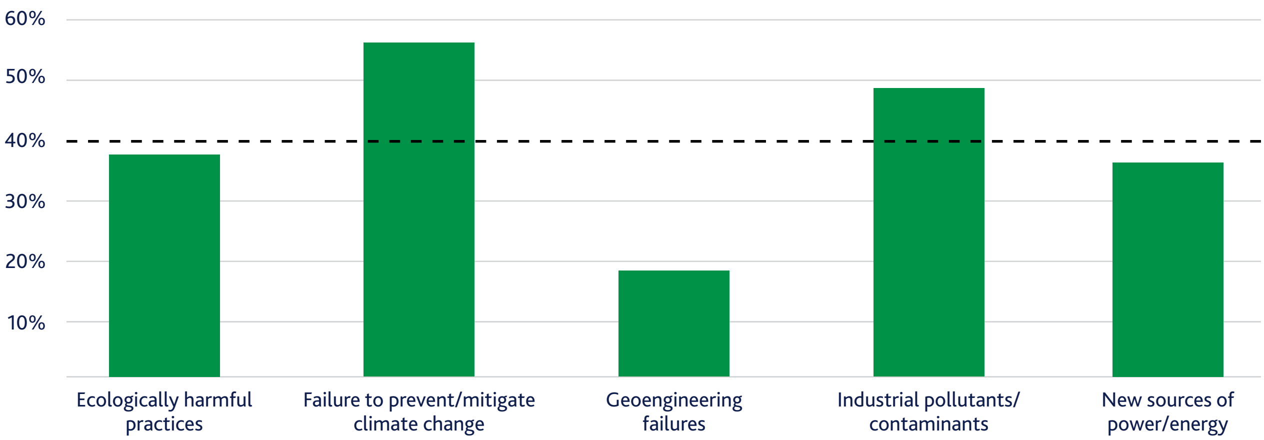
Alongside litigation risks relating to climate change, concerns are mounting about potential liabilities companies could incur for the adverse side effects of chemicals and other materials used in their products. Close to 50% of survey respondents highlight industrial pollutants/contaminants as a very significant factor affecting the medium-term outlook for liability (Figure 10). In particular, worries are growing that per- and polyfluoroalkyl substances (PFAS) found in a wide array of consumer and industrial products cause health and environmental harm, which could lead to liability claims.[51] The same is true for pollution from microplastics, which arises as plastics degrade and break down into soils, sediments and freshwaters and ultimately find their way into the food chain.

5.1 Evidence is mounting about the health and environmental impacts of PFAS/microplastics

Possible injury and harm from the use of PFAS is a long-standing issue, having first come to light several decades ago. Challenges persist in assessing the associated hazards and tracking the specific source of any harm, given the variety of molecular compositions and other physical properties of these materials. Studies have shown that certain PFAS are toxic for humans, but much of the evidence relates to a handful of chemicals, primarily legacy PFAS such as perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Those have long been marked for restricted use (see Box 4).

FIGURE 10: SPECIFIC ENVIRONMENTAL INFLUENCES ON FUTURE COMMERCIAL LIABILITY

% of respondents reporting 'very significant' (sample size: 54)



Note: The black dashed line indicates the average respondents reporting very significant as their answer for environmental topics, across the full sample

Source: The Geneva Association

51 Similar concerns have been raised around the harmful effects of titanium dioxide (TiO_2), a chemical widely used in a range of household products, including consumables. Chubb et al. 2022.

However, scientific evidence is emerging that some of the newer PFAS compounds developed as alternatives to PFOA and PFOS might also cause long-term health and environmental damage. As a result, PFAS-related litigation has increased, with claimants often invoking novel legal theories of liability in a bid to seek legal redress. This includes a growing line of lawsuits that allege goods containing PFAS were falsely marketed as healthy or environmentally friendly.[52] Regulators, especially in the U.S. and Europe, have also tightened rules relating to PFAS use and contamination, including permissible levels in drinking water.[53]

> *"If a 'signature disease' can be linked to PFAS, litigation will explode. Microplastics are also an under-reported emerging threat."*
>
> **Respondent to the GA Liability Trends Survey**

Litigation activity is less advanced for microplastics, but recent laboratory studies have pointed to their toxicological impacts on human cells.[54] As a result, some commentators expect a major increase in microplastics claims activity and severity in the medium term, underpinned by further advances in scientific understanding and further evolution in legal doctrines and standards.[55]

Box 4: PFAS – A brief overview

PFAS have been around since the 1940s. They are found in a variety of consumer products like non-stick cookware, weather-proof textiles and food packaging. Referred to as 'forever chemicals', PFAS are immune to natural degradation as well as heat, acids, chemical stimuli and oxidation. Because of this, PFAS persist in water sources, leading to bioaccumulation in humans, animals and the environment.

There are many PFAS compounds – over 12,000 by some counts.[56] Studies have shown that two of the most popular PFAS, PFOA and PFOS, have adverse effects on human health, including cancer, liver damage, decreased fertility and increased risk of asthma and thyroid disease. As a result, restrictions on the manufacture and use of these chemicals have progressively been introduced, both on a voluntary basis and in response to national and international regulations.

Evidence is growing that replacement compounds for PFOS/PFOA have similar toxic characteristics and may also create adverse long-term effects. Certain alternatives may have even longer half-lives in humans than PFOS.[57] Even though the latest results are based on small-scale studies, the evidence has encouraged litigation against companies. Legislative and regulatory scrutiny over the potential environmental impact and health risks associated with PFAS has also intensified. For example, in May 2022, the New York Assembly and Senate passed a bill that bans the sale of any apparel in the state of New York that contains intentionally added PFAS, starting on 31 December 2023.[58]

The defendants in litigation are mostly chemical companies who produce PFAS, but increasingly downstream manufacturers who incorporate PFAS into products, retailers of products containing PFAS and other entities using or disposing of PFAS items (e.g. packaging) are being sued. In April 2022, for example, a class-action suit was filed against an American clothing retailer based on the allegations that the waterproof coats it sold contained PFAS.[59]

While most PFAS lawsuits have been in the U.S., the phenomenon is becoming more widespread. The Belgium government recently reached a settlement with a U.S. manufacturer of PFOS relating to the historical contamination of ground around one of its Belgian manufacturing plants.[60] PFOS was found in the nearby soil in 2018, and subsequently in the bloodstreams of local residents, in very high concentrations, which could yet trigger claims for compensation.

Source: The Geneva Association (based on publicly available information)

52 Gardella 2023.
53 For example, in June 2022 the U.S. Environmental Protection Agency (EPA) released updated interim drinking water health advisories that materially reduced the acceptable levels of certain PFAS. In addition, the EPA is proposing to designate two of the most widely PFAS as hazardous substances – PFOA and PFOS – which would hold polluters accountable for disclosing and cleaning up their contamination.
54 Danopoulosa et al. 2022.
55 One recent analysis estimated *expected* plastics-related liabilities from litigation triggered during 2022–2030 to be over USD 20 billion in the U.S. alone, with the potential for overall claims to exceed USD 100 billion during the same period. Manufacturers of the chemicals of concern will likely be most exposed. See Minderoo 2022.
56 EPA 2021.
57 Jia et al. 2022.
58 Gardella 2022.
59 Rizzi 2022.
60 Baker 2022.

5.2 Pollution exclusions in liability insurance policies may come under renewed scrutiny

The extent to which any liability claims for harm caused by emerging contaminants is covered by companies' insurance will depend on the terms of their policy. In response to earlier industrial pollutant cases (e.g. asbestos), general liability insurance contracts introduced 'total' or 'absolute' pollution exclusions, many of which will apply to PFAS. Nevertheless, subject to the precise contract language, the time period in which the policy was issued and the applicable law, legal disputes could well arise over coverage for PFAS-related liabilities. This is because jurisdictions may interpret legacy pollution exclusions differently.[61] It might also be disputed whether regular pollution exclusions apply for product liability claims against downstream manufacturers of goods that contain PFAS.[62]

Insurance policies developed specifically to address environmental claims or remediation costs are more likely to cover PFAS-related liability than modern-day general liability policies. But such dedicated environmental/pollution policies are typically not standardised and often include particular restrictions on coverage. That these may be challenged by claimants could explain why claims/legal professionals in our survey (albeit a small sub-sample) seem especially concerned over future liability from emerging contaminants.[63]

61 Fischer and Baker 2021.

62 Ellison and Kraus 2022.

63 Recent U.S. case law underscores the importance of wordings in pollution exclusions. For example, a New York state appellate court held that an insurer did not have a duty to defend a manufacturer accused of discharging PFAS into local water supplies because the court found that PFAS fell within the definition of 'pollutant'. In contrast, a Michigan district court judged that an insurer had a duty to defend the owner and operator of a tannery that used Scotch Gard (containing PFAS) because the release of PFAS fell within the sudden and accidental exception of the historical pollution exclusion. Beverly 2022.

6

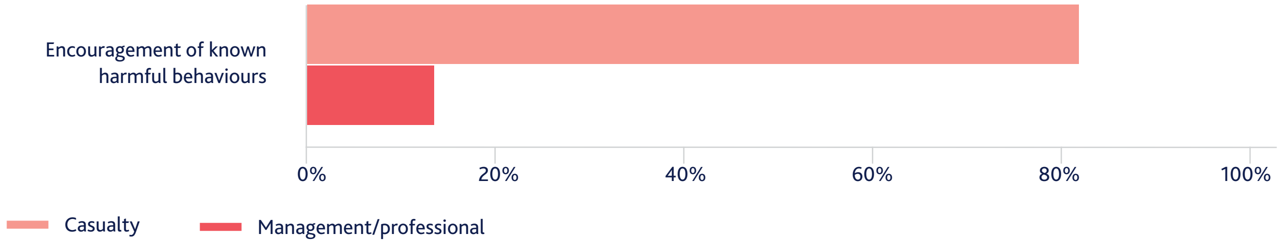
6. The focus on corporate social responsibilities and governance is intensifying

It is not just specific environmental and technological issues that are framing the commercial liability outlook. Perhaps in light of the earlier episode of mass tobacco litigation and the more recent protracted legal disputes dealing with attributing blame for the U.S. opioid epidemic, survey respondents also highlight the prospect of litigation related to other harmful consumer behaviours such as the overuse of antibiotics and vaping.[64] Unsurprisingly, casualty re/insurance experts seem most concerned, with a large majority highlighting this as a significant potential influence on future corporate liabilities (Figure 11).

More generally, investors, employees and consumers increasingly expect companies actively to live up to their full range of corporate social responsibilities, while businesses face an expanding range of ESG-related disclosure requirements and regulation. Firms that fail to meet these standards open themselves up to the risk of litigation and/or regulatory action, challenging, for example, the veracity of ESG statements or the propriety of the firm's activities and performance.[65] Such claims will likely involve novel applications of the law, crafted by inventive plaintiffs' lawyers, not least because there is no widely agreed definition of the risks, impacts and practices that should be considered within the scope of ESG responsibilities and, correspondingly, to whom any related legal obligations are owed.

FIGURE 11: RE/INSURER VIEWS ON FUTURE COMMERCIAL LIABILITY FOR HARMFUL CONSUMER CONSUMER BEHAVIOURS, BY LINE OF BUSINESS

Net % balance of responses (sample size: management/professional – 26; casualty – 28)



Note: The net % balance is calculated as the percentage difference between very/fairly significant and no/little significance responses

Source: The Geneva Association

64 The sprawling litigation over opioids, which began in 2017, has yielded more than USD 40 billion in settlements. Novel claims drawing on various legal theories have been brought not only against major pharmaceutical manufacturers but also opioid distributors, pharmacy retailers, and even professional accreditation services firms. Pierson 2022.

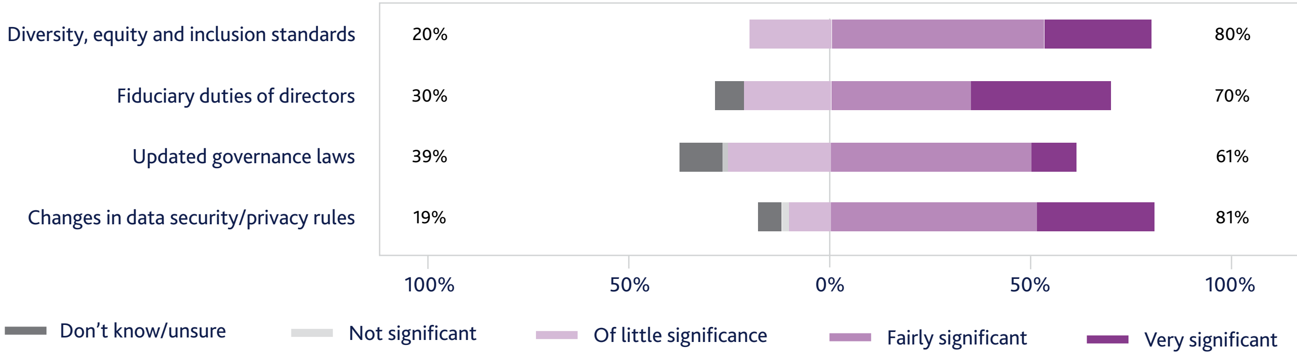
65 Hackett et al. 2020.

6.1 D&O liability for social issues is a nascent theme

Although ESG litigation has thus far been largely climate related, social concerns, including labour standards, wages and benefits, workplace and board diversity, racial justice and pay equity, are all emerging areas for D&O liability. To some extent, this is reflected in the results of our survey: a large proportion of re/insurers highlight lack of transparency and specificity around diversity, equity and inclusion standards (DEI) and breaches of directors' fiduciary duties to manage companies responsibly as bases for potential ESG-related liability claims (Figure 12).

FIGURE 12: SPECIFIC LEGISLATIVE/REGULATORY INFLUENCES ON FUTURE COMMERCIAL LIABILITY

% of responses (sample size: 54)



Note: The percentages on the right-hand side (left-hand side) indicate the share of responses reporting a factor as fairly or very significant (insignificant or unsure)

Source: The Geneva Association

Directors of companies have already been hit with lawsuits from shareholders alleging that the board misrepresented their commitment to DEI and that this led to a reduction in the value of the firm.[66] Some lawsuits also address a lack of diversity and other ESG-related issues affecting a company's broader workforce beyond the boardroom, which may also impact profitability.[67] But the 'S' in ESG is potentially wide ranging, including creating liability for directors accused of failing to support employee welfare (not only a safe working environment, but one that is free from fear of harassment and discrimination) as well as using unethical production methods in company supply chains.

Mirroring their environmental responsibilities, directors might ultimately be held accountable for their companies failing to achieve publicly stated social commitments (i.e. 'social washing'), although as noted in Box 3, how ESG-related commitments will impact D&O liability claims remains unclear. In the case of shareholder actions, investors must still show that they or the firm were harmed or suffered losses as a result of the directors' failure to achieve objectives that were material to the business rather than mere aspirational goals.

6.2 Cybersecurity breaches will create liability exposure

Implementing appropriate cybersecurity standards and protocols can also be viewed as part of companies' ESG responsibilities. The recent spate of cyberattacks, especially linked to ransomware, has generated significant first-party losses such as business interruption and remediation expenses. However, almost any cyber incident can lead to claims for compensation from affected customers, suppliers and other stakeholders whose data may have been compromised. Even for ransomware claims, third-party liability losses are becoming more important with the rise of double extortion attacks, where criminals steal and exploit personal or sensitive data.

The latest revelations over the use of pixel tracking technology (sometimes called web beacons) on company websites, which resulted in the unauthorised collection and sharing of users' private and personal information, only underscores the potential third-party cyber liability exposure connected to privacy breaches.[68] In some jurisdictions, firms could face lawsuits even if plaintiffs suffer no concrete harm but the incident substantially increases the risk of future ID theft or other harm.[69]

66 Zurich 2022b.
67 Zurich 2022c.
68 Most notably, several U.S. healthcare entities currently face lawsuits over their use of the Meta Pixel tracker on their websites. The tracker collected private and sensitive information without patients' consent (including on password-protected patient portals) and shared the data with Meta, formerly the Facebook company. For more information, see, for example, WillisTowersWatson 2022b.
69 Dempsey 2022.

Such threats to data privacy have prompted increased regulatory oversight and stricter cybersecurity governance requirements. Data breach and privacy regulations continue to expand, following the introduction of tough rules in Europe under the General Data Protection Regulation (GDPR), and more stringent regulations in places such as California, Brazil, China and India. This includes the potential for collective consumer actions on an 'opt-out' basis in some jurisdictions.[70] In addition, a number of U.S. states have passed biometric privacy laws with the aim of safeguarding consumers' private information.[71] Violations of data protection and privacy regulations are cited by around 80% of our survey respondents as a significant influence on firms' future liabilities (Figure 12).

"The exchange and processing of data increases the exposure of companies to data breaches and thus to non-compliance with increasingly restrictive data protection and intellectual property laws and regulations."

Respondent to the GA Liability Trends Survey

Beside regulatory fines/penalties and claims for compensatory damages from third parties whose privacy is breached, cybersecurity shortcomings can give rise to executive liability. In the case of publicly quoted companies, overstating the strength of cyber preparedness or inadequately revealing the extent of a data breach that led to a significant fall in the stock price, could trigger 'follow-on' civil litigation from investors on grounds of misleading disclosures. Directors and officers may also sometimes have to defend claims against the company and themselves personally if they made a decision or took a course of action that breached their fiduciary duties – for example, failing to put adequate cybersecurity measures in place. The bar for such lawsuits is high, however, since shareholders must typically show that the board consciously failed to exercise its oversight responsibilities.

70 In April 2022, the EU Court of Justice ruled that consumer groups can autonomously bring legal proceedings for alleged breaches of data protection rules as long as national law allows it. Bertuzzi 2022.

71 Allianz 2022b.

7

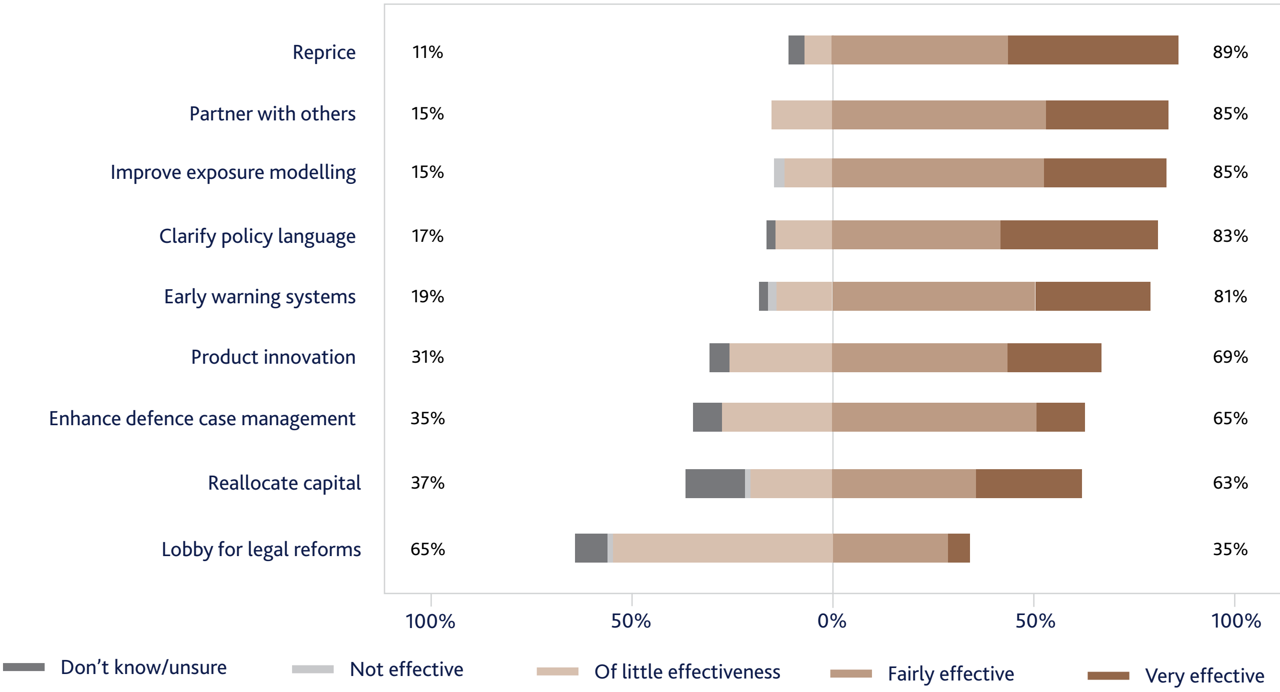
7. Insurers pull various levers to adapt to emerging liability risks

Conventional liability insurance policies have proven flexible in the past to accommodate new and emerging risks. From a narrow legal perspective, once liability is set up as a gateway issue – the identification of a defendant, evidence of the existence and breach of a duty of care as well as proof of a causal connection between their conduct and the victim's injury or financial harm – there is arguably little that cannot be handled by traditional liability insurance. This includes responding to some of the intangible risks associated with new digital technology.

Our survey shows that liability re/insurers expect to employ a wide range of mechanisms to align exposures with their risk appetite and risk-absorbing capacity (Figure 13). While the usual approaches of repricing the available cover (including adjusting policy limits) and refining policy language both feature highly, other methods such as improved liability exposure modelling, partnerships to gather relevant data/intelligence and share risks as well as product innovation (e.g. more bespoke and modular affirmative covers) will also play a role.

FIGURE 13: RE/INSURER VIEWS ON SPECIFIC INITIATIVES TO RESPOND TO EMERGING COMMERCIAL LIABILITY RISKS

% of respondents (sample size: 54)



Note: The percentages on the right-hand side (left-hand side) indicate the share of responses reporting a factor as fairly or very effective (ineffective or unsure)

Source: The Geneva Association

Despite the ongoing shifts towards a more plaintiff-friendly litigation environment, re/insurers place relatively limited faith in the power of lobbying to effect change. That could partly be because the development is still most important in selected countries, especially the U.S. In addition, compared with previous social inflationary episodes, recent influences are less rooted in reinterpretations of legal doctrines and more in the institutional features of legal systems and societal attitudes towards the boundaries of corporate liability. Solutions to those factors may not naturally lend themselves to specific legal reforms, although there is an ongoing debate in some jurisdictions about how far regulation of TPLF could help to level the playing field between plaintiffs and defendants in order to ensure fairness and financial practicality in settlement awards.[72]

7.1 Casualty insurers tend to focus most on changes in policy language

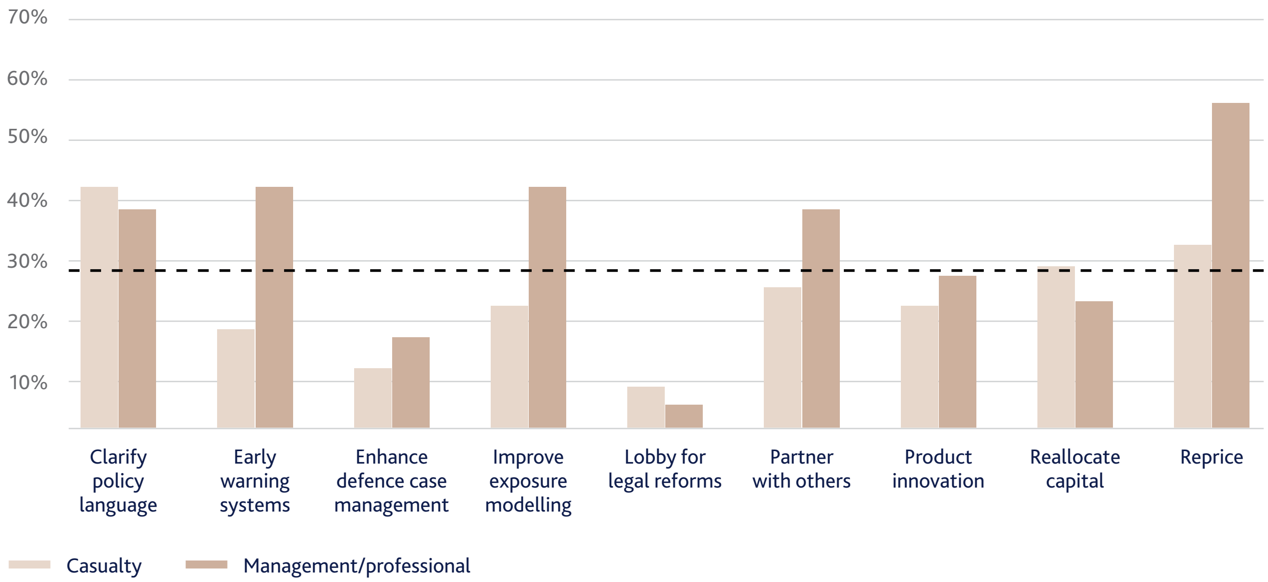
Experts in casualty lines highlight the importance of precise policy language (e.g. clearer endorsements/exclusions for specific perils) in order to adapt their coverages (Figure 14). This is probably unsurprising given that most commercial general liability policies are written on an 'all-risk' basis, often with an 'occurrence' trigger, meaning that they cover all damage not expressly excluded, regardless of how far in the past the harm occurred. With occurrence-based policies, too, the aggregate limit on payouts typically resets every year, offering protection against bodily injury or property damage resulting from continuous or repeated exposure over time. In contrast, professional liability/E&O and D&O insurance mainly have 'claims-made' terms (i.e. coverage will respond only for claims made during the time period the policy is in effect).

> *"Clear wordings that state what is covered and what is not – for example, abatement costs, intentional acts versus accidents, fines/penalties, environmental exclusions – are very important."*
>
> **Respondent to the GA Liability Trends Survey**

Some insurance carriers have already added specific PFAS exclusions to general liability as well as environmental policies in order to clarify coverage, especially for firms in regions or sectors most likely to be exposed to litigation. Likewise, climate change exclusions, such as that drafted by the Lloyd's Market Association (LMA), are being introduced into liability policies, albeit sparingly, and sub-limits inserted to reduce insurers' exposure to climate-related litigation.[73] Protection against liability for the damaging effects of pollution is still widely available through specialised pollution legal liability policies, although such coverages are typically written on a claims-made rather than an occurrence basis.

FIGURE 14: RE/INSURER VIEWS ON SPECIFIC INITIATIVES TO RESPOND TO EMERGING COMMERCIAL LIABILITY RISKS, BY LINE OF BUSINESS

% of respondents reporting very significant (sample size: management/professional – 26; casualty – 28)



Note: The black dashed line indicates the average respondents reporting very effective as their answer for response topics, across the full sample

Source: The Geneva Association

72 For example, in September 2022, the European Parliament voted overwhelmingly in favour of adopting a report by its committee on legal affairs ('The Voss report'), which proposes measures to regulate the activities of litigation funders. If taken forward by the European Commission this could lead to legislation to introduce regulatory frameworks for the TPLF sector across EU member countries.

73 The LMA published LMA5570, a model climate change exclusion for use on liability policies, in November 2021. See LMA 2021.

7.2 Risk selection and exposure management are key

Adjusting the terms and conditions of insurance contracts to match evolving risks – both price and non-price elements – is crucial in order to ensure that re/insurers do not overstretch their balance sheets. Unintended coverage that is not priced for can lead to major unforeseen losses, which could undermine carriers' solvency. Though true for all lines, it is especially so for liability insurance given the full costs of providing protection may not always be known until years after a policy is sold.

Yet survey respondents also recognise the need to develop insurance solutions to meet new protection needs of companies as well as grasp the associated business development opportunities. That will ensure insurance remains relevant as an important mechanism to support social sustainability. Liability insurance, for instance, will likely be vital in promoting technical solutions to meet important societal needs such as reducing CO_2 emissions through carbon capture and storage technology as well as new green energy generation. This includes the potential for more 'named perils' within liability policies, perhaps as supplementary cover, and bespoke, standalone coverages for new risks.

> *"There is also an opportunity to design new insurance products to cater for the new realities. But changes in exposure management are also necessary."*
>
> **Respondent to the GA Liability Trends Survey**

However, innovative liability insurance products will require increased understanding of the individual risks involved and the possibility that exposures could aggregate within re/insurers' portfolios. Assessing the scope for losses to accumulate – in particular, the potential for incidents to affect many lines of business across multiple policy years to produce catastrophic losses – is a challenge for liability re/insurers. Unlike property lines, where the processes underlying physical risks such as hurricanes or windstorms are reasonably well understood (although climate change is making that more complicated), the causal mechanisms are much more complex for liability exposure, especially for some of the new intangible risks.

The underlying drivers of liability change over time so that the past may not be a good guide to the future. The ways in which they interact are also not easily articulated nor quantified. For example, many of the legal/litigation factors that fuel social inflation are difficult to measure, let alone predict. The pathways for ESG-related liability are currently also not easily mapped. Similarly, the full range of liability risks associated with novel technologies are, almost by definition, unknown at policy inception and may not sit well within prevailing liability frameworks developed by insurance-related jurisprudence.

> *"New technologies will open up business opportunities for re/insurers but the risks will require thorough analyses to ensure exposures are well identified."*
>
> **Respondent to the GA Liability Trends Survey**

Further progress towards dynamic risk-selection strategies and liability exposure management will therefore be important in expanding and maintaining the set of risks insurers can sensibly underwrite. Over a third of surveyed liability experts highlight enhanced risk modelling and quantification as being very effective in responding to emerging liability risks. Such process innovation will likely require advances in data capture and analytics, including greater use of machine learning/AI, to improve insurers' understanding of emerging liability risks. The scope for correlated losses between existing insurance classes (e.g. casualty and managerial/professional lines) might also argue for insurers' different functional units to collaborate more. Effective implementation of ESG standards could, for instance, lead to fewer product liability and recall claims while also triggering D&O claims against other companies that allegedly fall short.

Increased dialogue with their commercial clients will also help insurers better understand potential liability risks and the role that insurance can play in mitigating them. This could be especially important for understanding the implications of multiple, overlapping new digital technologies and the complicated legal issues they create. Fostering increased transparency about emerging liability risks not only serves to improve visibility over exposures but also hopefully reduces scope for coverage disputes.

8

8. Concluding remarks

Navigating future commercial liability exposures is challenging, not least because the outlook depends on a complex set of interacting factors that are difficult to evaluate and which may only come to light over long periods of time. Insurers must nevertheless look ahead in order to align their coverages with the evolving risk landscape while also ensuring they are adequately rewarded for the risks they assume. In doing so, they will be able to realise the opportunities that the evolving risk landscape offers for the re/insurance industry without overextending their balance sheets.

Many re/insurers highlight the influence of actual and prospective developments in legal/litigation practices in shaping liability outcomes and how much companies will draw on their different insurance policies for protection. Coupled with heightened awareness of corporates' social responsibilities, such factors could be especially important in determining corporate liability for key emerging environmental perils such as climate change and industrial pollutants. Our survey shows the associated environmental risks, which have long been on re/insurers' radar, are coming into sharper focus, albeit considerable uncertainty persists about the routes to legal liability.

Even if legal culpability for environmental harm or failing to adequately manage and adapt to the risks remains difficult to establish, the development of various ESG regulations and associated litigation is likely to have an important bearing on liability for firms and their directors that misled investors/customers or overstated their green credentials. Moreover, ESG is not just about the 'E'. Social and governance issues also seem set to frame more litigation and regulatory actions against companies, which could have significant consequences for liability insurance, especially D&O. Greater clarity over the nature and scope of ESG-related responsibilities of companies and their directors will help to ensure liability insurance coverage aligns well with the risks.

Keeping up with liability risks associated with new technology will also be critical for re/insurers. According to our survey, most attention is currently concentrated on relatively mature technologies such as cloud computing and AI, and the associated significant potential for accumulated liability exposures. But re/insurers also need to stay alert to more nascent developments such as the metaverse, which though still highly uncertain could develop rapidly and have far-reaching liability implications. Understanding the liability landscape has become complicated enough as it is with the rise of social media and e-commerce platforms – the development of fully immersive virtual environments would only add to the complexity.

By design, liability insurance products are flexible and adapt to address emerging risks. Initially, such adaptation often takes the form of tighter policy language to fine tune coverage. However, liability insurers recognise they can and must innovate in other ways – both product and process innovation – in order to upgrade their solutions to meet the protection needs of companies. This includes further developing early warning systems to identify and raise awareness about shifts in the litigation/liability environment and investing in enhanced exposure modelling of new and latent liability risks.

Assessing future liability exposures, especially the potential for losses to aggregate over time and lines of business, has historically been difficult for the insurance industry. But a forward-looking mind set informed with insights from predictive analytics could result in fewer unpleasant surprises and abrupt reductions in available coverage. In turn, this will help ensure liability insurance maintains its socially useful function: ensuring victims are adequately compensated while also incentivising policyholders to take steps to reduce the risk of harm to themselves and others.

Appendix: Survey design

The GA Liability Trends Survey consisted of an online questionnaire spanning:

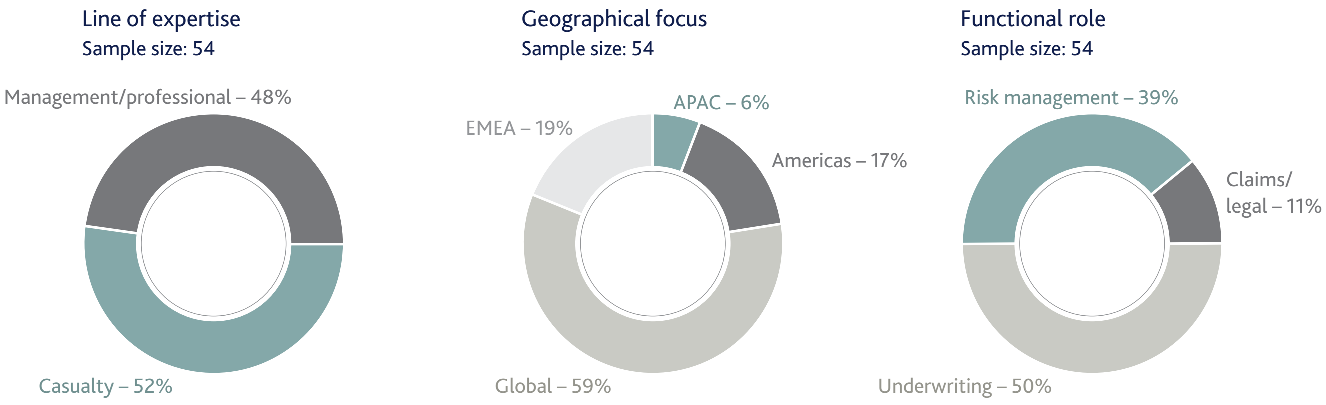
- The five broad drivers underpinning future corporate liability (socio-economic/political, technology, environment, legal/litigation and regulation)
- The implications of ESG regimes
- The impact of the COVID-19 pandemic
- Responses of the insurance sector to the challenges presented.

Most of the questions were multiple choice, enabling respondents to rank or express their view about the significance/likelihood of a particular topic over a 5–10 year horizon. In addition, supplementary open questions allowed respondents to expand on their opinions about the most significant or likely factors, and offer qualitative observations on both the risks and opportunities.

Targeted at liability insurance experts among GA member companies, the online survey was in the field from late March until June 2022. A total of 54 responses were received during this period, from 24 re/insurers, with the vast majority of respondents being in senior/head positions.[74] The companies represented account for almost USD 500 billion in non-life GWP, approximately half of the total non-life GWPs of GA members and probably around 25% of the global P&C insurance market.[75]

In terms of geographical reach, the majority of respondents worked in roles with a global focus. Around 40% had region-specific roles, mostly in either the Americas or EMEA (Figure 15). A small majority of the sample were dedicated experts in casualty insurance (e.g. general liability, product liability, employers' liability/workers' comp etc.) with others typically responsible for all liability or specialising in managerial/professional lines (e.g. E&O, D&O, employers' practices liability etc.). Half of the respondents were connected to underwriting business functions, around 40% represented risk management and the remainder were in legal/claims departments.

FIGURE 15: SAMPLE COMPOSITION – PROFILE OF RESPONDENTS



Source: The Geneva Association

74 Some re/insurers provided collective responses representing the consolidated views of their organisation.
75 Based on an estimate of global P&C insurance premiums of USD 1.8 trillion in 2020. See Swiss Re 2021b.

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