New cars on a production line. Automotive recall cases are becoming more frequent and more expensive.

### Liability claims trends

Liability claims are becoming more international, complex and costly as awareness of compensation and US-style litigation continues to spread.

The US has long been associated with a compensation culture, but there is a growing trend outside America towards consumer protection. As people become wealthier, especially in emerging markets, they are more likely to seek compensation when they suffer bodily injury or a loss of income.

“The trend for globalization will not stop and awareness of consumer protection and a culture of compensation will grow in emerging markets,” explains Peter Oenning, Liability Claims Specialist, AGCS.

“In some parts of the world, like Russia, it is still uncommon for people to seek compensation, but in others, like some countries in the Asia region, it is now becoming everyday practice for people to make a claim if they suffer personal injury or if a product is found to be faulty.”

Examples of recent large claims include: damages to homes and dwellings by annual flooding in Brazil, allegedly caused by a nearby construction development; worldwide claims for replacement of defective ear implants versus an Australian manufacturer; hundreds of claims for wrongful death due to pulmonary diseases allegedly caused by a sterilizer for a humidifying device in South Korea; and big losses for an European meat producer due to an import ban in China since leftovers from metal earmarks were detected in pig ears.

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**Top Causes of Loss: Liability Claims (€1m +)**

<table>
<thead>
<tr>
<th>No. of Claims</th>
<th>By value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property damage 26%</td>
<td>Bodily injury (inc fatalities) 44%</td>
</tr>
<tr>
<td>Product defect 17%</td>
<td>Product defect 14%</td>
</tr>
<tr>
<td>Product defect - property damage 17%</td>
<td>Property damage 12%</td>
</tr>
<tr>
<td>Product defect - financial loss 12%</td>
<td>Product defect - financial loss 10%</td>
</tr>
<tr>
<td>Bodily injury (inc fatalities) 8%</td>
<td>Product defect - property damage 9%</td>
</tr>
<tr>
<td>Other 21%</td>
<td>Other 12%</td>
</tr>
</tbody>
</table>

Source: Allianz Global Corporate & Specialty. Data based on accident years 2009-2013.

Although not large in number, personal injury and wrongful death claims result in more than 40% of claims costs.

Claims from product defects are high in volume. Automotive recall cases are becoming more frequent and more expensive.
Growing awareness and new laws

Consumers in emerging markets like China are growing more aware of their rights and are increasingly more likely to seek compensation.

For example, a recent case of contaminated whey for baby formula from New Zealand drew media attention in China, Thailand, Malaysia, Vietnam and other Asian countries and resulted in some large legal cases, as well as the active involvement of the country’s consumer associations.

At the same time national governments are also growing more aware of the need to protect consumers.

In recent years, China has passed a number of laws to increase consumer rights and give people improved access to justice. As a result there has been a gradual increase in claims against manufacturers for faulty products, and these can include sizable punitive damages.

Collective actions are being allowed in an increasing number of countries. For example, there is now class action law in Italy and the Netherlands. There are also a number of countries. For example, there is now class action law in Italy and the Netherlands.

“Plaintiff lawyers are looking to make connections and bring claims in other countries. They are going to where compensation awards tend to be highest and where they are most likely to secure a favourable verdict.”

As liability claims become more international, there is a tendency to use the services of international law firms, but these are more expensive than local alternatives. “An international product recall for a motor or pharmaceutical business would need an international law firm to steer the claim globally, but you have to pay a premium for global service,” Oenning adds.

Bigger, more complex claims

Some of the biggest claims in recent years have involved pharmaceutical product liability cases, most notably a number in the US including a most recent case involving birth control pills. Automotive industries have also experienced a high number of product liability, recall and bodily injury cases.

Cases against the automotive and pharmaceutical industries are representative of a wider trend in liability claims, that of increasing size and complexity.

“Trends like globalization and consolidation of industries means claims are getting bigger, spanning different lawyers, jurisdictions and legal systems,” says Larry Crotser, Liability Claims Specialist, AGCS. “This is making claims much more complex, requiring legal expertise and knowledge of requirements in multiple countries.”

“Trends such as globalization and consolidation of industries means claims are getting bigger, spanning different jurisdictions and lawyers”

Forum shopping

International forum shopping is also becoming more of an issue for liability claims as awareness of other jurisdictions increases. For example, product liability claims against a French breast implant manufacturer have been made elsewhere in Europe and as far away as Latin America.

“Law firms are becoming more international and we increasingly see related claims being litigated in multiple countries,” Oenning explains.

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Rising legal costs

The US continues to produce the largest liability claims, although measures to curb class action claims have helped stem the rise in class action litigation in the country.

“Reforms in the US have had a chilling effect on mass tort,” Crotser adds. “The Class Action Fairness Act of 2005 and a number of supreme court cases have made it more difficult for claimant lawyers to file class action law suits, in particular for personal injury claims.”

However, while there are fewer filings, legal costs have continued to rise and have in some cases wiped out the benefits of recent tort reforms.

“Litigation in the US is becoming more expensive as legal costs continue to rise,” says Crotser. Legal costs have multiplied by a factor of two or three in some instances in the US.

The increased cost of claims also reflects rising medical inflation in the US, which has been in the double digits for the past 10 to 20 years.

Rising legal and medical costs are also a feature of other markets. “This is a global trend,” Oenning notes.

“Legal and medical costs are increasing in the US, but also elsewhere. For example, the cost of care has increased dramatically over the past two decades, meaning medical costs in Germany can now run into seven figures for bodily injury claims,” he adds.

Many of the biggest liability cases are related to bodily injuries, for example adverse events caused by a drug in a pharma case.”

Economic solution in the US

In the US decisions are increasingly coming down to economic reasoning, explains Crotser.

“In the US you can’t pay for 15,000 lawsuits on one product, so you need to look for an economical solution. Some types of claims in the US are now too difficult to defend, while in other countries it may still be a realistic option to defend a claim,” he says.

The financial crisis did not have an impact on general liability and other non-financial institutions liability claims. As the economic activity picks up, however, liability claims typically increase.

“The US economy has been recovering and some clients are enjoying record sales. But the recovery is not as great as some in the media believe, and we have not seen the uptick in claims that we might otherwise have expected,” says Crotser.

Notifications in the US have been increasing, in particular for professional liability claims where there has been an uptick in claims volumes. “US insureds and their brokers are more proactive in notifying claims,” Crotser concludes.

Claims settlement challenges: Increasing need for cross-border expertise

The growth in cross border litigation and the internationalisation of liability claims requires increasing levels of knowledge and expertise.

“There are still very big differences between legal jurisdictions and claims handlers need to understand these to have the best chance of defending a claim,” says Peter Oenning, Liability Claims Specialist, AGCS. “It is important as an insurer to be able to deal with cases in multiple jurisdictions,” he says.

The increasing complexity and cross border nature of cases requires all parties to keep on top of documentation and ensure consistency, adds Larry Crotser, Liability Claims Specialist, AGCS.

“Risk managers and insurers need to review and co-ordinate documents and discovery responses consistently across jurisdictions,” he says.