

LIABILITY CLAIMS TRENDS

Although claims in mature markets have been reducing following improved safety and product quality, severity continues to rise globally. The potential for ever-larger liability claims is driven by many factors including increasing complexity, internationalization of claims and rising legal costs. Around a third of large corporate liability claims involve litigation, compared with property insurance where less than 1% of claims do, on average.

1 HIGHER SETTLEMENTS FOR US BODILY INJURIES

In the US, which traditionally is the largest market for liability insurance and claims, loss frequency has remained stable in recent years with the make-up of claims also consistent. Bodily injury claims account for the lion's share, followed by product liability and medical malpractice claims.

The US has seen a trend towards higher settlements and awards in personal injury cases, some with high punitive damages. For example, in August 2018, Monsanto, a division of German chemical group Bayer, was ordered to pay a former groundskeeper US\$289mn after he claimed that chemical glyphosate – a key ingredient in its weed-killer Roundup – caused his cancer. The groundskeeper subsequently agreed to accept a reduced award of \$78mn¹, although at the time of writing Monsanto was also appealing this decision. The initial ruling has already led to heightened liability litigation.²

In July 2018, US pharmaceutical and consumer goods group Johnson & Johnson was ordered to pay US\$4.7bn in damages to 22 women

who alleged that its talc products had caused them to develop ovarian cancer. The jury in the US state of Missouri awarded US\$4.14bn in punitive damages and US\$550mn in compensation. In both cases, the juries were swayed by expert evidence, despite the absence of scientific consensus proving a causal link between the products and cancer.

“Personal injury claims in the US now settle at much higher values than they did just five years ago,” says **Larry Crotser, Liability Claims Specialist at AGCS**. “It could be that we are now seeing the ‘millennial effect’³ on juries, which could result in increasing awards. A number of younger people tend to be less business-friendly and more co-operative than previously – and can be potentially less questioning in this area.”

Commercial motor claims in the US have also experienced a number of large personal injury awards. AGCS has been involved in several large claims involving trucking clients – one incident in Texas in 2017 resulted in an US\$1bn settlement for a single road traffic accident.

“We are not seeing an increase in the frequency of liability claims, but the value of

¹ Groundkeeper Accepts Reduced \$78mn Monsanto Verdict, October 31, 2018, The Associated Press
² Plaintiffs Lawyers Eye More Roundup Lawsuits After \$289mn Verdict Against Monsanto, August 13, 2018, The Recorder
³ A Millennial Could Be Your Next Jury Foreperson, March 15, 2017, Litigation Insights

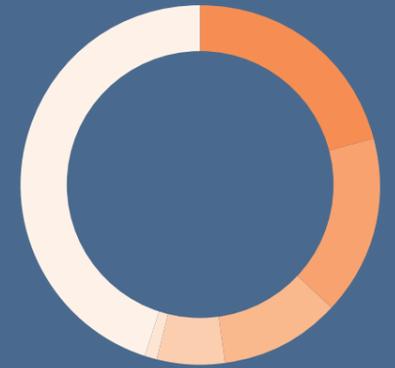


TOP CAUSES OF LOSS: LIABILITY CLAIMS



By value of claims

Defective products	45%
Faulty workmanship/maintenance	13%
Fire/explosion	7%
Minor collision/crash (e.g. non-aviation/auto/shipping-related)	3%
Crime/disorder	3%
Other	29%



By number of claims

Faulty workmanship/maintenance	21%
Defective products	16%
Slips and falls	11%
Minor collision/crash (e.g. non-aviation/auto/shipping-related)	6%
Environmental/pollution	1%
Other	45%

Source: Allianz Global Corporate & Specialty. Based on analysis of 39,895 insurance industry claims between July 2013 and July 2018.

Defective products are the top cause of liability losses for businesses globally accounting for 45% of the value of all claims. Together, defective products and faulty workmanship/maintenance account for almost 60% of the value of all claims (58%).

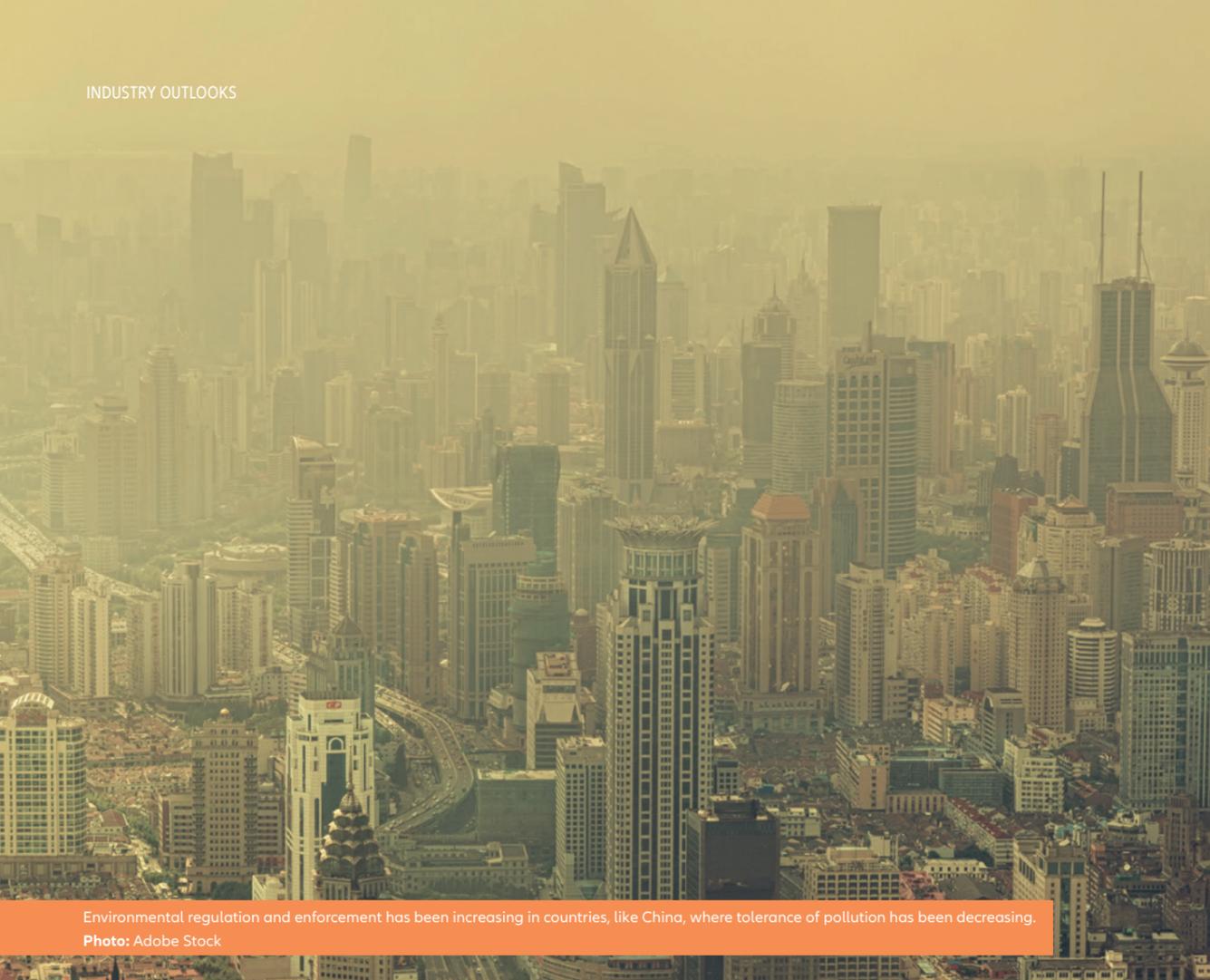
claims has been increasing with higher awards and rising legal costs. In some cases, the defense costs for comparable actions have doubled or even tripled over the last 10 years due to more extensive discovery (including e-discovery), higher expenditure for experts and increased legal fees,” says **Peter Oenning, Liability Claims Specialist at AGCS**.

2 INCREASING SEVERITY AND FREQUENCY IN EMERGING MARKETS

Outside the US, there has been a general trend towards increased frequency and severity in particular emerging markets. Liability claims frequency has been increasing in Latin America and Asia following tougher environmental and consumer protection regulation and with growing public awareness of rights to compensation.

“We are seeing more claims from the Asia region and other emerging markets as awareness of consumers has increased, making it more likely they will claim,” explains Oenning. During the first quarter of 2017, AGCS had some 800 pending liability claims in Asia, which had risen to 1,300 by the second quarter of 2018. In Latin America the number of pending claims increased from 700 to 1,100 over the same timeframe.

Claims severity is also increasing in emerging markets. “We are now seeing much larger claims in Latin America and Asia than we have in the past,” Oenning adds. “Once, nine out of 10 large claims globally would have come from the US, now it is more like seven in 10.”



Environmental regulation and enforcement has been increasing in countries, like China, where tolerance of pollution has been decreasing.

Photo: Adobe Stock

3 COLLECTIVE ACTIONS IN EUROPE

In Europe, frequency of liability claims has remained stable. However, the prospect of the region becoming more litigious is increasing with a move towards collective actions in a number of countries.

Investors and consumers are now able to bring class action-like claims across the continent – it is already possible in the Netherlands, France, Italy and the UK, and, as of November 2018, it is also easier to bring class actions in Germany under a new legislation. In addition, the European Commission has proposed a new directive on representative actions, which could make it easier to bring consumer class actions in the European Economic Area. However, while companies need to keep abreast of such developments, overall the legal environment should prevent the emergence of a US-style litigation and class action environment in Europe.

4 LARGE LOSS POTENTIAL RISING

In both mature and emerging markets, the potential for large losses is increasing, according to Oenning: “Large liability claims are very complex and expensive. They tend to be cross-border and involve multiple parties, taking a long time to investigate.”

There is also a trend towards more international liability claims. For example, there have been more claims involving European and Chinese companies in the US⁴. “As companies have become more global, the chances of being involved in litigation have increased,” Oenning adds.

Product liability claims, for example, are getting larger and more complex with the development of extended global supply chains, where components or ingredients in sectors like automotive, pharmaceutical or food are concentrated on a small number of large global suppliers.

6 RISE IN ENVIRONMENTAL AND EMPLOYMENT LOSS ACTIVITY

“With the development of concentrated global supply chains in industries like automotive manufacturing, liability claims are now more complex. As companies restrict the number of worldwide suppliers in the supply chain, it increases liability risk for these few suppliers exponentially,” says Oenning.

Product recall losses are a major contributor to defective product incidents being the major cause of liability losses. Many manufacturers are sourcing components or ingredients from fewer suppliers. This has seen huge increases in values of risk and the emergence of a “ripple effect”, where a single recall can impact whole industries, such as with the recent Takata airbag recall.

Employment and discrimination claims could also increase. Recent years have seen a number of claims related to abuse and harassment claims in the church, charities and business worlds, while a number of large US companies have been sued for unfair work practices against women.

Longer term, environmental liability claims are likely to rise with increased awareness and regulation. Environmental regulation and enforcement has been increasing in countries, like China, where tolerance of pollution has been decreasing.

Recent years have seen a notable rise in environmental claims in emerging markets, where authorities are now more inclined to hold companies to account for pollution incidents. Insurers have dealt with a number of such large claims in recent years, related to collapsed dams, floods and pipeline leakages in environmentally-sensitive areas in countries such as Brazil, Peru and Chile.

Climate change-related liability claims may also materialize in years to come. Although of limited success, there has been litigation in the US, claiming that companies’ emissions have contributed to climate change. With a trend towards climate change risk reporting, companies could also face litigation from investors over disclosure.

5 TECHNOLOGY TO SHAPE FUTURE LIABILITY LANDSCAPE

Cyber risk is a hot topic that has yet to translate into serious claims activity for commercial general liability (CGL) or product liability insurance. Malicious cyber-attacks are typically excluded from general liability insurance. Where US courts have heard disputes they have typically found that damages from data breaches are not covered under CGL policies.

“Cyber is the next big trend, but as yet we have not seen this in liability claims. Plaintiff lawyers in the US are not bringing claims for cyber-security incidents and data breaches,” says Crotser.

However, technology is expected to shape liability claims in the future with advances in automation and the Internet of Things (IoT).

“We expect to see more liability claims from emerging technology. For example, autonomous vehicles would see a shift in liability and claims from drivers to manufacturers and software providers. Such claims are likely to be harder to investigate and establish cause, and could result in increased cost and workload per case for insurers,” says Oenning.

“This trend is obvious for driverless vehicles but will go much further. The growing use of technology and automation could also reduce frequency of personal injury claims where it improves safety and quality, but it is also likely to mean an increase in product liability claims.”

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⁴ Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review, National Economic Research Associates