

# sigma

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Litigation costs drive  
claims inflation:  
indexing liability  
loss trends

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# Executive summary

The US liability risk pool, the largest in the world, is highly exposed to social inflation.

The US has the largest liability risk pool in the world, and it is expanding rapidly. US commercial casualty insurance sector losses grew at an average annual rate of 11% over the last five years to reach USD 143 billion in 2023. For sense of scale, that sum is 33% more than all the insured losses from natural catastrophe events that took place globally last year. US liability claims costs have been rising faster than the rate of economic growth and inflation, indicating that other factors are at play. We define these as social inflation. Unlike economic inflation, which is decelerating, social inflation shows no signs of abating. The drivers of social inflation include societal trends and behavioural norms, leading to greater use of the legal system and rapid growth in settlement awards. In this study, we construct an index for social inflation, with which we quantify the impact of social inflation on liability claims. In the case of the US, social inflation has been on an upward trend over the last decade and reached around 7% in 2023, a 20-year high.

The US has experienced significant social inflation, driven by large verdicts.

The US has been in the midst of a cycle of social inflation since around 2015. Liability claims severity has trended significantly higher than economic factors due mostly to a rising number of very large verdicts against commercial defendants. The US legal system can generate outsized awards in the settlement of tort liability disputes, particularly related to bodily injury claims. In 2023, there were 27 cases of courts awarding more than USD 100 million in compensation. Very high verdicts have been fueled by trial lawyers' increased use of psychology-based strategies, digital media advertising and litigation funding. Other drivers are jurors' attitudes to issues such as economic inequality and negative sentiment toward corporations. Other countries with common-law systems like Australia, Canada and the UK share some of the driving forces of social inflation as the US but are not as exposed to the same degree of runaway awards. Social inflation in those countries is largely linked to the expansion of mass tort.

Social inflation has caused significant underwriting losses and reduced capacity.

Social inflation is particularly disruptive for liability insurance because it is difficult to measure and predict, and disproportionately affects the longest-tail lines, which are more exposed to legal system developments. For instance, in part due to social inflation pressures, US liability lines exposed to bodily injury claims have seen profitability deteriorate over the last five years, with cumulative underwriting losses of USD 43 billion. In response, capacity available to businesses has declined significantly.

We expect social inflation in the US will continue, and see an expansion of litigation in Europe.

To date, social inflation has been mostly a US phenomenon. However, liability claims costs have risen above average rates of economic inflation in a few other key markets. We estimate that social inflation contributed around 10 percentage points (ppt) to claims growth in the UK in 2022, and 7 ppt in the cases of Canada and Australia, linked to spillover effects from US risks and the expansion of mass tort. Therefore, there is ambiguity in determining whether the driving forces are related to US trends or domestic liability trends. We expect social inflation in the US will continue for the foreseeable future, and that it will spread further internationally, particularly in Europe in the next 3 to 5 years. There, access to litigation funding is becoming easier, product liability reforms are expanding the scope of litigation and changes to collective redress rules will facilitate claims procedures. This is a potent combination that increases the potential for litigation. That said, we do not envisage individual court awards in other countries to be anywhere near the size of awards or settlements in the US.

Emerging litigation risks and current elevated levels of claims growth call for action.

We note also the emergence of new areas of litigation risk potential, including the use of "forever chemicals", obesity and algorithmic liability, among others. These could broaden liability claims in the years to come, in all jurisdictions. In our view, the elevated claims growth of today is unsustainable even with the tailwind of higher interest rates. Based on current trends, we estimate that the impact of social inflation will outweigh the benefit of higher interest rates on casualty lines in one to two years. Calls for action include tort reform, regulation of the use of third-party litigation funding, in particular around disclosure rules, risk mitigation at the corporate level and, in the insurance industry, use of new technology and data analytics to improve underwriting discipline and claims management, and more proactive preparation of defence cases.

# Key takeaways

## Defining social inflation

We define social inflation as the increasing severity of liability claims beyond that explained by economic factors. In recent years, changes in the legal landscape have contributed to liability costs rising faster than economic inflation and exposure growth.

### Concepts of economic inflation vs. social inflation

Economic inflation	Social inflation
A sustained increase in the price level of goods and services.	An increase in liability compensation costs beyond basic economic trends.
Price levels are measured based on the price of a typical basket of goods and services.	These include societal trends such as: <ul style="list-style-type: none"> <li>changing attitudes</li> <li>expanding concepts of liability</li> <li>a rising willingness to resolve conflict via the legal system</li> </ul>
<b>Insurance implications</b> Economic inflation includes sub-indices for specific sectors (such as healthcare) that are relevant for bodily injury claims. A related economic claims driver is wage inflation, which is relevant for loss of income compensation.	<b>Insurance implications</b> Higher defence costs, larger verdicts and a generally more plaintiff-friendly environment.

Source: Swiss Re Institute

## Drivers of social inflation

The US has been experiencing an increase in outsized awards in bodily injury cases. Driving factors include the trial bar’s use of psychology-based strategies and litigation funding, as well as jurors’ attitudes to issues like social injustice and negative sentiment toward corporations. Other countries like Australia, UK and Canada share some of the driving forces such as the expansion of mass tort, but are not as exposed to runaway awards. We expect social inflation to expand internationally, particularly in Europe driven by a potent combination of easier access to litigation, an expansion of collective redress and a broadening of the product liability landscape.

### Concepts of economic inflation vs. social inflation

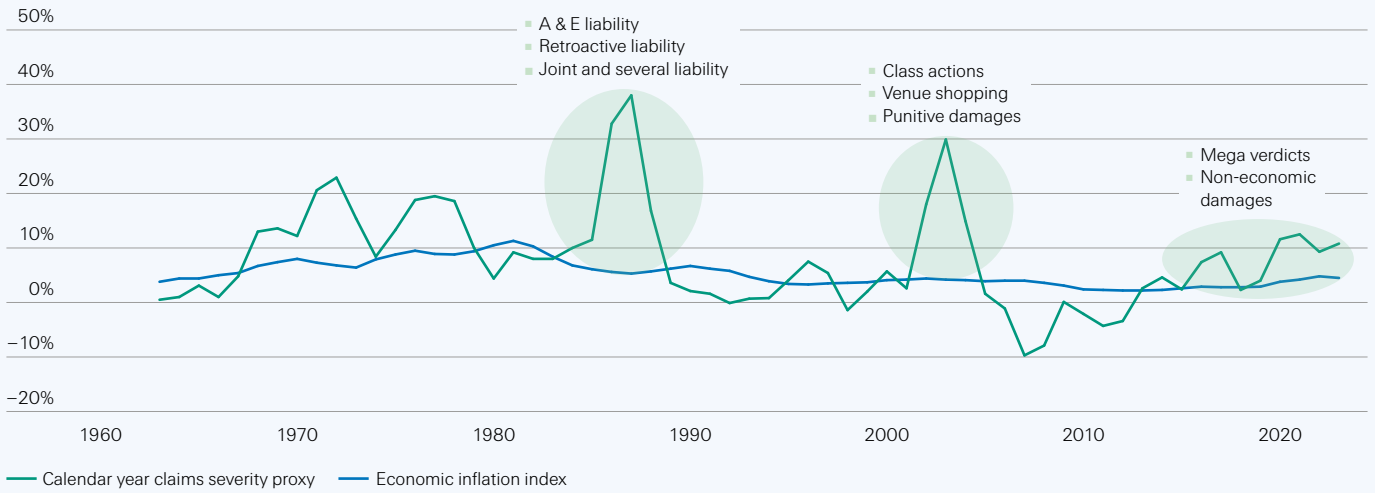
Category	Material law	Legal procedures	Norms & attitudes
<b>Key question</b>	<b>Who is liable for what?</b>	<b>How hard is it to win?</b>	<b>What is the value of a claim?</b>
<b>Examples</b>	<ul style="list-style-type: none"> <li>Environmental liability legislation</li> <li>Joint and several liability</li> <li>Collateral source rule</li> <li>Expansion of public nuisance</li> </ul>	<ul style="list-style-type: none"> <li>Expanding access to mass tort</li> <li>Changes to burden of proof</li> <li>Ease of forum shopping</li> <li>Assignment of benefits, Florida</li> <li>Litigation funding</li> </ul>	<ul style="list-style-type: none"> <li>Anchoring of non-economic damages</li> <li>Anti-corporate sentiment</li> <li>Views on restoring societal injustices</li> <li>Reptile-theory-based strategies</li> </ul>
<b>Regional relevance</b>	<ul style="list-style-type: none"> <li>US, 1980s</li> <li>EU environmental liability directive</li> <li>EU General Data Protection Regulation</li> <li>EU product liability directive</li> </ul>	<ul style="list-style-type: none"> <li>US, 2000s</li> <li>Australia, Canada, UK mass tort</li> <li>EU Representative Actions Directive</li> <li>EU product liability directive</li> </ul>	<ul style="list-style-type: none"> <li>US, current wave</li> </ul>

Source: Swiss Re Institute

## Changing nature of social inflation

Prior episodes of social inflation in the 1980s and 2000s were driven by material changes to tort law and an expansion of access to mass tort. The current episode of social inflation in the US starting in the mid- 2010s has been mostly caused by outsized awards in bodily injury cases.

Periods when US claims severity growth exceeded economic inflation, indicative of episodes of social inflation

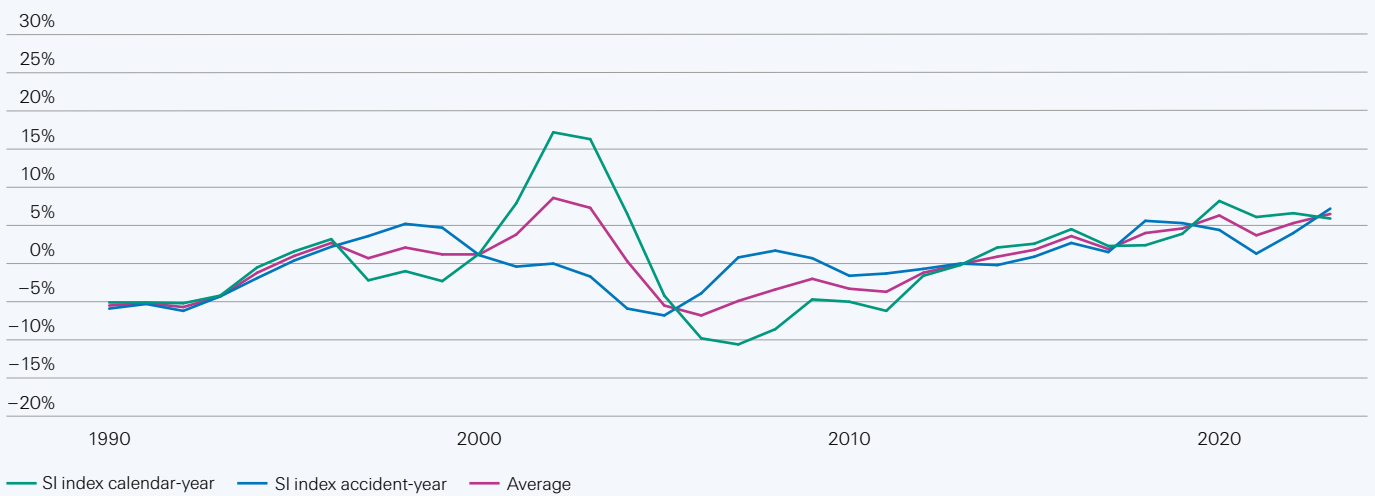


Source: Swiss Re Institute

## Measuring social inflation

We have constructed a “Social Inflation Index” by disentangling claims growth from other claims drivers such as economic inflation, exposure growth and frequency trends. Claims trends differ based on calendar- or accident-year data due to reserving. Both indices show more similar development since the mid-2010s and, since both views send a valid signal, we take the average for a single metric. Our US social inflation index shows values greater than zero since 2014, rising to around 7% by 2023. We thus estimate that social inflation contributed 7 ppt to liability claims growth in the US last year.

US social inflation index, accident-year and calendar-year, 1990–2023



Source: Swiss Re Institute

## Comparing liability trends internationally

To date, social inflation has been mostly a US phenomenon with claims growth far exceeding economic growth and CPI (“economic”) inflation, and accelerating since the mid-2010s. The US also has the largest liability risk pool by far, both in absolute and relative (GDP-adjusted) terms. US liability claims amounted to 0.36% of GDP in 2022. Over the five years to 2022, countries like the UK and Australia have also seen double-digit growth in liability claims, also in excess of economic inflation.

### General liability claims in USD, growth in local currency nominal terms, and as % of GDP

	Liability claims 2022 USD bn	CAGR 2012–2022 local currency	CAGR 2017–2022 local currency	Liability claims/GDP 2017	Liability claims/GDP 2022
<b>US</b>	92.3	7.9%	11.6%	0.27%	0.36%
<b>UK</b>	8.5	3.7%	11.1%	0.19%	0.27%
<b>Germany</b>	8.2	5.3%	5.8%	0.18%	0.20%
<b>Canada</b>	4.3	8.1%	11.0%	0.16%	0.20%
<b>France</b>	4.3	1.5%	4.5%	0.14%	0.16%
<b>Australia</b>	4.0	5.5%	6.3%	0.24%	0.23%
<b>Japan</b>	2.5	2.6%	4.3%	0.05%	0.06%
<b>Switzerland</b>	1.2	4.4%	1.4%	0.15%	0.14%

Source: Swiss Re Institute

The same patterns show in the social inflation indices. Australia, the UK and the US saw higher indices in 2017–2022 compared to the overall 10-year period, indicating that social inflation has worsened in recent years.

### Social inflation indices and comparison with economic inflation

	Social inflation		Economic inflation	
	2012–2022	2017–2022	2012–2022	2017–2022
<b>US</b>	3.8%	5.4%	3.1%	3.7%
<b>Canada</b>	n.a.	6.7%	2.3%	2.9%
<b>UK</b>	0.2%	4.5%	3.0%	3.8%
<b>Australia</b>	0.9%	4.1%	2.9%	2.8%
<b>Germany</b>	1.7%	1.7%	1.8%	3.3%
<b>Japan</b>	3.1%	3.6%	0.6%	0.4%

Note: social inflation shows a simple average of annual indices. Economic inflation is the weighted average of core CPI, healthcare and wage inflation based on strength of correlations with claims severity proxy. Source: Swiss Re Institute

## Future of social inflation

The US is expected to remain the epicentre of social inflation due to unique societal, economic and legal factors. However, other countries, such as Australia, Canada, the UK, and parts of continental Europe, show signs of potential liability claims growth driven by factors such as third-party litigation funding and expanded collective redress. Social inflation remains a concern globally for individuals, businesses and insurers alike.

### International comparison of future social inflation drivers

	US	Australia	UK	Canada	Netherlands	France	Germany	Japan
<b>Claims penetration</b>	H	M	H	M	L	M	M	L
<b>Income inequality</b>	H	M	M	M	L	M	M	M
<b>Third-party litigation funding</b>	H	H	H	M	H	M	M	L
<b>Contingency fees</b>	H	M	M	H	L	L	L	L
<b>Collective redress</b>	H	H	H	H	H	M	M	L
<b>Case law</b>	H	H	H	H	L	L	L	L
<b>Jury based</b>	H	L	L	L	L	L	L	L

High risk	Medium risk	Low risk
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Source: Swiss Re Institute

# Social inflation: understanding the phenomenon

Social inflation describes the increasing severity of liability insurance claims beyond that which can be explained by economic drivers. US liability claims costs have risen well above average rates of economic inflation since the mid-2010s. Previous episodes of social inflation in the US in the 1980s and 2000s were driven by material changes to tort law and an expansion of access to mass tort. The current episode has been mostly caused by oversized court compensation awards in bodily injury cases. Though by far not to the same degree, there has been an acceleration of rising claims beyond rates of economic inflation in other countries with common-law systems in recent years too.

## Cost pressures beyond economic inflation

Tort liability is expanding as result of economic, societal, and legal factors.

Demand for liability insurance has been growing rapidly in several major countries, with associated claims rising due to economic factors, societal trends and legal system costs. Economic factors such as medical expense inflation and rising wages explain only part of the increase. In recent years, changes in the legal landscape have also contributed to rising costs, exemplified by large verdicts in the US. The tort system has significantly broadened the potential scope and costs of liability. Alongside the broader scope of liability, more opportunities to assert claims, and social norms inflating the value of a claim, have made liability cover increasingly expensive for businesses and consumers.

Social inflation: the increased severity of insurance claims fuelled by non-economic drivers.

From the insurance industry perspective, we define social inflation as the increasing severity of liability insurance claims, beyond that which can be explained by economic drivers. In addition to insurance claims, social inflation affects society, encompassing jury verdicts and settlements. As a concept, it dates back to at least 1959 when, in an actuarial journal, F.S. Perryman asked whether rising loss costs and claim frequencies in automobile insurance could be attributed “to reasons which are not economic but social?”<sup>1</sup> Today, these “social” trends include jurors’ changing attitudes towards corporations, expanding concepts of liability, litigation funding, a rising willingness to settle conflict via the legal system, large defence costs, mega jury awards, broader interpretation of insurance policies and a more plaintiff-friendly environment.

**Table 1**  
Concepts of economic inflation vs. social inflation

Economic inflation	Social inflation
A sustained increase in the price level of goods and services.	An increase in liability compensation costs beyond basic economic trends.
Price levels are measured based on the price of a typical basket of goods and services.	These include societal trends such as: <ul style="list-style-type: none"> <li>■ changing attitudes</li> <li>■ expanding concepts of liability</li> <li>■ a rising willingness to resolve conflict via the legal system</li> </ul>
<b>Insurance implications</b> Economic inflation includes sub-indices for specific sectors (such as healthcare) that are relevant for bodily injury claims. A related economic claims driver is wage inflation, which is relevant for loss of income compensation.	<b>Insurance implications</b> Higher defence costs, larger verdicts and a generally more plaintiff-friendly environment.

Source: Swiss Re Institute

<sup>1</sup> Perryman, F. S. *Discussion of Compulsory Automobile Insurance in Europe*, in Proceedings of the Casualty Actuarial Society, vol. 46, 1959.

The recent goods-driven inflation surge has given way to more persistent price pressures in services.

In recent years, the US, UK and Australia have seen double-digit growth in average annual liability claims.

After 2021, the post-pandemic surge in economic inflation grabbed headlines, with personal lines insurers in particular facing higher claims costs. For example, the price of used cars in the US peaked at 45% year-on-year in June 2021 and auto repair inflation reached a high of 23% in January 2023. Both drove motor claims higher.<sup>2</sup> Construction costs also spiked, with sector inflation reaching 23% in the July 2022 producer price index, driving claims in property insurance higher across a range of lines of business. The inflation surge was initially goods-driven, with prices for services increasing more steadily. Since late 2022, this dynamic has flipped, with service prices rising faster than goods prices. Today, the prevailing trend is disinflation in goods inflation but service sector inflation is proving more stubborn. Wages and health care expenditures are key drivers of claims severity in lines such as general liability (GL) and commercial auto liability (CAL). Price rises for these types of services are not decelerating as quickly as goods prices, so liability lines are seeing greater claims cost pressures than property or motor lines. Industry data show net liability claims costs in the US rising much faster than the average rate of economic inflation (3.6%), in part reflecting the workings of social inflation.

To date, social inflation has been mostly a US phenomenon. The US has the largest liability risk pool in the world, in both absolute and relative (GDP-adjusted) terms, and it remains one of the fastest growing. US commercial casualty insurance losses grew by an average annual rate of 11% over the last five years, reaching USD 143 billion in 2023.<sup>3</sup> For point of reference, the casualty claims total was 33% more than last year's global insured losses from natural catastrophes (USD 108 billion). Excluding CAL to facilitate cross-country comparisons,<sup>4</sup> US liability claims amounted to 0.36% of GDP in 2022 (see Table 2). That said, over the five years to 2022, countries like the UK and Australia have also seen double-digit growth in liability claims, well in excess of economic inflation. Over the same period, the UK, and also Canada and Germany, have seen liability risk pools grow to sizeable proportion, with claims at 0.20%-plus of GDP in 2022. In Australia, liability claims been elevated for longer.

**Table 2**

General liability claims in USD, growth in local currency nominal terms, and as % of GDP

	Liability claims 2022 USD bn	CAGR 2012–2022 local currency	CAGR 2017–2022 local currency	Liability claims/GDP 2017	Liability claims/GDP 2022
<b>US</b>	92.3	7.9%	11.6%	0.27%	0.36%
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<b>Switzerland</b>	1.2	4.4%	1.4%	0.15%	0.14%

Note: general liability excludes motor liability. Source: Swiss Re Institute

There is a strong cyclical trend to US liability claims. The trend in other markets is less clear.

At first glance, the progression of the liability claims-to-GDP ratio gives indication of long-term trends in different countries (see Figure 1). There are also large cycles for some countries and short-term volatility, which points to some "noise" in the data, especially around the pandemic years. In the US, the ratio has been on a long-term upward trajectory, even when looking through the impact of COVID-19 (ie, comparing pre-2020 accident years and 2022/2023). In the UK, the long-run trend has been sideways, but with a jump up in recent years. Notable is a high correlation of the UK cycles with those in the US. In Canada, the long-run trend is also more sideways. In 2020, the claims/GDP

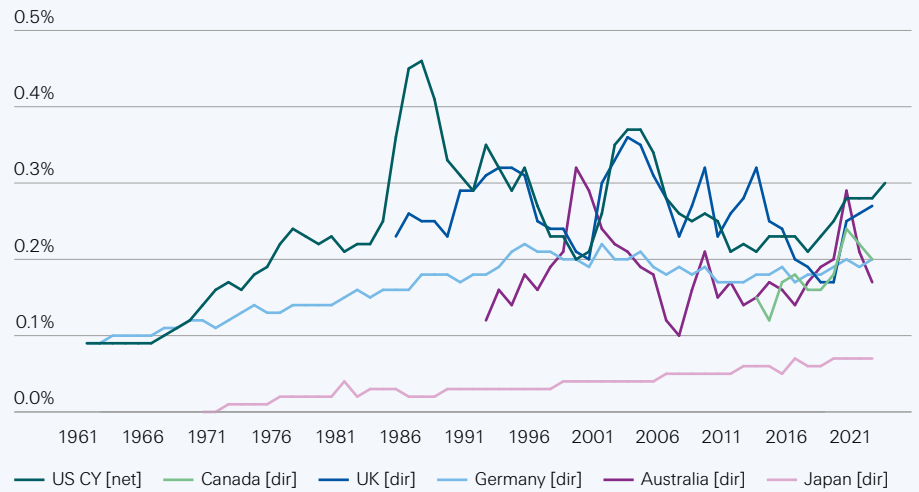
<sup>2</sup> Motor insurance: price rises to decelerate from current heights as claims inflation eases, Swiss Re Institute, 30 April 2024.

<sup>3</sup> Our series of US liability claims includes loss adjustment expenses (roughly 20–25% of the total in recent years) and comprises the statutory lines (other liability, products liability, medical professional liability and commercial auto liability). It does not include the liability portion of commercial multiple peril or private passenger auto liability.

<sup>4</sup> Social inflation pressures in commercial auto liability insurance is relatively unique to the US, hence the exclusion.

ratio spiked notably in Australia, Canada and the UK. This was likely in part due COVID-19 related reserving and a subsequent drop in reserves in the following two years, which obfuscates any underlying cyclical signal. In countries with common-law systems, there has been an uptrend since the mid-2010s. In Germany and Japan, the ratio has trended up more steadily, with less volatility over time.

**Figure 1**  
Liability claims as a % of GDP,  
international comparison



Source: Swiss Re Institute

The 1980s US liability crisis was the first wave of social inflation.

Social inflation arises from changes in the legal and social environment. Such change can occur in phases and thus cause cycles in liability claims growth. The US liability crisis of the mid-1980s was the first significant wave of runaway social inflation. It was caused by changes to legislation and case law that significantly expanded the scope of tort liability. Corporations and their insurers were retroactively held liable for environmental damage and huge asbestos-related claims.<sup>5</sup> High (unexpected) economic inflation in the US in the early 1980s also contributed to rising liability losses. The market was eventually partially brought back into balance by tort reform measures intended to slow rapidly rising liability costs and a re-underwriting of asbestos and environmental risks.<sup>6,7</sup> A subsequent focus on insurability and alternative risk transfer restored market balance.<sup>8</sup>

The late 1990s saw a second wave with an expansion of class action suits in the US.

In the late 1990s, a surge in class action lawsuits drove a second wave of social inflation in the US, with claims accelerating faster than in other countries, especially for product, professional liability and medical malpractice insurance. The US legal system widened the scope of liability by easing access to mass tort claims via case law. As in the first wave, many of the court trials also dealt with asbestos. The plaintiffs' bar had succeeded in widening the range of claimants including people with little or no current disability, and also widened the scope of defendants, moving beyond manufacturers or producers of asbestos and also to firms that used the material.<sup>9</sup> Federal tort reform measures governing class action suits and state-level caps imposed on non-economic awards and lawyer compensation brought the market back into balance. At around the same time, sharply rising medical malpractice claims led to a coverage crisis for medical providers. Tort reform at state level that limited non-economic damages and thus lowered medical malpractice costs for insurers and insureds (ie, physicians) helped restore market balance.<sup>10</sup>

<sup>5</sup> R. A. Winter, *The liability crisis and the dynamics of competitive insurance markets*. Yale Journal on Regulation, vol. 5, 1988. G. L. Priest, *The current insurance crisis and modern tort law*. Yale Law Journal, vol. 96, 1986.

<sup>6</sup> Reforms included modifications to joint and several liability (which allows an injured plaintiff to collect the entire award from one defendant regardless of the defendant's assigned percentage of fault), caps on non-economic damages and punitive damages, and limits on liability awards.

<sup>7</sup> W. K. Viscusi, et al. *The effect of 1980s tort reform legislation on general liability and medical malpractice insurance*, Journal of Risk and Uncertainty, vol. 6, 1993.

<sup>8</sup> We define market balance as insurers earning cost of capital, and capacity growing in line with market activity.

<sup>9</sup> *sigma* 6/2004: The economics of liability losses - insuring a moving target, Swiss Re.

<sup>10</sup> K.E. Thorpe, *The Medical Malpractice 'Crisis': Recent Trends And The Impact Of State Tort Reforms*, Health Affairs, vol 23, 2004.



The current and third wave of social inflation in the US is mostly driven by large verdicts and non-economic damages.

The current wave of social inflation in the US is characterised by a rising frequency of large single-claimant events, often based on ballooning non-economic damages.<sup>11</sup> These outsized verdicts centre around personal injury cases, allowing for non-economic damages (pain, suffering, emotional distress, etc.) for which there are no objective standards to assess potential awards. Bodily injury cases in particular can strike an emotional chord with juries. The pandemic and associated court closures created some distortion in 2020, but the upward trend has resumed since. The experience of mega awards that surpass USD 10 million (often referred to as “nuclear verdicts”) is primarily a US phenomenon. However, with an expansion of the scope of mass tort, markets will likely become more vulnerable to social inflation pressures also.<sup>12</sup>

<sup>11</sup> *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, US Chamber of Commerce Institute for Legal Reform, 2024.

<sup>12</sup> *The Rise of US-Style Class Actions in the UK and Europe*, Jones Day, October 2023.

# Quantifying social inflation in the US

To disentangle social inflation from other claims drivers such as economic inflation, exposure growth and frequency trends, we have constructed a “Social Inflation Index”. On this basis, we estimate that social inflation drove around 7% of the claims growth in US liability insurance in 2023. This is driven by factors such as the trial bar increasingly using psychology-based strategies, data analytics, digital media advertising and litigation funding. Other factors relate to jurors’ attitudes to issues like social injustice and negative sentiment toward corporations.

## The Social Inflation Index

The social inflation index is the residual between...

Social inflation has been primarily a US phenomenon, in everyday life and for the insurance industry. From the industry perspective, we define social inflation as the difference between claims severity<sup>13</sup> growth and claims inflation that has been driven by economic factors.

**Social inflation = claims severity growth – economic inflation**

... claims severity...

To develop a proxy for claims severity, we subtract real gross domestic product (GDP) growth from claims growth in order to remove the impact of growing economic activity on exposure growth. More economic activity implies more companies, more workers, more vehicles etc. leading to more accidents or other harmful actions. We also subtract actuarial assumptions for claims frequency. Claims frequency is defined as the number of claims relative to the number of policies. Changes in claims frequency will affect claims growth irrespective of claims severity and therefore needs to be corrected for.<sup>14</sup>

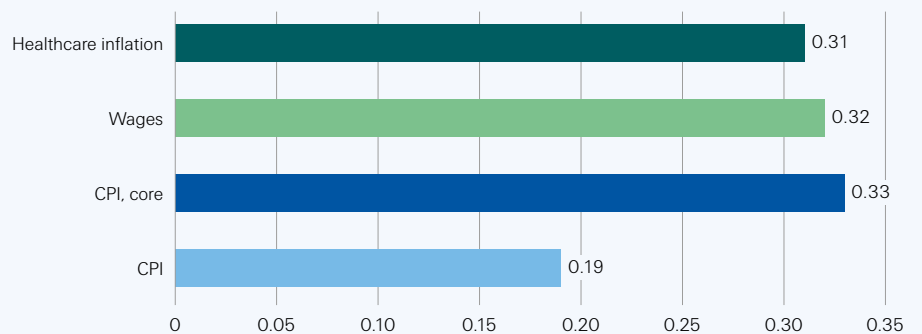
...and economic inflation.

**Claims severity = claims growth – exposure growth – frequency changes**

For the economic-driven inflation component of the social inflation equation, we choose macroeconomic cost claims drivers with the highest correlation to liability claims severity, and calculate a weighted average of the claims variables that reflects the respective strength of correlation. All variables are analysed as 3-year moving averages to reduce random noise from accounting data and to reflect the average lags between economic data and average claims settlement. Figure 2 shows the long-term correlations between US liability claims severity and services inflation factors: 0.31 for healthcare expenditure, 0.32 for wage inflation, and 0.33 for core CPI. We use core CPI<sup>15</sup> because the correlation of claims severity to the broader, more volatile headline CPI is weaker (0.19).

**Figure 2**

Correlations between US liability claims severity and macro variables, 3-year averages, 1963–2023



Source: Standard & Poor’s, Macrobond, Swiss Re Institute

<sup>13</sup> Defined as the average size of claims.

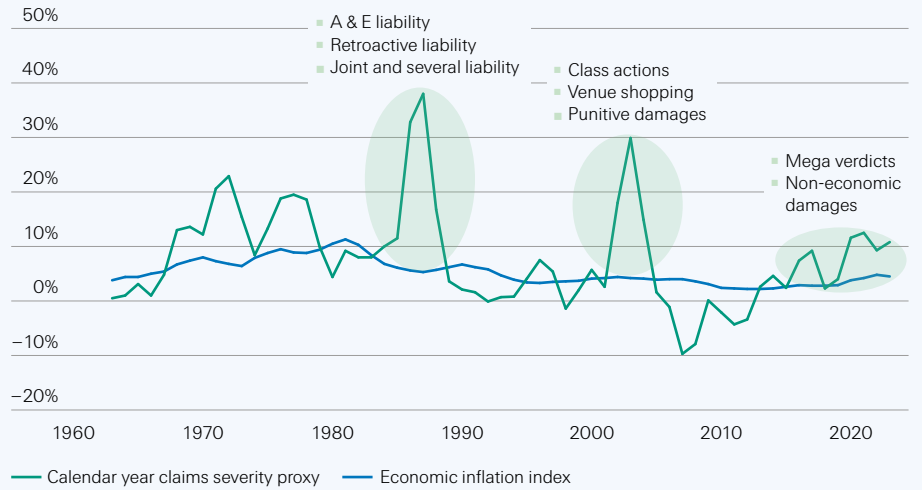
<sup>14</sup> There is a long-term declining trend in claims frequency in general liability and medical malpractice. Claims frequency in commercial auto has been trending up since 2021 according to Verisk data.

<sup>15</sup> Core inflation excludes food and energy prices, which are not only more volatile but are also not typically drivers of tort liability claims.

Growth in claims severity has exceeded economic inflation, suggesting the existence of non-economic drivers.

After estimating claims severity and the weighted average of economic inflation drivers, we can derive an estimate of social inflation. In the US, 3-year average growth in claims severity has exceeded economic inflation metrics since 2014 (see Figure 3). This implies that other, non-economic factors, have played a large role in driving liability claims severity. We consider this residual to be social inflation.

**Figure 3**  
US claims severity proxy and economic inflation metrics

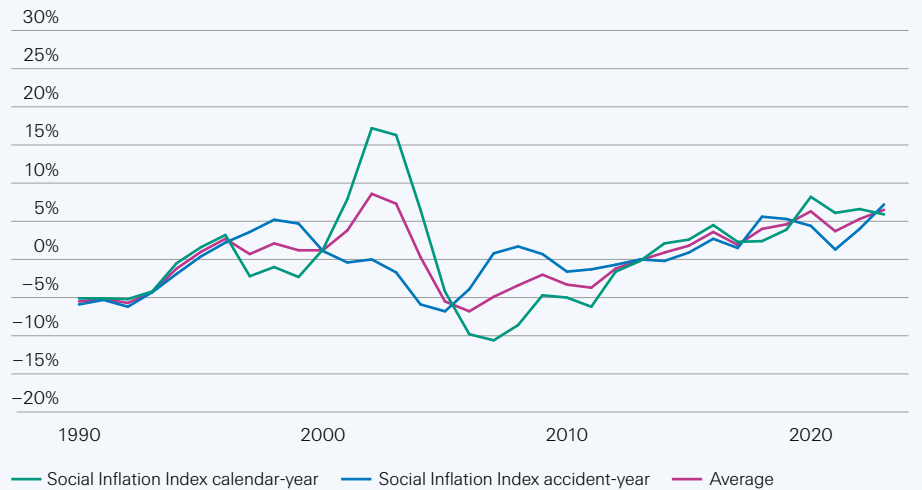


Note: Showing are the smoothed (three-year averages) trends in US claims severity alongside the weighted average of healthcare, wage and core CPI inflation.  
Source: AM Best, Macrobond, Swiss Re Institute

We estimate that social inflation has driven 7% of claims growth in the US by 2023.

Claims trends differ based on calendar- or accident-year data due to reserving. The calendar-year based index shows more extreme swings in the period pre-2010. This can be attributed to the reserving cycle of the late 1990s soft market and the subsequent reserves additions during the early 2000s. Both indices show more similar development since the mid-2010s and as both views send a valid signal, we take the average for a single metric. As Figure 4 shows, our Social Inflation Index for the US shows values greater than zero since 2014, rising to around 7% by 2023. In other words, we estimate that social inflation contributed around 7 ppt of liability claims growth in the US last year. The continuing uptrend since then gives indication of the increasing impact that social inflation is having on claims costs.

**Figure 4**  
US Social Inflation Index, accident-year and calendar-year, 1990–2023



Source: Swiss Re Institute

Third-party research supports the findings of our index analysis.

A review of other research on US liability claims supports the conclusions drawn from our index analysis. For example, research on US motor vehicle personal accident claims using a hedonic model – which compares cases with similar accident profiles – also shows a widening gap to modelled economic inflation values since 2015.<sup>16</sup> A recent study by Rand analysing personal injury and wrongful death trial awards finds that inflation-adjusted awards per plaintiff tended to fall prior to 2014, but have risen by a compound annual growth rate (CAGR) of 8% since then.<sup>17</sup>

### Mostly a US societal trends phenomenon

The US is by far the most susceptible to social inflation.

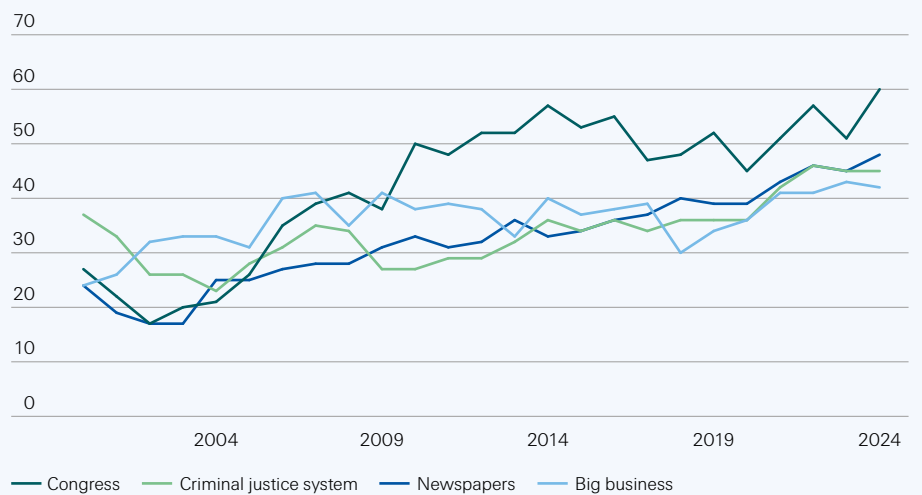
To date, social inflation and its drivers have been most evident in the context of societal trends in the US. The drivers are many, and include:

- social sentiment
- changing jury attitudes
- an expansion of legal concepts
- lawyers’ use of psychology-driven strategies in court
- growth of litigation funding
- technology and data analytics
- (aggressive) advertising by attorney

Public trust in institutions is declining across many of society’s institutions.

**Social sentiment:** Public trust in institutions has been on a down trend for many decades in the US (see Figure 5) and also in other countries. Growing scepticism and loss of confidence spans various societal pillars including government, the judiciary, media and business. About 61% of US adults feel there is too much economic inequality,<sup>18</sup> of which 62% say large businesses and corporations should be held accountable for a wide range of issues, from environmental damage to product defects. In line with this sentiment, there is evidence linking economic inequality with higher jury awards.<sup>19</sup> Furthermore, consolidation in several industries like real estate, trucking and medical providers has created larger companies that can be targets for the sophisticated and well-funded plaintiffs’ bar.<sup>20</sup>

**Figure 5**  
Gallup polls: negative trust in US institutions



Percent of survey respondents who indicated that their confidence in institutions was “very little” or “none”. Source: Gallup

<sup>16</sup> S. Oh, *Social inflation*, 2022.  
<sup>17</sup> *What Is the Evidence for Social Inflation? Trends in Trial Awards and Insurance Claim Payments*, Rand Corporation, 2024.  
<sup>18</sup> J. M. Horowitz, R. Igielnik, R. Kochhar, *Most Americans Say There Is Too Much Economic Inequality in the US, but Fewer Than Half Call It a Top Priority*, Pew Research Center, 9 January 2020.  
<sup>19</sup> *Quantifying social inflation - jury awards, income inequality and the Bronx Jury Hypothesis*, Gen Re, 24 September 2020.  
<sup>20</sup> A. Klauber, F. Diamond, S. Hirsch, *P&C Industry Facing Structural Change in Casualty Severity*, June 2024.

Jurors have become more sympathetic towards large awards.

**Changing jury attitudes:** In recent years, juries have been awarding larger sums in tort cases, especially for non-economic damages. This trend has been driven by the belief that large corporations can afford substantial payouts and that the legal system should correct social injustices, including a redistribution of wealth. Younger generations are generally more sceptical of corporate ethics. Surveys reveal the heightened sensitivity of jury decisions to jurors' changing attitudes. For example, in a survey carried out by Swiss Re in the US last year, 82% of respondents said they believe that damages awarded in lawsuits are "just right" or "too low" (see *Attitudes to litigation*). This points to a strong likelihood that juries will continue to award higher compensation amounts for non-economic damages.<sup>21</sup> Another survey finds evidence of a near doubling of anti-corporate sentiment from 27% pre-pandemic to 45% post pandemic.<sup>22</sup> In addition, 77% of jurors believe in the use of punitive damages to "punish" a corporation.<sup>23</sup> Jurors, especially those from younger generations, typically read digital media for news. This can carry an inherent bias toward more attention-grabbing headlines around lifestyles and events, which in turn can influence jurors' unconscious bias when determining damage awards.

A vast majority of people believe corporations put profit over public safety, according to a Swiss Re survey.

### Attitudes toward litigation

In line with other polls on social inflation, a 2023 Swiss Re behavioural economics survey of 1 000 respondents confirmed low trust in corporations. Eighty-seven percent of respondents either agreed or strongly agreed that corporations will choose profit over public safety (see Figure 6). There is also a tendency to blame corporations for accidents, even when the firms are not the direct cause. About 44% of respondents agreed or strongly agreed that firms should pay medical compensation to an individual in the case of an accident occurring on company premises, even if the firm itself did not cause the harm suffered.

Almost three quarter of persons say corporations should pay punitive damages.

Attitudes toward the legal system appear to have shifted too. In 2016, a third-party survey found that 90% of participants agreed that too many lawsuits filed in the US.<sup>24</sup> In Swiss Re's 2023 survey, only 59% thought so. Even more striking, the ratio of respondents believing that damages awarded in lawsuits are too high decreased from 42% in 2016 to 18% in 2023. And willingness to punish through punitive damages remains elevated, with 71% of respondents to our survey agreeing that punitive damages against companies are the best way to deter wrongdoing.

Younger generations have become more plaintiff-friendly.

Our survey further found that the behavioural drivers of social inflation were pervasive across demographics and geographies. Younger generations exhibit more plaintiff-friendly attitudes than older persons, a signal of the impact jury composition can have. The types of companies targeted were wide-ranging too: large corporations are not the only target. While respondents were more likely to cast blame and seek to sue in a fictitious slip and fall case involving a large company, responses to questions about the same scenario in the case of a local business were not much different. This suggests that small and mid-sized firms are not immune to social inflation pressures.

<sup>21</sup> *The State of US Liability Reinsurance*, Swiss Re, 12 September 2023.

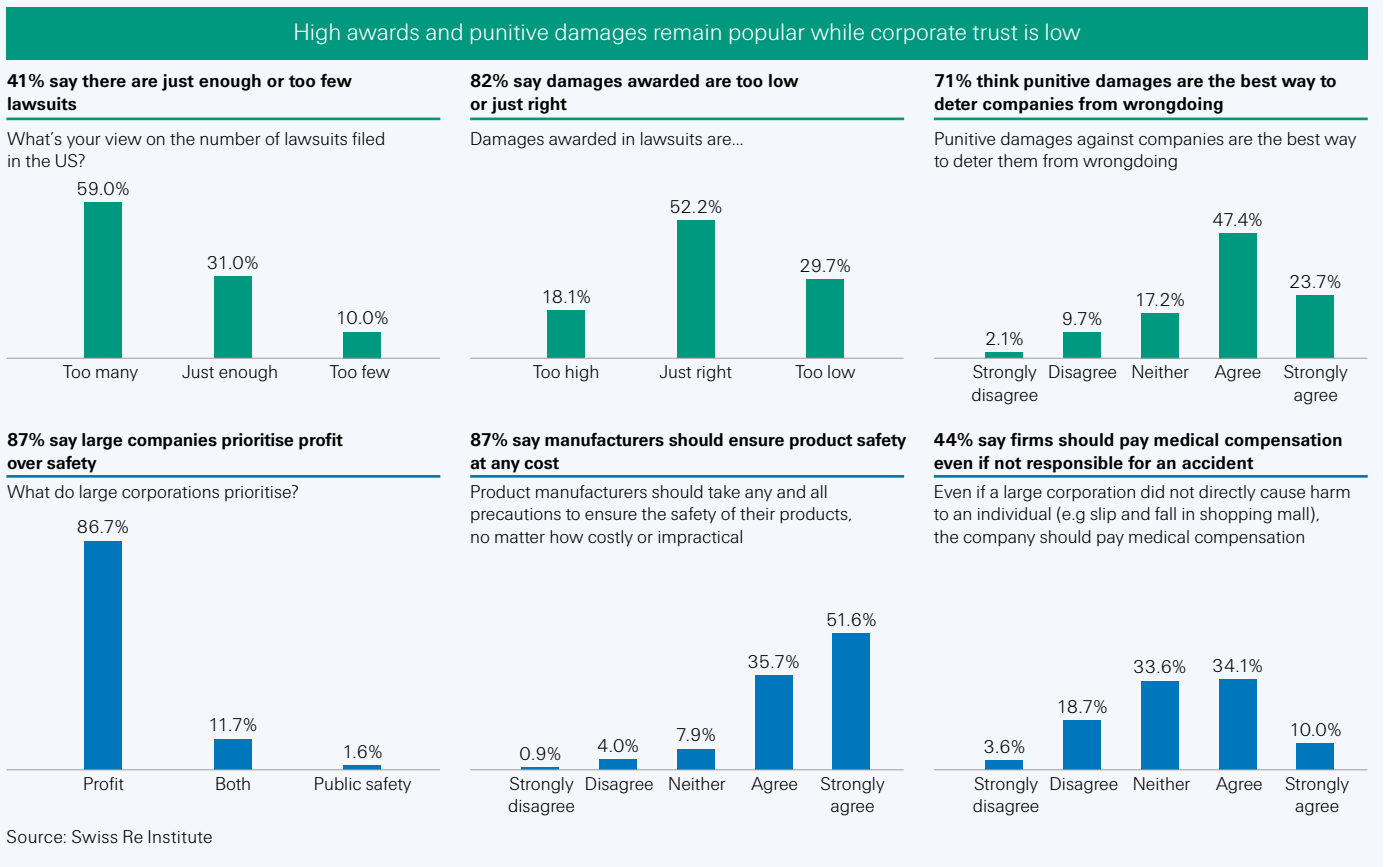
<sup>22</sup> *Jury Attitudes in a Polarized Society: Understanding Today's Jurors for Trial Strategy and Beyond*, Orrick, Herrington & Sutcliffe LLP, November 2023.

<sup>23</sup> *Ibid.*

<sup>24</sup> *National Juror Attitude Survey: General attitudes towards lawsuits*, Decision Quest, 2018.

**Figure 6**

Findings of Swiss Re’s survey of attitude to social inflation



New thinking, such as on environmental liability and admissibility of mass tort, fuel cycles of social inflation.

**An expansion of legal concepts:** Past cycles of social inflation in the US have been largely driven by expanding legal concepts relating to environmental liability, and the scope and admissibility of mass tort claims and mass tort evidence. For example, courts in Florida have long allowed insureds to assign their post-loss rights to make claims under insurance policies to third-parties such as roofers and other contractors, without insurer consent. An expansion of the assignment of benefits (AOB) concept from health to property insurance created a surge of property claims that ultimately led to tort reform including the elimination of AOB,<sup>25</sup> in an attempt to stem fast-rising claims costs and premiums. More recently, US courts have expanded the concept of what constitutes a viable liability claim, making it easier for plaintiffs to sue. For instance, in some cases courts have upheld public nuisance claims against pharmaceutical manufacturers that have produced therapies which were shown to have adverse side effects and damage public health.<sup>26</sup> In a casualty context, plaintiffs in public nuisance claims tend to have a lower hurdle to prove liability and causation. Since gaining significant traction in the space of opioid litigation around 2019,<sup>27</sup> public nuisance has been applied in other areas of emerging tort liability (see *Public nuisance, US*).

<sup>25</sup> Florida Senate Bill 2-A prohibits policyholders from assigning post-loss benefits of residential or commercial property insurance contracts issued or renewed on or after 1 January 2023.

<sup>26</sup> L. Kendrick, *The Perils and Promise of Public Nuisance*, Yale Law Journal vol. 132, 2022.

<sup>27</sup> One of the landmark cases in this context was the case of Oklahoma v. Johnson & Johnson, decided in August 2019.

Public nuisance first entered the scope of tort liability through the tobacco litigation.

Public nuisance later expanded its use in the opioid litigation.

### Public nuisance, US

Expansion of public nuisance from a property to a casualty cause of action has been a growing concern for insurers. The remedy of public nuisance was originally designed to prevent interference with public land and water rights. Among other cases, the concept was asserted in the historic tobacco litigation that cemented strong priming for later adoption in the opioid complex. While property insurers have long raised concerns about “public insurance”, today casualty insurers face the prospect of acceptance of public nuisance as a cause of action. Such acceptance would increase exposures across an array of casualty issues and heighten the concept of public insurance.<sup>28</sup>

The transfer of public nuisance to the casualty arena has largely come about due to opioid litigation. By the time the opioid multi-district litigation (MDL) was filed in 2017, it seemed clear that plaintiff entities or individual claimants would find it difficult to attribute causality of damages. Because no such proof was likely possible in the opioid case, litigation gravitated to a public nuisance theory. The acceptance of public nuisance in the opioid cases opened the door for more general acceptance of public nuisance as a cause of action in casualty cases. As a result, the opioid complex activated a progression of public nuisance cases for numerous casualty scenarios. We now see the theory advanced across a wide range of casualty litigation: gun manufacturer liability, vaping, climate change, COVID-19 and others.<sup>29</sup>

Plaintiffs’ lawyers successfully pursue strategies based on negative emotions.

**Use of psychology-based strategies at the trial bar:** Over the last decade, plaintiffs’ lawyers have made significant changes in how they try lawsuits, deploying applied psychology to jury trials and testing their strategies with mock juries. To increase the odds that jury decisions are based more on emotion than fact, tactics have shifted from one of developing sympathy with the victim to stirring anger against the defendant. This is called the “reptile theory”, a concept first mentioned in 2009.<sup>30</sup> Plaintiffs’ attorneys often generate very strong feelings by portraying a corporate defendant as reckless, neglectful of safety concerns and only caring about profits. Another strategy is the “anchoring effect”.<sup>31</sup> Jurors tend to anchor their awards around suggested numbers. Lawyers demand large compensation numbers early on in a trial, and repeatedly. The reptile and anchoring effect strategies have been key factors in the success of lawyers securing outsized awards, mostly for non-economic damages.

Third-party litigation funding enables larger and longer trials.

**Third-party litigation funding (TPLF)** is the process through which commercial or consumer litigants and law firms can finance their case and other legal costs with the help of a third-party investor. Litigation funders back claims in many areas relevant to insurers such as trucking accidents, product liability mass tort, and bodily injury and medical liability claims.<sup>32</sup> TPLF is correlated with higher awards, longer cases and greater legal expense. Litigation funding is also inefficient as more than half of the awards remain within the professional litigation industry.<sup>33</sup> Additional capital also leads to more legal advertising by plaintiffs’ lawyers, further fuelling the growth of mass torts.

The rapid growth of litigation funding is expected to be sustained based on high returns for professional investors.

The US litigation funding market grew by 44% between 2019 and 2022,<sup>34</sup> driven by both supply and demand considerations. Supply is fuelled by 1) an attractive risk/reward profile; 2) the relatively uncorrelated nature of returns with macroeconomic trends; and 3) a feedback loop due to increased visibility that has the effect of drawing in additional capital. Meanwhile, demand is driven by 1) targeted advertising to consumers; 2) increased corporate acceptance of financing as a tool for monetising legal claims and managing legal risk (including accounting benefits); and 3) increased use of TPLF as

<sup>28</sup> *Trend Spotlight: Public Nuisance: More than a nuisance for casualty insurers*, Swiss Re, 2021.

<sup>29</sup> L.S. Mullenix, *Public Nuisance: The New Mass Tort Frontier*, Cambridge University Press, 2023.

<sup>30</sup> *What attorneys should know about Reptile Theory*, Thomson Reuters, 19 September 2022.

<sup>31</sup> P. Bystranowski et al, *Anchoring effect in legal decision-making: A meta-analysis*, *Law and Human Behavior* 45, vol. 1, 2021.

<sup>32</sup> *What is third-party litigation funding and how does it affect insurance pricing and affordability?*, Insurance Information Institute, 2022.

<sup>33</sup> *US litigation funding and social inflation: The rising costs of legal liability*, Swiss Re, 9 December 2021.

<sup>34</sup> *The Westfleet Insider: 2022 Litigation Finance Market Report*, Westfleet Advisors, 2022. The most recent 2023 Westfleet report changed the methodology for calculating AUM, making comparisons with earlier years more difficult.

working capital by law firms. The litigation funding industry is projected to continue to grow quickly, by an average 8.7% CAGR between 2020 and 2028.<sup>35</sup>

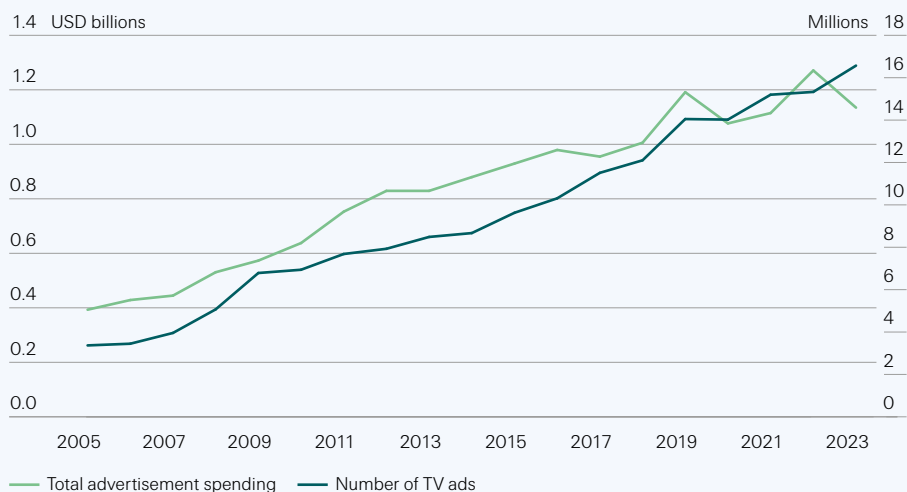
TPLF firms are using advanced data and analytics to select promising cases.

**Technology and data analytics:** Attorneys are increasingly leveraging technology and data analytics in their approach to claims. They can access public records of prospective jurors and expert witnesses, including marital, arrest and data on property ownership. Social media is a source of information for the religious and political party affiliations of prospective jurors. Law firms can also use legal data and analytics for intelligence on judges, parties and opposing counsel. Predictive analytics are used for case assessment and determination of legal strategies. Research has found that 69% of legal professionals at law firms used legal analytics in 2023, up from 61% in 2021.<sup>36</sup> TPLF firms are also increasingly using state-of-the-art data analytics to identify and evaluate funding opportunities.<sup>37</sup> With limited transparency about case details and settlement values, there is value in the size of proprietary data sets, creating economies of scale.

Attorney advertising is highly successful in generating volume for mass tort litigation.

**Attorney advertising:** US attorneys are spending more on advertising. The rise can be seen in the growing presence of personal injury advertising on the internet, TV, radio and in other communications media like billboards and on the sides of buses. Over the last 10 years, spending on legal advertising increased by 34% to nearly USD 1.2 billion in 2023, and the number of adverts for legal services nearly doubled.<sup>38</sup> Attorneys are also using digital media to advertise. Reportedly, the prices per click paid by law firms for online advertising are the highest paid by any advertiser.<sup>39</sup>

**Figure 7**  
Legal advertisements and spending on TV



Source: X-Ante Legal Services Ad Trends

<sup>35</sup> *Global Litigation Funding Market, 2017–2028*, Research Nester, 2021.

<sup>36</sup> *Legal Analytics Survey Results 2023*, Lex Machina, 2023.

<sup>37</sup> *What are the Chances?: The Predictive Analytics behind Third-Party Litigation Funding in Investment Arbitration*, Uppsala University, 2022.

<sup>38</sup> Source: X Ante LLC using vivvix CMAG data, Swiss Re.

<sup>39</sup> *The Most Expensive Keywords For 2022*, pcchero.com, 7 March 2022.



## Impact on verdicts, and insurance implications

The awarding of “mega” verdicts was temporarily paused by the pandemic.

Even so, the share of verdicts larger than USD 50 million quadrupled since 2010.

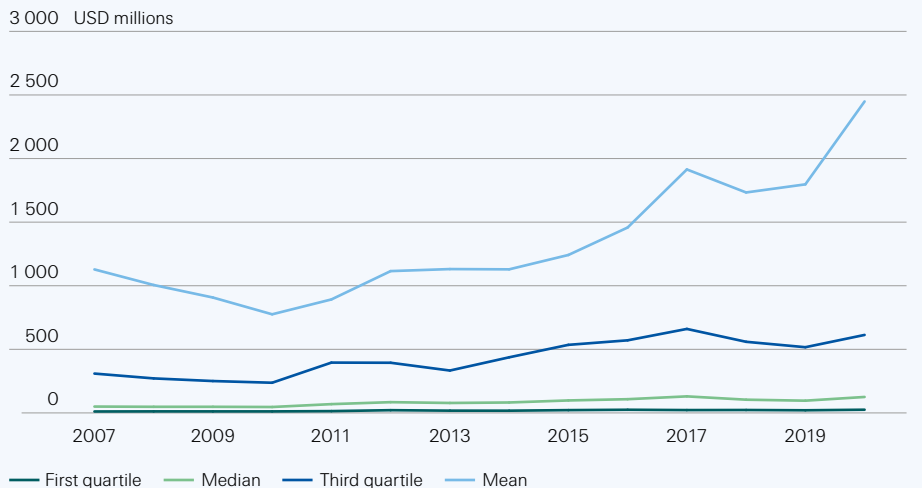
Median verdicts are increasing but not by as much as the largest awards.

As a result of the above-mentioned trends, trial verdicts in the US have been rising. Verdict data must be interpreted with caution and for this reason, we have reviewed several sources.<sup>40</sup> Each confirms that claims costs are increasing, other than during a short period of slowdown in the pandemic. The number of mega verdicts has nearly tripled since 2020 and in 2023.<sup>41</sup> Corporate defendants reportedly faced USD 14.5 billion in mega verdicts last year. The median mega verdict rose to USD 44 million in 2023, more than double from USD 21 million in 2020. Last year, 89 lawsuits resulted in verdicts of more than USD 10 million (a 15-year high), and 27 cases of verdicts exceeding USD 100 million.<sup>42</sup>

California and Florida are near equal for generating the highest number of mega verdicts, followed by New York and Texas. Courts in these four states consistently produce half of the US’ mega verdicts, while accounting for roughly one-third of the population.<sup>43</sup> Further, the percentage of bodily injury and wrongful death trial awards exceeding USD 50 million per plaintiff in the US roughly quadrupled between 2010 and 2019.<sup>44</sup>

An analysis of bodily injury verdict data as in Figure 8 indicates a shift of both the median and the fat-tailed nature (kurtosis)<sup>45</sup> of the claims distribution, with verdicts growing fastest at the upper end of the distribution. The figure shows the mean, median and quartiles of bodily injury jury verdicts between 2007 and 2020, adjusted for CPI inflation. It points to an increase in median awards but also to an even larger increase in the upper tail of the distribution – reflected in the stronger growth of the mean. The real growth of the mean (14.5% CAGR) exceeded the growth of the median (5%) between 2015 and 2020. Approximate metrics of kurtosis increased strongly during that time.<sup>46</sup> This data is consistent with the observation that it is the growth in very large jury verdicts in particular that has driven social inflation.

**Figure 8**  
Mean, median and quartiles of personal injury verdicts in 2020



Note: data exclude punitive damages.  
Source: Insurance Information Institute, Thomson Reuters, misc. editions of *Current Award Trends in Personal Injury*, Jury Verdict Research, Swiss Re Institute

<sup>40</sup> Cases tried to verdict are not representative of all claims filed (many are settled before reaching trial), the mix of cases varies by year, and jury awards can be reduced after verdict by trial or appellate court action, or by settlement. See *Trends in Civil Jury Verdicts: New Data from 15 Jurisdictions*, Rand, 1996.  
<sup>41</sup> *Corporate verdicts go thermonuclear*, Marathon Strategies, 2024.  
<sup>42</sup> Ibid.  
<sup>43</sup> *Nuclear Verdicts An Update on Trends, Causes, and Solutions*, US Chamber of Commerce Institute for Legal Reform, May 2024.  
<sup>44</sup> Inflation-adjusted to 2019 dollars. Source: Rand op. cit.  
<sup>45</sup> Kurtosis describes how much of a probability distribution falls in the tails instead of its centre. The focus here is on the relative occurrence of large claims compared to the normal distribution (bell curve) of a typical random variable.  
<sup>46</sup> The ratio of mean to median increased from 12.7 to 19.7 between 2015 and 2020. The ratio of mean to 3<sup>rd</sup> quartile increased from 2.3 to 4.0. Both metrics indicate the increase of relatively larger values in the upper tail of the distribution.

Claims distribution becomes more fat-tailed and therefore more difficult to insure.

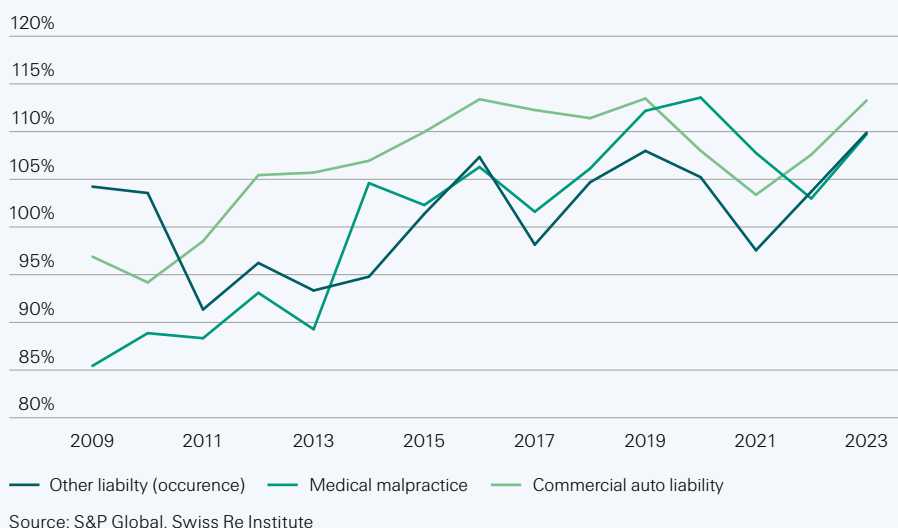
The combination of adverse trends has resulted in underwriting losses.

Insurance claims severity also rose for low-limit standard policies. The inflation-adjusted severity of commercial insurance bodily injury claims rose by a CAGR of around 3.8% between 2014 and 2019. Severity appears to have increased at faster rates for higher-limit policies in several market segments.<sup>47</sup> The recent escalation of claims appears to shift both the median and the kurtosis of the claims distribution. We see a larger frequency of large verdicts. The shift in the average affects profitability and requires premium rates to follow/anticipate the claims trends.

**Insurance implications: underwriting losses and adverse reserves development**

The drivers of social inflation have come together to create a perfect storm in today’s liability market. Outcomes include high combined ratios and accumulation of adverse reserve development across several underwriting years. Rate increases have not compensated for rising loss costs. The five-year average (2019–2023) direct combined ratios (via exposure to bodily injury claims) have been 105% for other liability occurrence, 109% for commercial auto liability, and 106% for medical malpractice (see Figure 9). Cumulative underwriting losses for these three lines over the same period were USD 43 billion.

**Figure 9**  
Direct combined ratios



Social inflation impact reflects in adverse reserves development, which further weakens result outcomes.

Actuaries rely on historical development patterns to estimate future liabilities. Insurers base claims reserving on assumptions with respect to both economic and social inflation. When either trend increases unexpectedly, estimating future and existing liabilities becomes more difficult. In this situation, insurers tend to add reserves for legacy liabilities and push for rate increases to cover future liabilities. According to a study sponsored by the Casualty Actuarial Society and Insurance Information Institute,<sup>48</sup> social inflation accounted for USD 30 billion in extra commercial auto liability claims between 2010 and 2021.<sup>49</sup> This increase happened during a period without significant economic inflation shocks. Based on an actuarial analysis of development factors for paid claims – which include fewer subjective factors than incurred loss estimates – claims costs increased faster than would be expected. In the 10 accident years since 2013, there was adverse reserve development in GL in eight of the 10 years, and in CAL, nine of those years (see Figure 10).<sup>50</sup> For accident years 2013–2022, total adverse development in GL amounted to USD 13 billion, and USD 17 billion in CAL. Loss ratios for several accident years have risen by more than 10 ppt as a result. On a calendar-year net basis, US insurers revised up liability loss estimates by US 10 billion in 2023.<sup>51</sup>

<sup>47</sup> GL policies that typically have USD 1 million/USD 2 million limits and personal auto policies with limits that do not exceed USD100,000/USD300,000. Source: Rand, op. cit.

<sup>48</sup> J. Lynch, D. Moore, *Social Inflation and Loss Development*, CAS Research Paper, February 2022, updated March 2023.

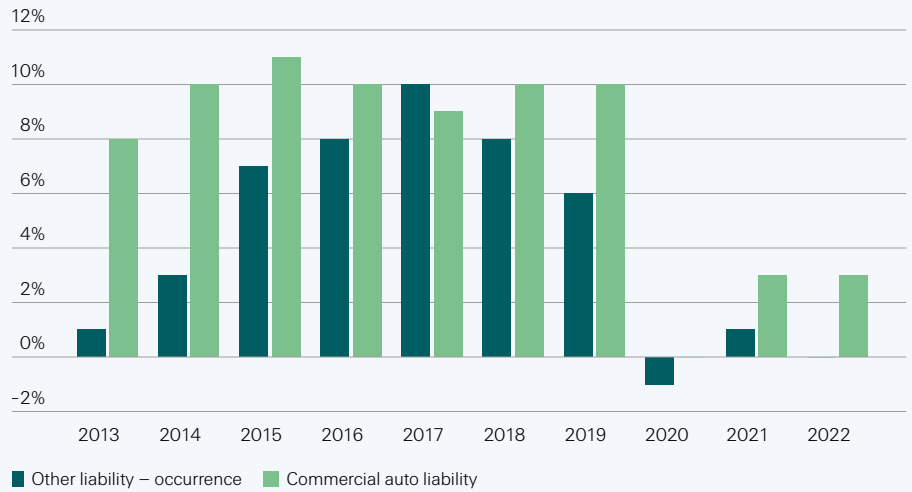
<sup>49</sup> See also *Social Inflation Remains a Thorn in the Side of Casualty Insurers*, Best’s Special Report, 9 May 2024.

<sup>50</sup> Accident years 2013–22 as of the 2023 Annual Statement.

<sup>51</sup> The estimate is based on net claims and defence and cost containment data from Schedule P Part 2 and includes non-proportional liability reinsurance in addition to the primary liability lines grouped in this report.

**Figure 10**

Incurred loss development from initial estimate percent of net premiums earned



Note: accident years 2020–22 appear relatively benign, likely due to both pandemic-related factors (eg, paused claims activity, increased conservatism in initial estimates) and timing. Younger accident years have had less time to develop adversely. Additionally, while the ultimate loss ratios for these years remain below those for earlier accident years, the reported estimates for 2020 and 2021 increased in 2023.  
 Source: NAIC Schedule P, S&P Capital IQ

Deteriorating results have led to reduced capacity for liability insurance in the US. This partly reflects in a shift to the excess and surplus lines market.

**Insurance industry reaction: rate increases, reduced limits and capacity**

In recent years, social inflation has contributed to reduced capacity in the US liability insurance market. Even before the pandemic, a weakening profitability environment for liability insurers led to a rising share of business shifting from the admitted market to the excess and surplus (E&S) market.<sup>52</sup> Over the last five years, the E&S market share has increased from 24% to 33% for Other Liability Occurrence and from 19% to 26% for medical malpractice. Such moves are indicators of a stressed market.<sup>53</sup> Underwriting losses and heightened parameter uncertainty have led to reductions in insurance capacity and changes to insurance programs. For example, global casualty insurance capacity was USD 2.2 billion in 2018. By 2020, this had fallen to USD 1.4 billion.<sup>54</sup> This decrease was mostly related to reductions in the availability of certain types of cover, reportedly “because of the volatile nature of the US litigation environment”.<sup>55</sup>

Reduction in limits, which can contribute to greater overall claims cost growth.

In addition to adjusting rates, insurers are also making changes to insurance programs, such as reducing the limits of liability for some covers and increasing attachment points for excess insurance and/or reinsurance.<sup>56, 57</sup> Median limits purchased for liability towers<sup>58</sup> – or stacked liability insurance programs – declined by an average of nearly 25% in nominal terms and 46% in inflation-adjusted terms between 2014 and 2023, a period of increasing loss costs (see Table 3).<sup>59</sup> Within these programs, insurers generally cover smaller limits as well. This could potentially boost reserve adequacy, as insurers may be quicker to record a loss at policy limits in case reserves (reducing the amount of adverse reserve movement). However, it could also increase claims cost growth as insurers might place less emphasis on individual claims defences.

<sup>52</sup> In the US, regular insurers – also called standard or admitted carriers – follow state regulations concerning rates and underwriting. E&S lines carriers do not have to follow these regulations and can assume greater risks.  
<sup>53</sup> Based on data from S&P Global and *US Excess & Surplus Insurance Market Outperformance to Continue*, Fitch Wire, 4 October 2023, and *US E&S Insurance Market Report: Growth slows for excess and surplus market*, S&P Global, 20 June, 2024  
<sup>54</sup> *Insurance marketplace realities 2021*, Willis Towers Watson, 18 November, 2020.  
<sup>55</sup> Ibid.  
<sup>56</sup> *Professional lines: How the latest litigation trends are leaving a mark*, Risk & Insurance, April 2023.  
<sup>57</sup> C.R. Cole, C. Marzen, *Nuclear Verdicts, Tort Liability, and Legislative Responses*, Journal of Insurance Regulation, 2023.  
<sup>58</sup> The tailor-made liability insurance programs consisting of GL, umbrella and excess policies stacked on top of each other. This allows for the insurability of large limits for large corporations.  
<sup>59</sup> *Liability Limit Benchmark & Large Loss Profile by Industry Sector 2024*, Chubb Limited, 17 June, 2024.

**Table 3**

Median liability limits 2024 vs 2023

	Median limit		Change	
	2014	2023	Nominal	Real
Utilities	343	375	9%	-21%
Life sciences	260	241	-7%	-33%
Oil & gas	565	498	-12%	-37%
Real estate & hospitality	350	298	-15%	-39%
Manufacturing	400	340	-15%	-39%
Consumer products	365	263	-28%	-48%
Chemical	500	350	-30%	-50%
Healthcare	245	168	-31%	-51%
Transportation – road	250	170	-32%	-51%
Construction	450	250	-44%	-60%
Transportation – rail	825	323	-61%	-72%

Source: *Chubb Liability Limit Benchmark Report*, Swiss Re Institute

Liability premium rates are re-accelerating in response to concerns around elevated loss trend and reserve adequacy.

With elevated loss trends, adverse reserve developments and poor underwriting results, by the first half of 2024 US liability premium rate increases had re-accelerated to 7% year-on-year, from 3–5% in the preceding six quarters, defying a broader deceleration of commercial insurance rates.<sup>60</sup> The market for liability insurance is competitive and has gotten more so over time. In the US, the top 5 carriers accounted for just one-quarter of direct premiums written in 2023, compared to one-third a decade earlier. This suggests that the reduced capacity is almost all a result of inadequate rates relative to the level of risk in the current environment of social inflation.

Prevailing liability regimes can affect where firms decide to do business.

#### Impact on the economy: disruptions and unprotected risks

Corporations face strong increases in legal defence costs, which usually will be passed on to consumers through higher prices. Large corporations' average defence costs increased by 10% annually between 2018 and 2023.<sup>61</sup> The costs and risks of the liability regime can influence decisions about where to locate or do business. This applies at the state-level in the US<sup>62</sup> but also internationally in terms of foreign direct investment, for example.<sup>63</sup> Below are two case studies about specific impacts of social inflation on industry.

SI contributed to the HIH collapse in Australia and subsequent disruptions.

Persistent and underpriced social inflation can ultimately affect the insurance industry's ability to provide risk transfer, the lack of which causes significant disruption at local and national level. For example, one of the main causes of the collapse of Australian insurer HIH in 2001 was persistent under-reserving of long tail-lines, specifically on account of an under-estimation of the effects of social inflation. As one of the largest builders' warranty insurers, the collapse of HIH left thousands of builders without this mandatory cover, and almost AUD 2 billion of construction activity was put on hold.<sup>64</sup> Car accident victims insured by HIH were left waiting for medical procedures worth AUD190 million. HIH's collapse triggered large and sudden premium increases in lines such as home warranty, professional indemnity and public liability. Companies and non-profits were forced to shut down as they were unable to find alternative insurance, or could not afford the sudden jump in premiums.<sup>65</sup> The government had to provide aid to policyholders suffering financial hardship. The fiscal cost was estimated to be over AUD 650 million<sup>66</sup> and required the Treasury to run an "HIH Claims Support Scheme" for 12 years.<sup>67</sup>

<sup>60</sup> Marsh, Global Insurance Market Index, 2Q24: US casualty excluding workers' compensation.

<sup>61</sup> Source: Swiss Re Institute calculations based on 2019 *Carlton Fields Class Action Survey* and 2024 *Carlton Fields Class Action Survey*, Carlton Fields.

<sup>62</sup> 2019 *Lawsuit Climate Survey – Ranking the States*, US Chamber of Commerce Institute for Legal Reform, 2019.

<sup>63</sup> *The US Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty*, US Department of Commerce, October 2008; *Through Their Eyes: How Foreign Investors View and React to the US Legal System*, Institute for Legal Reform, US Chamber of Commerce, 2007.

<sup>64</sup> *The HIH Claims Support Scheme*, Australian Government Treasury Economic Roundup Issue 1, 2015.

<sup>65</sup> *Royal Commission into the failure of HIH Insurance Report*, April 2003.

<sup>66</sup> *Towards an efficient and stable financial system*, Committee for Economic Development of Australia, June 2014.

<sup>67</sup> See *The HIH Claims Support Scheme*, Treasury of the Australian Government, 19 June 2015.

The trucking industry in the US is one of the most affected sectors.

In the US, the trucking industry is one of the sectors most affected by mega verdicts. As a result, (excess) coverage has become unpredictable and expensive, forcing numerous insurers to either withdraw from the market altogether or drastically scale back the comprehensiveness of the insurance coverage they offer. Mega verdicts also destabilise the industry's structure. Larger trucking companies may be able to handle a verdict that exceeds their insurance limit, but not easily. Smaller companies are less likely to survive the legal cost and verdict/settlement. This is likely to contribute to industry consolidation and concentration. It has also been noted that some companies are reducing excess coverage to manage costs, as these covers are seeing rate increases of more than 75%.<sup>68</sup> According to a 2023 report by the US Chamber for Commerce Institute for Legal Reform, there are fewer insurers in the trucking market today, and many of the ones left now offer reduced coverage.<sup>69</sup> This means trucking companies are finding it increasingly difficult to secure adequate insurance cover, and are being forced to assume more risk than they have in the past.

<sup>68</sup> *Rise in 'nuclear verdicts' in lawsuits threatens trucking industry*, CNBC, 24 March 2021.

<sup>69</sup> *Roadblock: The Trucking Litigation Problem and How to Fix It*, US Chamber of Commerce Institute for Legal Reform, July 2023.

# Signs of social inflation in other markets

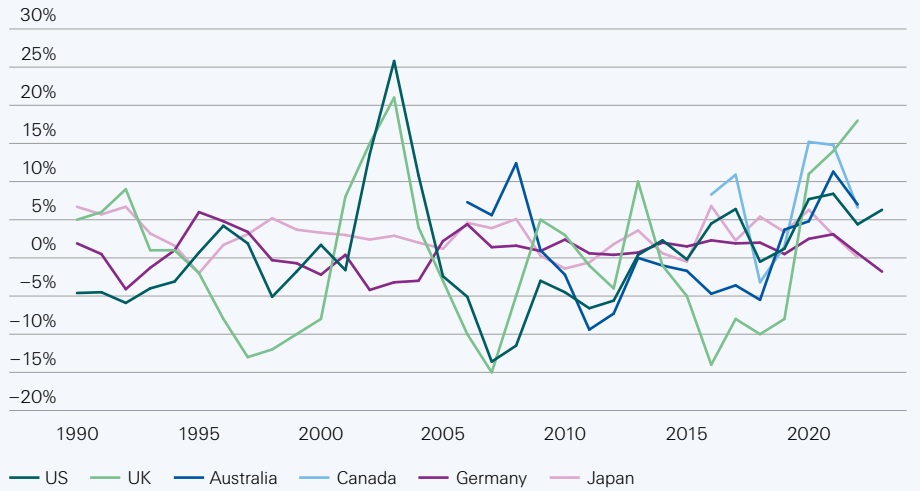
There have been signs of social inflation in the UK, Australia and Canada. Based on our Social Inflation Index calculations, we estimate that in the UK, social inflation contributed more than 10 ppt of liability claims growth in 2022. For Australia and Canada, we estimate the contribution was around 7 ppt. To date, social inflation in Japan and Germany has been minimal. These countries are exposed to many of the driving forces of social inflation as in the US, but not all. Countries are also exposed to spillover effects from the US emanating from international insurance programs. That social inflation is predominantly a US phenomenon is largely due mega awards delivered by juries there. With different tort liability systems, other jurisdictions are not similarly exposed.

## Social inflation in other jurisdictions

Our index analysis indicates that social inflation has impacted liability claims in the UK, Australia and Canada.

While to date social inflation has primarily been a US phenomenon, there have been signs thereof in a few other markets also. No country has experienced the mega awards that courts in the US have delivered. Nevertheless, our Social Inflation Index analysis points to a meaningful but volatile impact of non-economic damages on liability claims in the UK, Australia and Canada. Using the same methodology as for the US, we estimate that in the UK, social inflation contributed to more than 10 ppt of liability claims growth in 2022 (see Figure 11). In Australia and Canada, the contribution was 7 ppt.

**Figure 11**  
Social inflation indices across select markets, calendar-year basis



Note: UK estimates exclude the London Market but include some non-UK exposures of contracts with UK insurers.  
Source: Swiss Re Institute

In recent years, Australia and the UK have seen a rise in social inflation.

On average, social inflation was higher between 2017 and 2022 than 2012–2022 in Australia, the UK and the US, showing that social inflation increased in recent years. Economic inflation, already deducted from social inflation in the numbers, was also elevated between 2017 and 2022 in most cases, adding to pressures on insurance claims (see Table 4).

**Table 4**

Social inflation indices compared to economic inflation

	Social inflation		Economic inflation	
	2012–2022	2017–2022	2012–2022	2017–2022
<b>US</b>	3.8%	5.4%	3.1%	3.7%
<b>Canada</b>	n.a.	6.7%	2.3%	2.9%
<b>UK</b>	0.2%	4.5%	3.0%	3.8%
<b>Australia</b>	0.9%	4.1%	3.3%	2.8%
<b>Germany</b>	1.7%	1.7%	2.9%	3.3%
<b>Japan</b>	3.1%	3.6%	0.6%	0.4%

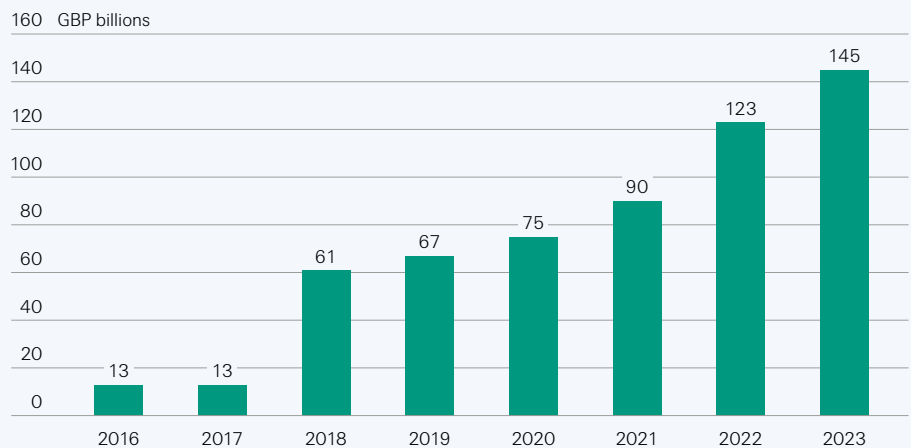
Note: social inflation shows a simple average of annual indices. Economic inflation is the weighted average of core CPI, healthcare and wage inflation based on strength of correlations with claims severity proxy. Source: Swiss Re Institute

The UK has seen some spillover of social inflation from the US. Also, the number of class actions in the UK is rising.

Of note is that in the case of the UK, liability claims in the early 2000s surged in parallel with those in the US. Based on the strong historical correlation, the recent climb of the UK index as shown in Figure 11 is likely driven by exposure of UK manufacturers to social inflation risks in the US.<sup>70</sup> We note too that the number of class actions and amounts claimed in the UK has risen in recent years. Since 2016, the yearly claimed amount has gone up by a factor of almost 10x, driven by both opt-in and the broader opt-out forms of claims (see Figure 12).<sup>71</sup> So far, however, class actions have not been an important driver of social inflation in the UK as judges can block part or all of the demanded amount, and because it can take several years for claims to be settled. Nonetheless, more class actions suggests a pipeline of increasing liability claims may be forthcoming in the medium term.

**Figure 12**

Claimed amount in class actions in the UK



Source: *European Class Action Report*, CMS, 2024, and Swiss Re Institute

COVID-19 and Ogden rate changes have created some noise in UK claims data.

The Ogden<sup>72</sup> discount rate also plays a role in the non-economic patterns of liability claims in the UK. A lower rate means that future investment returns are discounted less, thereby resulting in higher compensation. The rate changed in 2001, at the same time that our Social Inflation Index for the UK increased. It was also modified in 2017 and 2019. External analysts expect the discount rate to increase in 2025, which has the potential to reduce the non-economic element in UK liability claims.<sup>73</sup> Changes in

<sup>70</sup> The numbers exclude international business by the London Market.

<sup>71</sup> Under the opt in mechanism, individuals within scope for a class action are not by default a class member unless they affirmatively join the class. Under opt out, individuals fitting within the class definition are members unless they affirmatively exclude themselves.

<sup>72</sup> The Ogden discount rate is used to calculate the amount of compensation persons who have suffered a life changing injury receive from insurers to cover all their predicted future losses. For more, see *The Ogden discount rate explained*, Dennis Watkins.

<sup>73</sup> *Discount rate review 2024/5 – lower damages awards on the way?*, Insurance Law Global, 16 February 2024.

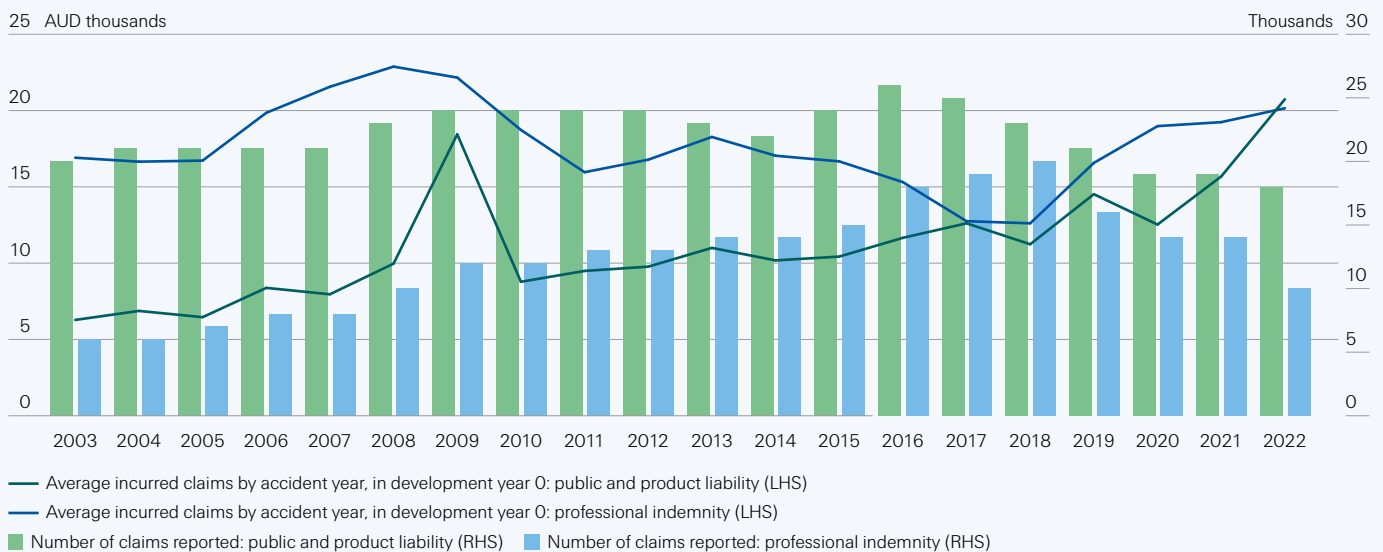
the discount rate, as well as the impact of COVID-19 on insurance claims create, some noise in data from 2020 onwards, but nevertheless signals of social inflation remain.

We estimate social inflation contributed 7 ppt annually to liability claims growth in Australia over the last three years.

As above, we estimate that social inflation pressures in Australia contributed around 7 ppt to liability claims growth in 2022. During 2019 and 2022, overall claims severity rose by around 10% each year, much higher than the average 2.8% gain in economic inflation.<sup>74, 75</sup> The faster increase of claims severity was driven by a number of non-economic factors, including those relevant to more frequent and expensive worker-to-worker (WTW) claims,<sup>76</sup> and a growing number of class actions against financial institutions after the Financial Services Royal Commission (FSRC) of 2017–19 highlighted numerous potential contraventions of the law.

**Figure 13**

Australia: liability average claims & claims frequency by accident year



Note: average incurred claims = (cumulative) gross claim incurred/number of claims reported. Gross claim incurred submitted to the National Claims and Policy Database does not include any allowance for incurred but not reported or incurred but not enough reported claims costs.  
 Source: *NCPD Level 1 Claims Data Report*, The Australian Prudential Regulation Authority, December 2022, and Swiss Re Institute

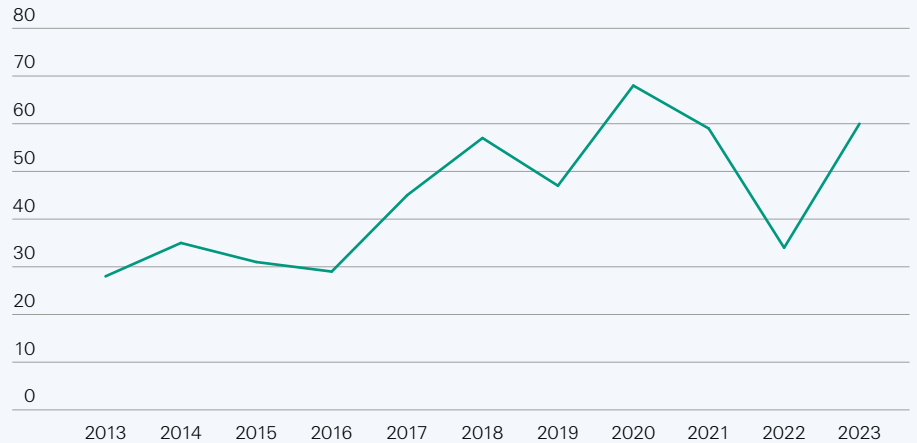
Claims severity is in large part driven by increasing use of sub-contractor staff, and by courts imposing liability on host employers.

Claims severity and frequency of WTW claims seem to be growing on the back of more common use of sub-contractor staff, an increasing willingness of courts in Australia to impose liability on host employers,<sup>77</sup> and rising awareness of workplace safety and this type of claim itself. The rise of claims frequency and severity for professional indemnity (PI) has been driven by financial loss claims and claims with large sizes (see Figure 13).<sup>78</sup> These were likely related to the rising number of class action filings after the FRSC, as shown in Figure 14.

<sup>74</sup> Claims severity for both public and product liability and professional indemnity.  
<sup>75</sup> Economic inflation is measured as a 3-year moving average of a simple average of core CPI inflation, medical service CPI inflation, and wage growth.  
<sup>76</sup> WTW claims are common in industries that often use labour hired staff, like construction and agriculture. Such a claim can be brought by an injured labour hired staff or his/her employer's worker's compensation insurer against the host employer if the latter is liable for the injury. The duty of care to labour hired staff is shared between the labour hire firm and the host employer.  
<sup>77</sup> *Reach Hire: the evidentiary burden for employers hosting labour hire workers*, Colin Biggers & Paisley, 17 December 2019.  
<sup>78</sup> *NCPD Level 1 Claims Data Report*, Australian Prudential Regulation Authority, December 2022.



**Figure 14**  
Number of class actions in Australia

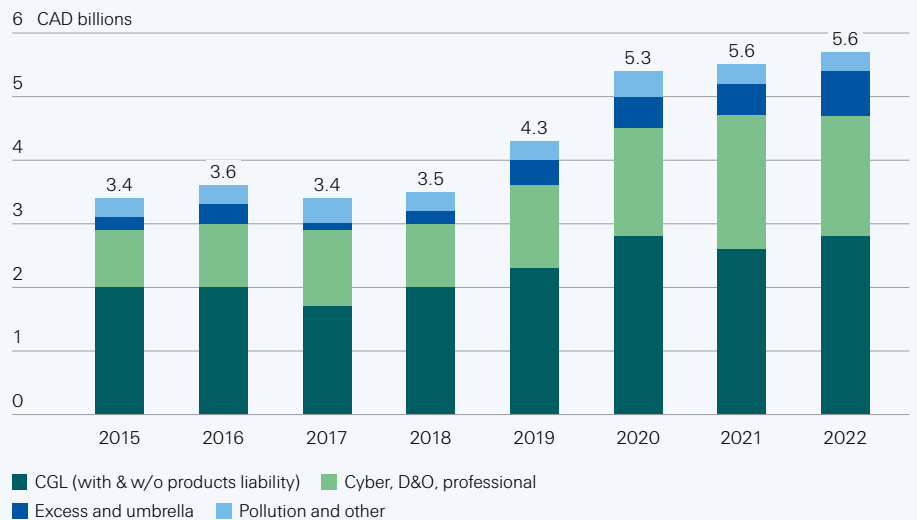


Source: *Class Action Risk 2024, 2023 in Review*, Allens

In Canada, liability claims have increased at a double digit rate, led by Excess and professional liability policies.

In Canada, incurred claims for liability lines<sup>79</sup> increased by an annual average of 12% between 2014 and 2022 (see Figure 15).<sup>80</sup> Based on line of business-level data available starting 2015, commercial general liability policies were the largest liability line, accounting for roughly half of the value of claims. At the same time excess/umbrella policies, which offer additional insurance protection above the limits of the underlying coverage, and cyber/D&O/professional liability policies grew their shares of the value of claims by 6 ppt and 8 pts, respectively. Of concern for the future is a rise in shareholder activism beyond pre-pandemic levels of activity. Last year, 47 Canadian companies were targeted by activists.<sup>81</sup>

**Figure 15**  
Canada liability claims, 2015–2022, direct and undiscounted basis



Source: Schedule 67.31

Social inflation has not been an issue in France and Italy in recent years, but it may well come back.

Both Italy and France have seen periods when liability claims trended above economic factors. These were driven by social inflation in bodily injury cases and impacted motor and medical malpractice lines of business.<sup>82</sup> There has been little to indicate a significant impact from social inflation factors in recent years, but history shows that this cannot be

<sup>79</sup> Undiscounted claims based on IFRS 4 Schedule 67.31.

<sup>80</sup> Ibid.

<sup>81</sup> *A Preview Of 2024: 10 Trends That GCs And Boards Need To Know*, Monday, 9 February 2024.

<sup>82</sup> In particular, medical malpractice in Italy experienced a strong rise in insurance claims starting from the 1970s with negative consequences for insurers and medical professionals. This was stopped by efficient legislative interventions starting in 2012. A summary of those events is available in: N. Coggiola, *Medical Liability Law in Italy*, *Journal du Droit de la Santé et de l'Assurance – Maladie*, vol. 23, 2009.

taken for granted. Besides, as in the European Union more broadly, changing regulations that facilitate collective redress and widen the scope of litigation, together with stronger TPLF presence, could accentuate social inflation impacts in the future.

Claims data from German show no sign of social inflation pressures.

There has been little sign of social inflation in Germany and Japan. The average liability claims payout has increased steadily over time, from around EUR 1 600 in 2010 to EUR 2 700 in 2023. But when estimating the Social Inflation Index by removing economic factors from the payouts, it appears the index has barely been above zero in recent years. Also, the number of claims incurred has declined over time. All told, liability insurers in all countries experience some spillover of social inflation from US risks through international programs, irrespective of the domestic legal system.

### Tort liability in Europe and the US: key differences

Structural differences in tort liability awards between the US and continental Europe...

Social inflation is predominantly a US phenomenon, largely due to the different legal environment and norms relative to other jurisdictions. Tort liability awards in the US are significantly higher than in continental Europe. Although class actions and litigation funding are on the rise in both regions, Table 5 illustrates that there are significant differences in other areas. Europe offers more social security protections, does not use juries in civil cases, and has stricter regulations on legal advertisements. Additionally, the US system allows for punitive damages, which are not present in Europe. In the latter, the “loser pays” rule and limited plaintiff discovery are distinctive features of the legal system, these absent in the US. This said, new developments in Europe may lead to defendants being forced to disclose more information to plaintiffs.

**Table 5**  
Similarities and differences between European and US liability regimes

Similarities between Europe and US	Differences in Europe vis-à-vis the US
<ul style="list-style-type: none"> <li>■ Mass tort on the rise</li> <li>■ Increase in litigation funding</li> <li>■ Emerging risks</li> <li>■ Societal and political drivers</li> </ul>	<ul style="list-style-type: none"> <li>■ More protection through social security</li> <li>■ No juries</li> <li>■ Limited punitive damages</li> <li>■ Limited plaintiff discovery</li> <li>■ Strictly regulated legal advertisement</li> <li>■ Loser pays rules</li> <li>■ Legal compensation schemes</li> </ul>

Source: Swiss Re Institute

Tort law in continental Europe is governed by comprehensive civil codes.

Tort law in continental Europe differs significantly from the US, primarily due to the absence of juries and the influence of civil law traditions. In most European countries, tort cases are adjudicated by professional judges rather than juries. This approach emphasises legal reasoning and consistency over community sentiment and moral judgment, leaving little scope for psychology-based legal strategies. Judges are typically career professionals with specialised training, and this can lead to more predictable and uniform outcomes. The principles of tort law in continental Europe are often codified in comprehensive civil codes, such as the German Civil Code (BGB) or the French Civil Code (Code Civil), providing a structured framework for adjudication. This contrasts to the US common law system, where tort law is shaped by case law and jury verdicts.<sup>83</sup>

Access to social security and health insurance provides a baseline level for financial and medical support.

The broader availability of social security and health insurance in Europe than in the US reduces the financial pressures on individuals to seek compensation through tort claims. Social safety nets and more comprehensive health insurance systems in many European countries provide a baseline level of financial support, thus diminishing the need for large tort awards to cover medical expenses and lost income.<sup>84</sup>

Punitive damages are of minor importance.

Tort law in continental Europe tends to focus more on restitution and compensation, and it also more clearly separates criminal and private law. Hence, there is almost no use of

<sup>83</sup> *Factors Likely to Influence Tort Litigation in the European Union*, The Geneva Papers, 2006.

<sup>84</sup> K.S. Abraham, L. Liebman, *Private Insurance, Social Insurance, and Tort Reform: Toward a New Vision of Compensation for Illness and Injury*. Columbia Law Review, vol 1, 1993.

US-style punitive damages. When cases originating in the US come to court in Europe, judges in the latter have used a 1:1 ratio between punitive and compensatory damage awards as a benchmark, versus a 9:1 reference in the US. Further, non-economic damages are less common and typically more restrained in personal injury cases in Europe than in the US.<sup>85</sup> Pain and suffering awards in the US “are often more than 10 times those in even the most generous of the other nations.”<sup>86</sup>

There are large differences across countries for bodily injury and fatality compensation.

As of 2022, there have been significant differences in the compensation systems used with respect to pecuniary and non-pecuniary damages<sup>87</sup> for fatalities and severe bodily injuries among countries in Europe. In Germany and England, non-pecuniary damage awards for fatalities are small.<sup>88</sup> In Ireland, government and judges have recently revisited personal injury tables and reduced awards.<sup>89</sup> In Spain, on the other hand, since the introduction of the new “Baremo” system, awards for pain and suffering have even exceeded economic damages for fatalities. In Italy, this has been the case for both fatalities and severe bodily claims.<sup>90</sup> In Italy, an update to compensation award tables earlier in 2024 adjusted economic damages in line with inflation, while non-pecuniary damages will be updated later in the year.

Since 2011 and 2014, non-economic damage awards did not increase more strongly than those for pecuniary damage.

The comparison with 2011 and 2014 reveals, however, that non-economic awards for pain and suffering in Europe did not increase more strongly than those for pecuniary damage (see Table 6). In Germany, non-monetary loss from death started being compensated in 2017. Pecuniary damages rose with inflation, and in the case of Spain, due to changes in award tables.

**Table 6**

Compound annual growth rate in damage awards across countries and type of damage.

	CAGR 2011–21		France	CAGR 2014–21	
	Italy	Spain		Germany	UK
<b>Fatality</b>					
<b>Pecuniary</b>	0.7%	16.1%	10.5%	5.9%	9.1%
<b>Non-pecuniary</b>	1.4%	7.6%	2.6%	NA	-3.4%
<b>Total</b>	1.2%	9.4%	9.8%	6.2%	8.8%
<b>Tetraplegia</b>					
<b>Pecuniary</b>	0.5%	11.6%	6.0%	5.5%	4.6%
<b>Non-pecuniary</b>	0.8%	2.7%	0.0%	2.6%	0.4%
<b>Total</b>	0.7%	8.2%	5.5%	5.4%	4.5%

Note: For France, Germany and the UK, data start in 2014.  
Source: Swiss Re Motor Bodily Injury Landscape

Legal expense compensation schemes are more plaintiff-friendly in the US.

Another difference in approach is that the US system is characterised by contingency fees and TPLF, where lawyers take cases on a no-win-no-fee basis and litigation costs are often financed by outside investors. These mechanisms enable plaintiffs to pursue claims without upfront costs. In contrast, in many countries in Europe the loser pays rule applies, which is often cited as a reason for relatively low litigation rates.<sup>91</sup> In Europe, whichever party loses the case pays for both its own legal costs and those of the other party, and for any compensation awarded to the plaintiff. Another important aspect of

<sup>85</sup> M.V. Saladino, *The Enforcement of Punitive Damages Awards Between United States and Europe: An Introduction for U.S. Practitioners*, *The International Lawyer*, vol. 53, Issue 3, 2019.

<sup>86</sup> S. D. Sugarman, *A Comparative Law Look at Pain and Suffering Awards*, 55 DEPAUL L. REV., 2006.

<sup>87</sup> Pecuniary damages, also known as economic damages, refer to those losses endured by claimants that can be easily quantified, such as medical expenses and non-earned wage and other earnings. Non-pecuniary, or non-economic damages, cover losses that have to be substantiated by claimants, such as the loss of a relationship with a third-party, loss of quality of life and emotional suffering. It has larger uncertainty bands.

<sup>88</sup> *Motor Bodily Injury Landscape: A comparison of 14 European countries*, Swiss Re, April 2022.

<sup>89</sup> *Personal Injuries Guidelines adopted by the Judicial Council*, *The Judicial Council*, 6 March 2021.

<sup>90</sup> The “Baremo” is the compulsory compensation system used for the calculation of damages suffered by victims of road traffic accidents in Spain. The Baremo was first introduced in 1995 and received significant changes in 2016.

<sup>91</sup> Some form of contingent fee arrangement, such as success fees, is available in several European countries. These arrangements are typically more limited and less common than in the US.

the US-type jury system is the extensive discovery allowed. The discovery process allows both parties to request in-depth and sometimes onerous information from the opposing party. The process tends to be time-consuming and expensive. The high costs of discovery raise the influence of TPLF. Legal systems in the EU, in contrast, tend to limit plaintiff discovery.

Several drivers of social inflation in Europe are impacted by ongoing legal reforms.

Various directives are currently being implemented in Europe and these will impact several, but not all, drivers of social inflation. The reforms combine changes to material law and legal procedures to increase potential liability, which could be a particularly impactful mix for social inflation. Plaintiff discovery may also become easier with legal reforms currently underway.

# Outlook: social inflation in US set to stay, to increase in Europe driven by legal reforms

Social inflation in the US is here to stay: we see no turning point for the key drivers in the foreseeable future. We expect the phenomenon will spread more internationally, particularly in Europe, given a broadening of the scope of product liability risks and an expansion of collective redress there. That said, we have no expectation of US-style mega awards in Europe or elsewhere. For all regions, emerging litigation risks originating from factors such as “forever chemicals”, obesity, algorithmic liability and addictive software design, present additional social inflation pressures for the future. The impact of social inflation may show more in specialty lines like aviation, marine and property natural catastrophe insurance.

## US: social inflation set to stay

Known future risks put pressure on already-elevated liability claims growth.

Social inflation is particularly disruptive for liability insurance because it is difficult to measure and predict, and disproportionately affects the longest-tail lines. With long tail lines, any change in trends will have a leveraged impact, affecting both new business and prior-year loss reserves. Based on current trends, we estimate that the impact of social inflation could outweigh the benefit of higher interest rates on long-tail lines’ investment income in one to two years, depending on the duration of the business. Current claims growth is a challenge for both insurers and insureds, and there are further pressure points. Such as, for instance, emerging litigation risks originating from factors like per- and polyfluoroalkyl (PFAS) chemicals (referred to as “forever chemicals” given that they do not break down in the environment, can build up in the body and may be toxic), obesity, climate change, algorithmic liability and addictive software design, etc.

Existing trends in the US look set to continue, with few signs of a countervailing response.

In our view, the current drivers of social inflation in the US are here to stay for the foreseeable future (see Table 7). Changing societal and generational attitudes will likely reflect in increased jury awards; the trial bar’s psychology-based tactics will spread as more law firms copy and adapt; and the use of litigation funding will likely increase as more hedge funds and investors enter the space. A potential counterforce could come from movements to advocate for litigation funding disclosure and transparency.

**Table 7**  
Expected trends for key drivers of social inflation in the US

Driver	Trend status	Outlook
<b>Propensity to sue</b>	<ul style="list-style-type: none"> <li>Attorney involvement in claims continues to increase, driving up settlement values and litigation. Between 2017 and 2022, attorney representation rates at first notice of loss increased by 9 ppts (GL) and 15ppts (auto liability).<sup>92</sup></li> <li>The number of claimants in multi-district litigation (MDL) cases is at a historic high.</li> </ul>	
<b>Plaintiff/defense bar</b>	<ul style="list-style-type: none"> <li>The plaintiff's bar has become increasingly sophisticated and successful in networking, tactics and psychological expertise (eg, reptile theory).</li> <li>Defense lawyers are adapting their strategies but continue to lag plaintiff bar developments.</li> </ul>	
<b>Litigation funding</b>	<ul style="list-style-type: none"> <li>The US litigation funding market continues to grow as returns are attractive and law firms become familiar with TPLF.</li> <li>The impact is most strongly felt in mass tort and headline personal injury cases.</li> <li>There is expanding interest in litigation funding transparency at the state (eg, Montana and Indiana enacted transparency acts recently) and federal district court levels (eg, New Jersey and Northern District of California). However, so far rules around funding disclosure are being implemented in a patchwork manner.</li> <li>Congressional hearings in 2023 and 2024 and letters to the Advisory Committee on Civil Rules<sup>93</sup> and Chief Justice Roberts in July 2024 advocate a federal disclosure rule on commercial TPLF to improve clarity and consistency.</li> </ul>	
<b>Legal advertising</b>	<ul style="list-style-type: none"> <li>Law firms continue to increase legal advertising (number of TV ads doubled between 2014 to 2023).<sup>94</sup></li> <li>Online traffic to attorney websites is growing, Between 2019 and 2023, there were 5x more clicks on online ads from personal injury lawyers.<sup>95</sup></li> </ul>	
<b>Societal sentiment</b> <sup>96</sup>	<ul style="list-style-type: none"> <li>Corporate trust is at an all-time low (eg, 87% of people agree or strongly agree that corporations choose profit over public safety).</li> <li>Regarding large verdicts, 82% of people think damages awarded in lawsuits are just right or too low.</li> <li>On propensity to sue: 82% agree or strongly agree that involving an attorney is an effective way to secure compensation</li> </ul>	
<b>Tort reform</b>	<ul style="list-style-type: none"> <li>With a heavily divided Congress and reforms not being considered a pressing issue by either party, there is unlikely to be significant tort reform at the federal level in the near term.</li> <li>Recent years have shown little systematic momentum for legal reform at state level. The Florida assignment of benefits tort reform is an important exception.</li> <li>Several states have rolled back punitive damage reforms as unconstitutional (eg, Illinois, Kentucky and Missouri).</li> </ul>	

Red = adverse for outlook; trend set to continue. Orange = neutral for outlook.  
Source: Swiss Re Institute

## Europe and the UK: facilitated and broadened litigation

The EU is promoting the measured expansion of collective redress.

The European legal landscape is currently evolving fast, with a combination of several directives likely to increase litigation and the scope for social inflation in Europe. Such as, for example, the European Union's (EU) Representative Actions Directive (RAD). Having come into law on 24 December 2020 and taken effect from 25 June 2023, the directive aims to ensure that all EU member states have a mechanism of representative action in place. The intention is to facilitate well-functioning markets, a feature of which is high levels of consumer protection by allowing qualified entities ("who is admissible to file an action") to seek redress as appropriate and available under EU or national law. In the US, class actions and multi-district litigations (MDLs) started in the mid-1960s and have become common place for all manner of claims. In Europe, historically consumer class actions have been limited in number and taken place in just a few countries. Only in recent years has there been an uptick.

The number of class actions will continue to increase.

Implementation progress for the RAD differs across EU countries, and some still have to implement the directive.<sup>97</sup> We expect the number of collective class actions to rise as RAD become more established in national laws (see Figure 16). In the UK, the total claimed value of class actions reached GBP 145 billion in 2023.<sup>98</sup> It grew by a factor of 10x from 2016, although that partly reflects large class actions against companies listed in the UK but active elsewhere. In Europe, the number of class actions filed more than doubled since 2018, and is likely to rise further following recent legislative developments. The UK drove most of the growth in 2020, but the number of class actions in Germany, the Netherlands and Portugal have also risen strongly since then.

<sup>92</sup> C. Frechette, M. Koonce, *Liability litigation observations and trends in 2023*, Sedgwick, 2023.

<sup>93</sup> J. Cornyn, T. Tillis, US Senate. *Letter to Advisory Committee on Civil Rules*, US Courts, 11 July 2024.

<sup>94</sup> Source X Ante LLC, using CMAG data, Swiss Re.

<sup>95</sup> Source: Swiss Re, using data from Semrush.

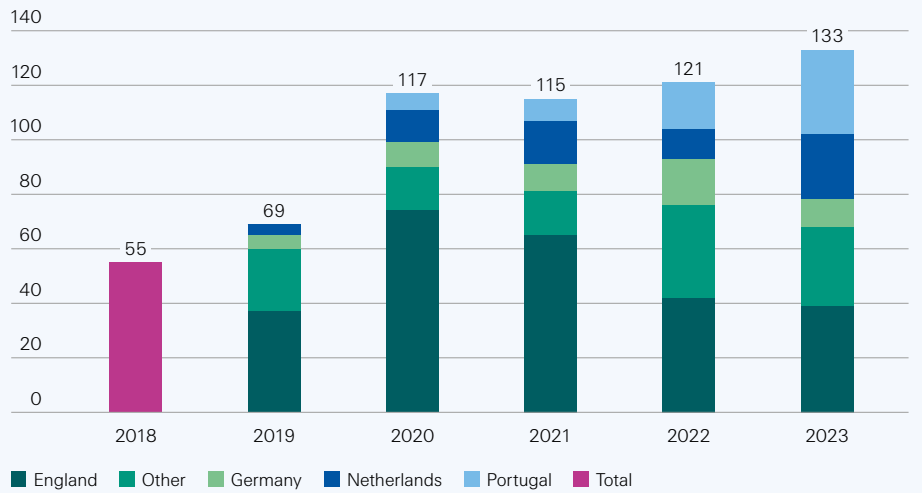
<sup>96</sup> Aforementioned Swiss Re survey on attitudes to social inflation.

<sup>97</sup> *Collective Redress Directive Implementation Tracker*, Bird & Bird, site accessed 31 July 2024.

<sup>98</sup> *European Class Actions Report 2024*, CMS, August 2024.

The share of claims relating to product liability, consumer law and bodily injury, which are commonly insured, has grown markedly since 2020 to close to 30% of the total of all class actions. These lines of business will likely see the largest increase in claims following the deployment of the RAD. Moreover, the share of opt-out class actions, a type that often encompasses more plaintiffs, became larger than the share of opt-in for the first time in 2023.

**Figure 16**  
Number of class actions in Europe, 2018–2023



Source: *European Class Action Report*, CMS, 2024

QREs that can bring collective action can in some cases be set up ad-hoc...

EU rules for collective redress remain more restrictive than in the US. Only Qualified Representative Entities (QREs) such as public bodies and/or consumer organisations can bring actions. They must be independent organisations with a transparent statutory purpose to protect consumers’ interests. Some member states such as France and the Netherlands allow QREs to be set-up “ad-hoc” and for these to be sponsored by TPLF. This could limit transparency on funding and ultimate goals. Safeguards against abusive lawsuits include the loser pays principle, controls on cross-borders claims and prevention of punitive damages. Though limited in number, for most countries, collective actions are not new. It will now be easier to bring class actions while also expand their scope of coverage.

...more litigation funders are being established, and forum shopping has started to emerge.

These developments are paving the way for a new era of collective redress and potentially higher single-victim awards in Europe. Cross-border litigation and forum shopping has started to emerge in some cases. The Netherlands is a case in point, having become a popular jurisdiction for bringing forward mass tort claims.<sup>99</sup> Today, litigation funders operate in at least seven countries in western Europe, with a strong increase in the number of offices<sup>100</sup> (see *Litigation funding outside the US*).

### Multiple directives will expand litigation possibilities

The Product Liability Directive will have a profound effect.

Other new and evolving directives such as the Product Liability Directive (PLD) will have profound effect. The PLD will broaden liability to include software and other digital processes such as cloud services and also the scope of operators who can be treated as manufacturers. Further, the PLD will increase the scope of litigation to include data loss and harm to psychological health, while also easing the burden of proof for consumers seeking compensation for damages caused by defective products. It will increase plaintiff discovery by forcing product manufacturers to disclose product information to courts, to help in the assessment of the plausibility of a claim. The expectation is that PLD will lead to more litigation in areas including medical

<sup>99</sup> I. Tzankova, X. Kramer, *From Injunction and Settlement to Action: Collective Redress and Funding in the Netherlands*. In *Class Actions in Europe*, Erasmus University Rotterdam, 23 July 2021.

<sup>100</sup> As of July 2024, a tally by European Justice Forum showed more than 40 funders active in the Netherlands and Germany, 10–15 in Austria and between 1 and 10 in Spain, France, Italy, Portugal, Sweden.

devices, technology and food.<sup>101</sup> EU countries have until around mid-2026 to deploy the directive into national law, and there is limited flexibility in terms of which provisions can be selected or not.

**Table 8**

The main EU directives and initiatives currently in progress or recently entered in force

In force	In progress
<ul style="list-style-type: none"> <li>■ Representative Action Directive</li> <li>■ AI Act</li> <li>■ General Data Protection Regulation (GDPR)</li> <li>■ General Product Safety Regulation</li> </ul>	<ul style="list-style-type: none"> <li>■ Product Liability Directive</li> <li>■ AI Liability Directive</li> <li>■ Empowering Consumers and Green Claims Directive</li> <li>■ Corporate Sustainability and Due Diligence</li> </ul>

Source: Swiss Re Institute

Many other directives covering liability are being implemented at the EU level.

Many other directives and regulations with potential impacts on litigation are already in force, or will be in the medium term (see Table 8). This includes the complementary *Empowering Consumers for the Green Transition* and the *Green Claims Directives*. These aim to protect consumers from misleading greenwashing tactics by banning practices such as unsubstantiated future sustainability promises, claims that simply align with legal requirements, and the use of broad claims like “eco-friendly”. These mechanisms will go a long way to improving access to justice and protecting consumers. However, they may also increase the number and size of class actions. Litigation possibilities will expand as more products, and corporate actions and messaging become regulated. Other factors potentially increasing damage payouts include consumer-friendly periods for latent damages, tensions between EU and national regulations and faster liability processing (see Table 9).

**Table 9**

New EU directives impact liability via three main aspects

New EU directives impacting liability		
1 <sup>st</sup> pillar	2 <sup>nd</sup> pillar	3 <sup>rd</sup> pillar
Broader definitions	Changing burden of proof	Faster liability processing
More products, actions and markets. These extend scope for litigation.	Procedural law is in a grey-zone between systemic EU directives and national regulations.	Including liability law into broad directives speed up processing.

Source: European Justice Forum, Swiss Re Institute

Recent legislative changes could help plaintiffs to file claims in other, more favourable jurisdictions.

The recent legislative changes in the EU, in particular the RAD, could involve issues around so-called forum shopping.<sup>102</sup> Member states have leeway in how to implement the directives and safeguards against abuse, notably with regards to TPLF. It can be that cross-border claims are interpreted differently across jurisdictions, leading to different outcomes, some being more plaintiff-friendly. This is especially in cases of collective redress with many claimants spanning different member states. Judgements issued in plaintiff-friendly courts may be accepted by other countries, depending on how foreign judgements are recognized. While the EU generally has provisions to prevent such conflicts, they still need to be worked out for the new collective redress rules.<sup>103</sup>

In our view, social inflation may increase markedly in Europe.

The RAD, PLD and other EU directives create an impactful mix for social inflation, combining changes to material law and procedure to increase potential liability. Although we do not expect mega verdicts in Europe, and the new rules and directives do not match

<sup>101</sup> *What Can You Expect From the New Product Liability Directive?*, Covington, 14 March 2024.

<sup>102</sup> This happens when claimants file claims, not necessarily where they are based, but in the jurisdictions where litigation is likely to yield the most favourable outcome.

<sup>103</sup> *Solving the Conflicting Collective Claims Cross-Border Conundrum*, European Justice Forum, June 2019.



some of the US specificities such as attorney advertising and the use of juries, the legislative reforms could lead to notably more social inflation in Europe starting in the next 3–5 years and have transformational impact in the long-term. This could see liability insurance claims rise faster than predicted based on economic factors.

TPLF is expanding rapidly in Europe.

### Litigation funding outside the US

With the exception of a few countries (eg, Ireland), in Europe TPLF is permitted, is largely unregulated and is growing rapidly. Increasing numbers of US law firms with well-oiled models are launching regional operations, particularly in countries with opt-out mechanisms for collective class actions. Germany and the Netherlands are particularly active TPLF markets, each with more than 40 funders in activity. In Germany, third-party funders have been around since the late 1990s. The legal framework for litigation funding is relatively non-restrictive, and litigation funding does not need to be disclosed. This has helped the TPLF market to grow. Setting up an office is the first phase of development for funders, and it may take them a few years before they can fully establish themselves. Together with the legislative developments, this suggests strong growth potential for TPLF in Europe.

The Dutch TPLF market is expected to expand strongly.

The Netherlands has become a favoured jurisdiction for the litigation and settlement of large securities' class actions. It is the prototype for the use of litigation funding in Europe, having had an established class action system prior to RAD implementation. The Dutch TPLF market continues to grow and today has around 50 active funders. On 1 January 2020, the Act on Redress of Mass Damages in a Collective Action (WAMCA) came into force in the Netherlands, enabling representative entities to bring damage claims on an opt-out basis. While there is no specific disclosure rule relating to TPLF, WAMCA stipulates that the representative entity behind a lawsuit must have sufficient financial means to bring a claim, implying that the court can review the funding structure. Some aspects of TPLF have been addressed by the RAD, with strict reference to consumer collective redress.

The RAD includes safeguards against TPLF abuse...

The RAD specifically permits funding of litigation by third parties if the collective interests of the consumers are not compromised. Legislation is still taking shape in the EU, but will likely retain more constraints than in the US. For example, in the latest proposal, claimants are forced to disclose third-party funding, there are safeguards against conflicts of interests, and there is a cap to the share of damage awards that funders can demand as their fees.<sup>104</sup>

...but there remain weak spots.

Weak spots remain, however, allowing potential for TPLF abuse, and this could inflate the number and size of court awards. Disclosure to judges of funding structures depends on country-specific rules and is limited in some cases. The provenance of funds and the presence of conflicts of interest might remain hidden. The differences in safeguards mean that plaintiffs may engage in forum shopping.<sup>105</sup>

The UK is the largest market for TPLF in Europe and it is growing fast.

TPLF is well established in the UK, the largest market in Europe, one that is growing fast. Between 2011 and 2021, assets held on the balance sheets of the 15 largest UK litigation funding firms expanded by a factor of 10x to around GBP 2.2 trillion.<sup>106</sup> A judicially-imposed regulation exposes funders to pay a portion of the winning party's costs but nevertheless, TPLF continues to grow in England and Wales. In 2011, a self-regulatory body, the Association of Litigation Funders (ALF) was founded. Its Code of Conduct recommends best practice and ethical behaviour amongst its members, and covers capital requirements, prevention of litigation control and guidelines around settlement and termination. There is no disclosure requirement under the Civil Procedure Rules nor a statutory requirement to notify that a plaintiff/claimant is funded. However, certain types of litigation funding agreements have recently started to be considered unlawful, constraining possibilities for funders.<sup>107</sup>

<sup>104</sup> *Responsible third-party funding of civil litigation*, European Parliament, 20 June 2024.

<sup>105</sup> See *Third Party Litigation Funding*, European Justice Forum, accessed July 2024.

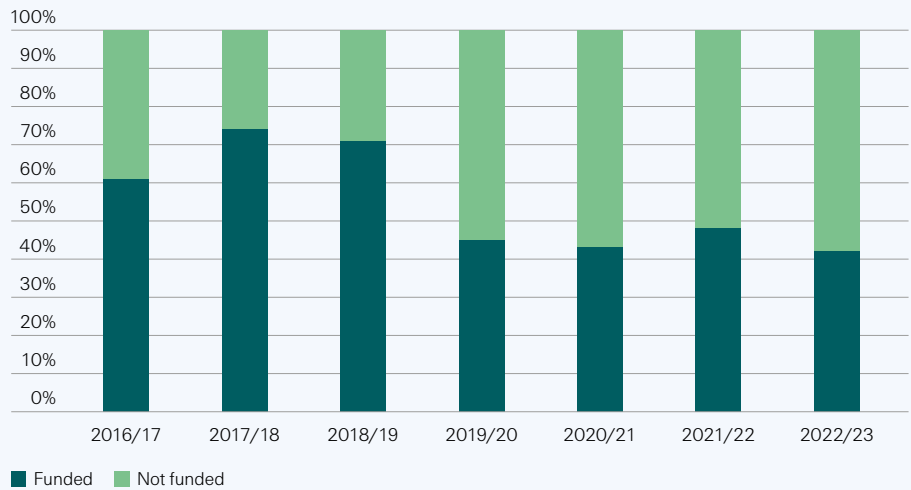
<sup>106</sup> *Litigation funders backing class action lawsuits as they put £2.2bn "war chests" to work*, RPC, 20 June 2022.

<sup>107</sup> Legal ripples from the court decision that triggered this change in view are still unfolding. A summary is available in *Lucy Keane examines the PACCAR decision on litigation funding in Solicitors Journal*, Signature Litigation, 20 June 2024.

Australia is a mature market for TPLF with a large role in funding class actions.

Australia is a mature market for TPLF, having been established in 1996 following the availability of class actions four years earlier.<sup>108</sup> The 2010s saw increasing use of TPLF after funded class actions were exempted from regulations related to a Managed Investment Scheme (MIS) in 2013.<sup>109</sup> From 2013 to 2018, 64% of class actions filed in the Federal Court were funded by TPLF. Between 1992 and 2013, just 15% of class actions had been third-party funded.<sup>110</sup> While promoting access to justice, growing funded class actions aroused debate on how to properly oversee the litigation funding industry and back-and-forth regulatory changes. In 2020, the government announced that litigation funders need to hold an Australian Financial Services License (AFSL) and comply with the MIS regime, reversing the aforementioned 2013 exemption.<sup>111</sup> The number of class actions and the share of funded class actions declined since the regulatory change (see Figure 14 and Figure 17). However, the recently elected Labor government rolled back these regulations in 2022, after the Federal Court noted some “conceptual incoherence” between MIS requirements and litigation funding schemes.<sup>112, 113</sup> The decision removed a heavy regulatory burden on litigation funders and the number of class actions have increased since.

**Figure 17**  
Share of funded class actions in Australia



Note: 2022/23 refers to developments between 1 July 2022 and 30 June 2023.  
Source: King & Woods Mallesons, The Review, Class Actions in Australia 2022/2023

TPLF in Asia, ex. Australia, is still in early development stage.

Asia: Most countries in Asia other than India are taking a conservative approach to litigation funding. In Hong Kong, TPLF is in principle not permitted unless under limited conditions, and has only been allowed for arbitration since 2019.<sup>114</sup> In Singapore, there is strict criteria for third-party funders on paid-up capital and managed assets, although TPLF has been permitted for arbitration since 2017.<sup>115</sup> In mainland China, Japan and South Korea, there are no specific regulations on TPLF and so far, use thereof has been very rare.<sup>116, 117</sup> India is a fast-growing market, with TPLF permitted and welcomed by the courts, although there are no specific regulations. Several international litigation funders have indicated interests in expanding business in India’s market.<sup>118</sup>

<sup>108</sup> *Litigation funding: access and ethics*, Federal Court of Australia, 4 October 2018.  
<sup>109</sup> In Australia, Managed Investment Schemes are also known as ‘schemes’ or ‘pooled investments’. Some examples of managed investment schemes include cash management trusts, Australian equity (share) schemes and exchange traded funds (ETFs).  
<sup>110</sup> *Regulation impact statement – regulating litigation funders under the Corporations Act*, Australia Government – Department of the Treasury, 15 June 2020.  
<sup>111</sup> *Corporations Amendment (Litigation Funding) Regulations 2020 – Explanatory Statement*, Australia Government – Australia Taxation Office, 23 July 2020.  
<sup>112</sup> *Improving access to justice for class actions*, Treasury Australia Government, 16 December 2022.  
<sup>113</sup> ‘Square peg into a round hole’: Federal Court reverses ruling on funded class actions as managed investment schemes – implications for crypto assets, Hall & Wilcox, 2 September 2022.  
<sup>114</sup> *Litigation Funding 2024 – China & Hong Kong: Global Practice Guides*, Chambers and Partners, 5 March 2024.  
<sup>115</sup> *Litigation Funding 2024 – Singapore: Global Practice Guides*, Chambers and Partners, 5 March 2024.  
<sup>116</sup> *2023-Litigation-Funding-Japan*, Woodsford, 24 November 2022.  
<sup>117</sup> *Litigation 2024 – South Korea: Global Practice Guides*, Chambers and Partners, 5 December 2023.  
<sup>118</sup> *Litigation Funding 2024 – India: Global Practice Guides*, Chambers and Partners, 5 March 2024.

We expect the US will remain the epicentre of social inflation.

**Which countries are most exposed to future social inflation?**

Table 10 summarises key factors that shape social inflation and which will influence future development. No country shares the mix of factors that prevail in the US, and we expect the US will remain the epicentre of social inflation for the foreseeable future, especially with respect to mega verdicts for single claims. Outside of the US, Australia, Canada and the UK are the most exposed with their common-law legal systems allowing for significant liability claims growth via class actions. There is also a growing awareness of consumer rights and corporate accountability and TPLF. Countries in the EU are exposed to a combination of expanding collective redress and broader/facilitated litigation as a result of legislation. Among those, the Netherlands is most exposed given its established system of mass tort and use of TPLF. Social inflation effects will likely be least pronounced in Japan due to the country’s legal system and an emphasis on alternative dispute resolution and less adversarial legal proceedings (although it is still exposed to overseas claims trends via insured multinationals).

**Table 10**  
International comparison of drivers for social inflation in the future

	US	Australia	UK	Canada	Netherlands	France	Germany	Japan
Claims penetration	H	M	H	M	L	M	M	L
Income inequality	H	M	M	M	L	M	M	M
Third-party litigation funding	H	H	H	M	H	M	M	L
Contingency fees	H	M	M	H	L	L	L	L
Collective redress	H	H	H	H	H	M	M	L
Case law	H	H	H	H	L	L	L	L
Jury based	H	L	L	L	L	L	L	L

High risk
Medium risk
Low risk

Note: Claims penetration refers to the ratio of liability claims to GDP; income inequality is measured with standardized Gini coefficients based on the Standardized World Income Inequality Database.  
Source: Swiss Re Institute

**Emerging liability risks**

Emerging liability risks could compound claims pressures in the future.

We anticipate further pressure points for liability insurers from new exposures and higher claims frequency. Emerging liability risks evolve continually and could originate from various structural changes in, for instance, technological, medical and environmental factors. For insurers, this also means increasing uncertainty for tort liability claims.

Insurers should stay informed to effectively manage and transfer liabilities in a changing risk landscape.

Addressing emerging risks requires proactive risk management strategies and insurance solutions tailored to specific industries and business operations. Insurers should remain alert to evolving trends to effectively manage and transfer liabilities in a changing risk landscape. Legal and regulatory changes such as data protection regulations, product liability laws and consumer protection laws may adapt to new realities and expose businesses to new liabilities. Insurance coverage should adapt to these regulatory shifts.

**Table 11**  
Emerging liability risks

Technological	<b>Artificial intelligence (AI)</b>	<ul style="list-style-type: none"> <li>Law firms and litigation funders already use AI to analyse past cases and determine the value and likelihood of successful settlements.</li> <li>Law firms can employ Gen AI-powered tools such as chatbots that offer easier access to legal guidance. This could increase propensity to initiate litigation.</li> <li>AI raises new liability concerns: there has already been a first wave of AI-related lawsuits focussed on data privacy, discrimination and intellectual property claims.<sup>119</sup></li> <li>AI-system failures could trigger software producers' or distributors' professional indemnity, and errors and omissions (potentially also director and officers') claims.</li> </ul>
	<b>Cyber related</b>	<ul style="list-style-type: none"> <li>With the increasing frequency and sophistication of cyberattacks, firms face significant liabilities related to data breaches, privacy violations and business interruption.</li> </ul>
	<b>Digital payments/cashless economy</b>	<ul style="list-style-type: none"> <li>Malfunction/shutdown of software and hardware systems at point of purchase/transaction due to cyberattacks, power outages and other factors may increase liability claims.</li> <li>A cashless economy creates a new product segment for cyber risks.</li> </ul>
	<b>Social media</b>	<ul style="list-style-type: none"> <li>Over-use of digital platforms can be distracting and lead to omissions in safety-critical functions (eg, system steering roles, security guards, etc) or accidents. This could impact liability lines of business: motor liability (car accidents), GL and professional indemnity and employer liability/workers' compensation (workplace accidents) insurance.</li> <li>Companies behind digital platforms may increasingly be held liable for any negative effects experienced by users.</li> </ul>
Medical	<b>Advances in medicine</b>	<ul style="list-style-type: none"> <li>Health therapies/treatments continue to advance. However, this could also lead to an increase in medical malpractice and product liability claims such as, for example, from elder persons who may be more sensitive to new medicines or treatments.</li> </ul>
	<b>Weight-loss injections</b>	<ul style="list-style-type: none"> <li>Uncertainty remains over long-term risks to health from the use of weight-loss injections, including the use for aesthetic weight loss in unintended (ie, not obese, not overweight) populations.</li> <li>Potential increase in product liability claims against drug manufacturers, distributors and retailers, and medical malpractice or professional indemnity claims.</li> </ul>
	<b>Obesity</b>	<ul style="list-style-type: none"> <li>Lawsuits against the food and beverage industry over consumers' obesity and related health problems may increase. Claims could be based on misinformation, misleading advertising and/or labeling.</li> <li>Consumers could also claim that a certain ingredient or agent in a product has contributed to their obesity problems.</li> </ul>
Environmental	<b>Toxic chemicals</b>	<ul style="list-style-type: none"> <li>New scientific methods and computation power make it easier to attribute chemicals to their sources and to discover previously not visible connections between chemicals, environmental impairment, property damage and/or bodily injury.</li> <li>In the context of strengthening legislation and regulation, such findings could lead to GL, director and officers' and workers' compensation insurance claims.</li> </ul>
	<b>Climate change related</b>	<ul style="list-style-type: none"> <li>Companies face liability if they fail to comply with evolving environmental regulations aimed at mitigating climate change.</li> <li>Attribution science is increasingly being used in claims against companies, claiming that their emissions indirectly cause environmental harm, property damage and/or adverse health effects.</li> <li>Companies may face greenwashing lawsuits from investors, consumers, competitors or regulators with respect to communications about the environmental benefits of products or business practices.</li> </ul>
	<b>Sustainable recycling</b>	<ul style="list-style-type: none"> <li>If recyclability becomes mandatory, any product design not compliant with a legal framework could be regarded as faulty, triggering product liability and/or recall losses.</li> <li>Investors could file claims against a company and its directors and officers for wrongful disclosure of products as circular-economy compliant.</li> </ul>

Note: For more information on emerging risks relevant to the re/insurance industry, see Swiss Re's SONAR 2023 and 2024 reports.  
Source: Swiss Re Institute

## Social inflation beyond casualty

In addition to the potential for geographic spread, social inflation trends also extend their impact to lines of insurance business beyond Casualty. We mainly see this in three areas.

We see social inflations trends widening to other areas, such as liability covers in some specialty lines.

**Liability covers** included in some specialty lines, such as:

- Aviation. Successful attempts by plaintiffs to bring cases into the legal system have led to a significant increase in the value of single-passenger claims. After plane crashes non-US airlines in Indonesia in 2018 and Ethiopia in 2019, plaintiff attorneys filed lawsuits directly against Boeing in the US, driving up settlement values. In another US case, passengers who were aboard a flight that experienced severe turbulence were awarded more than USD 1 million by juries for emotional trauma caused.<sup>120</sup>

<sup>119</sup> Class Action Survey, Carlton Fields, 2024.

<sup>120</sup> Injured passengers on Singapore Airlines face varied compensation, Reuters, 22 May 2024.

- Marine. Awards have been rising strongly, in particular in cases of crew members suffering injury or death, wreck removal/salvage and oil pollution. In the US, claims are now being settled above the primary limit (typically USD 1 million).<sup>121</sup>
- Cyber. As the cyber threat landscape evolves and societal attitudes towards data privacy change, the third-party liability component of cyber insurance is becoming increasingly exposed to potential social inflation impacts. That is through compensation for non-economic damages such as emotional distress, and the pursuit via class actions.

The scope of large property claims events is affected by legal and regulatory influences.

**Regulatory action** affecting property losses after large natural catastrophic events, to the effect of increasing the scope coverage and/or contract limits beyond what was in the initial property cover. For instance:

- Hurricane Ida (2021): the US state of Louisiana's Department of Insurance (DOI) commissioner ordered insurers to pay evacuation expenses.<sup>122</sup>
- Hurricane Irene (2011): Regulators in northeast states of the US urged insurance companies to voluntarily waive the hurricane deductible.<sup>123</sup>
- Hurricane Sandy (2012): shortly before making landfall, the regulator in the US state of Connecticut downgraded the storm to a post-hurricane storm so that high hurricane deductibles could not be applied.<sup>124</sup>

SI is also trending in litigation cases about the scope of coverage and contract language.

**Litigation** arising from disputes over the scope of insurance policy coverage and contract language. For example:

- Following the floods in Queensland and New South Wales in 2020 and 2021, courts and lobbyists effectively managed to redefine the difference between a flood and a storm. Flood cover is normally an additional cover that must be purchased explicitly, so that standard policies remain affordable and available. Insurers found themselves in a position where they were forced to settle flood claims on storm-only policies, due to lobbying and adverse court findings.<sup>125</sup>
- In Florida, assignment of benefits rules that allow homeowners to assign their insurance benefits to contractors, and other litigation practices have increased the frequency and severity of litigated claims. By 2020, Florida accounted for 9% of US homeowners claims but 80% of national homeowners' suits.<sup>126</sup> With regulations passed to counter such practices,<sup>127</sup> Florida may be an example of how to address excessive claims growth. The 2023 data to help verify this assessment will be available later this year.
- There has been a wave of litigation related to COVID-19 business closures and coverage under standard business interruption policies. Many courts have sided with insurance companies, stating that the presence of virus was not enough to trigger the policies, which typically require physical damage to property. But some cases remain ongoing, with appeals and settlements that could yet result in large payouts.<sup>128</sup>

<sup>121</sup> *Social Inflation: An American Phenomenon with International Implications*, International Union of Marine Insurance eye Newsletter, June 2021.

<sup>122</sup> *Commissioner Donelon Orders Insurers to Pay Evacuation Expenses for Hurricane Ida*, Louisiana Department of Insurance, 8 September, 2021.

<sup>123</sup> *Irene Raises Hurricane Deductible Questions in Hard-Hit Northeast States*, Insurance Journal, 7 September, 2011.

<sup>124</sup> *Governor: Insurers Cannot Impose Hurricane Deductibles*, NBC Connecticut, 1 November, 2012.

<sup>125</sup> *What is Social Inflation, and how is it impacting insurance?*, Bellrock, 7 March 2023.

<sup>126</sup> *Property Insurance Stability Report*, Florida Office of Insurance Regulation, 1 July 2024.

<sup>127</sup> Florida Senate Bill 2-A, passed December 2022, prohibits the assignment of insurance benefits under property insurance policies issued on or after 1 January 2023, among other changes to the Florida insurance market. For description of the additional reforms, see *2022A Bill Summaries – The Florida Senate*. Additional tort reform passed in Florida – HB 837 in 2023 – addresses personal injury litigation.

<sup>128</sup> *Insurers avoid picking up businesses' Covid-19 pandemic costs*, The Wall Street Journal, 6 February 2023.

# Getting a grip on social inflation

To date, social inflation has been mostly a US phenomenon, but there have also been signs thereof in other countries with common-law systems, and we expect there to be more spread internationally. To counter and mitigate potential for higher claims, countries in which social inflation has yet to take a firm hold can take lessons from the US experience to date and apply in local context. Calls for action include tort reform, regulation of the use of third-party litigation funding risk mitigation at the corporate level and advanced modelling and adaptations to defence strategies for the insurance industry.

## Monitor and control

Social inflation has been mostly a US phenomenon due to the nature of the legal environment there.

Social inflation is mostly a US phenomenon due to the prevailing legal environment and norms relative to other jurisdictions. In our view, the current drivers of social inflation in the US are here to stay for the foreseeable future. Increased jury rewards are likely given changing societal/generational and increasingly anti-corporate attitudes; the more widespread use of psychology-based tactics by the trial bar; and the continued expansion of the litigation funding industry.

We expect social inflation will become a more prevalent in other countries over time.

Though not to the extremes seen in the US, we expect social inflation impacts to spread more globally, particularly in Europe driven by easier access to litigation and an expansion of the scope of collective redress. Further there will likely be new areas of litigation risk in the US and elsewhere from areas such as use of artificial intelligence, over-use of social media and obesity, among many others. To monitor and manage the rise in liability claims values on account of non-economic damages requires action at the state legislative, corporate and insurance industry levels. Table 10 provides a simple framework for considering the legal and social aspects likely to affect liability costs, namely the scope of liability, the tort process, and societal norms.

**Table 12**  
Drivers of increased liability and legal system costs

Category	Material law	Legal procedures	Norms & attitudes
Key question	Who is liable for what?	How hard is it to win?	What is the value of a claim?
<b>Examples</b>	<ul style="list-style-type: none"> <li>Environmental liability legislation</li> <li>Joint and several liability</li> <li>Collateral source rule</li> <li>Expansion of public nuisance</li> </ul>	<ul style="list-style-type: none"> <li>Expanding access to mass tort</li> <li>Changes to burden of proof</li> <li>Ease of forum shopping</li> <li>Assignment of benefits, Florida</li> <li>Litigation funding</li> </ul>	<ul style="list-style-type: none"> <li>Anchoring of non-economic damages</li> <li>Anti-corporate sentiment</li> <li>Views on restoring societal injustices</li> <li>Reptile-theory-based strategies</li> </ul>
<b>Regional relevance</b>	<ul style="list-style-type: none"> <li>US, 1980s</li> <li>EU environmental liability directive</li> <li>EU GDPR</li> <li>EU product liability directive</li> </ul>	<ul style="list-style-type: none"> <li>US, 2000s</li> <li>Australia, Canada, UK mass tort</li> <li>EU, RAD</li> <li>EU product liability directive</li> </ul>	<ul style="list-style-type: none"> <li>US, current wave</li> </ul>

Source: Swiss Re Institute

Curb the scope of non-economic damages through tort reform.

### Tort reform to curb the scope of non-economic damages

Based on past experience, an effective approach to handling social inflation is from the liability regime itself, through tort reform. In the US, tort reforms at state level were used in the early 2000s on medical malpractice suits, limiting non-economic damages.<sup>129</sup> Another tort reform adopted by several states requires trial courts to bifurcate a jury’s consideration of compensatory and punitive damage claims. These regulations help ensure that evidence supporting a punitive award does not improperly lead the jury to find a defendant liable when the latter did not cause a plaintiff’s injury.<sup>130</sup>

<sup>129</sup> E. Kendall, *Social Inflation – Is The Industry Ready?*, IRUA Scholars Essay Program, 2023.

<sup>130</sup> *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, US Chamber of Commerce Institute for Legal Reform, 2024.

Transparency and regulation of TPLF would create clarity and consistency.

Actions to strengthen disclosure requirements are being taken, but more are needed.

In the US, the majority support TPLF disclosure.

An emphasis on corporate social responsibility actions can mitigate spread of negative sentiment that businesses can suffer.

Actions can be pre-emptive...

### Litigation funding transparency

We are concerned that TPLF causes potentially harmful economic and ethical consequences, particularly when used by vulnerable individuals. With a few exceptions, in Europe, TPLF is permitted, is largely unregulated and is growing rapidly. Hence it sits with individual judges to insist on disclosure of TPLF agreements in the course of admission of claims. Greater protection for consumers is required, along with better regulation of the industry and more transparency about TPLF involvement in a case. Regulation should, for example, prohibit funders from influencing a party's selection of counsel, choices about litigation strategy, or settlement. Legislators and judges should require disclosure of TPLF agreements, and in particular the beneficial owners behind the legal entities. They should address ethical concerns such as the conflict-of-interest vis-a-vis attorney-client privilege. The maximal remuneration of funders in share of total awards should be capped, as is already done in a few countries (eg, Germany).

In the US actions are being taken to promote transparency, such as proposals that claimants must disclose third-party funding and the placing of a cap on the share of damage awards that funders can demand as their fees. But areas of weakness remain, allowing potential TPLF abuse that could inflate the number and size of court awards. In the UK and Australia, litigation funding is an established practice. In the former, there are no mandatory disclosure requirements and in Australia, the government recently rolled back some TPLF operating requirements introduced in 2020.

In a survey by the Institute for Legal Reform, 69% of voters in the US across all political party lines said they strongly support TPLF disclosure.<sup>131</sup> Current state-level rules mandating litigation funding disclosure come from state legislatures rather than the courts. Individual federal district courts have also enacted disclosure requirements (eg, New Jersey and Northern District of California), but a federal rule promulgated by the appropriate Federal Rules Committees would avoid a situation of multiple conflicting disclosure requirements.<sup>132</sup> The topic is receiving increased interest from Congress, which has held hearings on funding transparency. And in July 2024, members of the Senate and House of Representatives sent letters to the Advisory Committee on Civil Rules<sup>133</sup> and Chief Justice John Roberts<sup>134</sup> requesting a review of TPLF in litigation and efforts to enforce transparency nationwide.

### Loss mitigation at corporate level

Large, public-facing companies are particularly vulnerable to the impacts of social inflation and not just the potential monetary impact. Negative feedback about brands can go viral on social media, further reinforcing recent cultural attitudes about corporate responsibility. A counteractive force on the part of corporates is to have a strong culture and representation of corporate social responsibilities (CSR) activities, to help mitigate negative perceptions during a corporate crisis such as litigation.<sup>135</sup>

Risk managers play an important role in mitigating litigation risk. The best strategies for countering mega verdicts begin before an incident happens.<sup>136</sup> These can include practices such as:

- enhanced safety protocols and training across the organisation, particularly in sectors susceptible to bodily injury claims (eg, transportation, healthcare and construction);
- use of advanced technology to increase compliance with safety standards, including a reliable record-keeping system;<sup>137</sup> and
- arrangements for crisis response resources ahead of time.<sup>138</sup>

<sup>131</sup> *ILR National Survey: Third Party Litigation Funding*, Institute for Legal Reform, November 2022.

<sup>132</sup> *Social Inflation – Legal System Abuse: Observations and solutions to support the right to fair and impartial dispute resolution*, DRI Center for Law and Public Policy, 2023.

<sup>133</sup> *TPLF-Letter, United States Senate, 11 July 2024*.

<sup>134</sup> *TPLF-Letter, Congress of the United States, 12 July 2024*.

<sup>135</sup> *The influence of corporate social responsibility disclosures and assurance on jurors' judgments*, *Current Issues in Auditing*, 17 vol. 1, 2023.

<sup>136</sup> *Nuclear Verdicts: What, Why and How to Defend Against Them*, UKP&I, 5 December 2013.

<sup>137</sup> For examples in the context of the trucking industry, see *Nuclear Verdicts: How to reduce exposure?* on [www.embarksafety.com](http://www.embarksafety.com)

<sup>138</sup> See *What's Driving Huge Jury Awards? Navigating Legal Liability in the Era of the Nuclear Verdict*, on [www.travelers.com](http://www.travelers.com)



...and quick action after an event occurs can also help.

After an incident occurs, act quickly to investigate and gather information that may help at trial and mitigate the risk of large awards potential. To discourage abusive litigation practices, defendants should carefully select cases to try to verdict. Once litigation ensues, defendants could:

- manage perceptions of a company's operations and culture. Use experts and professionals to depict the company in the best possible light. Be present during trials and depositions to personalise the organisation.
- get ahead of the negative image the plaintiff will try sell to the jury. Research shows that advertising can play a role in persuading public opinion with respect to a company and potentially create a positive impression among potential jurors.<sup>139</sup>
- establish reasonable award values for cases, and present these to juries early on in court proceedings. The values should be presented as justifiable alternatives to the inflated values that could come from the plaintiff's attorneys.<sup>140</sup>

Insurers need to acknowledge social inflation as a potential driver of long-term claims growth.

### Insurance industry

Efforts to restrict claims severity are important from an economy-wide perspective. In acknowledging that social inflation can be a major driver of long-term claims and costs (these ultimately passed on to insureds), insurers need to also invest in risk assessment and modelling, defence tactics and better claims management to be best positioned to navigate the future claims environment.

Also needed are greater data transparency and disciplined underwriting...

Greater data transparency and partnerships across the insurance industry could be key to enhance understanding of emerging risks and the analysis of social inflation trends. Rates must be based on sufficient forward-looking trend assumptions, otherwise they could lead to future adverse reserve development. Insurers will need to continue to limit their liability capacity if earned profitability does not cover the cost of capital. Rate increases do not currently outpace loss trends and relying on interest rates to balance inflation is unsustainable. We estimate that based on current trends, the impact of social inflation will outweigh the benefit of higher interest rates on casualty lines in one to two years.<sup>141</sup> Continued primary rate gains are needed to sustain economic profits.

...use of new technology and data analytics to support claims management....

Greater use of new technology and enhanced data analytics could also help support claims management. Court data and filings provide a wealth of information about judges, their rulings, the litigants, their attorneys, expert witnesses and more. Analysis of social media and other unstructured data might also provide insights about the potential for large verdicts in particular jurisdictions. Combined with insurers' historical claims information, such data can be used to develop predictive tools that help an insurer unilaterally decide whether to litigate or settle claims, evaluate potential fraud, and assess which adjuster or counsel to use.<sup>142</sup>

...and proactive defence case management

Alongside analytics, defence attorneys and their clients could also borrow more from the plaintiff side's playbook. In particular, they should run more frequent and earlier mock jury exercises to understand and evaluate possible outcomes should a case go to trial. There can also be some benefit to mimicking the psychological tactics of the plaintiffs' bar to develop alternative narratives that allow juries to identify with the defendant's position. But ultimately, keeping the "emotional temperature" low will also help defence attorneys gain credibility with decision makers, as plaintiff's counsel strives to induce anxiety and fear in jurors.<sup>143</sup>

<sup>139</sup> L.H. Cohen, U.G. Gurun, *Buying the verdict*. Management Science, 2023.

<sup>140</sup> www.travelers.com op. cit.

<sup>141</sup> For a quantification of the benefits of higher interest rates, see *sigma* 4/2023: *Raising the bar: non-life insurance in a higher-risk, higher-return world*, Swiss Re Institute.

<sup>142</sup> *AI provides the edge that insurers need in general liability*, PropertyCasualty360, 14 August, 2023.

<sup>143</sup> DRI Center for Law and Public Policy op. cit.



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