FUNDING MASS TORT CLAIMS

ARISING FROM EMERGING RISKS

Why some risks become industrial-scale litigation, and others do not

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THE THESIS

Mass torts require an ecosystem

COMPENSATION

Is the game worth the candle?

THE POTENTIAL RECOVERY

NUCLEAR VERDICTS

MULTIPLE DAMAGES

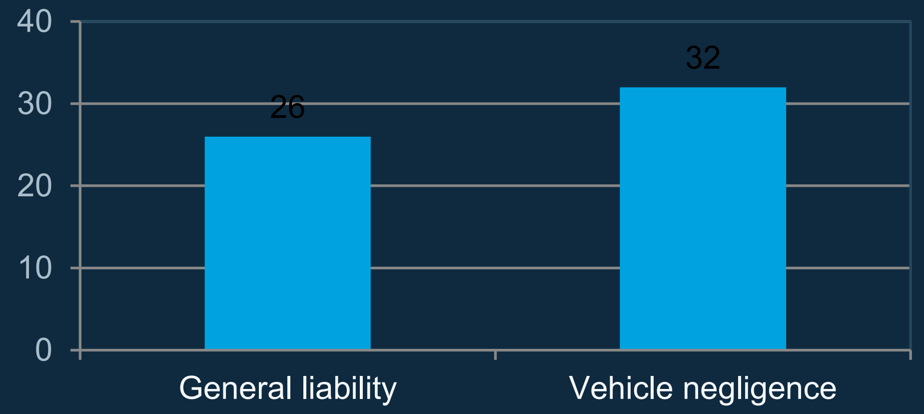
JURY AWARDS

COMPENSATION

Verdict economics changes the settlement range

Large outcomes matter even when the case never reaches a jury.

SWISS RE: 2010–2019



Median size of awards above US$1m

WHY IT MATTERS

TAIL RISK Remote but catastrophic awards affect rational settlement values.

RESERVING Claims trends become underwriting and capacity issues.

NET RECOVERY Headline settlement is divided across the wider ecosystem.

LAWYERS AS INVESTORS

The plaintiff bar supplies the engine

The organised sequence is often event, then lawyers, then claimants.

CLAIM FORMATION

Mass torts do not discover themselves

A repeatable claimant-side process turns dispersed grievances into a litigation asset.

1

SIGNAL

Regulatory finding, science, recall, breach

2

THEORY

Translate fact pattern into a cause of action

3

BOOK

Recruit suitable claimants at scale

4

EVIDENCE

Commission experts and organise proof

5

ROUTE

Choose procedure, jurisdiction and funding

Underlying merits still matter: infrastructure cannot create breach, causation or loss.

FUNDING

Capital solves timing and risk

Mass litigation requires capital, while recovery may be years away and may never occur.

RISK CAPITAL

Funding is an amplifier, not a cause of action

Its UK significance is structural: it substitutes for internal claimant-firm capital and helps neutralise adverse costs.

US$17bn Global litigation-funding investment, 2021

52% US share of global activity

38% Allocation to mass torts

£2.2bn Assets committed in England and Wales by 2022

The portfolio logic matters: individual cases may disappoint or fail while the capital remains committed.

REALITY CHECK

Merricks: funding enabled the claim, but did not dictate the outcome

The litigation shows both the durability and the limits of third-party capital.

~£14bn	~10 years	£200m	£62.6m + interest	£100m+
Claim advanced	Funded litigation	Settlement	Reported payout	Reserved for consumers

Tribunal priority: preserve consumer distribution before maximising the funder's return.

AGGREGATION

No scale without a procedural route

Procedure determines whether common issues are resolved once or litigated thousands of times.

UNITED STATES

Two mature routes to scale

Class and non-class mechanisms capture different kinds of commonality.

RULE 23

CLASS ACTION

- One certified class
- Common issues must predominate
- Opt-out damages class
- Court-supervised settlement

MDL

COORDINATED INDIVIDUAL CLAIMS

- Claims remain individual
- Common pre-trial management
- Central evidence and motions
- Bellwethers inform valuation

ENGLAND AND WALES

A patchwork rather than one general class action

Each route is powerful in the right case, but each leaves gaps.

GLO — **Opt-in**

Common or related issues

Book-building and common costs

CPR 19.8 — **Representative**

Same interest

Individual loss remains difficult

CAT — **Opt-out**

Competition claims

Funding and certification central

CPR 7.3 — **Multi-party**

Convenient disposal

Commonality still contested

INSURER LENS

Procedure is an exposure multiplier

A risk becomes more dangerous when evidence, limitation, acquisition and settlement can be managed collectively.

CULTURE

Participation follows claim architecture

Make claiming credible, low-risk and frictionless, and nationality matters less.

HORIZON SCAN

Monitor the ecosystem, not only filed claims

The next mass claim will combine a large cohort, reusable evidence, a solvent target, a cause of action and a scalable route.

EARLY WARNING

Signals that infrastructure is organising

Look for convergence across law, capital, evidence and claimant acquisition.

- Regulatory investigation
- Scientific consensus
- Product recall or repeat allegation
- Claimant advertising
- Representative organisation
- Funder announcement
- Recruitment campaign
- Jurisdiction or CPO application

Risk accelerates when several signals appear together around the same event or product.

COVERAGE RESPONSE

Policy architecture can diverge from litigation architecture

A claimant ecosystem may aggregate legally while the policy aggregates differently, or not at all.

TRIGGER

When did insured damage occur?

OCCURRENCE

One event, series, or multiple causes?

AGGREGATION

Which connecting words and unifying factor?

ALLOCATION

How does exposure move across years?

COSTS

Inside or outside limits?

COOPERATION

Who controls evidence, strategy and settlement?

FINAL PROPOSITION

An emerging risk becomes a mass-tort threat when it acquires infrastructure

The underlying harm is the spark. Compensation, lawyers, capital and procedure are the fuel and machinery.

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THE QUESTION FOR INSURERS

When does an emerging risk start becoming a mass claim?

When lawyers, funders, experts and procedure begin to organise around it.

Thank you