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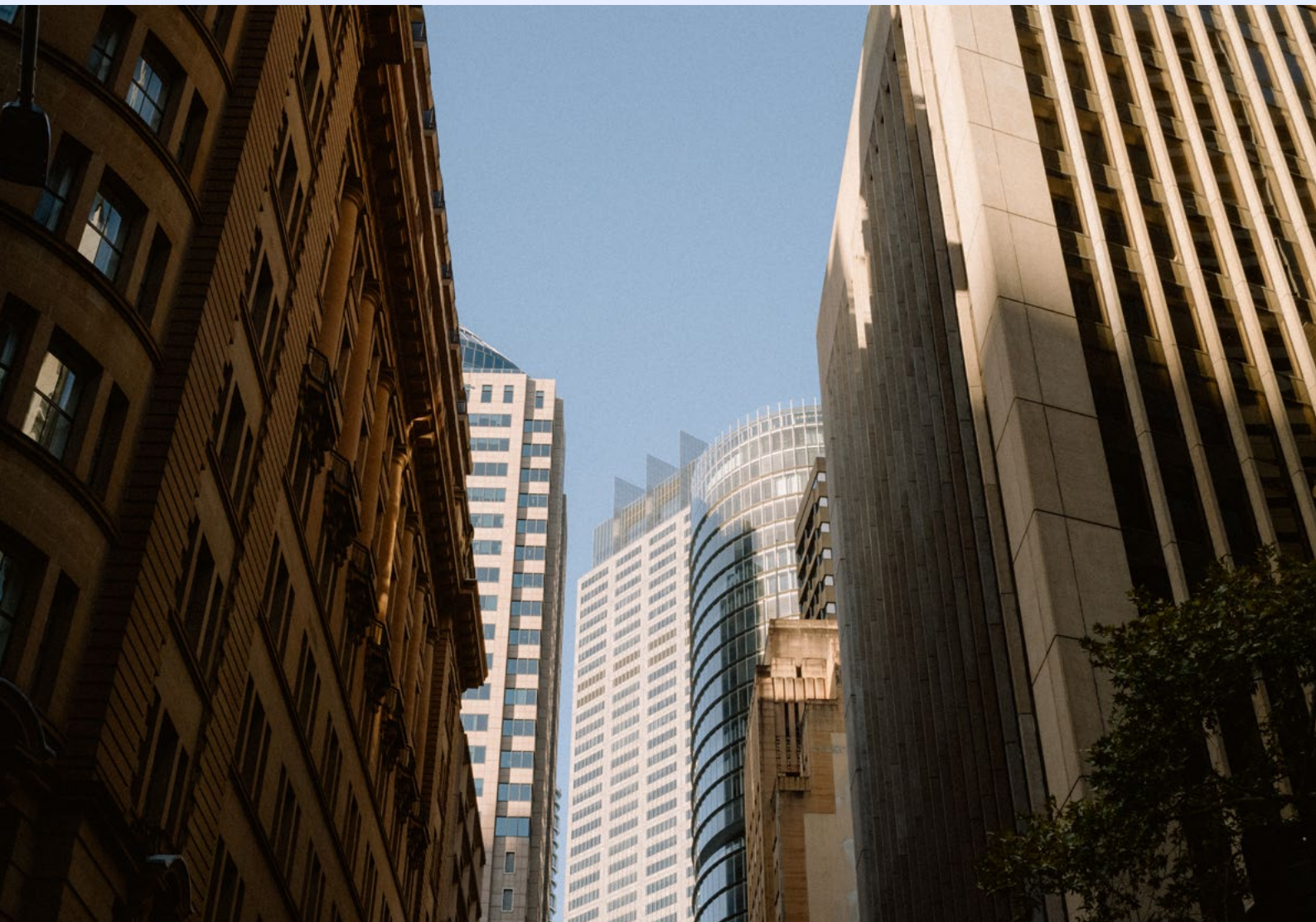
Thought leadership

# A global view on group action litigation: what lies ahead in 2026?



# A global view on group action litigation: what lies ahead in 2026?

## Key takeaways

1. Group and class action litigation continues to expand globally, driven by regulatory reform outside the US and the growing availability of third-party litigation funding.
2. While Europe is generally lowering barriers to collective claims, the US has moved in a more restrictive direction, tightening certification standards while still endorsing class actions as a key procedural tool.
3. For multinational companies, exposure is widening across product liability, data, competition and ESG claims, in particular, making early risk assessment, governance and jurisdiction-specific preparedness essential.

Based on developments we have seen across the firm over the past year class action/group litigation cases will continue to grow globally as more jurisdictions introduce or broaden collective action mechanisms. This trend is being accelerated by two primary drivers. First, while the US is far and away the "market leader" when it comes to the volume of class action cases – exceeding the rest of the world combined – more jurisdictions are adopting and liberalizing their own collective action regimes in the wake of EU Directive 2020/1828. Luxembourg, for example, has introduced its new collective action mechanism and we saw legislative and judicial efforts to expand access to group claims in France, Germany, Italy, and the Netherlands. Class actions are designed to provide an efficient means for similarly aggrieved claimants to obtain redress in a single proceeding whether in product liability, data privacy, securities fraud, antitrust, or other cases. Many class action cases are thus permitted to move forward – for example, roughly two-thirds of US class actions are certified despite increasingly rigorous scrutiny in recent years – a trend we largely expect to continue.

Second, the volume of class actions around the world is driven in part by the proliferation of third-party firms willing to finance class actions – there are hundreds of firms with billions of dollars, Euros, and pounds to invest according to multiple public reports.

There is one countervailing trend, however, that may provide a less bleak glimpse of that risk. This is a growing divergence between the efforts of some European regimes to make collective actions more accessible, and the US, home to a century-old class action framework, which has gradually shifted in the opposite direction in more recent years. As explored in a series of articles we published last year chronicling global class action developments, Federal Rule of Civil Procedure 23 was a little-used procedural mechanism following its creation in the 1930s, but amendments in the mid-1960s made it significantly more accessible to claimants and easier for courts to use, resulting in a surge of class action filings each year (and, arguably, some significant abuses) that lasted for decades. In the past ten to fifteen years, however, the US has seen both a legislative and judicial backlash that has somewhat tightened the requirements for certification and given defendants more tools to defeat certification.

These trends may, and perhaps should, make multinational companies wary of the risks of class action/group litigation claims, but there are actions companies can take now to prepare themselves for that possibility and to take advantage of more recent developments in the case law. Below, we summarize key 2025 developments in each major jurisdiction and what to expect going forward, followed by some practical guidance for multinational companies to assess and reduce the risks.

# Class action risk comparison across sectors and jurisdictions

| Sectors | Australia | Czech Republic | France | Germany | Italy | Luxembourg | Netherlands | Saudi Arabia | Spain | UAE | UK | US |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Consumer Goods & Retail | High | High | High | Medium | High | Medium | High | Medium | High | Low | High | High |
| Energy & Resources | Medium | Medium | Medium | Medium | Medium | Low | High | Low | Medium | Low | Medium | High |
| Financial Services | Medium | High | Medium | Medium | High | Medium | High | High | High | Medium | Medium | High |
| Healthcare & Life Sciences | Medium | High | High | Medium | Low | Medium | Medium | Low | Medium | Low | Medium | High |
| Industrials, Transport & Mobility | High | High | Low | Medium | High | Medium | Low | Low | High | Low | High | Medium |
| Infrastructure | Low | Low | Low | Low | Medium | Low | Low | Low | Low | Low | Low | Low |
| Real Estate | Medium | Low | Low | Medium | Low | Medium | Low | Medium | High | Low | Low | Medium |
| Entertainment & Sport | Medium | Medium | Low | Medium | Medium | Low | Medium | Low | Medium | Low | Medium | Medium |
| Technology, Media and Telecommunications | Medium | Medium | Medium | Medium | High | Medium | High | Low | High | Low | High | Medium |

High Medium Low

# 1 Australia

Class action (aka, representative action) activity in Australia continues its upward trajectory, with a record number of filings, unparalleled settlement values and several landmark High Court decisions reshaping procedural dynamics across both Federal and State jurisdictions.

## Key takeaways

1. Class action activity in Australia reached record levels in 2025, with diversification of claim types across consumer, employment, securities and ESG-related matters.
2. Litigation funding is a central feature of the market, while forum choice increasingly favoured Victoria due to Group Costs Orders and a series of High Court decisions reshaping funding strategy and procedural dynamics.
3. Landmark High Court rulings in 2025 clarified the limits of funding arrangements, reinforced soft class closure mechanisms and further entrenched Victoria as a focal jurisdiction for plaintiff-led class actions.

**Litigation funding:** Third-party litigation funding remained a major driver of class actions, despite ongoing public and political scrutiny. Although the percentage of class actions commenced in 2025 with the support of litigation funding decreased from previous years (from approximately 50% to around 32%), that statistical decrease is explained, in part, by a cluster of employment class actions that have been brought without litigation funding (discussed further below). Overall, the third-party litigation funding market remained active throughout 2025.

**Forum:** The Federal Court of Australia remained the preferred forum for the commencement of new actions, seeing approximately 70% of new filings. However, with the introduction of the Victorian Supreme Court's (exceptional) rule empowering the Court to award contingency-based remuneration to class action law firms (known as "Group Costs Orders" or GCOs), Victoria continues to see increased class action activity. A number of significant decisions of the High Court in 2025 (discussed below) will no doubt see that trend continue.

**Claim types:** Australia's class action regimes are agnostic to claim type, meaning the regime can be used in connection with any claim type or subject matter. As a result, Australia has seen considerable diversity in the types of claims commenced since the class action regime was first introduced in 1992. The trend towards diversity continued in 2025.

**Consumer claims** continued to be the most common claim type, representing over 35% of new filings across State and Federal jurisdictions, spanning a broad range of sections, including automotive, aged care, healthcare (medications and devices), financial services and products, insurance, retail, property development, and gambling.

There was also a marked uptick in **employment-related claims**, with over 30% of new filings concerning claims for underpayment or other breaches of workplace entitlements. However, much of that activity was attributable to numerous related class actions concerning the working hours of junior doctors, which commenced in 2025 off the back of the successful initial trial against Peninsula Health in 2023. Additionally, in September 2025, the Federal Court handed down the long-awaited decision in the Woolworths / Coles regulatory and class action proceedings, concerning underpayment claims by salaried managers. The initial success of the representative applicants in those matters is likely to catalyze copycat claims as well as other employment-related filings in the short term. Penalties also loom large in employment claims, particularly as the Court has the power to direct the benefit of the penalty to the aggrieved employees. National airline Qantas was hit with civil penalties of AU$90 million for breaches of Australia's workplace general protections laws.

We also saw something of a resurgence in **securities class actions** in 2025, after no claims being filed in 2024. Nine securities class actions commenced in 2025 (including an action commenced by Woolworths shareholders in the aftermath of Woolworths' defeat in the underpayment class action discussed above). This was despite a growing body of case law from Australian courts (including two significant decisions in 2025) highlighting the substantial hurdles faced by plaintiffs in making good these claims – particularly in proving loss causation. In addition to the Federal Court's dismissal of the *Davis v Wilson* class action (commenced by shareholders in Quintis Limited) in February 2025, the Full Federal Court handed down its decision following the appeal in *Zonia v Commonwealth Bank of Australia*. While the Full Court found that CBA had breached certain continuous disclosure obligations, the dismissal of the class action was ultimately upheld on the basis that the plaintiff shareholders failed to prove causation and loss. The class in Zonia has now sought special leave to appeal to the High Court on these issues.

**ESG class actions** remained on the backburner in Australia in 2025, although there were important developments in the space as a result of the Federal Court's decision in *Pabai v Commonwealth of Australia*. While the claim by the two Torres Strait Islander leaders was ultimately unsuccessful (with the Court finding that there was no novel duty of care owed by the government to protect the Torres Strait from climate damage), the decision demonstrated the Court's willingness to accept evidence of the quantifiable impact of climate change and the requirement for accurate, science-based, emission-reduction targets. The first instance decision in Pabai has been appealed, which appeal will likely be heard in late-2026. Judgment was delivered in February 2026 in greenwashing proceedings against Santos Limited concerning its stated plans to achieve net zero emissions. Although the claims were dismissed, the Court made findings which acknowledge the application of the Australian Consumer Law to sustainability and net zero statements as representations as to future matters for which a reasonable basis (objectively assessed) is required. Similar proceedings against Woodside Energy have also now been listed for trial commencing mid-2027.

## Unparalleled settlement values

A settlement of AU$548.5 million was approved in September 2025 in the revived Robodebt Class Action, making it the largest class action settlement in Australia's history. There were otherwise at least 24 settlements approved in total throughout 2025: the 10 largest settlements totaled over AU$1.6 billion, with the remainder (either approved or pending) totaling approximately AU$1.8 billion.

## Key developments from the High Courts

After over three decades in operation, the adjectival law (and lore) of Australia's class action regime is largely settled. That said, much of the law has evolved from ad hoc innovations posited by practitioners (and supported by the Courts), which have served to provide expedient resolutions to practical problems. One such example is the historic advent of what is colloquially referred to as a 'soft class-closure' process (discussed further below), in answer to the obvious challenges parties face when attempting to settle proceedings in the 'opt-out' regimes that apply in Australia. In 2025, that innovation, and other boundaries of Australia's class action regime, were tested in Australia's highest court.

### 1. *Lendlease v Pallas* – soft class closure

The High Court's decision in *Lendlease v Pallas* arose from a NSW Supreme Court shareholder class action alleging misleading or deceptive conduct and continual disclosure breaches. The High Court was asked to resolve whether Part 10 of the Civil Procedure Act 2005 (NSW), including s 175(5), empowers the Court to order a pre mediation "soft class closure" registration scheme. Such a scheme invites group members to register before mediation and foreshadows that, if the matter settles, the parties may seek orders limiting participation in settlement benefits to only those who registered. The High Court unanimously overturned the NSW Court of Appeal's decision, holding that s 175(5) should be construed liberally and does support such notices, and that the mechanism is not inconsistent with Australia's opt out model. The High Court also made clear that concerns about conflicts between registered and unregistered members go to the Court's discretion and settlement approval fairness, rather than to the existence of power.

The decision reinforces soft closure as a mainstream settlement facilitation tool and resolves a significant State–Federal inconsistency on the Court's approach to near identical notice provisions.

## 2. Bluesky – Solicitors' Common Fund Orders in the Federal Court

Perhaps the most significant decision concerning class actions in Australia in more than a decade, *Kain v R&B Investments Pty Ltd; Ernst & Young v R&B Investments Pty Ltd; Shand v R&B Investments Pty Ltd (Blue Sky),* arose from an appeal against a Full Federal Court decision which had held that the Federal Court could make a "solicitors' common fund order" (SCFO), being an order at settlement or judgment giving the applicant's solicitors a percentage of the recovery on a contingency basis as remuneration for taking the risk of running an unfunded class action (despite Australia's universal prohibition on contingency-based billing). The High Court unanimously confirmed that, at settlement or judgment, the Federal Court has power under ss 33V and 33Z of the Federal Court of Australia Act 1976 (Cth) to make a common fund order in favor of a litigation funder, but it held that power does not extend to SCFOs where the solicitors are subject to state/territory prohibitions on contingency fees (in this case, s 183 of the Legal Profession Uniform Law (NSW)), because it cannot be "just" to make orders that would give effect, in substance, to a prohibited contingency arrangement.

The broader ramifications are material for funding strategy and forum choice: plaintiff firms cannot (unless and until the legislature says otherwise) use the Federal Court to obtain contingency style returns via SCFOs in NSW (and likely other equivalent jurisdictions). This strengthens Victoria's position as the preferred forum for unfunded claims given the express statutory Group Costs Order (GCO) regime in the Victorian Supreme Court, while also placing CFOs for third-party funders at settlement/judgment on a firmer footing (although leaving the restriction on early "commencement" CFOs following *Brewster* intact).

## 3. *Hunt Leather Pty Ltd v Transport for NSW* – funding commissions recoverability as damages in intentional tort claims

*Hunt Leather Pty Ltd v Transport for NSW* came to the High Court on appeal from the NSW Court of Appeal in proceedings arising out of alleged business disruption during the Sydney Light Rail works, where the applicants had entered a litigation funding agreement providing for a 40% commission out of any recovery. The funding issue was whether that commission could be claimed from the respondent as damages (i.e. as "loss" said to have been incurred as a result of the alleged nuisance). The High Court upheld the Court of Appeal's rejection of that head of loss, holding that the funding commission was not a compensable species of damage in nuisance because it was not the kind of harm the duty in nuisance is directed to preventing (it was neither an injury to land nor consequential upon such injury). In any event, it was properly treated as analogous to irrecoverable litigation costs, rather than substantive loss. The Court also noted policy difficulties – that damages would vary depending on a plaintiff's voluntary funding arrangements, and that the funder's entitlement only crystallizes on judgment/settlement.

As to broader ramifications, the decision substantially constrains attempts to shift funding commissions to defendants via damages claims (even if causation can be shown), keeping funding commission recovery within settlement and judicial supervision frameworks.

### 4. *Bogan v Estate of Peter John Smedley (Deceased)* – GCOs travelling between jurisdictions

*Bogan v Estate of Peter John Smedley (Deceased)* [2025] HCA 7 concerned a Victorian group proceeding in which a GCO had been made, and an application to transfer the proceeding to the Supreme Court of NSW. The dispute turned on three linked questions: whether the Victorian GCO would remain enforceable after transfer, whether that mattered to the transfer discretion, and whether the transfer should be ordered. The High Court (majority) held that a Victorian GCO does not "travel" with a transferred proceeding, and that this was a relevant and (in the circumstances) decisive consideration on transfer. This was because it was common ground between the parties that the NSW Supreme Court lacked the power to make an SCFO and there was a real risk that the proceeding could not be viably funded without it.

The decision further entrenches forum gravity towards Victoria for plaintiff firms seeking contingency-style funding via GCOs. It will likely also serve to recalibrate early litigation strategy for plaintiffs and defendants alike. Plaintiff firms wishing to secure a GCO will be encouraged to move quickly. Further, while forum selection (and transfer considerations) may not have historically been a first priority for defendants, the decision emphasizes that timing is critical: a transfer application should be made early (as delay may prevent later action).

# 2 Czech Republic

The Czech Republic introduced collective action legislation through Class Actions Act, which came into effect on 1 July 2024. The Act applies only to rights arising after its entry into force.

## Key takeaways

1. The Czech Republic's new opt in collective action regime is narrowly focused on consumer monetary claims but has already demonstrated procedural efficiency and speed, with the first case reaching judgment within seven months, confirming the court's flexible, representative approach.

The regime is an opt-in system available for consumer disputes, with small businesses also qualifying as consumers under the Act (similar to the German approach). Claims are limited to monetary relief brought by qualified entities (certain non-profit organizations) on behalf of consumers. A two-phase process requires the court to first assess the admissibility of the collective action before proceeding to the merits, with requirements including a minimum of 10 group members and sufficiently similar factual and legal bases for the claims. A key feature of the regime is procedural economy: the court does not examine each individual claim separately but relies on a representative sample of claims, using a degree of probability and typicality to determine the factual pattern.
The non-profit organizations bringing the claims are entitled to remuneration, determined by the court as a percentage of the awarded amount, capped at 16%.

In July 2025, a Czech court issued the first collective action judgment under the new regime. A qualified consumer organization brought a claim on behalf of consumers who had ordered custom furniture online, paid deposits in full, but never received delivery despite contractual deadlines and additional grace periods. The class action was filed in late 2024 and certified in early 2025. Over 50 consumers registered their claims, with the vast majority receiving compensation totaling approximately EUR 59,000. A small number of claims were dismissed due to materially different factual circumstances.

In its decision of 1 July 2025, the court confirmed the procedural efficiency principle underlying collective proceedings, noting that while individual examination of each claim is impractical in cases involving hundreds or thousands of claims, a flexible approach is appropriate where the number of claimants is relatively modest. On the substantive merits, the court held that undertakings cannot rely on obscure contractual terms, particularly where publicly available information and subsequent conduct are not in line with such terms. The court awarded the claimant consumer organization the maximum 16% fee plus administrative costs. The proceeding concluded remarkably swiftly, spanning approximately seven months from filing to judgment.

# 3 France

The French class action regime, introduced in 2014, saw limited uptake in its first decade due to its complexity – only 35 class actions were initiated between 2014 and 2020, of which just 21 reached the courts. Most concerned consumer protection, with a handful relating to health, discrimination and data protection.

## Key takeaways

1. France's original class action regime saw limited use and few successful outcomes, but sweeping reforms introduced in May 2025 have replaced fragmented sector-specific rules with a single, simplified framework.
2. The new regime significantly broadens access and scope, allowing a wider range of claimants, expanded remedies including compensation and cessation and facilitated third-party funding.
3. While only one case has been filed so far under the new rules, the reforms are expected to drive increased mass claims litigation and scrutiny for companies from 2026 onwards.

Under this historical regime, successful outcomes for claimants on the merits were rare, and none has yet reached a final, unappealable stage. To date, only two cases, which are still under appeal, have resulted in a finding of liability:

- on 5 January 2022, the Paris Judicial Court found Sanofi at fault in the Dépakine group action for its marketing of the drug, thereby allowing victims to seek compensation;
- on 27 May 2025, the Civil Court of Saint-Denis de La Réunion ruled that Cise Réunion was liable for failing to provide potable tap water across several networks where the water was repeatedly unfit for consumption.

In May 2025, however, the legislator enacted sweeping reform to comply with EU Directive 2020/1828 and enable easier access to class actions.

Key changes include:

- **A unified legal regime**. Previously, class actions were fragmented across five areas: consumer protection, public health, environment, data protection and discrimination – each with its own rules. The reform repeals these sector-specific regimes, establishing a single, harmonized framework for all class actions. Now, any person may bring a class action on behalf of multiple individuals or entities in a similar situation, following a breach by a professional, public entity, or public service provider of a legal or contractual obligation.
- **A broader scope.** Class actions can now seek cessation of unlawful conduct and/or liability and compensation for any type of loss, provided individual claims are submitted.
- **A wider access to claimants.** The list of eligible claimants has expanded.

In addition to accredited associations, actions may be brought by:

- Non-accredited non-profit associations (active for over two years, for cessation only);
- Certain representative trade unions;
- The public prosecutor (principal party for cessation, joined party in any action);
- Qualified European entities (for cross-border actions)

- **A streamlined procedure.** The reform simplifies the procedural framework by channelling class actions to designated courts and establishing a public national register, which improves the monitoring of filings and shortens defendants' response periods.
- **Facilitated funding.** Third-party funding is permitted, provided funders do not influence the proceedings to the detriment of represented parties. For the first time, a dedicated fund – financed by civil penalties for intentional misconduct – supports class actions arising from events after 3 May 2025.

## Recent developments under the new regime

So far, one class action has been filed under the new regime: on 22 July 2025, the French consumer association UFC-Que Choisir initiated a class action against Stellantis and Automobiles Citroën seeking to secure compensation for owners of affected Citroën and DS vehicles for the various losses suffered as a result of their vehicles being immobilised following "stop-drive" recalls or notices instructing them to cease driving, due to the use of defective Takata airbags. Proceedings are still pending.

## Outlook

Given the recent implementation of the new regime, the simplified framework is anticipated to lead to an increase in mass claims litigation in 2026, thereby raising both the level of risk and the degree of scrutiny faced by companies before the French courts. The government is required to report to Parliament on the new regime by 2029.

# 4 Germany

Mass claims litigation in Germany is accelerating due to an increasingly supportive environment and litigation funding. Claimant firms and litigation funders are increasingly capitalizing on evolving legal frameworks including the EU's Product Liability Directive and Empowering Consumers Directive to drive significant growth in Germany's litigation market.

## Key takeaways

1. Mass claims litigation in Germany is accelerating, driven by litigation funding, claimant firm coordination and legal frameworks that support large-scale individual actions, claims bundling and collective redress.
2. Exposure is rising across product liability, General Data Protection Regulation (GDPR), greenwashing and antitrust, with new EU directives and recent case law making standardised, high volume claims easier to pursue.
3. Litigation funding is playing a growing role, with funders targeting collective redress and profit skimming actions and 2026 shaping up as a test year for these mechanisms.

Germany's mass claim toolbox runs on three tracks:

- **Mass individual actions remain predominant.** Individuals sue in their own name, while claimant firms coordinate large volumes of near identical cases. This model is commercially viable due to legal cost insurance and extensive use of AI. The diesel emissions litigation, GDPR "scraping" claims and COVID-19 vaccine cases show how quickly waves of individual actions can form. These three complexes illustrate the breadth of potential exposure: (i) the diesel emissions litigation involved vehicle owners alleging manipulation of exhaust gas values by car manufacturers, (ii) GDPR scraping claims allege a breach of data protection law, and (iii) COVID-19 vaccine cases brought against vaccine manufacturers concern alleged side effects.
- **Claims bundling is becoming more common.** Specialized firms bundle large numbers of individual claims by assigning them to a special purpose vehicle (SPV), which then sues in its own name. Although this model carries legal uncertainty, it is central in antitrust cases and increasingly popular in GDPR cases.
- **Collective redress mechanisms** allow designated organizations (for example, consumer protection associations) to bring claims on behalf of defined groups.

The Consumer Rights Enforcement Act (*Verbraucherrechtedurchsetzungsgesetz* (VDuG) implementing the EU Collective Redress Directive), enables qualified entities to bring actions for damages and other forms of redress on behalf of consumers (redress action, *Abhilfeklage*). Where damages are awarded, the amount is distributed to consumers who opt in to the proceedings. Recently, redress actions have been brought against companies whose methods for

implementing price increases, for example in subscription-based models, have attracted scrutiny from consumer protection associations. Under the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*, "UWG"), certain organizations (for example, consumer protection associations) can seek injunctions against unfair commercial practices and bring profit skimming claims (*Gewinnabschöpfungsklage*), with proceeds paid into the federal budget. A recent legislative change allows litigation funding costs to be paid from skimmed profits – and 2026 is set to become a test year for this mechanism.

## Areas highly exposed to heightened mass litigation risk in Germany:

**Product liability (especially in the tech sector):** The Product Liability Directive (and its national transposition) extends strict liability to software – one coding error can scale across a user base. More claimant-friendly evidentiary rules and explicit coverage of data loss harms make standardized, large-scale claims more feasible.

**GDPR litigation:** Any business processing personal data can face mass claims. Data breaches and leaks, scraping, unlawful email marketing and unlawful processing already drive litigation in Germany.

**Unfair commercial practices (especially greenwashing):** Under the UWG, consumers may claim damages for misleading statements or withheld essential information – this also applies applying to greenwashing. And as the Empowering Consumers Directive's transposition (via the UWG) will tighten green advertising rules as of 27 September 2026, we expect more greenwashing cases, also as representative actions under the VDuG.

**Antitrust litigation:** German courts have traditionally limited SPV aggregation for antitrust damages, but recent case law suggests a shift. The recent European Court of Justice's decision on bundling (standalone) antitrust damages claims reinforces that direction. We expect more bundling driven antitrust litigation, and growing consumer focus as the VDuG allows asserting antitrust damages collectively.

## The increasing role of litigation funding in Germany

Litigation funding is surging. In 2025, funders explored opportunities around VDuG actions and antitrust claims bundling. The VDuG's 10% cap on a funder's share may temper some activity, but funders see opportunities in parallel UWG profit-skimming actions. In December 2025, Burford Capital funded a representative action against a technology company seeking to skim profits (approximately €1.8 billion). Funders also welcomed the European Court of Justice's antitrust ruling as a signal to increase activity in Germany. In a statement, Burford Capital says: "This landmark decision from Europe's top court paves the way for the continued use of collective redress and legal finance."

# 5 Italy

## Key takeaways

1. Group litigation risk in Italy is increasing, with courts confirming that multiple collective redress routes can run in parallel and that individual variations in loss do not prevent collective treatment where a uniform methodology applies.
2. Collective action mechanisms are moving into routine use, particularly for consumer-facing and EU law-based claims, with early admissibility often prompting settlement rather than a full merits judgment.
3. Public data points to a rapid rise in collective proceedings and material monetary exposure, especially in consumer, product safety and financial services disputes, even though official figures likely understate the true level of activity.

Three recent developments in Italy warrant emphasis for group-claim risk:

- In the "Takata airbag" litigation, the Turin Court of Appeal (16 July 2025) confirmed that (i) Italy's two principal collective redress routes – a general opt in class action and consumer representative actions brought by qualified entities under a new framework introduced in 2023 – may proceed in parallel and be coordinated where they arise from the same factual matrix, and (ii) individual differences in the amount of loss allegedly suffered do not, by themselves, prevent the case from being handled on a collective basis where the loss can be quantified using a uniform, objective methodology.
- The EU derived consumer representative action regime has moved from "on the books" to routine use: a specialized procedure embedded in the Consumer Code channels many consumer-facing, EU law-based disputes into actions that qualified entities can bring for injunctive relief and redress.
- A case to watch is the publicly announced Moige initiative against major social media platforms (Meta and TikTok), described as an injunctive class action targeting alleged harmful practices affecting minors; regardless of ultimate merits, it signals the increasing deployment of Italy's collective tools in "digital harms" scenarios and may influence how courts approach such claims in the future.

Publicly available indicators show a marked acceleration in group litigation and a broadening of subject matter, albeit with incomplete visibility. The Italian Ministry of Justice's online platform indicates that 38 collective proceedings were recorded in 2024, up from 19 in 2023 and roughly 10 across 2021–2022, and that 76 proceedings were listed online as of April 2025, while cautioning that injunctive collective cases are frequently not uploaded and therefore the online figures should be treated as a floor rather than a ceiling for risk assessment. The case mix reflected in the reporting and in the platform's docket descriptions points to a concentration in consumer-facing disputes, especially financial services and standard form contracts, product/vehicle safety and recalls, and consumer subscriptions and advertising/marketing practices.

In terms of outcomes, the prevailing pattern is that a significant share of matters are resolved through settlement or early termination after admissibility is granted. A clear reference point is the Italian "Dieselgate" collective litigation – arising from alleged use of "defeat devices" and misleading emissions-related representations in certain diesel vehicles – which was concluded with a settlement between Volkswagen and Altroconsumo: a compensation fund of up to €50 million was made available for an admitted group of around 60,000 consumers, with individual payments typically framed in a €550 to €1,100 range through a dedicated claims platform. For practical risk assessment, the key implication is that material monetary exposure in Italy is often crystallized via negotiated resolution once a collective claim clears the admissibility hurdle, rather than through a final merits judgment.

# 6 Luxembourg

## Key takeaways

1. Luxembourg has introduced a new consumer class action regime allowing qualified entities to seek injunctions and compensation against professionals, but its practical impact remains untested given the absence of case law to date.

## The introduction of class actions in Luxembourg

In November 2025, new legislation introducing class actions into Luxembourg consumer law came into force. The Consumer Code now allows a class action to be brought before the Luxembourg Courts when the individual interests of several consumers in a similar or identical situation have been harmed by one or more professionals. There are two grounds for bringing a class action:

- a breach of legal obligations by the professional; or
- infringements by the professional established by a court following an action for cessation or prohibition.

This new procedure enables consumers, through a single lawsuit, to seek the cessation or prohibition of the professional's unlawful conduct, compensation for any harm suffered if the court finds a violation, or both. Class actions may be brought against professionals established in Luxembourg or active in its market, regardless of whether the violation is ongoing or has already ceased. The right to bring a class action is limited to certain qualified entities, including sectoral regulatory bodies such as the Luxembourg Competition Authority, approved associations, and others. Given the recent introduction of this procedure, no statistics are yet available regarding the number of class actions filed, nor is there precise information or guidance on how the Luxembourg courts will deal with class actions.

# 7 Netherlands

The Dutch Act on redress of mass damages in collective action (*Wet afwikkeling massaschade in collectieve actie* WAMCA) came into effect on 1 January 2020 and structurally changed the Dutch system for mass litigation and collective redress. Claimants have been granted the ability to seek monetary compensation in mass proceedings and rulings are generally binding for Dutch parties who have not utilized their opt-out options. On the other hand, the requirements for standing of the claim vehicle became stricter.

## Key takeaways

1. The WAMCA has reshaped Dutch mass litigation by enabling collective claims for monetary damages, but strict standing requirements and a lengthy admissibility phase have slowed progress and limited merits rulings.
2. Recent case law and pending CJEU guidance, particularly in GDPR-related actions, are likely to be decisive for the future scope and viability of collective damages claims in the Netherlands.
3. While filings seem to have levelled off, risk exposure remains concentrated in data protection, consumer law and ESG-related claims, with courts showing increasing openness to bundling material and non material damages.

The legislator sought to balance the interests of claimants to effectuate their rights with the interests of defendants in being protected against unfounded or frivolous mass claims. Furthermore, it was the intention to create a clear framework for mass litigation, to prevent chaos from numerous individual claims and enhance the appeal of settlements. After five years of WAMCA, the experience is that although the body of case law is steadily growing, there are still practical issues such as procedural delays due to ambiguities regarding, amongst other things, the requirement of claim vehicles having to be sufficiently representative. This necessitates further clarification by courts or the legislator to enhance the WAMCA's effectiveness.

Since the introduction of the WAMCA, approximately 100 cases have been initiated. After initial enthusiasm, the growth in the number of cases has slowed down. This may have to do with the fact that after six years only one case has made it to a ruling from a first instance court on the merits. All other cases have been dismissed, settled or are still pending. Litigation on standing has proven to be lengthy.

The current trend is that new class actions focus on (i) data protection/privacy claims; (ii) consumer law; and (iii) public interest/ESG claims. Three key developments have potentially significant implications for Dutch collective actions and demonstrate recent trends.

## Preliminary questions to the CJEU in the Amazon case

In July 2025, the Rotterdam District Court referred preliminary questions to the Court of Justice of the European Union (CJEU) in a collective action under the WAMCA against Amazon. The preliminary questions focus on the interplay between the WAMCA and GDPR, specifically: (i) whether the Netherlands may impose stricter admissibility requirements on representative organisations in collective actions for GDPR violations than those set out in Article 80 of the GDPR, and (ii) whether such organisations may claim damages for GDPR infringements without an explicit mandate from the affected individuals. The CJEU's answers, which are expected at the end of 2026, will be pivotal for the future of collective actions relating to GDPR infringements in the Netherlands.

## Judgment on the admissibility of (non-)material damages under the WAMCA in the Tiktok case

In October 2025, the Amsterdam Court of Appeal rendered a significant judgment on the admissibility phase in a collective action against TikTok. The Court of Appeal held that claims for both material and non-material damages (*materiële en immateriële schade*) can be bundled in a collective action. The presence of significant differences among the affected individuals does not preclude collective proceedings. The Court of Appeal emphasised that the Dutch legislator recognizes that not every member of the group will have suffered the same level of damage, and that this can be addressed by categorising group members for the purpose of determining compensation. This judgment is consistent with the Court of Appeal's earlier judgment in the collective action against Oracle et al. (Amsterdam Court of Appeal, 18 June 2024) and appears to open the door further for claims for non-material damages in collective actions.

## Evaluation of the WAMCA

A recent evaluation of the WAMCA, commissioned by the Research and Documentation Centre (WODC) assessed whether the Act has met its objectives since coming into force on 1 January 2020. It found that no collective damages claims under the WAMCA have been fully concluded, largely because the admissibility phase – particularly the assessment of the claimant organisation – takes considerable time.

As a result, the goal of achieving efficient and effective proceedings has not yet been met and the evaluation suggests that improvements could be made to streamline or shorten the preliminary admissibility phase.

# 8 Saudi Arabia and the UAE

## Key takeaways

1. Saudi Arabia has an emerging class action system, with securities disputes before the CRSD the most developed and frequently used.
2. The UAE has no formal class action regime, with only limited collective mechanisms in onshore courts and low use group litigation orders in the DIFC and ADGM.

In Saudi Arabia, class actions are a relatively new mechanism in terms of practice and application, although the legal framework has been in place for some time. The most advanced and mature use of class actions is in securities disputes, overseen by the Committees for Resolving Securities Disputes (CRSD). Here, class actions have been successful, with some cases involving over 1,000 claimants and compensation exceeding SAR 1 billion. The process typically involves a main plaintiff submitting a request for a class action, after which others can join, and individual claims may be frozen and included in the class action unless claimants opt out. The CRSD can also initiate class actions on its own if there are many similar claims. Class actions are also possible in commercial and labor disputes, but practice in these areas is less mature, and there are few published case precedents. Generally, more than 10 claimants are required, and the relevant judicial bodies include commercial courts, the CRSD, and labor courts. Recent legislative changes, such as allowing lawyers to advertise, are expected to further drive the adoption of class actions in Saudi Arabia.

In Dubai (UAE), there is currently no formal class action mechanism comparable to those in jurisdictions such as the UK, Europe or Australia. The UAE comprises three legal systems: the onshore civil courts and two common law jurisdictions in the DIFC and ADGM. None of these have a dedicated class action process. However, there are mechanisms that allow for collective actions. In onshore UAE, one exception is in labor disputes, where groups of employees can bring collective claims against employers, though this is not widely used. More generally, groups of claimants can join a single claim form, and the Civil Procedure Law allows interested parties to join ongoing claims. In the DIFC and ADGM, group litigation orders can be made, allowing claims with common issues to be managed together, but these have not yet been widely used. Consumer protection in the UAE is handled by a specialist department within the Ministry of Economy, which investigates individual complaints and can render decisions, but there is no process for groups or classes of consumers to bring collective actions under current consumer laws.

# 9 Spain

Spain has yet to implement the Representative Actions Directive (EU) 2020/1828 into domestic law, leaving the framework for collective consumer redress in a prolonged transitional phase. In March 2025, the Government introduced a draft Collective Actions Act, reviving a text previously proposed as part of a procedural law reform but withdrawn in 2024. However, in light of the current political climate and limited legislative momentum, there is no clear timetable for its enactment, nor certainty as to the final configuration of the regime.

## Key takeaways

1. Spain remains without a modern collective redress regime, with the proposed Collective Actions Act implementing the Representative Actions Directive delayed and facing political and legislative uncertainty.
2. In practice, collective risk is shaped less by formal class actions and more by aggregation models, including bundled claims, assignments and funder-backed structures, particularly in competition and consumer disputes.
3. Even without a dedicated framework, Spanish courts and market participants are actively expanding collective litigation pathways, with competition damages and financial services disputes driving scale and momentum.

If enacted as currently drafted, Spain's Collective Actions Act would establish a dedicated procedure in the Civil Procedure Act for both cessation and consumer redress actions, with redress claims operating on a default opt-out basis (consumers are bound unless they opt out within a court-set period), subject to an exceptional opt-in model where individual relief exceeds EUR 3,000, and in any event for consumers habitually resident outside Spain. Standing would sit primarily with the Public Prosecutor and "qualified entities" (notably consumer associations and certain public bodies), including the ability for EU-designated entities to bring cross-border actions (using the Commission list as proof of designation), while individual consumers would not generally be able to intervene. The draft also places strong emphasis on notice and transparency through public recording of key milestones and outcomes, and it introduces a mandatory funding disclosure and judicial control regime under which third-party funding may be restricted, restructured or refused where it creates conflicts of interest or risks diverting the claim away from consumer protection objectives, with potential consequences including exclusion of the entity or termination of the action.

Against that backdrop, Spain continues to see a material volume of group-style disputes, but largely through existing procedural tools rather than through a modern collective redress framework.

As matters stand, Spain does not provide a general consumer "follow-on" civil damages route that is automatically triggered by an infringement finding from a regulator. That type of follow-on dynamic exists in a meaningful way only in competition damages litigation, where infringements can underpin private damages claims.

For consumer protection breaches, recovery is typically pursued either through individual proceedings, where an administrative infringement decision is generally treated as evidential material rather than binding on the adjudicator, or through administrative compensation powers contemplated by the Spanish Consumer Protection Act, which (while available in law) appear rarely used in practice.

In consequence, the practical "collective" risk profile for businesses in Spain has tended to be shaped less by formal class actions and more by aggregation models that consolidate many claims into a single piece of litigation. Even without a dedicated collective redress regime, collective litigation continues in Spain, most visibly in the form of cessation actions seeking injunctive or declaratory relief under consumer law and unfair competition rules.

In parallel, market participants have increasingly relied on alternative routes to achieve scale: consumer associations bringing claims in the name and on the authority of their members (often operating in practice as a mass joinder), law firms bundling large numbers of client claims into a single set of proceedings and actively recruiting claimants to increase the size of the book, and assignment structures under which claims are transferred to a vehicle entity that then litigates in its own name, frequently supported by third-party funding. While large-scale aggregation remains comparatively recent in Spain than in some other jurisdictions, the direction of travel has been towards greater use, driven in particular by funder and investor appetite, and by the expectation that eventual implementation of the Directive will normalize and expand collective recovery pathways.

Competition damages actions have already become a significant driver of collective litigation and aggregation models in Spain, as demonstrated by the ongoing automobile cartel claims. In addition, further collective actions are expected to emerge following decisions of the Spanish Competition Authority in the Booking.com case (S/0005/21), the paper and corrugated cardboard cartel case (S/0469/13), the milk cartel (S/0425/12) and the cartel concerning the manufacture of paper and cardboard products for domestic, sanitary and hygiene use (S/DC/0504/14 – AIO), where claimants coordination and third-party funding structures are currently being organized.

Financial services disputes also remain a prominent source of group-style litigation and continue to evolve within the existing procedural framework. A notable ongoing matter is a cessation class action concerning multicurrency mortgages,

which is currently awaiting a decision from the Supreme Court. The Court has also recently rejected appeals brought by banks in ADICAE's long-running collective proceedings concerning mortgage "floor clauses", following guidance from the CJEU in July 2024 on how transparency should be assessed in collective contexts, by reference to an average consumer benchmark and standardized pre-contractual and contractual practices. In the same vein, the Supreme Court has now extended that approach to collective claims involving revolving credit. In its judgment of 17 February 2026, in proceedings brought by ASUFIN against Carrefour, the Court upheld a collective cessation claim and declared null the contractual terms governing the revolving repayment mechanism.

Taken together, these developments show that, even in the absence of a formally implemented Representative Actions Directive, Spanish Courts are actively shaping the practical scope and effectiveness of the collective mechanisms already available. At the same time, the market continues to test and expand aggregation and funding structures to achieve scale, in anticipation of a more fully developed collective redress regime.

# 10 United Kingdom

In 2026, we expect to see securities, competition and ESG class actions continue to gain momentum. Funding reforms are also on the agenda, with the UK Government confirming that it will implement legislation to reverse *PACCAR "as soon as parliamentary time allows,"* which may embolden funders. We also anticipate that courts will continue to take an active and pragmatic approach to the case management of group actions. We provide below a summary of last year's key developments and detail our views on what that portends for 2026.

## Key takeaways

1. The UK remains an active and evolving forum for group litigation, with competition, securities and ESG claims gaining momentum and Courts taking a more assertive role in case management and certification.
2. Funding remains a central uncertainty, with the Government committed to reversing *PACCAR* but the scope and timing of reform still unclear, leaving funders and claimants operating in a transitional environment.
3. Recent decisions show courts tightening the gate for representative and collective actions while also demonstrating a willingness to hold UK parent companies liable for overseas harm, significantly increasing litigation risk for global businesses.

## The Collective Actions Regime in the Competition Appeals Tribunal (CAT)

2025 was a defining year for the competition collective actions regime. In its first liability finding, the CAT held that Apple had abused its dominant position by excluding rivals and charging unfair prices for apps and subscriptions on its devices (*Kent v Apple*).

By contrast, in *Gutmann v South Western Trains & others*, the CAT did not agree that providing insufficient information/availability of certain boundary rail fares amounts to an abuse of a dominant position. In particular, the CAT laid down a marker that while abuse is a broad concept, it is not unlimited and competition law is not a general law of consumer protection. Dominant companies are not under an obligation to organize or conduct their businesses so as to achieve the best outcome for their consumers.

We have also seen the CAT taking a more active gatekeeping role. It has refused certification where the proposed class representative was considered unsuitable, on the basis that she may not have been able to balance adequately the interests of the funders and lawyers with those of the class members (*Riefa v Apple*). In another case, the CAT rejected a claim, in part, because the class representative had failed to identify a credible or plausible method for assessing damages and the CAT was doubtful that the cost benefit of the proceedings favoured certification (*Rowntree v PRS*).

We continue to see a focus on opt-out standalone claims (i.e. not relying upon a decision of a UK competition authority), although there were far fewer class actions issued in the CAT in 2025 than in recent years. We have also seen a number of settlements, including in the *Merricks v Mastercard* case, where the funder continues to contest the settlement approved by the CAT, through judicial review proceedings.

2025 also marked ten years of the opt-out collective actions regime. The UK Department for Business and Trade (DBT) opened a consultation on whether the regime strikes the right balance between access to justice for claimants and avoiding disproportionate burdens on defendants. The DBT states in the consultation that *"bringing a claim should not be the primary route to redress for consumers where they have suffered loss as a result of anti-competitive behaviour"*. The Department's response, expected in 2026, will outline potential improvements to the regime and alternative routes for consumer redress.

## Litigation funding

In 2023, the UK Supreme Court ruled in *PACCAR* that litigation funding agreements (LFAs) based on a percentage of damages recovered in a claim were unenforceable unless they complied with stringent regulatory provisions for damages-based agreements.

In June 2025, the Civil Justice Council (CJC) published a review into third-party litigation funding which recommended that the UK Government legislate to reverse the impact of that decision with prospective and retrospective effect. This could make previously unenforceable LFAs enforceable, including those entered into prior to the legislation. The CJC also recommended the introduction of a "light touch" regulatory regime for litigation funders, who are currently self-regulated.

The CJC's review further proposed that courts be required to approve LFAs and, as part of that process, funded parties should certify that they had not been approached to pursue proceedings, either directly or indirectly, by the funder or their lawyer. The recommendations also included a requirement that funders do not control the litigation, particularly and explicitly in respect of settlement.

In December 2025, the Government confirmed it would introduce legislation to reverse *PACCAR "when parliamentary time allows"*, although it did not confirm whether such legislation would also have retrospective effect. The Government is also carefully considering the remainder of the CJC's recommendations. The extent of legislative change – and the timing – therefore remain uncertain, but confirmation that *PACCAR* will be reversed has been welcomed by funders and claimant law firms.

## BHP liable in the English courts for dam collapse in Brazil

In a highly anticipated judgment in November 2025, the English High Court found BHP liable for the 2015 Fundão dam collapse in Brazil, which caused significant environmental and socio economic damage and led to a group claim

by over 600,000 claimants. Based almost solely on findings under Brazilian law, the Court found BHP, a UK-domiciled parent company, liable for operations associated with its Brazilian subsidiary.

The Court held that BHP is strictly liable as a "polluter" under Brazilian environmental law, despite not directly owning or operating the dam, and also liable for fault under the Brazilian Civil Code for failing to act on known instability. The Court determined that BHP exercised substantial control over Samarco, the joint venture responsible for the dam and was actively involved in both strategic and operational decisions.

The Court rejected BHP's arguments that the claims were time-barred. It also ruled that the effect of previous settlements and waivers must be considered on a case-by-case basis and confirmed that Brazilian municipalities have standing to bring claims in England.

This judgment demonstrates the willingness of English Courts to hold UK parent companies liable for environmental harm caused by overseas subsidiaries, even where the harm and the claimants are outside the UK. This judgment underscores the imperative for global businesses to assess and strengthen management frameworks to mitigate litigation risk.

The proceedings will now progress to the stage two trial (scheduled for October 2026 to March 2027), which will consider issues of loss and quantum. The Claimants seek damages of up to £36 billion.

## Developments in opt-out representative actions under CPR 19.8

In January 2025, the Court of Appeal (CoA) rejected Wirral Council's attempt to bring a securities (or stock drop) claim – via a CPR 19.8 representative action – against Indivior and Reckitt Benckiser on behalf of retail and institutional investors arising from alleged fraudulent statements made by the defendant companies about their roles in the US opioid crisis. The CoA emphasized that, while a claimant can commence representative proceedings where the "same interest" threshold is met, discretion under CPR 19.8 is *"quite unfettered"* as to whether those proceedings should be allowed to continue, and stated that the Court must assess the advantages and disadvantages of available procedures, stressing there is *"no predilection towards one form of procedure rather than another"*. The CoA also rejected the argument *"engineered by the funders"* that a representative action could provide a practicable route to redress for retail investors whose claims would not otherwise be funded in multiparty litigation. In August 2025, the High Court made clear that thought must be given to the logistical and practical arrangements of representative actions under CPR 19.8. In *AFM and SAG-AFTRA & Ors v Secretary of State*, the Court held that the "same interest" test will be interpreted purposively by the Courts, that class definitions must be objectively clear and that individualised damages assessment may be a practical hurdle to the bringing of representative claims, absent a firm and workable proposal as to assessment and distribution. That claim continues as a representative action for the time being, albeit a judgment in December 2025 in the proceedings reiterated the High Court's insistence on principled and workable mechanisms under CPR 19.8.

These judgments demonstrate that the English Courts will support representative actions only where genuine common issues exist. The "same interest" test remains a high bar.

## Section 90A FSMA: reliance and dishonest delay

Two cases in the past year, brought by shareholders under s.90A and Schedule 10A of the Financial Services and Markets Act 2000 (FSMA) against UK listed/public companies, have had the English High Courts grappling with the concepts of "reliance" and "dishonest delay."

In *Allianz Funds Multi-Strategy Trust v Barclays PLC*, the High Court ruled – on a strike out application – that under s.90A FSMA: (1) reliance cannot be satisfied in respect of published information which the Claimants did not read or consider at all; and (2) dishonest delay only imposes liability upon an issuer where publication of information has taken place (the Barclays Judgment). Of the claims against Barclays (worth £332 million), 60% were struck out based on this judgment, and the case was settled not long after the decision.

Following the Barclays Judgment, Standard Chartered plc (SC) brought an application to strike out similar claims in the s.90A case it was facing (*Persons Identified in Schedule 1 v Standard Chartered PLC*). However, the High Court declined to follow the approach taken in the Barclays Judgment and denied SC's strike-out application, principally on case management grounds. Mr Justice Green emphasized that the law on reliance and dishonest delay under s.90A FSMA remains unsettled and that these issues should be determined at trial on the basis of full factual and expert evidence. SC was granted permission to appeal the High Court's decision.

There remains a degree of uncertainty as to how the courts will ultimately determine issues of reliance and dishonest delay in s.90A claims, although the case settled in early December 2025.

# 11 United States

We anticipate that 2026 will be another year which sees a significant number of class action cases filed in federal courts with key areas being product liability, antitrust, data breach and privacy, consumer protection, and securities fraud litigation. More than 12,000 class actions were filed in federal courts in the US in 2025, an increase from the prior year (and continuing a multi-year trend of more than 10,000 cases per year). We discuss some more specific, substantive developments from 2025 below and what that portends for 2026 and beyond.

## Key takeaways

1. US class action filings remain at historically high levels, with product liability, antitrust, data breach and privacy, consumer protection and securities fraud driving volumes into 2026.
2. While US class action law did not materially change in 2025, Supreme Court decisions preserved the status quo on certification standards and reinforced Rule 23 as the route for broadly applicable injunctive relief.
3. Litigation funding and aggregation strategies continue to shape risk, alongside expanding exposure from mass torts, algorithmic pricing claims, data breaches and climate and greenwashing litigation across multiple sectors.

## Class action law did not materially change

There was no sea change in US class action law in 2025, but two Supreme Court decisions are of note. First, the Supreme Court declined an opportunity to further tighten class certification requirements in *Laboratory Corporation of America Holdings v. Davis,* 605 U.S. 327 (2025), when it decided per curiam not to review a decision of the Ninth Circuit Court of Appeals affirming certification of a class that may have included uninjured members. Thus, the status quo prevailed. We stress that the Court's decision was not a decision on the merits (and, in fact, it declines certiorari review of thousands of cases every year), and we note that Justice Kavanaugh dissented and expressly called for the Court to establish a rule rejecting certification in matters seeking class-wide damages when the proposed class is comprised of injured and uninjured members. We believe this is an issue that may well resurface in a future case. If so, and the Court rules as Justice Kavanaugh suggests, it would lead to a further tightening of judicial scrutiny over putative class actions in all areas of the law, and certification being denied in more cases.

Second, the Supreme Court endorsed the use of Rule 23 class actions as the primary mechanism to craft broadly applicable remedies, such as injunctive relief, that benefit a large number of parties who are not before the Court. The case in question, *Trump v. CASA,* Inc., 606 U.S. 831 (2025), was not a class action at all, but a series of individual cases that each challenged the constitutionality of the Trump administration's Executive Order regarding the criteria for citizenship. The Court limited the power of federal district courts in each case to issue so-called "universal injunctions" that would broadly bar the government from

enforcing the Executive Orders against the plaintiffs who brought each case and any other aggrieved person (even though those others were not parties to the action). The Court held that the normal rule, that a Court adjudicate the issues raised only by the parties before it and that any remedy it grants only applies to those parties, meant that while a single district court could entirely enjoin the government from committing an unconstitutional act against the plaintiff(s) who brought the suit, non-plaintiffs would not ordinarily benefit from that injunction. The Court noted that such non-parties could, of course, file their own cases or join another, existing case seeking their own injunctions. Or, a plaintiff who wants to obtain injunctive relief that is broadly applicable to others affected by the same conduct, could proceed by filing a class case under Federal Rule of Civil Procedure 23 on behalf of a class of similarly situated plaintiffs. The Court's endorsement of Rule 23 class actions signals an ongoing willingness to use that mechanism to craft broadly applicable remedies, a willingness that may very well spur an increase in the number of class actions filed.

## Litigation funding continues to drive lawsuits in the US

As in other jurisdictions across the globe, litigation funding continues to be a major factor in class action litigation, though the investment thesis tends to be a little different in the US where class actions have historically been self-funded by specialized plaintiffs' law firms. While that has begun to change, third-party funders in the US largely focus their investments in financing litigation by plaintiffs who want to "opt-out" of a class case, hire their own counsel, and steer their own litigation (and settlement) strategy. In antitrust and securities cases, in particular, these are often, and increasingly, sophisticated corporate entities or investors who do not believe their interests are best aligned with the representative class plaintiffs or their law firms, and do not want to simply be one of many absent class members with no say in the litigation strategy.

Two things to watch with regarding to litigation funding in the US are:

- Legislative proposals first brought up in 2025 to tax income obtained through litigation funding at much higher rates
- Judicial reaction to litigation funding, particularly in light of the high-profile and ongoing saga between Sysco Corporation and Burford Capital, the world's largest litigation funder.

Burford originally invested more than US$140 million in Sysco, which used its 2019 antitrust price-fixing claims against the chicken, beef, pork, and turkey industries as collateral, but subsequently assigned those claims to a third-party. A dispute over the legality of that assignment erupted in multipronged litigation almost three years ago, when Burford obtained an injunction from an international arbitration panel preventing settlement of Sysco's lawsuit without its approval, and Sysco sued Burford in an Illinois federal court alleging the funder was attempting to unlawfully block settlements it disapproved of, *"forcing Sysco to continue to litigate against its will."* To cut a long story short, the litigation between the parties continued throughout 2025 with no end in sight.

## The most common types of cases

The mix of class action cases continues to be heavily skewed towards product liability, mass tort, antitrust and data breach cases, which collectively account for roughly 75% of all consolidated federal class actions with fewer class cases (<5% each) being brought for securities fraud, breach of contract, employment discrimination, and patent infringement. We break down last year's key developments, below.

### Product liability/mass torts class action developments

In 2025, products liability class and mass tort actions dominated court dockets. Mass tort actions involve claims that do not qualify for (or are pled to avoid) class certification but are sufficiently similar to warrant consolidated procedures. In 2025, plaintiffs used both mechanisms to assert conventional and novel claims.

Unsurprisingly, new mass torts have followed some of the strongest consumer trends in 2025. Suits already have appeared in connection with GLP-1 weight loss drugs, alleging failure to warn and design defects caused personal injuries. Another action has alleged that baby food manufacturers failed to warn of the presence of heavy metals in their products, leading children to develop certain health disorders. Although these plaintiffs can struggle to establish causation, these and similar products will likely remain targets for multifactor causation theories, with each case guiding the next class or mass tort action.

Digital products also have attracted mass tort suits – although the question of whether these qualify as "products" has generated controversy. In one proceeding targeting social media platforms, plaintiffs assert that social media companies failed to warn families that their products are addictive, raising a defect theory. The court in that matter classified certain features of social media, such as age verification processes, as products. Other decisions have required allegations directed at specific aspects of digital media's functionality. Others have outright refused to treat platforms as products.

The mass claims involving PFAS, or "forever chemicals", also continue to proceed. PFAS actions often claim defective design and failure to warn alongside non-product claims such as public nuisance. A major PFAS-related action, which is the multi-district litigation in South Carolina, grew from 75 cases in 2018 to over 10,000 cases in 2025. This action is focused on fire-fighting materials such as aqueous film-forming foams (AFFF) and protective gear. But given the prevalence of PFAS in a wide variety of consumer goods, additional cases have been filed and many more are likely.

In sum, products liability class and mass tort actions were prominent in 2025. Yet, plaintiffs also advanced novel theories of causation and targeted new products with old causes of action. With varying success, plaintiffs will continue to target new products as they appear, from social media to artificial intelligence.

## Antitrust class action developments

2025 saw the continuance of a trend that we expect to grow for years to come: class-wide challenges to alleged Sherman Act Section 1 conspiracies to fix prices implemented through the common use of algorithmic pricing software (also known as revenue-management or revenue-enhancement software). The number of cases is high, they cut across a range of industries, including hotels and apartment rentals, healthcare services, and agricultural commodities, and courts are grappling with what analytical framework best fits the claims. Some courts have found no Section 1 'agreement' at all and dismissed the claims, while others have found a viable horizontal conspiracy, a series of vertical agreements, or a hub and spoke agreement. Some courts conclude that an agreement to use the software is per se illegal, while others apply the more lenient rule of reason and look to whether the pro-competitive impact of the software outweighs any adverse impact.

## Data breach class action developments

Data-related class action lawsuits proliferated in 2025. In addition to claims related to hostile breaches, claims included unauthorized third-party data sharing and AI privacy violations. One area of focus is the healthcare sector, based on hacks of relatively small networks that contain patients' personal information. In 2025, three separate healthcare facilities in Pennsylvania, North Carolina and Montana settled allegations of data breaches that resulted from unauthorized access to networks. The hacks allowed unauthorized third parties to obtain the personal and protected health information of tens of thousands of patients. In all three cases, class members were eligible to receive payments up to a maximum of US$5,000 per class member.

Plaintiffs' standing to sue for data use or privacy-related harms continues to be an issue, with courts continuing to seek ways to limit data-related claims to concrete harms. The Fourth Circuit stated that to allege a concrete injury for a privacy violation, the injury must be analogous to a traditional harm. For example, having one's driver's license stolen and listed on the dark web is analogous to public disclosure of private information, and thus sufficient for standing. Conversely, plaintiffs whose information was hacked, but not disseminated on the dark web, did not sufficiently allege standing. Similarly, a Ninth Circuit case involving an allegation that a major technology company violated users' privacy through its analytics software explained that for plaintiffs to allege a concrete injury, they must allege a harm that shares specific detail with a common law tort. The court concluded that the plaintiff failed to explain how the defendant's tracking of her analytics caused her to experience the type of harm similar to what is actionable under the common law tort of intrusion upon seclusion or public disclosure of private facts. These cases together suggest that even in large-scale breaches, classes of plaintiffs may be narrowed to groups that suffer more specific harms than the data breach itself.

Settlements of data-related actions often involve compensation funds without admission of liability. For example, AT&T did not admit liability in a settlement that provided customers with payouts of up to US$7,500 per person for each customer whose data was compromised in one of two hacks, occurring in 2019 and 2024. Apple Inc. also agreed to a settlement fund to resolve allegations that it violated customers' privacy by recording conversations between iPhone users and Siri, and disclosing the conversations to third parties such as advertisers. MGM Resorts International settled a class action involving 200 million guests regarding a 2017 data hack in which an individual hacked into customer data on MGM's private computer systems.

## Securities class action developments

In 2025, President Trump appointed Paul Atkins Chairman of the Securities and Exchange Commission, leading to a significant shift towards a more lenient set of enforcement priorities, though it remains unclear if private plaintiffs will fill that void with more vigorous class action case filings, for example. To date, the SEC under the second Trump administration has brought fewer regulatory enforcement actions than in years past. In total, 52 of 56 enforcement actions in FY 2025 were instigated before Chair Gensler departed in January 2025, with two enforcement actions during Commissioner Uyeda's term as interim chair, and two more after Chair Atkins joined in April 2025. FY 2025 marked the fewest total enforcement actions in the past four years during which the SEC brought 68, 91, and 80 enforcement actions in FY 2022, 2023, and 2024, respectively.

Despite this drop in regulatory enforcement, the number of securities class actions filed in 2025 decreased approximately 10 percent from the previous year but remained well within the historic average, demonstrating that the SEC's pullback has not yet triggered a significant uptick in the plaintiffs' bar acting to fill the gap.

Chair Atkins has also taken steps within the SEC's power to attempt to curtail securities class actions. Although the SEC has no authority over the right of private plaintiffs to bring securities class actions, it has expressed support for issuers to include a mandatory arbitration clause in their governing documents. In September 2025, the SEC issued a policy statement that would permit issuers to include mandatory arbitration for shareholder claims and that doing so would not affect the SEC's decision to accelerate the effectiveness of that registration statement, breaking with the long-standing practice where the SEC denied requests to accelerate where the governing documents called for mandatory arbitration. Subsequently, Chair Atkins publicly praised the benefits of mandatory arbitration, and suggested this shift would reduce meritless, vexatious, or frivolous litigation that drives capital away from US public markets.

It is not clear whether this change in SEC policy will limit federal securities class actions, and several external factors must be considered.

- Issuers may not be able to easily rewrite corporate bylaws to force investors to arbitrate securities claims. Corporations are incorporated under state laws, and state legislatures can permit or forbid mandatory arbitration clauses for any corporations incorporated under a state's laws. Some states, such as Delaware, have already prohibited the adoption of mandatory arbitration clauses. Other states may take the opposite approach, and it is possible that this may draw corporations away from Delaware to more mandatory arbitration-friendly states.

- Federal courts also have a role in determining whether mandatory arbitration clauses will catch on with issuers. The Supreme Court permitted class action lawsuit waivers in favor of arbitration clauses, but it has not issued an opinion on whether issuers can force shareholders to arbitrate all securities claims.

- Even if issuers do successfully adopt mandatory arbitration, it may not reduce an issuer's burden of defending securities claims. Fundamentally, securities arbitrations differ from ordinary consumer arbitrations. In most consumer arbitrations, it is unlikely that there will be one single consumer harmed to a degree that it makes rational and economic sense to proceed with an

arbitration, as there is generally no equivalent of an institutional investor for ordinary consumer goods. In contrast, a large institutional investor may find it economically rational to bring an individual arbitration proceeding against an issuer, and several institutional investors may decide to do the same simultaneously. In this case, an issuer will have to defend itself in multiple arbitrations brought by multiple large institutional investors. Therefore, an issuer that forces arbitration of securities claims may find that it pays out more to defend and resolve securities arbitrations than it otherwise would have in traditional class action litigations.

### Climate/ESG class action developments

In 2025, climate-related class actions involved traditional oil and gas defendants, but novel legal theories were asserted. One example is the proposed nationwide class action filed in the Western District of Washington involving insurance premiums. The plaintiffs alleged that major oil companies and a trade association engaged in a decades-long scheme to mislead the public about climate change. The plaintiffs asserted that this misinformation campaign contributed to extreme weather events that drove up homeowners' insurance premiums by more than 50% statewide, with some individuals experiencing hikes exceeding 100%. The complaint invoked consumer protection statutes (for example, unfair competition and false advertising laws) and RICO theories by alleging a coordinated enterprise involving misleading public statements, funded studies, and other conduct designed to sow doubt about climate science. By framing climate harm as an economic injury tied to deception and coordination, the suit reflects an evolution in litigation strategy – building on earlier securities law cases such as New York's suit against Exxon in 2019 – but now emphasizing consumer-level economic harm (for example, insurance premiums) and market coordination rather than investor-oriented disclosure theories.

Plaintiffs also have increasingly pursued claims against other carbon-intensive industries beyond oil and gas, challenging climate-related representations in sectors such as electric utilities, agriculture and consumer products. In a Massachusetts class action, plaintiffs alleged that an energy provider misled consumers by marketing "pollution free" electricity while relying on conventional grid power and renewable energy credits. In *Merrell v. Florida Crystals*, plaintiffs claimed that the sugar producer's "climate friendly" branding was deceptive given its continued use of preharvest burning practices. Plaintiffs have also advanced novel theories in cases like *Dib v. Apple*, which challenged "carbon neutral" claims for Apple Watch models based on the integrity of carbon credits, and *Berrin v. Delta Air Lines*, which contested airline carbon-neutral advertising. Collectively, these cases illustrate a trend toward climate class actions that focus on misrepresentation, economic injury, and market coordination rather than direct emissions alone, creating new litigation risks for companies across diverse industries.

## Greenwashing class action developments

Another common subject of class actions in the United States is greenwashing. Greenwashing occurs when a company misrepresents itself or its product as sustainable or environmentally friendly to capitalize on demand for sustainable goods and services. Greenwashing plaintiffs often target statements as false or misleading – for example, omissive, unqualified, or overly aspirational. Although greenwashing causes of action usually arise under state consumer protection statutes dealing with fraud and deceptive advertising, plaintiffs have also added state and federal antitrust claims as well as common law claims like unjust enrichment and public nuisance.

Greenwashing actions were common in 2025 but rarely reached settlement. For example, in a District of Kansas case (originally filed in Missouri), *Rodriguez v. Exxon Mobil Corp*., a putative class of consumers accused several companies of conspiring to promote plastics as "recyclable" and better for the environment despite knowing that "only a tiny fraction of plastics are ever recycled." Plaintiffs also alleged an antitrust violation, on the purported basis that multiple companies conspired to misrepresent recycling as sustainable "to artificially increase demand for plastics" and "protect their profits." Similarly, in *Leiber v. Igloo Products Corp*., a putative class in the Eastern District of New York challenged Igloo's statements that its products were biodegradable and made of recycled materials, alleging that consumer disposal of the products often prevents biodegradation and the products only partially consist of recycled materials. Plaintiffs on behalf of a putative class brought a putative unjust enrichment greenwashing claim in the Northern District of California. The plaintiffs sought disgorgement of a sugar company's "ill-gotten gains" allegedly resulting from misrepresentations of the company's sustainable harvesting practices.

The few greenwashing claims that reached settlement in 2025 did so only after a court's denial of a defendant company's dispositive motion. In October 2025, one company agreed to a US$1.5 million settlement with a putative class over claims that its "Non-Toxic" and "Earth Friendly" cleaning products contained substances harmful to the environment after the Northern District of California denied summary judgment. One month later, Tyson Foods, Inc. settled claims with a putative class in D.C. Superior Court that the gap between the beef producer's stated aspiration of becoming "net zero" by 2050 and the actions it had taken to achieve the goal made the representation misleading.

This year, also saw the first "AI Washing" case. "AI Washing" refers to intentionally misleading a customer into thinking that a company's products incorporate AI. The SEC and DOJ brought the first-of-its-kind lawsuit against both the founder of Nate Inc. and Nate Inc. itself, alleging that it falsely marketed its products to make customers believe that it used advanced AI technology. The lawsuit is currently pending in the Southern District of New York and is expected to play out this year.

Greenwashing class actions show no sign of slowing down in 2026. Companies can expect similar actions from state enforcers, which private suits often follow. This remained true in 2025 even though, unlike years prior, federal enforcement against greenwashing appears to have slowed.

# Conclusion and practical steps

## Conclusion

Overall, class action litigation in 2025 continued to have a strong presence in the US litigation landscape. While no major legislative or judicial changes occurred, persistent trends – such as broad class certification standards, the dominance of product liability, mass tort and data breach cases, and the growing influence of litigation funding – showcase the enduring complexity, high stakes, and evolving risks these actions pose for businesses.

## Practical steps

We provide the following practical steps for companies to consider, but if you have questions about the best strategy for your organization, please contact a member of the Clifford Chance Group Action Litigation team for more detailed guidance:

### Stress test high-risk areas (product, data, ESG, and competition)

Most global filings cluster around product liability, data and privacy breaches, ESG and greenwashing, and competition and antitrust. Companies should conduct targeted risk assessments in these pressure point areas. For example, in respect of antitrust, does your business account for a high share in a given product and geographic segment? Is the segment concentrated with a few big producers? If so, the risk of a monopoly or dominance case or a cartel case is elevated.

### Map your exposure across jurisdictions

Carry out an analysis to determine how common class actions are in your key jurisdictions and whether they are increasing, particularly in areas that create risk for your business. For example, if you produce a health-related consumer product and sales are 30% North America, 40% EU (and 20% Germany), 10% EMEA, and 20% APAC, the risk of product liability collective actions are highest in Germany and the US.

### Strengthen internal governance and preparedness

Reinforce compliance training for sales teams, HR, and legal in Germany and the US on product liability, privilege and class action defense, and have a coordinated response plan covering evidence preservation, crisis communications, cross-border coordination and board reporting. Early preparation significantly reduces cost and exposure when the first claim lands.

### Review your disclosures, marketing and public statements and/or key stakeholders' business practices and documents and discuss the risk of collective-action litigation with them

Regulators and claimant firms are increasingly targeting discrepancies in sustainability claims, product safety messaging, and financial disclosures. Ensure all statements are accurate, up to date and supported by internal documentation.

# Contacts

## Australia

**Naomi Griffin**
Partner, Sydney

naomi.griffin@cliffordchance.com
+61 2 8922 8093

**Brad Woodhouse**
Partner, Sydney

brad.woodhouse@cliffordchance.com
+61 2 9947 8365

## Czech Republic

**Jan Dobrý**
Counsel, Prague

jan.dobry@cliffordchanceprague.com
+420 222 55 5222

**Tomáš Brožek**
Senior Associate, Prague

tomas.brozek@cliffordchanceprague.com
+420 222 55 5114

## France

**Diego de Lammerville**
Partner, Paris

diego.delammerville@cliffordchance.com
+33 1 44 05 24 48

**Vladimir Maillot**
Counsel, Paris

vladimir.maillot@cliffordchance.com
+33 1 44 05 53 20

## Germany

**Priscilla Tatschner**
Partner, Frankfurt

priscilla.tatschner@cliffordchance.com
+49 69 71991 282

**Alexandra Diehl**
Partner, Frankfurt

alexandra.diehl@cliffordchance.com
+49 69 71991 242

## Italy

**Francesca Gesualdi**
Partner, Milan

francesca.gesualdi@cliffordchance.com
+39 02 8063 4090

**Vito Catalani**
Senior Associate, Milan

vito.catalani@cliffordchance.com
+39 02 8063 4219

## Luxembourg

**Ada Schmitt**
Partner, Luxembourg

ada.schmitt@cliffordchance.com
+352 485050 435

**Laurent Dimmer**
Senior Associate, Luxembourg

laurent.dimmer@cliffordchance.com
+352 485050 213

### Saudi Arabia and the UAE

**Paul Coates**
Partner, Dubai

paul.coates@cliffordchance.com
+971 4 503 2684

**Dr. Abdullah Alajlan**
Partner, Riyadh

abdullah.alajlan@ashcliffordchance.com
+966 11 481 6004

### Spain

**María Guinot**
Partner, Madrid

maria.guinot@cliffordchance.com
+34 915 907 571

**Laura del Campo**
Lawyer, Madrid

laura.delcampo@cliffordchance.com
+34 915 909 479

### The Netherlands

**Daan Lunsingh Scheurleer**
Partner, Amsterdam

daan.lunsinghscheurleer@cliffordchance.com
+31 20 711 9047

**Charlotte Spierings**
Counsel, Amsterdam

charlotte.spierings@cliffordchance.com
+31 20 711 9600

### United Kingdom

**Maxine Mossman**
Partner, London

maxine.mossman@cliffordchance.com
+44 20 7006 4204

**Harriet Slack**
Senior Associate, London

harriet.slack@cliffordchance.com
+44 20 7006 4696

### United States

**John Friel**
Partner, New York

john.friel@cliffordchance.com
+1 212 878 3386

**Joseph Ostoyich**
Partner, Washington DC

joseph.ostoyich@cliffordchance.com
+1 202 912 5533

Clifford Chance



cliffordchance.com

Clifford Chance, Two Manhattan West, 375 9th Avenue, New York, NY 10001