Clifford Chance

December 2025

Thought leadership

# Is your business ready for the next wave of group litigation?

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## Key takeaways

1. Group actions are expanding globally, driven by easier access to funding, innovative claimant lawyers, and procedural changes, with targets ranging from public companies to consumer goods and services.
2. Jurisdictions like the Netherlands, Australia, Germany, the US, and the UK are seeing distinct trends: environmental and non-financial claims are rising in Europe, Australia's mature funding market is pushing novel claims, and the UK faces uncertainty after the PACCAR ruling on litigation funding and suggestions of legislative change.
3. Private capital investors face increasing class action risk, especially in emerging sectors and through parent company liability, while regulatory and legislative changes continue to reshape the group litigation landscape.

Group actions are gaining momentum across Europe, the US and Asia-Pacific, driven by easier access to funding and permissive procedural developments. "Innovative claimant lawyers are pursuing new, often more complex group action opportunities," says Michael Gorrie, a Clifford Chance Senior Associate based in London. "Their targets include public companies, investment funds and a wide range of consumer and commercial goods and services. Their aims include securing significant financial returns, driving behavioural change or using litigation as a form of private law enforcement."

In this briefing we examine the latest trends and the emerging targets for collective redress.

### Activism and funding drive class actions in the Netherlands

Class actions in the Netherlands increasingly focus on non-financial claims, particularly environmental cases. A prominent example still pending is the case of Milieudefensie (Friends of the Earth Netherlands) against Shell. The District Court upheld the claim that Shell needed to cut its global $CO_2$ emissions – the first time a company has been held accountable for global emissions under human rights and tort law. Shell successfully appealed with all claims being dismissed by the Court of Appeal in 2024.

Milieudefensie has since appealed to the Dutch Supreme Court and announced that it is considering a new case seeking to block Shell from exploiting new oil and gas fields. It has also issued a writ of summons against ING, claiming the bank fails to align its financing with climate science and has sent letters to other companies demanding that they take climate action. "Milieudefensie funds its litigation through crowd funding and generates a lot of press attention," says Charlotte Spierings, a Clifford Chance Counsel based in Amsterdam.

"As well as environmental claims, the Netherlands is an active jurisdiction for class actions and, while Dutch law firms rarely fund claims themselves, we are increasingly seeing US law firms partnering with Dutch lawyers to launch cases – marking a developing trend," says Spierings. "The real game-changer was the legislative overhaul of the class action system five years ago when the WAMCA regime was introduced with an opt-in model for Dutch citizens."

The law is now under review as class action activity under the WAMCA regime has slowed. "One reason may be funders' disappointment with the results. After five and a half years, only one case has reached a ruling on the merits – and it was dismissed. Others remain pending, were thrown out, or settled privately," she says. However, judges have become more comfortable with the act and WAMCA is still used for environmental, consumer, data protection, privacy and product liability claims, as well as ideological cases and actions against the government.

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**Brad Woodhouse**
Partner, Sydney

### Australia – mature funding, novel claims and emerging risks

“In Australia, environmental claims are extraordinarily difficult to monetise and legally complex,” says Brad Woodhouse, a Clifford Chance Partner based in Sydney. A recent example is the decision in *Pabai Pabai* before the Federal Court of Australia. The case was brought by Torres Strait islanders against the government alleging breaches of duties of care in failing to take steps to mitigate the impact of climate change. The claim failed on duty, breach and causation. “The duty allegations were novel, but the most significant issue was the evidentiary difficulties the applicants had in trying to establish a counterfactual. They simply couldn't prove how the climate would have differed or what impacts would have changed if different emission targets had been set and met,” Woodhouse says.

Elsewhere in the Australian market, securities class actions continue, although activity has slowed following recent defendant successes to those claims. The most significant pockets of activity are employment and product liability, with claims in the pharmaceutical, medical devices and, most notably, automotive sectors. A key example is the ongoing diesel particulate filter claim against Toyota, where estimated aggregate losses could reach US$1 billion for just 250,000 vehicles. “It's certainly no surprise that global product manufacturers are now telling us that the Australian market is the second-highest litigation risk market worldwide,” he says.

“Australia's funding market is mature – ten to 15 years ahead of the UK. It has evolved from testing permissibility, through opt-in/opt-out challenges, into a growth phase that triggered regulatory pushback. After a phase of intense competition, the market is now consolidating as some of the funders that entered the market have now exited. Active funders must keep finding new cases to sustain their business model,” says Woodhouse.

The current challenge for funders is the public backlash over commissions, clashing with the principle that Australia's universal opt-out regime promotes access to justice. This pressure, combined with competition, is pushing funders toward novel claims – factually diverse and often socially sensitive. Examples include stolen wages for indigenous communities, the provision of IVF treatment and systemic sexual harassment. Funders typically aim for 2.5x investment but, currently, the critical point is ensuring that group members receive around 60% of the total recovered.

The dynamic has shifted when it comes to lawyers. Until recently, lawyers were unable to charge contingency fees for class action litigation. Now, the Victorian Supreme Court allows, with court endorsement, contingency fees. “Lawyers are becoming more entrepreneurial and are willing to take claims on their balance sheet, competing directly with funders. We are seeing a much higher level of activity in that court and there is a push to expand this model nationally,” Woodhouse says.

Law firms are also partnering with US firms to see if there are opportunities to bring US claims to Australia, particularly against global manufacturers. One major plaintiff firm recently announced plans for tie-ups with US firms to prosecute claims already filed overseas. “We expect this trend to grow,” he adds.

### From climate lawsuits to consumer redress – class actions gain ground in Germany and across the EU

“Companies need to be alert in Germany. Here and elsewhere in the EU, there's a surge of environmental legislation, obligations are increasing and activists backed by innovative legal strategies are driving new risks,” says Alexandra Diehl, a Clifford Chance Partner based in Frankfurt.

Climate change litigation in Germany has focused on implementing climate protection laws, starting with the 2021 landmark *Neubauer* decision by the Federal Constitutional Court. The court recognised that climate protection has constitutional status and declared part of the 2019 Climate Protection Act unconstitutional for failing to set sufficient emissions targets beyond 2030. This triggered a wave of claims, particularly against German car manufacturers, in relation to climate change, echoing earlier claims against diesel cars, which are still ongoing. “Germans like to sue because they have legal insurance which makes litigation accessible,” says Diehl. So far, these claims have largely been unsuccessful. “Courts have been reluctant to impose unwritten civil law due diligence obligations that go beyond what is required by public law; however, cases against Mercedes and BMW are pending in Germany’s highest court.”

In May 2025, the Higher Regional Court of Hamm dismissed a lawsuit brought by a Peruvian farmer seeking proportional reimbursements for the costs of protective measures from energy giant RWE regarding the risk of flooding from melting glaciers. The court dismissed the claim because the Peruvian famer’s property was not facing an imminent threat of harm. However, it confirmed that major emitters in principle can be held liable under German private law for climate-related harms. New risks loom as Greenpeace has announced that it will lodge climate change-related lawsuits against RWE and Heidelberg Materials on behalf of at least 43 farmers in Pakistan.

As well as climate litigation, there is a focus on collective actions around consumer protection. EU member states – except Bulgaria and Spain – have now adopted the Representative Actions Directive (RAD). The RAD applies to a wide range of sectors including financial services, travel and telecommunications, and creates a mechanism for consumers to bring collective legal action to protect their interests. Member states had wide discretion in implementation, including choosing between opt-in and opt-out systems. Most chose opt-in, apart from the Netherlands and Portugal, which therefore remain hotspots for RAD actions. “Germany also chose opt-in, so it is still far from a true class action jurisdiction,” says Diehl. “Actions under Germany’s RAD have been gradually increasing over the past two years. Initial targets were banks and financial firms; more recently, social media and telecom companies, especially in data protection. Notably, two recent cases against X and TikTok were filed by Dutch *stichtings* – foundations often used as claim vehicles – which are now crossing borders to litigate in Germany. Whether more *stichtings* will follow depends on the success of these initial cases. Plaintiff firms are also eyeing neo brokers and start-ups introducing digital innovative products,” she adds.

Another major development is the new EU Product Liability Directive (PLD) – a complete overhaul of the 1985 regime. It introduces a stricter, claimant-friendly liability framework, eases evidential burdens and extends coverage to digital products including software and AI. Member states must implement it by the end of 2026, and Germany has unusually rapidly published a draft bill. “I think we will see tremendous momentum around collective redress systems in Germany and other EU jurisdictions. The PLD will make the existing systems more attractive,” Diehl says.

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**Alexandra Diehl**
Partner, Frankfurt

### Political headwinds could reshape US class actions

“The US stands apart from jurisdictions like Australia and the UK because litigation funding plays almost no role here. For decades, US litigants have used the class action vehicle to bring claims against issuers of securities, as US rules incentivise litigants to aggressively pursue even those claims that are unlikely to be successful and result in a recovery,” says John Friel, a Clifford Chance Partner based in New York.

“The reason is procedural: there’s no general loser-pays rule in US class actions, so plaintiffs who lose don’t owe costs to defendants. This creates minimal downside to filing a suit,” he says.

Class actions are expensive, but plaintiffs’ law firms typically self-finance these matters through prior settlement proceeds, which are often around one-third of recoveries. This cost structure explains why class actions have proliferated – the US is the ’ancestral’ home of the class action – and maximises pressure on companies across a range of claims.

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**John Friel**
Partner, New York

“However, after years of plaintiffs’ firms specialising in class actions, we have also seen steps by the US Supreme Court and by legislators, to curtail the growth of class action lawsuits, including in the financial services sector,” Friel says. Political developments during 2025 may influence the future of class actions “although whether they curtail or inspire activity remains uncertain,” he says.

First, regulatory enforcement has fallen under the new Trump administration, especially in areas that are typically fertile ground for private litigation such as stock drops, antitrust, commodity derivatives and consumer protection. This could spur more private suits to fill enforcement gaps. On the other hand, it could make such claims harder to plead without follow-on regulatory findings.

Regarding stock drop actions, President Trump has expressed his support for moving public companies from quarterly to semi-annual reporting, a proposal backed by Republican-leaning SEC commissioners. The objective would be to reduce the burden on public issuers. “If an issuer is speaking less to the market, there may be fewer opportunities to say something that a private class action firm can try to contort into a fraud claim. But, in the same breath, less frequent disclosure could mean that when issuers do speak, their statements could result in prices moving more dramatically than they otherwise might, which could present attractive opportunities to the class action plaintiffs’ bar,” says Friel.

Similarly, the Republican majority of Commissioners on the US Securities and Exchange Commission (SEC) have also offered support for reform of the securities class action framework. This Fall, they announced that the SEC will not stand in the way of companies, when they go public, requiring that investor disputes be resolved through binding arbitration rather than in the courts. “The upshot could be that investors in the IPO are shut out of the courts – where they can sue on a class basis – and routed into arbitration, where they may not be able to do so,” he says. “Because of the costs of pursuing a securities fraud claim, investors who can’t sue as a class may forego their claims altogether.” For now, that outcome is forestalled by new legislation in the State of Delaware – the most popular state of incorporation of public companies in the US – prohibiting corporations from requiring investors to arbitrate securities fraud and other claims. It remains to be seen whether the desire for class action reform can drive companies out of Delaware and into competing states – “there is an appetite for securities litigation reform – it’s just a question of whether that appetite is strong enough to shake things up,” Friel says.

### The UK – the group litigation market is at a crossroads

“Class actions and group claims are increasingly used in the UK as tools for regulatory leverage and to drive behavioural change,” says Alice Darling, a Clifford Chance Senior Associate based in London.

On regulatory leverage, group redress is seen as a potential alternative to formal enforcement both in competition claims within the Competition Appeal Tribunal (CAT) and in stock drop claims. For example, many start with a regulatory finding, but claimants are not just seeking to recover loss, they seek to significantly expand the claim beyond the regulatory finding, relying on media reports and rumours. This can result in claimants pushing for very significant disclosure in these types of claims in order to support their attempts to uncover issues that haven’t been penalised in prior enforcement action.

“On behavioural change, we have seen attempts by interest groups to mirror the approach taken in the Netherlands. One high-profile example is Professor Roberts’s case against six water companies for allegedly under-reporting pollution incidents, which is currently a major issue in the UK,” says Darling. Earlier this year, the CAT dismissed the application for a collective proceedings order, citing a specific section of the Water Industry Act. Permission to appeal has been granted, with a hearing scheduled for early 2026. “The outcome will be critical in determining whether these claims gain traction in the UK,” she says.

Despite a growing number of group claims in the UK, they have been less successful than in other jurisdictions. The English High Court has used case management powers to restrict claims, particularly opt-out actions. Outside of the Competition Appeal Tribunal (CAT), opt-out claims can only proceed under the representative action procedure, which

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Senior Associate, London

requires all claimants to have the same interest in the claim. "It's a high bar reinforced by a number of decisions since 2021," says Darling.

Opt-in claims via Group Litigation Orders (GLOs) have stalled, with courts preferring to manage cases directly. Within the CAT, after a decade, there are only three liability judgments – two for defendants, including the *Gutmann* judgment in October. That judgment stated that consumer protection is not the role of competition law. "I think that's really putting a marker down to future claimants against attempts to expand the competition regime," she says.

The Department for Business and Trade (DBT) has launched a review of opt-out CAT claims, recognising the potential burden on business that increased exposure to litigation can present and stressing the need to find the right balance. Despite this thrust, a number of responses were supportive of the current regime (such as from the Bar Council) or pushed for expansion (the Collective Redress Lawyers Association).

Underlying all this is uncertainty around litigation funding. The Supreme Court's *PACCAR* ruling rendered most funding agreements then in place unenforceable, and a Bill to reverse the judgment was dropped after the general election in 2024. The Civil Justice Council proposed light-touch regulation and reversal, but the government signalled caution in a recent Westminster Hall debate, confirming no quick changes and that any change would have no retrospective effect. Regulators including the SRA and FCA are also scrutinising group claims to ensure responsible conduct. "We are clearly at an inflection point in this industry. There are a lot of interested parties, lots of debate going on, lots of loud voices in the market, but I would say it doesn't look like we're going to get opt-out claims outside of the CAT any time soon," says Darling.

## The rise of private capital and class action risk

In the US, private capital investors face increasing class action litigation risk related to their investments. "These investors have robust internal controls around legal and compliance so they are acutely aware of the disruptive effect class actions can have on a business in terms of management distraction, legal fees and, what an influential US judge memorably called, the hydraulic pressure to settle that class actions impose on defendants," says John Friel.

A prime example is the digital asset space, where private capital is investing heavily. Class litigants are targeting decentralised autonomous organisations (DAOs) – an arrangement without legal entity status – where governance is on the blockchain and private investors often obtain these tokens.

Class litigants are trying to sue DAO platforms for fraud, scam tokens or other issues. "DAOs argue that they are not legal entities so cannot be sued, but courts often reject that and classify them as general partnerships. So private investors in a decentralised technology face joint and several liability for all obligations and debts of that entity, which is an unpalatable risk for any compliant private capital investor," he says. To mitigate these risks, DAOs increasingly adopt legal structures in states like Wyoming, which have digital entity laws to shield investors from liability similar to those of an LLC.

Risk is also an increasing issue for private capital in the UK, particularly that of being drawn into litigation over alleged wrongdoing by a portfolio company or subsidiary. Claimants are using this tactic more often in the Competition Appeal Tribunal to exert pressure. In the *Gutmann* train case, for example, a rail operator was accused of setting fares, but two parent companies were also brought in even though they were not directly involved.

"Where within the CAT a parent company is brought in, it becomes jointly and severally liable for costs meaning the full damages, which can be huge in these claims, and can be recovered from any one defendant. That defendant can then seek recovery from others which may lead to further litigation. The test for joining a parent is whether it exercises decisive influence over the portfolio company. This is easier to establish than you might expect and has even been found in cases of minority ownership," says Alice Darling.

"That said, the CAT offers opportunities for private capital. It is possible to bring smaller stand-alone claims, and we're increasingly seeing private capital using the CAT to resolve commercial disputes by bringing its own competition claims," she adds.

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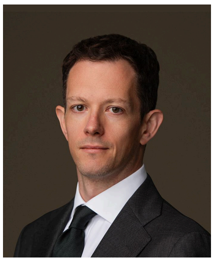

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