



Allianz Commercial

Professional indemnity insurance claims insights 2023

Heatmap of emerging risk trends

Introduction

Allianz experts scan the risk landscape for professional indemnity insurance and share their insights, highlighting areas of concern and what level of urgency the new threats present to professionals.

Professional indemnity insurance, sometimes called professional liability insurance, protects professionals from losses that could arise from a breach of their professional duties across all global industries. It provides cover for management consultants, auditors, accountants, architects, engineers, insurance brokers, agents, solicitors and lawyers, surveyors and other professionals, as well as those working in communications and the media. The risks that professionals like these need to shield themselves against include civil liability actions as a result of negligent duty or omission, the unintentional breach of intellectual property rights or confidentiality, libel or slander, dishonest or malicious acts by former or present employees, loss of documents, regulatory investigation and action, and many more.

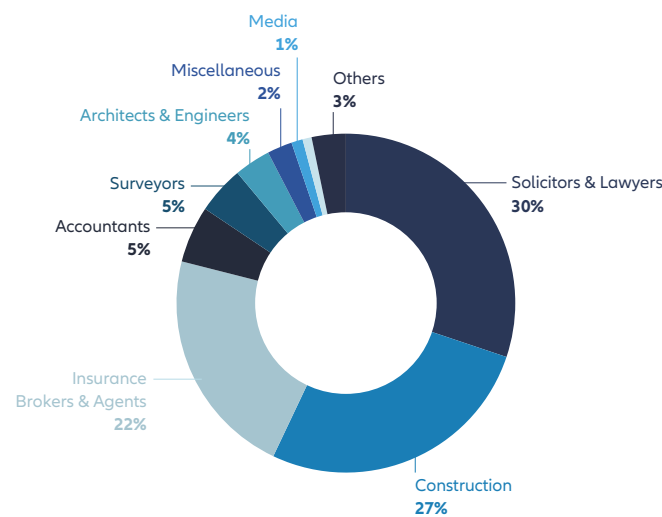
Over the past 20+ years Allianz Global Corporate & Specialty (now part of Allianz Commercial) has processed and handled over 93,000 professional indemnity claims to date from different regions and jurisdictions, with a total value of €2.2bn. Every year, our experts draw on a breadth of experience across a range of claims segments to shed light on claims trends, causes of loss, and geographical variations they have observed in the professional indemnity risk landscape. The information they gather provides underwriting teams with critical insights, which, in turn, supports a data-informed culture and offers added value for customers.

This activity is led by the Professional Indemnity Claims Global Practice Group (GPG) at Allianz Commercial, an international team of six claims professionals (see page 15 for contact details).

“It is just one of a number of such groups at Allianz Commercial and includes senior experts from the organization who are authorities in settling large, complex and multinational losses,” explains **Diego Assef, Head of Global Practice Group, Professional Indemnity Claims at Allianz Commercial.**

“With this publication, our goal is to share this knowledge with customers and bring them up to speed with what’s going on in the market; what we have observed from our claims data, as well as our analysis of emerging risks and trends. We indicate which professionals might be particularly vulnerable, discuss what’s on the horizon, relay key risks and possible developments, and rate them from 1 to 4 according to their level of impact.”

Professional Indemnity Claims – Impacted Professions



Source: Allianz Commercial. Based on analysis of 477 professional indemnity claims. Large losses only (above \$US1mn/€1mn)

Professional indemnity emerging risk trends heatmap

Categorization key

We have categorized the risks below according to our assessment of a combination of factors, including the likelihood and timing of the risk, the expected magnitude and frequency, and the likely ease with which the risk may be mitigated. This categorization is necessarily broad and high-level. In reality, impact will be more nuanced across professions and jurisdictions. The complexity of each risk has been simplified for illustrative purposes only and does not constitute professional or risk management advice.

Risk rating

- 1** *Very high*
Critical impact to operations or loss severity could be expected.
- 2** *High*
Major impact to operations or loss severity could be expected.
- 3** *Medium*
Moderate impact to operations or loss severity could be expected.
- 4** *Low*
Minor impact to operations or loss severity could be expected.

Evolving legislation related to building safety	An increase in high-profile litigation – a public policy evolving issue?	Geopolitical, economic and market volatility	Use of new technologies
Cyber crime, social engineering, and data loss	Growing focus on professionals’ supervision duties, internal controls and monitoring systems	The inflationary environment	Increased focus on environmental, social, and governance (ESG) topics
	Evolving regulatory environment and risk landscape	Covid-19 legacy and new ways of working	
	Innovation and technological developments in the construction industry		



Evolving legislation related to building safety

Risk rating

- 1** *Very high* **Critical impact to operations or loss severity could be expected.**
- 2** *High*
- 3** *Medium*
- 4** *Low*

Which professionals could be impacted?

Construction developers, architects, engineers, surveyors, design and build contractors, manufacturers/suppliers of cladding and insulation, and legal professionals.

What is the issue?

Although this is predominantly an issue of concern in the UK following the 2017 residential Grenfell Tower fire tragedy in which 72 people died, some impact will be felt globally too. Legislation in the UK now extends liability periods for claims under the Defective Premises Act in the Building Safety Act 2022 from six to 30 years retrospectively for completed works that fall within the parameters of the Act (which are carefully considered in each case) and from six to 15 years prospectively.

Similar measures have also been introduced in Australia, including new decennial liability insurance in New South Wales which protects building owners from serious defects materializing over a period of 10 years from when construction is completed. Other jurisdictions globally have reacted to the Grenfell tragedy by reviewing building standards, but much of this work is now completed. In Hong Kong, for example, a government-directed review and remediation scheme for relevant high-rise buildings was undertaken, with few (if any) remaining claims now expected.

Where could it lead?

The changes in the UK could result in new legal claims against manufacturers and suppliers, with a potential domino effect on all specialists in a construction project, such as architects, engineers and design and build contractors. In the UK, where the Building Safety Act was introduced in response to the Grenfell Tower fire, a second wave of cladding-related claims is expected, and other notifications could go back as far as 1992. Law professionals may encounter a challenging environment when expressing a legal opinion related to these changes in that the new requirements are complex, extensive and specific, meaning there is an increased chance of missing a key point.

What are the main claims drivers?

- Building and fire safety defects being detected and claims against developers resulting in onward claims through the supply chain. There is increased vigilance around these issues at every level, which will remain going forward, driving claims in the short to medium term.
- For surveyors, claims drivers might include claims relating to negligent overvaluation of buildings with combustible cladding.
- For solicitors, such as those advising on conveyancing matters in the UK, there may be exposures relating to failure to advise leaseholders on the implications of the Building Safety Act.


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Cyber crime, social engineering, and data loss

Risk rating

- 1 **Very high** Critical impact to operations or loss severity could be expected.
- 2 High
- 3 Medium
- 4 Low

Which professionals could be impacted?

The risk applies to all jurisdictions and to all professionals, including accountants/auditors, lawyers, surveyors/valuers, brokers, consultants, construction and other professionals. Smaller firms can be the most vulnerable as they typically have less sophisticated cyber-security arrangements.

What is the issue?

Cyber-attacks are an issue affecting firms globally. In the annual **Allianz Risk Barometer** survey, over a third of correspondents cited cyber incidents as their most important business risk for 2023. It was the foremost concern in 19 countries, including France, India, the UK, and Argentina.

Cyber-attacks have been increasing for years, a trend that was exacerbated by the widescale switch to remote/hybrid working prompted by the Covid-19 pandemic. In particular, the frequency of ransomware attacks has increased dramatically, with professional services firms a key target, as they are perceived to have the funds to pay ransom demands and hold a lot of valuable confidential client information. Over the past year, French and British authorities have also noted increasing activity involving mercenary hackers targeting law firms where they attempt to steal confidential data in order to gain the upper hand in business dealings or legal disputes.¹

Where could it lead?

Not only does a cyber breach present immediate first-party costs and disruption, but it can also result in significant regulatory exposures, including actions from professional bodies as well as data protection authorities. If the breach occurred due to weak systems and controls, there may also be considerable fines levied in this regard. Litigation from affected data subjects may follow, with the potential for large group claims.

Breaches may also lead to client and third-party liability claims, with claimants alleging losses due to business interruption and disruption, leaked information or weaknesses in the firm’s cyber security measures. A breach, especially if there is data loss, also carries the significant risk of reputational damage to the firm and, in some situations, could lead to stock drops and securities claims.

What are the main claims drivers?

- The laws setting out obligations in relation to cyber security and data protection are a fast-developing frontier, and there is a lack of legal authority in relation to whether a data breach can found a professional negligence claim.
- Claim drivers, which apply across all professions, include phishing and spoofing frauds; third-party supply chain risks; ransomware/malware; lack of adequate systems and controls; and data loss. A number of jurisdictions have seen both first-party and third-party liability issues arising from social engineering frauds, ransomware attacks and the hacking of transactions.
- ‘Hackers-for-hire’ are increasingly being brought in to try and influence the direction of legal cases in several jurisdictions around the globe. They are hired by one of the parties to steal sensitive information from courtroom opponents, for example. For these clients, they provide technical capabilities and deniability of involvement in the cyber-attack should it be discovered.



An increase in high-profile litigation – a public policy evolving issue?

Risk rating

- 1 *Very high*
- 2 *High*
- 3 *Medium*
- 4 *Low*

Major impact to operations or loss severity could be expected.

Which professionals could be impacted?

Management consultants and other professionals acting in advisory roles.

What is the issue?

Professional advisors and consultants have long been regarded as the “gatekeepers” of good corporate behavior and are subject to a raft of legislative and regulatory duties in relation to this. However, there is increasingly an additional risk of professional advisors and consultants being the target of litigation related to high-profile industries, events, environmental disasters or controversies (such as the opioid crisis, the Californian wildfires and the Texas cold waves in the US, or political scandals in South Africa).

This particularly applies if their work is alleged to have contributed to a specific event leading to damages being sustained by consumers or municipalities. In these cases the companies in question did not have contractual relationships with those seeking damages, but there have been examples of novel arguments, such as utilization of trade practices legislation, being run in order to find a cause of action where the professionals’ work is deemed to have contributed to an action considered against public policy.

Where could it lead?

Although this is not a high frequency risk, the exposures resulting from any litigation have the potential to be severe. Negative press coverage and reputational damage can lead to large settlements even where the litigation stretches the boundaries of professional liability law. A spotlight on an advisory role in relation to questionable corporate activity may lead to greater regulatory scrutiny, with the potential to lead to the imposition of fines and penalties, as well as the costs involved in dealing with the regulatory process. At its worst, there are examples of professional advisors entering insolvency following client flight because of a public scandal.

What are the main claims drivers?

- These claims are too nascent to provide clarity on drivers, but there are a few factors that make the turning of the spotlight on professionals more likely. These include factors such as social or political activism, “litigation landscape” factors such as the involvement of entrepreneurial plaintiff lawyers and funders, and the presence of public policy considerations, as well as broader questions as to the extent to which professionals matter and client intake can or should be guided by ethical considerations.

Growing focus on professionals' supervision duties, internal controls and monitoring systems

Risk rating

1 Very high

2 High

Major impact to operations or loss severity could be expected.

3 Medium

4 Low

Which professionals could be impacted?

Cross-profession risk, but regulated professions are more exposed.

What is the issue?

Professional firms have a duty to properly supervise their staff and, although regulatory and legislative frameworks will vary across jurisdictions and professions, the majority of firms will have obligations to implement and apply robust oversight and supervision processes across a range of areas when providing professional services to their clients. Regulated professions, such as law and accountancy, are particularly exposed.

There is evidence of a growing focus by legislators and regulators on systems and controls failure. Examples include the recent supervision failure of a bank to stop employees discussing work on personal text and instant messaging apps², and the current focus on 'failure to prevent' offences under the UK Bribery Act. Regulatory response can be particularly harsh where the failures appear to arise from an 'institutional' attitude of non-compliance rather than cases of individual bad apples exploiting weak processes within a firm. For example, the regulatory sanctions meted out for cheating in professional examinations administered by accountancy firms³ illustrate some of the issues that can arise. Driven by US regulatory action against US firms, this has spread to firms based in Canada, Australia and a variety of other jurisdictions.

Where could it lead?

Systems and controls failings will come under increasing supervisory scrutiny as regulatory oversight tightens globally in a context of rising cyber-crime, data loss and an evolving inflationary environment. Heightened attention to internal controls and monitoring systems remains crucial. Legal fees for internal investigations or when defending claims, such as from victims of fraudulent misconduct, can rapidly mount up, sometimes to hundreds of millions of dollars.

Insureds also risk finding themselves on two sometimes opposing fronts, such as the alleged individual misconduct of an employee or partner versus the firm's own financial survival and its fiduciary and supervisory duties. The insurer, however, will need to deal with all involved parties. In addition to that, this situation can lead to further reputational damage and a lack of controlling mechanisms, including training and constant awareness of the topic, which could avoid the derailing of internal compliance processes.

What are the main claims drivers?

- Lack of robust internal processes, or, where they exist, failure to ensure adherence and enforcement will be a core source of claims across jurisdictions and professions.
- Specific claim drivers aside from cyber and data systems and controls will vary by jurisdiction and profession. However, poor controls in relation to money laundering and bribery, as well as evidence of an "institutional" disregard for regulatory standards, are likely to lead to a greater degree of regulatory scrutiny and the potential for a harsher outcome.
- Cyber risks are an area where poor controls could increase the potential for a professional liability claim, and we anticipate an absence of training or supervisory controls could also make other types of professional liability civil and ombudsman claims more difficult to defend.



Evolving regulatory environment and risk landscape

Risk rating

- 1 *Very high*
- 2 *High*
- 3 *Medium*
- 4 *Low*

Major impact to operations or loss severity could be expected.

Which professionals could be impacted?

Accountants, auditors, lawyers, insurance brokers, surveyors and construction professionals.

What is the issue?

Professional services firms are operating in a time of heightened regulatory requirements, coupled with an increase in enforcement actions brought by more aggressive and proactive regulators. Additionally, in recent years, we have witnessed a rise in disciplinary proceedings against professionals for their conduct outside the provision of their professional services and we expect this to continue. Regulatory agendas continue to evolve, and the risk landscape continues to expand for professionals.

Regulatory action is also becoming increasingly politicized following criticism of financial regulators in the UK and Germany in the wake of high-profile corporate frauds and collapse. Examples include the criticism leveled at the German financial watchdog BaFin following the Wirecard scandal and at the UK Financial Reporting Council (FRC) in the wake of the Carillion collapse. Increased regulatory scrutiny and sanction is a global trend.

Where could it lead?

We could see heightened scrutiny and greater pressure on auditors to be mindful of and identify any instances of fraud, though these are increasingly difficult to identify. Auditors in the UK have been facing a rise in the level of regulatory scrutiny from the FRC and this trend is expected to continue when the FRC is replaced by the Audit, Reporting and Governance Authority. An audit reform is on the horizon. Together with more regulatory intervention and changing accounting standards, it is likely more claims will arise and there is a growing risk that auditors will be seen as an easier target for a company liquidator. The same risk landscape can impact indirectly law professionals, if they are called in to assist and fail, resulting in recovery actions against them for breach of fiduciary duty to the company.

What are the main claims drivers?

- Regulatory action is often coupled with a civil claim, although whether the regulatory or civil action is the catalyst varies across jurisdictions. Regulatory action often arises from the regulators' specific industry or issue focus or follows on from a corporate collapse or high-profile issue. Examples of the latter include the focus on non-disclosure agreements used by lawyers in the wake of high-profile claims and scandals arising from the #MeToo movement, and the pressure on the financial reporting regulators in the UK and Germany as mentioned above. Further examples are the focus of regulators on the impact of cladding safety on surveyors' regulatory responsibilities and the greater scrutiny of lawyers and accountants by regulators in South Africa following the exposure of state capture activities.
- Additionally, many of the regulatory regimes in jurisdictions which had hitherto been more benign have increased their focus (including the Middle East) in order to be able to compete internationally.

Innovation and technological developments in the construction industry

Risk rating

1 *Very high*

2 *High*

Major impact to operations or loss severity could be expected.

3 *Medium*

4 *Low*

Which professionals could be impacted?

Construction industry professionals, architects, engineers and surveyors.

What is the issue?

Innovative designs, new materials, and modern methods of construction, as well as the use of highly specialized technical experts, such as environmental and water engineers, geologists and design architects, are creating fertile ground for large construction professional indemnity claims. Top risk drivers include the work of engineers specializing in designing cladding, ventilating, heating and air-conditioning systems, such as for hospitals and residential buildings.

Where could it lead?

Errors in data, statistical process control, detailed design and performance assessments, or simply poor advice, are all leading to more losses that are difficult and expensive to rectify.

What are the main claims drivers?

- The pace of innovation and technological development within the construction industry has been significant over the last decade and that has driven claims, as professionals deal with new methods of working that require different skillsets. The changes are often reflected in updated contractual terms that are yet to be tested, providing areas for dispute.
- New materials and construction processes result in additional claims exposures where standard profession-wide approaches to design and specification are yet to be developed.



Geopolitical, economic and market volatility

Risk rating

- 1 Very high
- 2 High
- 3 Medium
- 4 Low

Moderate impact to operations or loss severity could be expected.

Which professionals could be impacted?

Construction and design professionals, solicitors, lawyers and accountants.

What is the issue?

An unprecedented climate of volatility, including ongoing conflict in Ukraine, instability in Taiwan and the Middle East, the consequences of Brexit, the rise of right-wing politicians in powerful or geostrategic economies, financial market instability and a challenging of the political status quo.

Where could it lead?

Political instability, combined with stock market volatility, can have knock-on effects on all professional services, calling for new ways of doing business as firms contend with local disruptions and fast-changing legislation. This might include situations where customers or investors are looking for someone to blame for financial losses or where contracts have been frustrated. Supply chains can also be impacted.

What are the main claims drivers?

- Regulatory exposures can arise for professionals acting for clients who may potentially be caught by a rapidly evolving sanctions regime. For advisory professionals, particularly lawyers, civil exposures can arise from a failure to properly advise on the impact of sanctions rules or from a decision to terminate contracts with non-sanctioned clients due to ethical or reputational considerations. Even where entities and individuals are not sanctioned, regulated professionals may also face regulatory exposures over the nature of their instructions (the focus on SLAPPs – Strategic Lawsuits against Public Participation – litigation in the UK being an example).
- More broadly, instability and difficult trading conditions can lead parties to scrutinize their contractual arrangements or to seek to rely on ‘force majeure’ provisions and look to their legal advisors for recompense over any bargains now perceived to have ‘gone bad’.
- For construction and design professionals, disruptions to supply chains can lead to claims relating to project delays.



The inflationary environment

Risk rating

1 Very high

2 High

3 Medium

4 Low

Moderate impact to operations or loss severity could be expected.

Which professionals could be impacted?

Financial advisers and planners, architects, engineers, solicitors, lawyers, auditors and insurance brokers.

What is the issue?

Claims inflation takes a number of different forms, and includes 'social inflation' – growing litigation, broader liability definitions, more plaintiff-friendly legal decisions, and larger compensatory jury awards or 'nuclear verdicts'. However, economic inflation can have a key impact upon professional exposures in a number of ways. Currently, social inflation and the highest inflationary environment we have seen for some time in a number of jurisdictions is pushing up the cost of defending claims and the cost of claims themselves, meaning disputes involve higher stakes for all parties. From an insurance coverage perspective, clients and brokers should ensure that liability limits, building limits, state of values, and business income limits are accurate and adequate.

Where could it lead?

The frequency and severity of claims are impacted by inflation (both social and economic). Professionals should proactively consider how to limit exposures, for example through limitation of liability clauses or by proactively addressing jurisdiction of any disputes early on. More broadly, recessionary or otherwise difficult financial conditions have always been followed (after a time lag) by increased claims against professionals.

What are the main claims drivers?

- If inflationary pressures lead to recessionary conditions, there will be a myriad of potential recessionary-related exposures for professionals, including insolvency-related exposures for auditors and insolvency practitioners, lenders' claims for solicitors and valuers, and claims arising from due diligence against lawyers and accountants. Apart from recessionary conditions, the main drivers for claims arising from inflationary conditions include:
- Increased costs of materials leading to value engineering or use of cut-price products by construction, engineering and design and build professionals alongside pressures to limit the involvement of professionals with specialist expertise in order to contain costs.
- Underinsurance/inadequate cover for property, business interruption and other risks for insurance brokers.
- For financial services professionals, mismanagement and suitability allegations relating to the management and investment of funds impacted by high inflationary environments including investment in financial institutions impacted by interest rate rises.
- For actuaries, allegations of failure to account properly for inflation in actuarial models.
- For solicitors and lawyers, allegations of failure to properly advise on settlement and damages sums in personal injury and other claims involving a consideration of prospective losses.
- Allegations of failings relating to the audit of companies and other entities whose business is vulnerable to inflationary rises including financial institutions impacted by high interest rates for auditors.

Covid-19 legacy and new ways of working

Risk rating

1 Very high

2 High

3 Medium

Moderate impact to operations or loss severity could be expected.

4 Low

Which professionals could be impacted?

Solicitors and lawyers, insurance agents and brokers, accountants, auditors, surveyors and design professionals.

What is the issue?

One of the legacies of Covid-19 has been the lasting changes it has made to the way many professionals work. Remote or hybrid working practices bring many benefits but also risk a lack of supervision or control and a dilution in mentoring and coaching. To date we have not seen professional liability claims against professionals arising from the pandemic to the extent originally anticipated. This is partly because claims with a longer tail are still potentially emerging – such as claims against brokers in Germany and South Africa following court judgments on the ambit of business interruption or closure policies, or against construction professionals in Hong Kong or in other parts of the world due to delays to several large projects. It is also partly because issues arising from changes to working practices, and errors arising from the pressure to provide swift advice in response to changes in legislation, may be the underlying cause of some of the claims still emerging, even if they are not reported as their direct/proximate cause.

Where could it lead?

The incidence of claims emanating from disputes around business income coverage in the US has lessened dramatically, but many remain active against insurance carriers. Once all avenues against the insurance carrier are exhausted, the focus could shift to the insurance professional. Covid-19-related claims could still pose a liability risk to brokers and agents that were indirectly brought into those lawsuits for failing to recommend or advise clients about 'pandemic'-related coverages and to procure business interruption coverage not dependent on direct physical loss to property. Overall, we have observed a trend towards venue shopping in favor of state courts versus federal courts, which tend to rule more often in favor of policyholders. However, this has not materially impacted overall success by carriers, as suits are dismissed with prejudice 86% of the time in federal courts versus 69% in state courts.⁴

An expected increase in Covid-19-related claims against accountants in relation to tax and insolvency advice, as well as the possibility of increased errors from pressure to provide swift advice in response to rapid changes in legislation, are yet to be seen. Furthermore, the erosion of knowledge, weaker supervision alongside the expertise 'brain drain' seen in jurisdictions such as South Africa (where professionals have been leaving the country for opportunities elsewhere) and in the audit sector in Australia (which has struggled to boost numbers due to border closures during Covid-19) can pose a real risk to the maintenance of technical and market expertise at the heart of professional firms.

What are the main claims drivers?

- Agile/hybrid working is an area of particular risk concern for many reasons. This can include the need to ensure that the technology used to allow employee access to systems off site is not vulnerable to criminals. There can also be security concerns when individuals cross borders with devices that carry access to accounts containing client information where legal professional privilege might not be respected.
- Instant messaging platforms also pose a risk, with multiple groups for both work and social purposes where privileged information is often shared less cautiously than it would be on official email systems. Individuals need to be consistently reminded of the confidentiality and privilege issues that arise from working and traveling outside the office, including communicating via unauthorized/private real-time messaging systems. This is particularly acute for law firms, although it can apply to all professionals.
- Additional risks arise from professional work undertaken against lockdown constraints such as drive-by valuations and remote audits (particularly the ability to verify/interrogate the information provided) for surveyors and auditors respectively. We have seen a reluctance by regulators to genuinely account for the restrictions placed upon professional firms in executing their engagements.
- For design professionals, the key risks are the reduced opportunity for the supervision of junior staff and that professionals might be less inclined to liaise with their colleagues to discuss the latest developments in their area and to sense-check their own technical work. The sharing of knowledge relating to design, risks, solutions and new methods of working is vital. If agile working tends to reduce that interaction, we may see more professional indemnity claims.

Use of new technologies

Risk rating

- 1 Very high
- 2 High
- 3 Medium
- 4 Low

Minor impact to operations or loss severity could be expected.

Which professionals could be impacted?

Solicitors and lawyers, certification agencies, real estate agents, construction professionals, architects, engineers, surveyors, auditors and accountants.

What is the issue?

New technologies bring rewards and risks for professional firms, including around authenticity and integrity. Artificial intelligence (AI), machine learning and robotics are being increasingly integrated into all professional areas with different levels of implementation. In the legal sphere, digital tools to discover and analyze data, such as e-Discovery, e-Disclosure and e-Modeling of natural resources, and predictive coding are increasingly accepted. Their use and reliability, as well as their cost effectiveness, should be closely monitored. Going forward, it is also widely predicted that firms that do not invest in new technologies will fall behind and be less well equipped to meet changing customer demand.

Where could it lead?

Technological advances, including AI, are transforming the markets in which professional services firms function, and how such firms operate and are remunerated by their clients. While AI has the potential to operate as a risk reducer, it will also shape professional exposures and test the traditional boundaries of liability. Taking the example of computer software to test for fraud in an audit or due diligence engagement, assessing the professional standard involved may need to evolve to encompass (or even focus upon) quality control of software, rather than the traditional skill and care involved in detecting fraud. Another example of a specific potential risk is the use of e-signatures; the relative security merits of wet versus e-signatures must be carefully considered. The legal, commercial and regulatory framework will need to develop at a pace that enables rather than frustrates such developments.

What are the main claims drivers?

- As technological solutions evolve rapidly so do the potential claims drivers. These include the need to preserve confidentiality when using service providers, risks of errors being repeated in volume work, and the level of supervision involved in machine learning tasks.
- Professional firms must continue to properly train and supervise their staff as technology evolves and to ensure the authenticity of work product in light of the emergence of products such as ChatGPT. In a recent case, a New York lawyer faced sanctions over an error-riddled brief drafted with help from ChatGPT that was used in their client's personal injury case against an airline company. The technology cited six non-existent court decisions.⁵
- Ultimately, a lack of awareness of how generative AI works, as well as an untrained use of this technology, could lead to legal sanctions and civil claims against all types of professionals, but in particular to legal practitioners, in cases where false representations are made in court, for example, after using this technology.

Increased focus on environmental, social, and governance (ESG) topics

Risk rating

- 1 *Very high*
- 2 *High*
- 3 *Medium*
- 4 *Low*

Minor impact to operations or loss severity could be expected.

Which professionals could be impacted?

Auditors, accountants, architects and design professionals, insurance brokers, surveyors, lawyers, consultants and financial professionals.

What is the issue?

Growing reporting requirements, regulatory enforcement, shareholder activism and litigation risks are all increasing environmental, social, and governance (ESG) liability risks for professionals. This is not helped by the lack of clarity around the term 'ESG', which encompasses a broad range of risks and considerations.

Claims for misrepresentation, mistakes, or failures to take account of climate change-related events when designing and constructing buildings are slowly increasing. Insurance brokers may find themselves in unfamiliar territory in terms of placing ESG risks as the market evolves. Auditors and accountants may be at risk if sustainability reports are included on audited financial statements, as well as when ESG-related reports or other material ESG disclosures were audited (third-party assurance). Professionals that are specifically engaged as ESG consultants and service providers may also be subject to claims from their clients. Professionals that are inadvertently engaged in ESG-related matters may also become subject to claims. For example, claims against marketing agencies and consultants for failing to appreciate that statements were unsubstantiated; and transactional consultants and lawyers for failing to scrutinize ESG warranties and credibility.

Where could it lead?

Exposure remains low but is perceptible on the horizon and is growing. Heightened activism increases litigation risk, and there has been a move towards more stringent regulation globally. As consideration of ESG-related factors becomes more central to business decision making, there is an increased prospect of clients and third parties that have been impacted by a corporate failure to look in greater detail at professionals' involvement in this. Additionally, ESG credentials are becoming increasingly important in professional firm selection, meaning that poor internal standards in relation to ESG factors may impact client retention.

What are the main claims drivers?

- For construction and design professionals, requirements to future-proof buildings, or to design against evolving sustainability standards and take into account environmental considerations when choosing building materials. Additionally, new technologies accounting for the impact of climate change can become redundant quickly and there may be issues over whether new methods are sufficiently well tested, and a gap between what is promised and what is delivered (for example, energy waste).
- For accountants and auditors, failure to provide strategic advice and recommendations which consider and integrate climate and other ESG risks, or failure to discharge duties of care in undertaking due diligence prior to investments being made, or when undertaking an audit, third-party assurance engagements, for example for ESG-related annual reports, as well as the risks arising in relation to audited entities later exposed to allegations of greenwashing.
- For insurance brokers, not fully advising the insured as to what they need to disclose in relation to ESG, not asking the insured clear and specific questions about information relevant to the cover required in terms of ESG – generic or standardised questions may not be sufficient to discharge this duty; not giving suitable advice due to insufficient knowledge of the insured's business and/or insufficient knowledge of ESG and not recommending cover that fits with the insured's needs and demands in relation to ESG.
- For lawyers, failures to advise on the legal/regulatory ESG-related implications of a transaction or to advise properly on physical and transition risks in relation to real estate or due diligence in corporate transactions.
- For valuers, the risk of not taking into account the various ways that sustainability and ESG issues can impact value. These may be physical risks, transition risks related to policy or legislation to achieve ESG and sustainability targets, or simply those reflecting the views and needs of market participants.
- Investment management, wealth management and pension trustees may face claims if they have purchased stocks without fully considering the risks of a changing climate to their portfolios or if they held on to assets too long, where climate change risks subsequently result in sharp price corrections. Financial advisers could also be vulnerable to lawsuits if they are seen to have failed in their duty of care when carrying out due diligence prior to investments being made.

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www.commercial.allianz.com

Global Practice Group – Professional Indemnity Claims Contacts

Diego G. M. Assef, LL.M. Eur.

Head of Global Practice Group Professional Indemnity
+49 89 3800 90348
diego.assef@allianz.com

William Perry, J.D.

Complex Claims Analyst
+1.312.456.3904
william.perry@agcs.allianz.com

Michael G. Ostler, JD RPLU

Managing Claims Director North America
+1.312.456.7459
michael.ostler@agcs.allianz.com

Bobbie Morrell

Senior Claims Expert Financial Lines
+44 (0) 20 3451 3680
roberta.morrell@allianz.com

Gena Hendricks, CPCU

Quality Assurance Specialist
Claims Governance and Integrity North America
+1.415.899.2102
gena.hendricks@agcs.allianz.com

Stuart Ping

Senior Claims Specialist Financial Lines
+44 (0) 20 3451 3681
stuart.ping@allianz.com

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Contacts

For more information contact your local Allianz Commercial Communications team.

Asia Pacific

Shakun Raj
shakun.raj@allianz.com
+65 6395 3817

Central and Eastern Europe

Andrej Kornienko
andrej.kornienko@allianz.com
+49 171 4787 382

Ibero/LatAm

Laura Llauroadó
laura.llaurado@allianz.com
+34 91 791 03 24

Mediterranean/Africa

Florence Claret
florence.claret@allianz.com
+33 158 858863

North America

Jo-Anne Chasen
jo-anne.chasen@agcs.allianz.com
+1 917 826 2183

UK and Nordics

Ailsa Sayers
ailsa.sayers@allianz.com
+44 20 3451 3391

Lesiba Sethoga

lesiba.sethoga@allianz.com
+27 11 214 7948

Global

Hugo Kidston
hugo.kidston@allianz.com
+44 203 451 3891

Olivia Smith

olivia.smith@allianz.com
+27 11 214 7928

Heidi Polke-Markmann

heidi.polke@allianz.com
+49 89 3800 14303

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Allianz Global Corporate & Specialty SE

Dieselstr. 8, 85774 Unterfoehring, Munich, Germany

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