Riding the Risk Pipeline:
Drafting Insurance Policies for Corporate Offense & Courtroom Defense

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Columbia University Professor Teresa Chan makes the point of this presentation eloquently: "The insurance industry sells solutions for risks that no one else wants to take." She continues: "There is nothing that you see, use, or feel that would exist without insurance. Banks don't finance multibillion dollar projects without insurance backing them, from covering the health and welfare of individuals who are involved through workers' comp or protecting against property damage that may occur during construction…[N]ew technologies can be brought to market if an insurer can remove risk associated with its performance. That's the power of insurance."[1]

Insurance is central to the functioning of modern economies.[2] It pools and prices individual and systemic risks. It transforms uncertainty into financial resilience. It permits businesses to innovate, governments to build infrastructure, and families to recover from unforeseen disasters. It manages systemic crises and mobilizes capital.

Because it is at the forefront of innovation, insurance professionals often take the lead on where risks are hiding. Part of their job is to design new products to insure against new risks, and to help companies and individuals determine the risks that they face. They name the risk, profile it, and work to mitigate it. The effort is collaborative, involving carriers, their policyholders, their potential customers, and both in-house and outside counsel.

In tandem, the modern litigation landscape is undergoing a profound transformation driven by regulatory expansion, technological disruption, and evolving societal attitudes. Legal systems across jurisdictions are redefining corporate liability and reshaping expectations placed on corporate actors by expanding exposure and complicating risk allocation across industries. Companies and insurers must adopt proactive governance and risk management strategies to navigate this evolving environment.

This program's global overview of the development of new insurance products for new risks will proceed in four parts. First, we will provide a brief overview of the current condition of the global insurance market. Second, we will discuss prominent emerging risks that insurance professionals are working to address. Third, we will discuss common insurance products and the gaps that

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[1] Teresa Chan, "The Importance of Insurance in Our Lives," https://sps.columbia.edu/news/importance-insurance-our-lives (last visited May 25, 2026).
[2] Richard Zeckhauser, "Insurance," https://www.econlib.org/library/Enc/Insurance.html (last visited May 25, 2026).

sometimes emerge when new risks are presented under legacy policies. Finally, we will offer practical takeaways for legal professionals, no matter what their capacity, so that they can better assist their clients in anticipating and addressing new risks.

I. Current Conditions in the Global Insurance Market

In 2025, the OECD reported that the insurance industry had been challenged by a persistent global inflationary environment, severe disaster events in a number of countries, and falling market penetration rates across all lines of business. On average, underwriting profitability grew outside of the life-insurance sector, and investment performance was broadly positive. The industry, globally, faces a period of uncertainty driven by macroeconomic risks (most prominently inflation and interest rate volatility), disaster risks, and cyber risks.[3]

II. Technological Risk: AI and Cyber

The European Union's AI Act establishes a comprehensive framework governing AI system, imposing obligations on companies to manage risks associated with these technologies.[4] In arbitration and dispute resolution, AI may enhance efficiency but must not undermine procedural fairness or human decision-making authority.[5]

Cyber risk litigation demonstrates increasing scrutiny of insurers' underwriting practices, particularly where risks were known or could have been identified at policy inception.[6]

III. D&O Insurance and Corporate Fines

Recent German case law suggests that cartel fines imposed on companies cannot be recovered from directors, as such recovery would undermine the sanctioning purpose of regulatory penalties.[7]

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[3] *See generally* OECD (2025), Global Insurance Market Trends 2025, OECD Publishing, Paris, https://doi.org/10.1787/0d11ecf4-en (last visited May 25, 2026).

[4] AI Act leaked: 5 Key Points (Clyde & Co 2024).

[5] AI and Arbitration: The German Perspective (Clyde & Co 2024).

[6] First Cyber Insurance Case Law in Germany, Regional Court of Tübingen (May 26, 2023).

[7] Higher Regional Court of Düsseldorf, VI-6 U 1/22 (Kart) (July 27, 2023).