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INSIGHTS JUL 2025



The Great Wash 2025: Green, AI, and Tariff Washing – A New Era of Exposure



Just like laundry day, corporate image-cleaning has its own spin cycles. But while a splash of detergent and a rinse can freshen up your gym socks, scrubbing up a company's ESG, AI or tariff credentials isn't always so harmless. Welcome to The Great Wash 2025 - where green-washing, AI-washing, and even tariff-washing risk leaving more than just a few stains on the corporate reputation cycle.

Unlike your laundry, corporate dirt doesn't just require a bit of detergent - it can come with a price tag in the millions and a side order of litigation. And when the spin cycle starts, it's often insurers who get dragged into the rinse. Whether it's D&O, PI, CLL, or a multiline combination, it doesn't take much imagination to picture a policyholder firing off a notification after finding themselves in hot water. But the real question is - where is the insurance cover?

Green-washing: Not a Securities Claims Driver - But Watch the Regulators

Green-washing: making your green-related credentials look better (or less bad) than they are. Despite the media attention, green-washing has not yet become a major source of securities claims. That's not to say it won't (climate change is literally a slow burn) - but so far, the real action has been on the regulatory front.

We've seen a string of high-profile enforcement actions across multiple jurisdictions:

- Vanguard Investments in Australia was hit with a record AU\$12.9 million penalty for misleading ESG claims about its bond fund.
- DWS Group in Germany settled for €25 million after overstating the sustainability of its investment products and exaggerating ESG credentials.
- Keurig Dr Pepper paid a \$1.5 million penalty to the SEC for overstating the recyclability of its K-Cup pods.
- Coca-Cola has faced multiple challenges—one from Earth Island Institute in the U.S. (now reinstated on appeal), and another from the European Consumer Organisation (BEUC), resulting in commitments to change its packaging claims.

What's notable is the diversity of regulators involved. We're not just talking about financial regulators like the SEC or ASIC. Consumer protection authorities are increasingly active—especially where the misleading statements are aimed at the public rather than investors. And it's not just the U.S. regulators – the Competition & Markets Authority and Advertising Standards Authority in the UK have been active too.

This matters for insurers and their clients because as we have previously discussed in our Newsletters, the line between D&O, PI, and CLL coverage is not always 100% clear, particularly where emerging issues are at the heart of a dispute. Where investors are misled, D&O is likely to respond. But where the public is misled—particularly in product marketing—PI or CLL may be more appropriate. Practitioners should be alert to how these exposures are framed and where coverage is expected to sit.

AI-Washing: The New Frontier for Securities Claims

If green-washing has been a regulatory story, AI-washing (making your AI-related credentials look better than they are) is shaping up to be a securities litigation one - particularly in the U.S. where it was one of the top drivers of securities claims in 2024 (15) and also in the first half of 2025 (9), with regulatory enforcement actions not far behind, including:

- Oddity Tech is facing a class action for allegedly overstating its use of AI in transforming the beauty industry.
- Presto Automation settled SEC charges after claiming its AI could fully automate drive-thru orders—when in fact, most orders required human intervention.

- Nate Inc. and its founder were charged for misleading investors about the company's use of AI in its shopping app.
- Kubient Inc. saw its CEO plead guilty to fraud after inflating the capabilities of its AI-powered ad fraud detection tool.

It's not just investors who are allegedly being misled. The U.S. Federal Trade Commission ("FTC") has taken action against companies like DoNotPay, Ascend Ecom, and Rytr LLC for deceptive AI claims in legal services, e-commerce, and review generation. These are consumer protection driven cases.

What's driving this? In part, it's the hype cycle. AI is the new gold rush, and companies are eager to position themselves as leaders. But when those claims turn out to be exaggerated - or outright false - investors and regulators are increasingly willing to act.

Outside the US, the EU Artificial Intelligence Act (AI Act), which entered into force on 1 August 2024, gives regulators significant powers to combat AI washing, with market surveillance authorities due to be designated by member states ahead of a 2nd August 2025 deadline and new transparency requirements, enforced with new powers to impose fines and corrective measures. Like a lot of new regulatory activity in the "washing" arena, however, the AI Act is facing delays in its implementation.

From an insurance perspective, this is fertile ground for D&O claims, particularly where misleading statements are made to investors in offering documents, investor presentations, or earnings calls. But again, PI and CLL may also be in play, especially where the misrepresentations relate to the delivery of professional services or consumer-facing products.

Tariff-Washing: An Embryonic Risk, But One That Could Hatch Soon

As global trade tensions rise, some companies may be tempted to downplay the impact of tariffs or trade restrictions in their public disclosures. We've seen this before: during the COVID-19 pandemic, some firms overstated their resilience or underplayed operational risks, leading to a wave of securities litigation which is still continuing.

Could we see something similar with tariffs? It's possible. A company may claim it is "well-insulated" from tariff impacts, for example in its ability to:

- use non-tariff countries / domestic sources for materials and components

- mitigate supply-chain disruption
- switch to markets with lower / no sanctions
- pass the financial effects of tariffs on to customers

But if subsequent performance indicates otherwise, investors may argue they were misled and securities claims will follow, triggering D&O coverage.

This will be a tricky tight rope for companies to walk. Obviously it's important to maintain investor and customer confidence during these unpredictable times, but without going too far.

Other tariff-related D&O risks are likely to include:

- Regulatory investigations / enforcement for tariff breaches
- Supply-chain issues impacting production
- Customer demand in key markets drying up
- Ultimately, if the risks cannot be managed, insolvency

At this stage, there are no known claims, but we are just getting started on this bumpy journey. Practitioners should be even more alert than before as to how clients are framing their exposure to geopolitical and economic risks.

The Regulatory Backdrop: Hesitation But No Reversal

Some might argue that the risk of "washing" claims is overstated - especially given recent developments:

- In the U.S., the SEC's proposed climate disclosure rules have been shelved indefinitely under the current administration as ESG is de-prioritised.
- In Europe, a delay in the implementation of the Corporate Sustainability Reporting Directive ("CSRD") and Corporate sustainability Due Diligence Directive ("CS3D") for many companies has been agreed, to allow enterprises more time to adapt.
- The UK's FCA and Bank of England have said there will be no new AI regulations. A private member's AI (Regulation) Bill currently before Parliament is unlikely to pass anytime soon.

This means that detailed rules governing what must be disclosed and when are not going to be there for companies to follow. This is not a green light for companies to relax and their insurers to ease their underwriting discipline.

If anything, the absence of prescriptive rules increases the likelihood of enforcement under existing laws.

Why? Because misleading investors or customers has always been unlawful - whether under securities laws, consumer protection statutes, or general principles of fraud and misrepresentation. And in the absence of clear disclosure frameworks companies will be making judgments - some of them bad - about when and what they say about their credentials (or lack of them).

In the US, while the appetite at federal level has shifted away from further ESG roll-outs, some states, most notably California, are pressing ahead with climate related reforms. These rules could well become the “de facto” standard across the US.

In other words, the enforcement risk is not going away.

Product Implications: Time to Rethink the Lines

So where does this leave those buying and selling insurance products?

When it comes to “washing” claims, who is misled and which enforcement agency is involved will determine where the insurance will lie. It is possible that more than one product will respond to different aspects of the same issue: making similar misleading statements to customers and investors alike will lead to different regulators getting involved and different insurances being impacted (PI/CLL for consumer actions and D&O for investor-related actions).

One key takeaway could be that the boundaries between D&O, PI, and CLL are becoming increasingly blurred.

So as The Great Wash of 2025 spins its way through the cycle, here are some initial considerations for insurance practitioners:

- **D&O:** This is still the primary responder for securities claims and regulatory investigations involving directors. There is unlikely to be any cover for fines and no cover for the company in respect of consumer actions (without a CLL “bolt-on”).
- **PI:** May respond where the misleading statement is in the provision of professional services - particularly in tech, finance, or advisory sectors. We have seen this in respect of the Vanguard and DWS claims which involved misleading customers about investment products sold by the firms. Mis-selling claims are a major source of exposure under FI PI policies for instance.

- **CLL:** Relevant for entity claims, especially where the misrepresentation is made in marketing or public communications where there is no client relationship. We did a Newsletter on CLL recently – see [here](#). However, many companies do not buy CLL and it is generally only available in the SME sector as a bolt-on to D&O.

If we are just looking at client need, there is a strong case for blended products or modular enhancements that address these separate but related “washing” exposures - particularly for companies operating in high-risk sectors like tech, finance, or consumer goods. In the financial tech services sector the FinTech policy does a great job of potentially covering all these (and other) exposures for instance. For the commercial SME sector there is the MLP. This avoids gaps and overlaps in cover.

But what if you are a large public company in the commercial sector? There is currently no product that addresses the consumer litigation risk associated with The Great Wash. Is there a need for a legal liability policy covering liability for financial loss at that level? Is the financial lines market even the best place to buy/sell such a product? Such a policy would need to avoid cover for deliberate or reckless misstatement liability: these are not something for insurers.

Whether providing multiple cover sections in a single policy or multiple policies for related matters insurers need to watch out for inadvertent aggregation of their limits for related matters. On the client side, you need to check against inadvertent aggregation of retentions. These challenges are solved through drafting, using interlocking and allocation clauses. The broker’s role will be key in making sure the cover is where intended.

Looking Ahead

The Great Wash will not be a passing trend. It reflects a deeper shift in how companies try to project themselves in today’s court of public opinion and how consequently they will be held accountable for their public statements. There are opportunities here for the insurance market to provide seamless coverage that addresses these needs.

If you are involved in the underwriting of financial lines policies, it’s time to make sure your clients have the right spin cycle selected when they are doing their corporate washing! ■