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Biggest Business Risks of 2025/2026: Mitigating Through Contractual Provisions and Smart Use of Insurance Assets

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PANELISTS

Jason Eig



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Jason is a real estate and finance partner who represents banks, financial institutions, REITs, private equity companies, and other sponsors on real estate financings, acquisitions, dispositions, leasing, and related matters. His representations span a variety of disciplines with particular industry experience in healthcare, industrial, and office real estate matters. Jason has extensive experience representing banks and other financial institutions in real estate lending transactions involving healthcare real estate assets having served as lead counsel on senior and mezzanine financing transactions for over 20 years throughout the United States. He has represented REITs, private equity companies, and other sponsors in acquisitions, dispositions, financings, and leasing matters for two decades. During Jason's career, he has served as lead outside transactions counsel for clients, having closed over 150 acquisitions, dispositions, and financings in this capacity. He also regularly represents clients in commercial leasing matters with a particular expertise in the industrial and office spaces.

John Gibbons



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John's national practice focuses on advising corporate policyholders about their insurance policy rights and recovery insurance assets, either through negotiation or trial. He maintains a particularly active trial practice that includes serving as trial counsel for a *Fortune* 100 pharmaceutical company in a four-month trial, a *Fortune* 500 regulated utility in two separate multiweek jury trials, and a large multinational engineering services corporation in a three-judge panel arbitration. John is ranked in *Chambers USA* and *Legal 500* recommended John for his “subject-matter expertise and business-focused approach.” *Benchmark Litigation* also recognized John as a local (Washington, DC) “Plaintiff Litigation Star” and ranked him in the National Tier 1 level (one of only 11 for insurance nationally). He is also recognized in *Best Lawyers in America*, *Super Lawyers*, and *Euromoney's Insurance and Reinsurance Expert Guides*. John is the principal author and editor of the ACC Guide *A Policyholder's Primer on Commercial Insurance in the United States*.

Kellyn Muller



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Kellyn is the General Counsel at leading independent bulk raw material trading company International Materials (IMI), with \$4 billion in revenue. She leads the company's internal legal and risk management functions related to contracts, claims, compliance management, international growth opportunities, business partnerships, and joint ventures. In addition to stellar career accomplishments throughout more than two decades, Kellyn continues to make her mark in professional roles. She was the founding president of the International Materials Foundation and is now a Board member. Kellyn also is a founding member of CHIEF, a private network designed to drive more women into positions of power and keep them there. Her professional achievements include being named a Pennsylvania Super Lawyer Rising Star for three years and a Florida Super Lawyer Rising Star. Before joining IMI, Muller was with Cozen O'Connor for 13 years in several capacities, including member, and office managing partner, vice chair in West Palm Beach, Fla.

With Business Comes Risk



Sorry...
**TEMPORARILY
CLOSED**



Planning for Business Risk

KEY CONTRACT CONSIDERATIONS

Indemnification Provisions
Insurance Procurement
Clauses
Waiver of Subrogation
Anti-Compete Clauses
Representations and Warranties
Asset Protection
Collateral Security Arrangements

INSURANCE

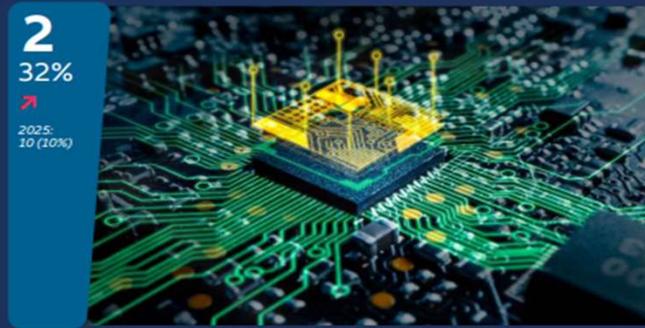
Lost Business Income
Cyber Attacks
Class Action &
Derivative Suits
Employment Practices
Products Liability
Media/ Advertising
Liability

First Party Risks
Third Party Risks



Cyber incidents

(e.g., cyber crime, IT network and service disruptions, malware / ransomware, data breaches, fines, and penalties)



Artificial intelligence

(e.g., implementation challenges, liability exposures, misinformation / disinformation)



Business interruption

(incl. supply chain disruption)



Changes in legislation and regulation

(e.g., tariffs, new directives, sustainability requirements)



Natural catastrophes

(e.g., storm, flood, earthquake, wildfire)



Climate change

(e.g., physical, operational and financial risks as a result of extreme weather)



Political risks and violence

(e.g., war, political instability, terrorism, polarization, coup d'état, civil unrest, strikes, riots, looting)



Macroeconomic developments

(e.g., inflation, deflation, monetary policies, austerity programs)



Fire, explosion¹



Market developments

(e.g., intensified competition / new entrants, M&A, market stagnation, market fluctuation)

The most important global business risks for 2026

Ranking changes are determined by positions year-on-year, ahead of percentages.

The 15th annual Allianz Risk Barometer survey was conducted among Allianz customers (global businesses), brokers and industry trade organizations. It also surveyed risk consultants, underwriters, senior managers and claims experts in the corporate insurance segment of Allianz Commercial and other Allianz entities.

[View the full Allianz Risk Barometer 2026 rankings here](#)

Rank		Percent	2025 rank	Trend
11	Critical infrastructure blackouts (e.g., power disruption) or failures (e.g., aging dams, bridges, rail tracks) ²	8%	12 (9%)	↗
12	Talent or labor issues	8%	11 (9%)	↘
13	Energy crisis (e.g., supply shortage / outage, price fluctuations)	6%	13 (8%)	→
14	Theft, fraud, corruption ³	5%	14 (7%)	→
15	Insolvency	5%	16 (6%)	↗
16	Loss of reputation or brand value (e.g., public criticism) ⁴	4%	15 (7%)	↘
17	Biodiversity and nature risks (e.g., water scarcity) ⁵	4%	NEW	↗
18	Product recall, quality management, serial defects	4%	18 (4%)	→
19	Human health risk (e.g., pandemic outbreak)	3%	19 (3%)	→
20	Pollution event	1%	17 (6%)	↘
	Other	2%		

Source: Allianz Commercial

Figures represent the number of risks selected as a percentage of all survey responses from 3,338 respondents. All respondents could select up to three risks per industry, which is why the figures do not add up to 100%.

NEW New entry in the top risks

Key

- ↗ Risk higher than in 2025
- ↘ Risk lower than in 2025
- No change from 2025 (3%) 2025 risk ranking %

- ¹ Fire, explosion ranks higher than market developments based on the actual number of responses
- ² Critical infrastructure blackouts ranks higher than talent or labor issues based on the actual number of responses
- ³ Theft, fraud, corruption ranks higher than insolvency based on the actual number of responses
- ⁴ Loss of reputation or brand value ranks higher than biodiversity and nature risks based on the actual number of responses
- ⁵ Biodiversity and nature risks ranks higher than product recall, quality management, serial defects based on the actual number of responses

Risk is Specific to You

TOP 5 RISKS IN
AGRICULTURE

TOP 5 RISKS IN
FINANCIAL SERVICES

TOP 5 RISKS IN
HOSPITALITY, LEISURE,
TOURISM

TOP 5 RISKS IN
CONSUMER GOODS

TOP 5 RISKS IN AVIATION,
AEROSPACE, DEFENSE

TOP 5 RISKS IN
POWER & UTILITIES

TOP 5 RISKS IN
GOVERNMENT, PUBLIC
SERVICES (INCL.
HEALTHCARE)

TOP 5 RISKS IN
ENGINEERING,
CONSTRUCTION,
REAL ESTATE

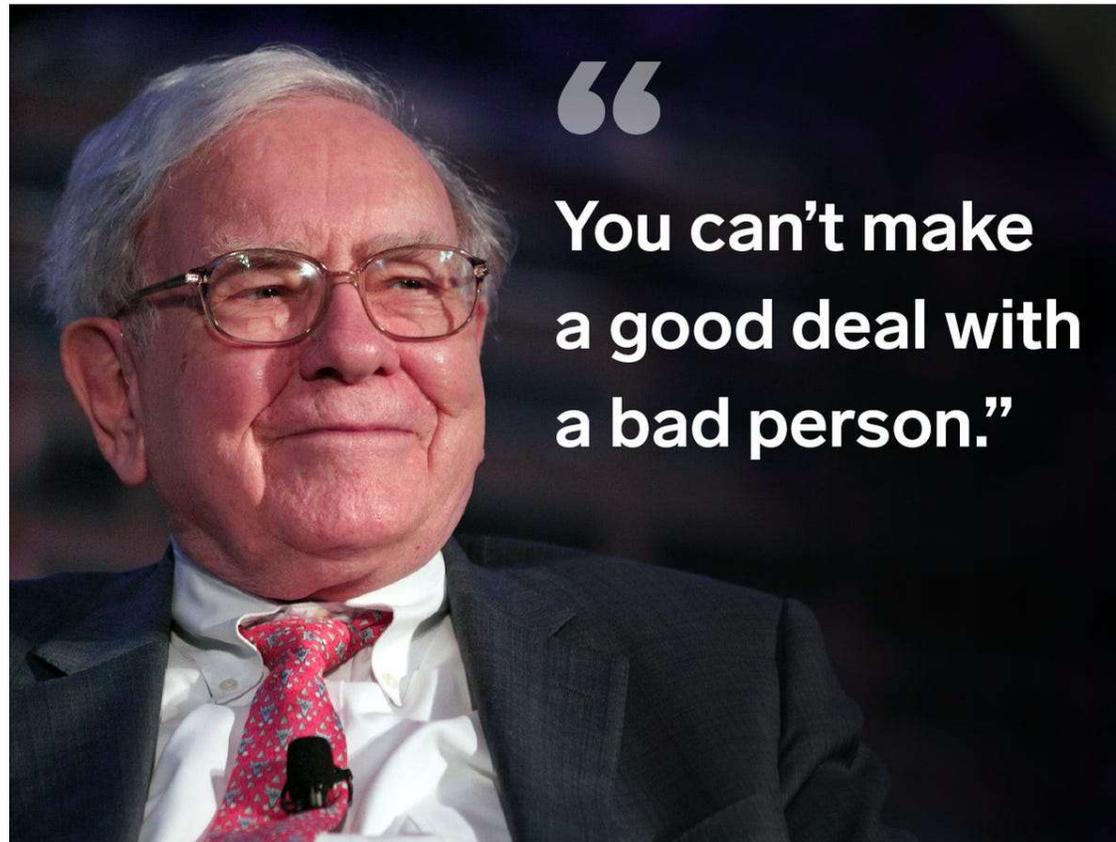
TOP 5 RISKS IN
FOOD & BEVERAGES
(MANUFACTURING &
SUPPLY)

TOP 5 RISKS IN
TECHNOLOGY

TOP 5 RISKS
IN CHEMICALS,
PHARMACEUTICALS,
BIOPHARMA

TOP 5 RISKS IN
ENTERTAINMENT &
MEDIA

Mitigate Deal Risks



Mitigate Deal Risks

- ✓ Before the Deal – Know Your Counterparty Well
 - ❑ Corporate Structure of Entities to the Transaction
 - ❑ Mitigating risk to Equity Stake Holders
 - ❑ Operating Entities vs Special Purpose Entities
- ✓ Understand Commercial Terms
 - ❑ LOIs or Term Sheets
 - ❑ Binding vs. Nonbinding
 - ❑ Exclusivity and Confidentiality
 - ❑ Economics and Basic Deal Terms

Mitigate Deal Risks

- ✓ Representations and Warranties for the Transaction
 - ❑ Factual Statements made by a Party as of a Date Certain (but be careful of compliance certificates that require a bring-down)
 - ❑ Knowledge and Materiality Qualifiers
- ✓ Covenants
 - ❑ Affirmative vs. Negative Covenants
 - ❑ Maintenance and Ongoing Operational Matters
 - ❑ Financial Covenants

Mitigate Deal Risks

- ✓ Collateral Security & Credit Enhancements
 - Is the Transaction Secured?
 - Are there Guaranties or Similar Credit Enhancements?
- ✓ Defaults and Remedies
 - Notice and Cure Periods
- ✓ Post-Closing Requirements
 - Confirm Parties Operate In Good Faith with “Skin In The Game”

Mitigating Risks to Your Business

- ✓ Force Majeure
- ✓ Cancellation Provisions
- ✓ Delay Provisions
- ✓ Limitations on Contract Damages
- ✓ Limited Agency Agreements
- ✓ Indirect Contracting
- ✓ Priority Protection for AR and Extensions of Financing
- ✓ Organizational Structure



Breaches & Recourse

- Who is actually liable?
 - ❑ Does the counterparty have assets to go after for breaches
- Collateral for defaults and breaches
 - ❑ Is the transaction secured and if so by what (documentation matters)
- Survival
 - ❑ Not all breaches are equal when it comes to survival periods
- Damages
 - ❑ Liquidated Damages / Caps / Reimbursement Obligations
- Indemnities
 - ❑ 3rd Party Claims
 - ❑ Liquidated Damages
 - ❑ Caps
 - ❑ Baskets vs Deductibles

Trends in Risk Transfer And Insurance

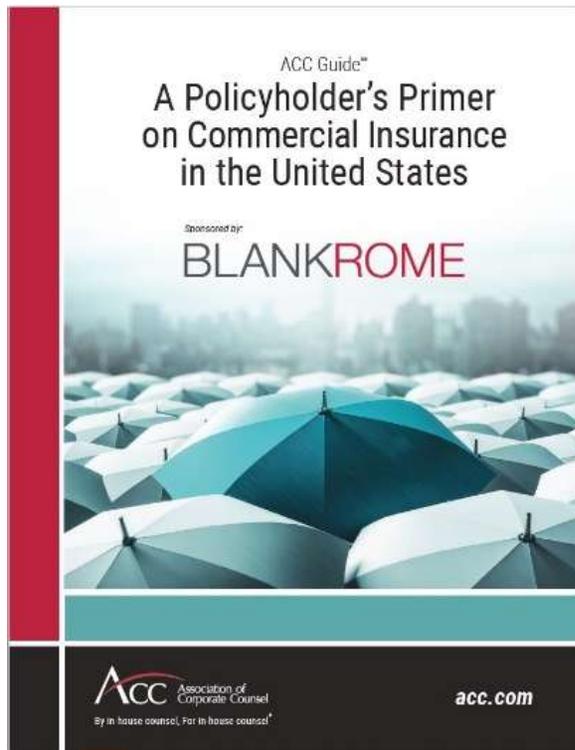
- Additional Forms of Long Tail Liabilities
- Post-Transaction Rights to Insurance
- Catastrophes
- Business Interruption Claims
- Pandemics
- Civil and Political Unrest/Changes
- Cyber & Crime Loss
- Supply Chain Disruptions
- Cancellations

Insurance Is an Asset

- Think of insurance as an asset.
- The four main times when a business thinks of insurance:
 - When it buys a property or business
 - When its insurance is up for renewal
 - When an event occurs that leads to or threatens a loss
 - When it sells a property or business
- Businesses with multiple tiers and properties consider insurance more frequently than simple single-tiered businesses.



ACC Guide



*Scan code below to download the
Blank Rome Insurance Primer from
the ACC website*



Align Insurance Assets with Your Risks

- Third-Party General Liability
 - Bodily Injury and Property Damage
 - Advertising Injury
- First-Party Property
 - Business Interruption
 - Contingent Business Interruption
 - Employment Practices
- Directors & Officers (“D&O”)
- Errors & Omissions (“E&O”) / Professional Liability

Align Specialized Insurance Assets with the Risks Facing Your Business

- Representation & Warranty
- Cyber & Privacy
- Credit Insurance / Lienholder Interest
- Patent
- Product Recall
- Environmental
- Crime / Fidelity
- Fiduciary
- Event Cancellation
- Title Insurance
- Charterer's Liability / Marine Package
- Cargo / Storage
- Wrap Up / OCIP / CCIP
- War / Political Risk

Insurance Requirements for Others

- Specify the types of policies required.
- Specify the minimum level of insurance necessary.
- Request “additional insured” status and waiver of subrogation.
- Request separate notice of cancellation and the option to continue the policy in the event the vendor fails to pay the necessary premiums.
- Owners/Financial Providers need ability to Force-Place

1. When analyzing an insurance issue, regardless of type:

- Work from the proposition that there should be coverage unless it can be unequivocally shown that there is no basis for coverage.
- Follow claim submission requirements in the policy to avoid the insurer arguing forfeiture of the insurance.
- Present the claim to the Insurer in a way that will maximize coverage.
- Analysis will be driven by state law.

2. Start your coverage analysis with the basic rules of construction:

- **Words in a policy are construed by their “ordinary and popular,” or “plain meaning,” not some technical meaning known only to insurance specialists.**
 - See, e.g., *Buckeye State Mut. Ins. Co. v. Carfield*, 914 N.E.2d 315, 318 (Ind. Ct. App. 2009); *AIU Ins. Co. v. Superior Court*, 799 P.2d 1253, 1264 (Cal. 1990)
- **If the words are reasonably susceptible of more than one meaning, they are ambiguous and must be construed in favor of coverage.**
 - See, e.g., *Mega Life & Health Ins. Co. v. Pieniozek*, 585 F.3d 1399, 1406 (11th Cir. 2009); *Int’l Bus. Machs. Corp. v. Liberty Mut. Fire Ins. Co.*, 303 F.3d 419, 424 (2d Cir. 2002)
- **A policyholder does not have to show that its construction is the only permissible one, or the best one - only that it’s a reasonable one.**
 - See, e.g., *Gen. Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 153 (Minn. Ct. App. 2001)
- **The insurance should be interpreted to give the policy and risk transfer real meaning.**
 - See, e.g., *USAA Cas. Ins. Co. v. Carr*, 225 A.3d 357 (Del. 2020)

3. Don't blindly accept conventional wisdom about what is and is not covered, and reject assertions that insurance is just "not intended" to pay your type of claim.

- E.g., assuming intentional acts aren't covered when some things expressly covered under advertising injury and personal injury are, by definition, intentional.

4. Explore your specific policy language, how it relates to other language in the insurance market, and how it was developed advertised to consumers and regulators.

- When procuring or renewing insurance, identify the type of liabilities for which the policyholder needs coverage, and for reviewing the policy language offered by competing insurance companies.
- Assess how various policies within a program fit together.

QUESTIONS?

Thank You for Joining Us



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