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Head injuries in sport and the problem of ubiquitous risks

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6 September 2023



Head injuries in sport

Head injury in sport



Claims landscape



- USD765m settlement of concussion lawsuit against NFL
- 169 professional and 66 amateur rugby players suing World Rugby, RFU, WRU
- 125 rugby league players suing RFL, BARLA and IRL
- 15 former footballers suing FA
- 60 Aussie League players suing AFL

US studies

- Between 170,000 and 380,000 sports-related traumatic brain injuries each year
- 21% of traumatic brain injuries in children caused by sport
- A 2017 study into symptomatic former NFL players' brains found that:
 - 87% bore hallmarks of chronic traumatic encephalopathy
 - 45% of men bore hallmarks of Alzheimers
- 170,000 people play rugby at least once a week

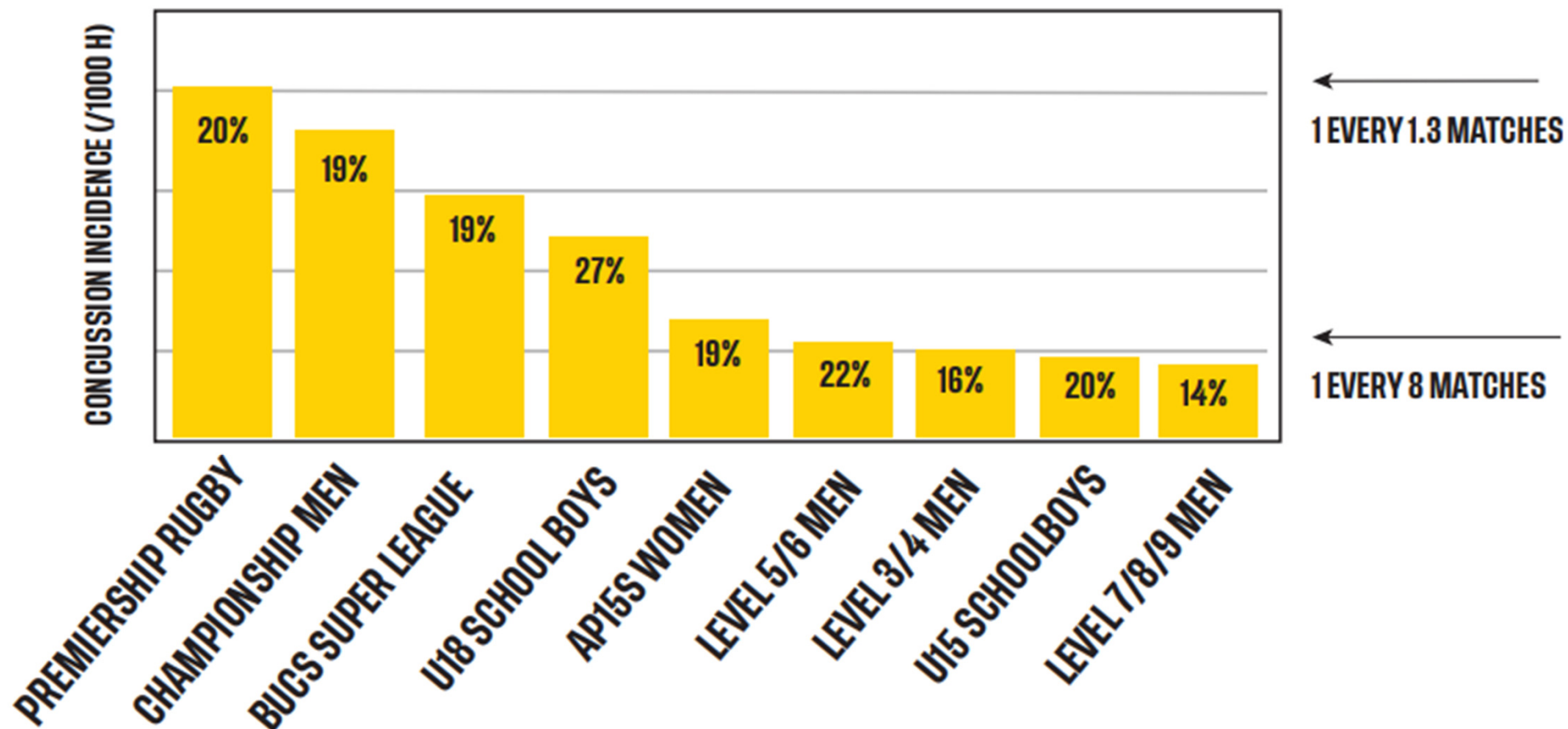


The UK problem in numbers

- 1.5M play football at least twice a month
- 195,000 play rugby union at least twice a month
- 59,000 play rugby league at least twice a month
- High participation levels among children



CONCUSSION AT DIFFERENT LEVELS OF THE GAME 18-19 SEASON



Who might be liable?



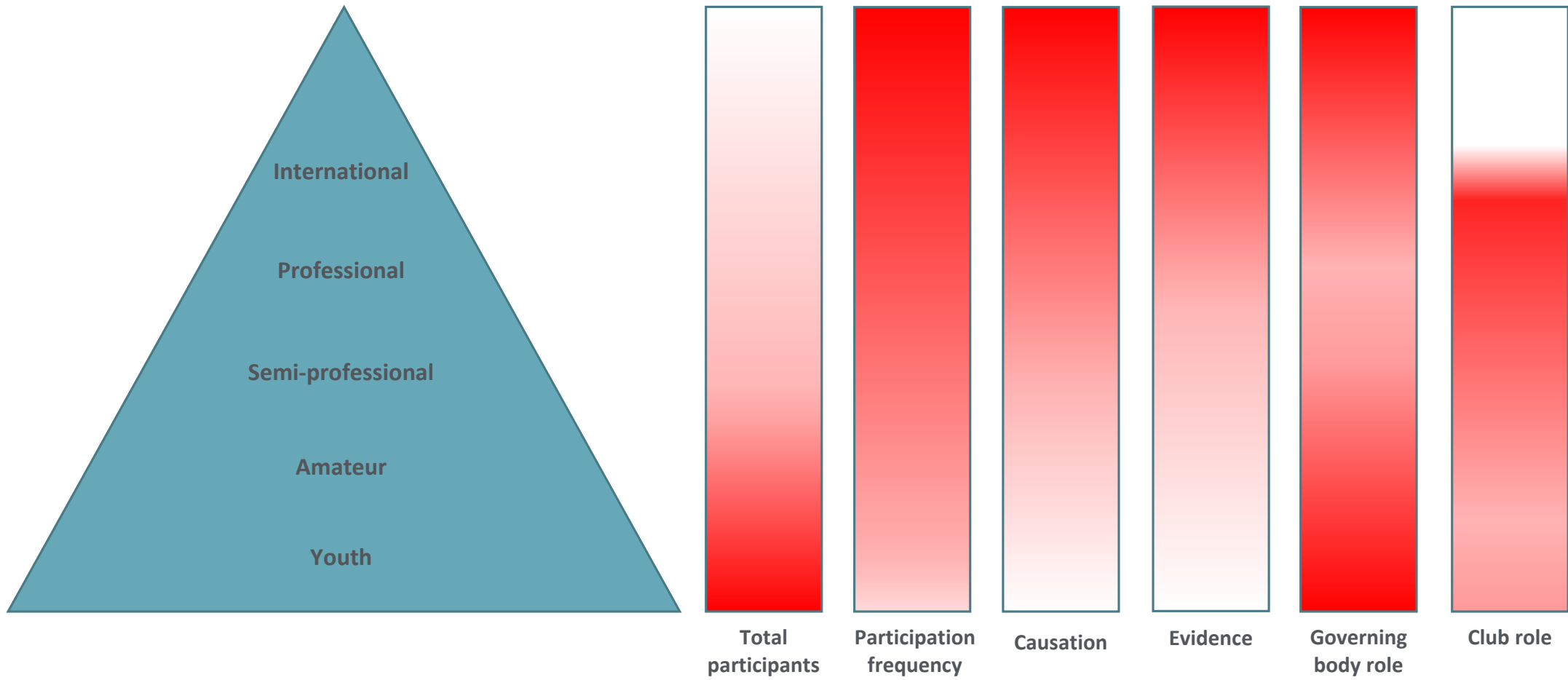
- Governing bodies: *Watson v British Boxing Board of Control* (1999)
- Clubs: *Gravil v Carroll & Redruth RFC* (2008)
- Promoters and trade associations: *In re National Football League Players' Concussion Injury Litigation*
- Doctors
- Other participants: *Czernushka v King* (2023)

Relevant doctrines and defences

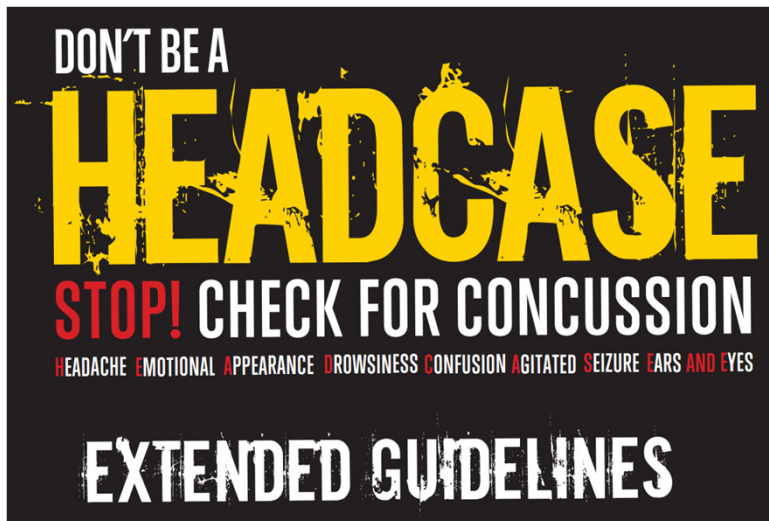


- Contract or tort?
- Duty of care: proximity of governing body to victim
- Learned intermediary: role of clubs and medics
- Negligence: relevance of international standards
- Informed consent
- Causation
- Burden of proof

Drivers of risk



RFU anti-concussion rules

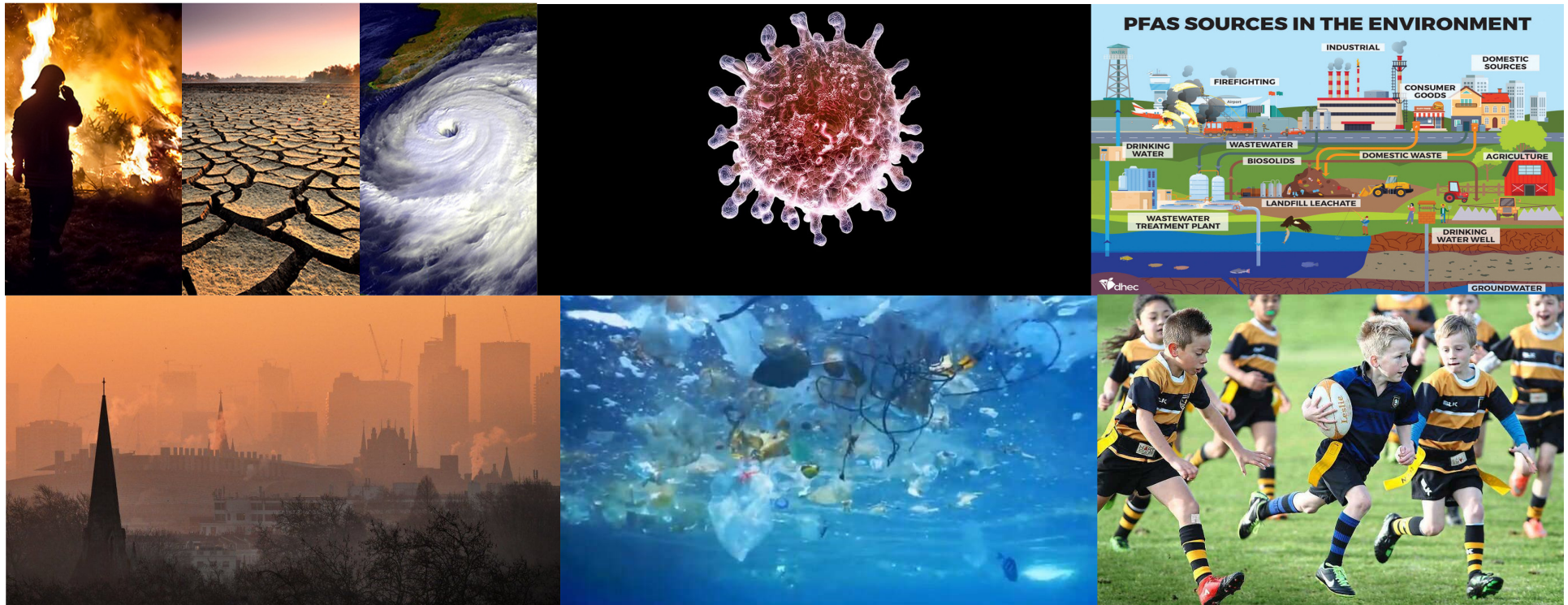


- Allocation of roles and responsibilities
- Players with suspected concussion removed immediately and checked out
- Players with actual concussion go through Graduated Return to Play
- Extensive information provided on medical science and statistics

The problem of ubiquitous risks



What is a ubiquitous risk?



Why are ubiquitous risks problematic?



- Huge losses:
 - Plastic pollution: USD100bn (Praedicat)
 - PFAS water decontamination: USD400bn (Praedicat)
 - EU air pollution: USD1.6tn (WHO, OECD)
 - Covid-19: USD8.5tn (UNWESP)
- Huge number of claimants
- Huge number of defendants
- Historic exposures
- Constant threat from new technologies

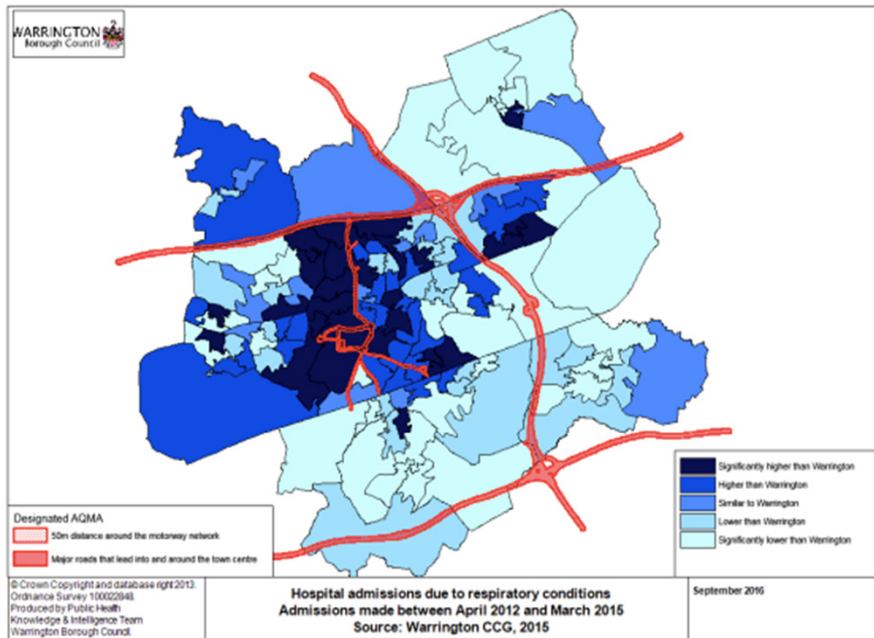
How concerned should we be about ubiquitous risks?



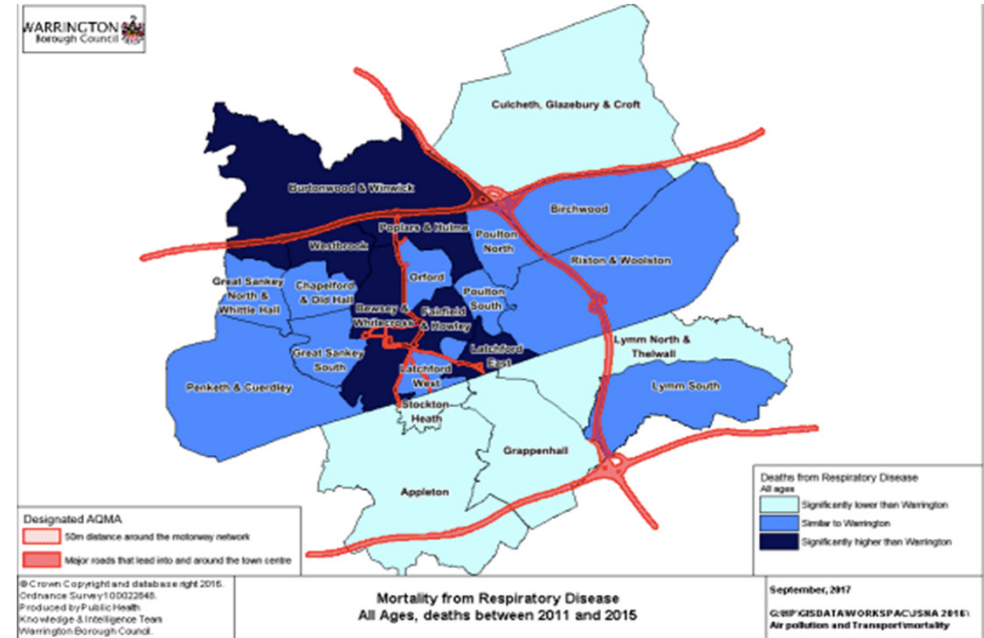
- Claims fail for too many claimants
- Claims fail for too many defendants
- Claims fail for lack of proof
- Claims fail for lack of causation
- Claims fail for non-justiciability
- Regulatory intervention may reduce risk
- NGOs want behavioural change, not damages

Causation very hard to prove

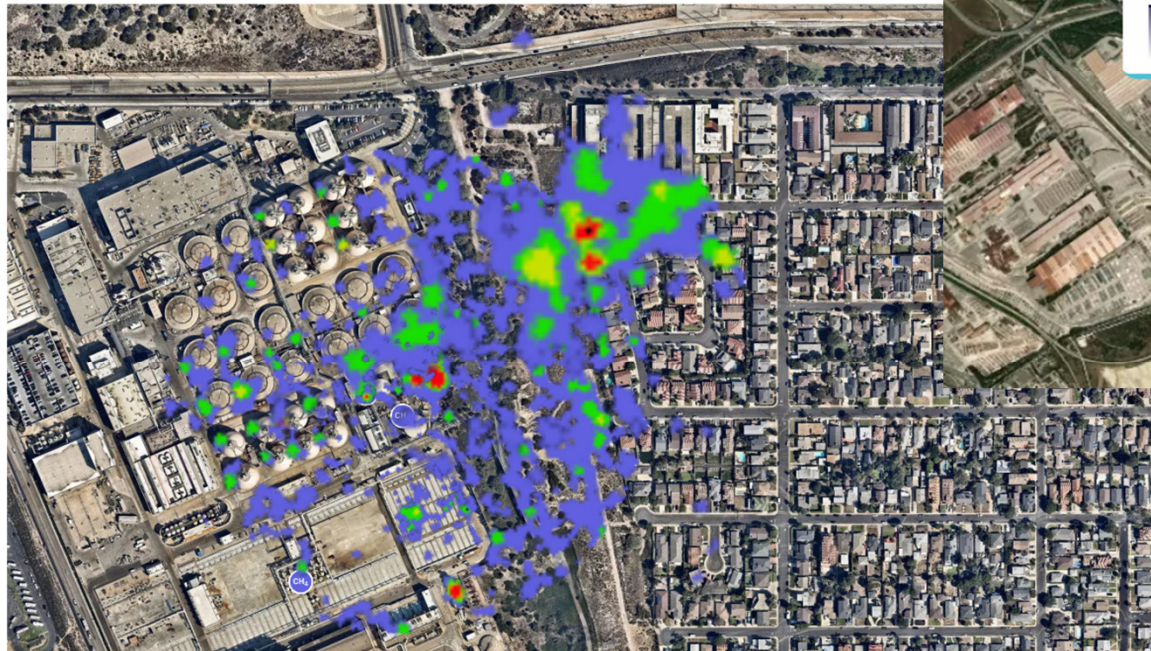
Hospital admissions for respiratory disease



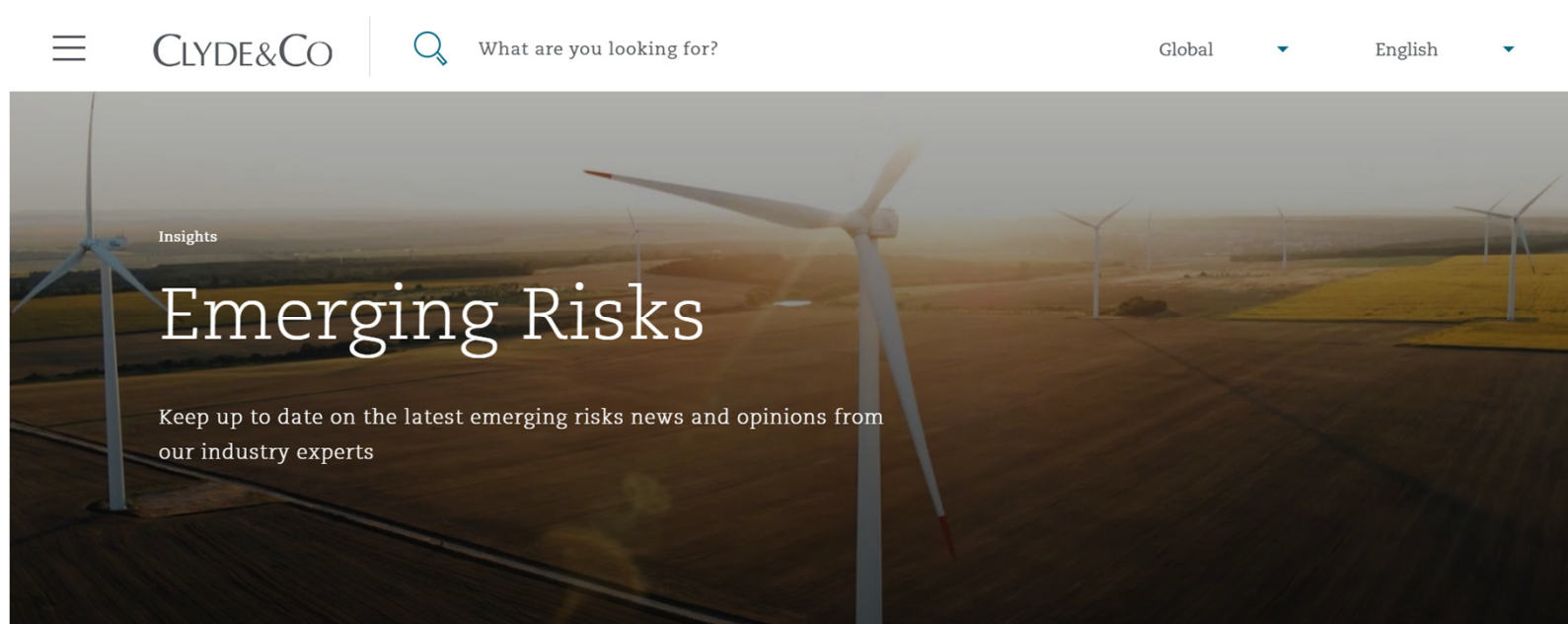
Mortality for respiratory disease



Beware improvements in science



More information



The image shows a website header and a hero section. The header includes a hamburger menu icon, the logo 'CLYDE&CO', a search bar with the text 'What are you looking for?', and dropdown menus for 'Global' and 'English'. The hero section features a background image of a wind farm at sunset. The text 'Insights' is positioned above the main title 'Emerging Risks'. Below the title, a subtitle reads: 'Keep up to date on the latest emerging risks news and opinions from our industry experts'.

CLYDE&CO

What are you looking for?

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English

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Emerging Risks

Keep up to date on the latest emerging risks news and opinions from our industry experts