Global disputes

Post-conference report

Navigating the next normal: Global disputes in 2020 and beyond

Insights on disputes, regulatory trends and COVID-19 across the global landscape

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Contents

Welcome from the conference co-chairs

Dear friends, colleagues, and clients

We hosted our inaugural Global Disputes Conference, “Navigating the next normal: Global disputes in 2020 and beyond,” from October 26 to 29, 2020. This report provides a synopsis of each of the conference’s 20 sessions, including key takeaways and links to view presentations in their entirety.

Amidst the backdrop of COVID-19, the work-from-home setting provided a unique opportunity for our global litigation department to present this conference, which focused on the pandemic’s many long-term legal and business ramifications. Our roster of presenters included thought leaders from the academic, corporate, judicial, and public health sectors and 61 Reed Smith attorneys across 19 offices and 13 practice and industry groups. We are grateful for their expertise and diverse perspectives. While this year’s remote conference was born out of necessity, we plan to maintain this virtual format next year and thereafter, providing our clients and contacts with our international perspective as we navigate “the next normal” together.

We hope this report and our conference provide useful insights on litigation trends. Please do not hesitate to reach out to us or any of the key contacts listed within this report if you have questions, comments, or needs.

With warm regards,

Peter Hardy
Partner, London
2020 Global Disputes Conference Co-Chair

Janet Kwuon
Partner, Los Angeles
2020 Global Disputes Conference Co-Chair

Geopolitics: 2020 tensions expected to abate in 2021

Takeaways

- **Global economic rebound will start and stop until vaccines are proven to be effective and widely distributed and used.**
- **With a Biden administration, there is renewed hope that China and U.S. tensions will improve which in turn could lead to better cooperation regarding technology.**
- **Large, diverse, resilient supply chains are more efficient in a pandemic.**

The Coronavirus pandemic has proven a generationally defining moment for the world impacting the political climate, the economy and its recovery, and raising questions around American elections and U.S.-China relations. The macroeconomic landscape and post-recovery is expected to resemble a jagged swoop, with industries like technology recovering more quickly than others, such as entertainment and travel.

COVID-19 is continuing to cause challenges all over the world. Europe and the United States are seeing rises in positive cases once again, which will likely prompt continued travel and business restrictions. Meanwhile, the race to develop a vaccine for mass distribution is creating competition, with the knowledge that successful nations will have ability to accelerate their economic recovery and reputation.

Election results will undoubtedly have an impact on America's complex relationship with China. U.S. failures to contain COVID-19 feed into China's propaganda that its country succeeded with containment. Nevertheless, Joe Biden has been the preferred candidate of China because of Donald Trump's erraticism. However, Biden is expected to hold China more accountable for its human rights issues (e.g., Taiwan, Uighurs) despite looking hypocritical due to the U.S. treatment of immigrant families under Trump's administration.

With China's rise in the global economy, it increasingly competes with the U.S. with technology at the center. China's President Xi Jinping's ascension has made it a more overtly abrasive environment. China has pushed back when challenged and has had little incentive to cooperate, especially with Trump's "America First" trade agenda. Countries and companies' decisions about technology can represent picking geopolitical sides. This could be expensive – in terms of maintaining separate supply chains across multiple technologies. Biden, on the other hand, has committed to have a more multi-lateral approach, which will have ripple effects around the globe, particularly if it helps create more cooperation in the development of technology. China's incentive to collaborate is fueled by its understanding that fragmented ecosystems, particularly with technology, prevent Chinese companies from selling to western countries.

Europe and the U.S. are in the throes of a second wave of COVID-19 that will impede economic recovery until a vaccine is approved and widely distributed. As a result, observers foresee a protracted, stop-start, "jagged swoosh" recovery in most economies.

U.S.-China tensions have been exacerbated by the Trump administration, but structural factors and Xi's policies have strained the relationship for more than a decade. President Biden's policy objectives and governance style will be very different from President Trump's, but underlying factors in the U.S.-China relationship will remain the same. Policy under Biden will be more multilateral, predictable, and organized, but the competitive tension between the two powers will persist.

Reed Smith partner **Janet Kwuon** moderated this discussion, which featured speakers from the Eurasia Group: **Caitlin Dean**, practice head for financial & professional services; and **Michael Hirson**, practice head for China & Northeast Asia. They lead teams that assess economic and political policies affecting these global regions.

Access the live recording here:
Looking ahead: What to expect in November and beyond

Contacts:

Janet H. Kwuon
Partner, Los Angeles

Caitlin Dean
Practice Head for Financial & Professional Services

Michael Hirson
Practice Head for China & Northeast Asia

The impact of international trade wars on global business

Takeaways

- **The U.S., the EU, and China are tightening their export control regimes.**
- **Sanctions are often used to achieve non-trade policy goals.**
- **Countries impose tariffs and use new trade tools to restore a level playing field.**

Recent regulatory and trade developments in the United States, the European Union (EU), and China are having wide-reaching effects on the global trade landscape.

Trade tensions among major economic powers are impacting businesses around the world and are heating up discussions on economic decoupling of Western countries (the United States and EU member states) from China.

Older simmering tensions and grievances between the EU and China (such as state intervention in the economy), and the EU and the United States (such as taxation of digital trade and the Boeing-Airbus dispute), are having a similar effect.

These tensions pose significant challenges to businesses already damaged by COVID-19, since trade wars disrupt existing supply chains with onerous barriers. The United States, the EU and China are ramping up their use of different tools such as export control, sanctions, tariffs, and foreign investment screening, which complicates the business environment and significantly reduces market access to foreign companies.

Considerations: The United States, the EU and China, as well as other countries, are expected to continue to impose their existing trade restrictions and to adopt new policy tools to protect their own interests amid heated trade tensions. Companies will have more trouble maintaining access to foreign markets with the onslaught of new trade barriers. We suggest that companies regularly monitor the fast-changing regulatory requirements and the trade environment and assess the potential impacts on their business operations.

In this panel, our on-the-ground international trade lawyers discuss how companies around the world are being affected by these challenges and what they can expect looking ahead.

Our speakers were Reed Smith partners **Michael Lowell**, (international trade and national security), who is based in Tysons; Brussels-based **Yves Melin** (EU trade, customs and regulatory); **Dora Wang** (regulatory enforcement), who works out of Shanghai and New York; and regulatory enforcement partner **Leigh Hansson** who works out of London and Washington, D.C.

Access the live recording here:
Trade Wars: The impact on international trade of tensions between the United States, China and European Union

Contacts:

Michael Lowell
Partner, Washington, D.C.

Yves Melin
Partner, Brussels

Dora Wang
Partner
Shanghai/New York

Leigh Hansson
Partner
London/Washington, D.C.

Financial crime: Why and how regulators are changing priorities

Takeaways

- **COVID-19 is profoundly disrupting the global regulatory enforcement landscape.**
- **Brexit is not expected to significantly complicate cross-border cooperation between enforcement agencies.**
- **Effective legal advisers are increasingly embracing innovative technologies.**

Initial COVID-19-induced lockdowns had a crippling impact on global regulatory enforcement activity. The UK's Serious Fraud Office (SFO) failed to conduct any suspect or compelled interviews in March and April 2020. Similarly, the UK's Financial Conduct Authority (FCA) initiated just 36 enforcement cases between March and May 2020, a sharp contrast with the 148 initiated during the same period in 2019. In subsequent months, activity has heightened. However, on the whole, it has fallen significantly in 2020.

COVID-19 relief packages have created new challenges for enforcement agencies. In the United States, statutory relief is embodied by the CARES Act. The Act comprised a

$2 trillion economic stimulus bill that was later supplemented by a $484 billion bill. This financial assistance spurred fraudulent activity to exploit taxpayer funds. Accordingly, regulators have focused their attention and levelled around 50 CARES Act-related criminal fraud charges. More such cases are anticipated in the coming months.

Brexit is expected to have a negligible impact on cross-border regulatory cooperation. From an enforcement perspective, collaboration across borders has increased markedly in recent years. This trend is epitomized by the Mutual Legal Assistance (MLA) process. MLA provides a method of criminal investigation cooperation between the UK and a myriad of other states. Crucially, the UK has already implemented frameworks to assist the processual functionality in the event of a "no-deal" Brexit.

A look forward: These difficult economic circumstances might increase desperation in corporate decision-making. Logically, a concordant proliferation in fraud-related offences could ensue. In Germany, this trend might coincide with the introduction of the Act for Strengthening the Integrity in the Economy; Germany's next step in establishing a criminal corporate liability regime. Therefore, it is more important than ever for German companies to work closely with trusted legal advisers to substantiate robust internal procedures and cooperate closely with regulators to effectively defend and mitigate enforcement activity.

Our speakers were London-based partner **Rosanne Kay**, Munich-based counsel **Christina Nitsche**, and Washington, D.C.-based partner **Rizwan Qureshi**, all with Reed Smith's Global Commercial Litigation Group. **Roger Parker**, a senior counsel for Reed Smith in London, moderated the session.

Access the live recording here:
Financial crime: Have regulatory bodies changed their priorities in light of the pandemic?

Contacts:

Rosanne Kay
Partner, London

Christina Nitsche
Counsel, Munich

Rizwan Qureshi
Partner, Washington, D.C.

Roger Parker
Senior Counsel, London

UAE-Israel normalization creates new opportunities

Takeaways

- **The UAE becomes a gateway for Israelis into the Arab world and African countries, and vice versa.**
- **There will be new opportunities for bilateral investment, joint ventures, distribution agreements, and R&D.**
- **The UAE and Israel are the two largest Middle East trade partners of the United States.**

On August 13, 2020, the governments of the United Arab Emirates (UAE) and Israel announced the Abraham Accords, an agreement for the full normalization of relationships between the two states. And on August 29, 2020, the UAE abolished the Israel Boycott Law, which had banned all business relationships between the UAE and Israel. Consequently, UAE nationals and residents are now allowed to enter into commercial, financial, and other agreements with Israeli national or resident entities and persons, and the UAE restrictions on the import and export of goods from and to Israel have been lifted.

Our speakers identify multiple major economic impacts of this opening. They include:

New opportunities for bilateral investment, joint ventures, distribution agreements, and R&D;

Mediation and arbitration rulings and awards from Israeli courts that previously were void in UAE will be enforced in Dubai and Abu Dhabi; and

An expanded choice of law and choice of forum.

The UAE legal system gives foreign investors access to a variety of dispute resolution systems they are familiar with. Thus, the Abraham Accords may increase Israel-based investors and businesses' choices of venue and legal system. The agreement also may help consolidate and streamline resolution processes by eliminating divergent court rulings on the same matter. But benefits of the agreement might not come to full fruition immediately. They depend on further inter-governmental cooperation.

Investors and businesses should review insurance policies and programs to assess or customize coverage for potential transactions and risk exposure, while being mindful of regulatory considerations. Our speakers give details on this and more.

Speakers include:

Sachin Kerur, Reed Smith partner for litigation and arbitration, Dubai

Carolyn H. Rosenberg, Reed Smith partner for insurance recovery, Chicago

Adela M. Mues, Reed Smith partner for international transactions, Dubai

Shai Sharvit, Gornitsky & Co., Tel Aviv, arbitration

Stéphane P. Illouz, Reed Smith partner in Paris, session moderator

Access the live recording here:
Recent developments in the Middle East: The Abraham Accords – What's next?

Contacts:

Sachin Kerur
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Adela Mues
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Tel Aviv, arbitration

Stéphane Illouz
Partner, Paris

Brexit puts English litigants in a quandary on jurisdiction

Takeaways

- **Despite the continuing uncertainty surrounding the UK's exit from the EU, it is already clear that the regime change will have a serious impact on cross-border disputes, in particular in relation to questions of jurisdiction, service, and enforcement.**

With the UK's departure from the EU now imminent, parties bringing proceedings in the English courts should be aware of the challenges this may bring for cross-border disputes, in particular in relation to questions of jurisdiction, service, and enforcement.

The Recast Brussels Regulation, which regulates jurisdiction and the recognition and enforcement of judgments between EU member states, will no longer apply to the UK from the end of 2020. In the absence of a replacement arrangement to deal with jurisdictional issues, two (partial) solutions exist. The UK may seek to rejoin the 2005 Hague Convention on Choice of Court Agreements, while it also has taken steps to accede to the 2007 Lugano Convention 2007. But with the UK joining the Lugano Convention in its own right comes the possible return of the "Italian Torpedo."

Other post-Brexit issues will arise in connection with the service of English proceedings on defendants in EU member states once EU rules on service (recorded in the Service Regulation) no longer apply to the UK. Parties bringing proceedings in the English Courts may look to the 1965 Hague Service Convention for answers, but service under this convention is not without its drawbacks.

Finally, once the Recast Brussels Regulation ceases to apply to the UK, there will be no system for the automatic recognition and enforcement of English court judgments in EU member states. However, there may be an alternative and similar regime the UK can join.

Litigation partner **Nick Brocklesby** and associate **Oliver Rawkins**, both based in London, consider these issues, and the extent of their impact on cross-border disputes brought in the English courts.

Access the live recording here:
The cross-border regime in England in the aftermath of Brexit: How much change can we expect?

Contacts:

Nick Brocklesby
Partner, London

Oliver Rawkins
Associate, London

Virtual proceedings are here to stay

Takeaways

- **Virtual trials and hearings are here to stay and will have a key part to play in global disputes post-pandemic.**
- **Virtual proceedings are effective but pose unique issues for jury trials.**
- **Best practices for successful virtual hearings can also enhance trial efficiency in the future.**

The social distancing guidelines that have been in place since the COVID-19 pandemic started have forced the legal profession to change the way it conducts trials and hearings. Most jurisdictions around the world have made the shift from in-person to virtual proceedings, which has brought a host of new challenges to those participating. Whether virtual jury selection, hybrid trials, or merely understanding the technology used to make these virtual proceedings possible, everyone involved has needed to hone new or previously unused skills. As it appears at least some of the changes implemented in these unprecedented times will continue well after the pandemic is over, understanding the best practices for virtual proceedings will provide valuable knowledge of critical importance to those in the legal profession for years to come.

Reed Smith has many attorneys who have successfully tried cases virtually in both the United States and the UK or in international arbitration. Our speakers included **Peter Hardy**, the co-chair of the Global Commercial Disputes Group, who, in addition to his extensive global and multi-jurisdictional dispute resolution experience, tried the first Zoom case in the London commercial court; and **Ricky Raven**, a partner in our Houston office, also in the Global Commercial Disputes Group, who is renowned for his work in products liability and mass tort litigation and recently obtained a defense verdict for one of our clients in a 55-day Zoom jury trial in California state court.

With the unknown duration of the pandemic and the newfound efficiency that virtual proceedings can provide, virtual trials and hearings are here stay. Undoubtedly, some types of hearings are better conducted in the court room and will return to primarily using a face-to-face format post reopening. For example, jury trials continue to present unique issues such as juror selection, connection between advocate and jurors, and issues with attention span in a virtual format.

However, a fully virtual format has proven effective in other situations and some best practices learnt from remote hearings will remain relevant on reopening in an in-person context. For example, witness testimony can be undertaken effectively by video link, reducing the need for some travel and allowing for hybrid trials. Advocates have learnt to shorten and focus submissions and keep to key points. Trial advocates that embrace the advantages of virtual hearings will have a significant advantage over others in the legal profession moving forward.

Moderated by Reed Smith partner, **Jennifer Yule DePriest**, this panel also included **Ali Malek QC**, a barrister at 3 Verulam Buildings and **Judge Rabeea Collier** of the 113th District Court in Texas.

Access the live recording here:
Virtual trials and hearings: Are they here to stay? Perspectives from the U.S. and UK

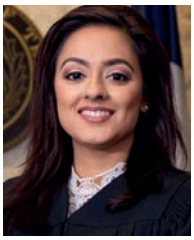
Contacts:

Peter Hardy
Partner, London

Ricky Raven
Partner, Houston

Jennifer Yule DePriest
Partner, Chicago

Ali Malek QC
Barrister at 3 Verulam Buildings



Judge Rabeea Collier
113th District Court
Texas

Artificial intelligence versus IP and data protection

Takeaways

- **AI: With great power comes great responsibility.**
- **Man or Machine: Which has ultimate control?**
- **The law must catch up with the technology.**

Artificial intelligence (AI) is used in a vast array of sectors, ranging from virtual assistants and autonomous cars to medical diagnosis. But has the law kept up with the many developments in the AI field?

The rights to ownership of AI are not clear cut. While an AI program's software can be copyrighted, and the data it handles may be protected, no straightforward answer relates to the ownership of the results generated by AI. AI-generated results cannot be copyrighted and they are likely unpatentable. So when something goes wrong, who is responsible: the machine, the individual who wrote the code for the software, or the company that has copyright over the AI software?

Businesses should be aware of the ways in which current legislation falls short, and should deal with any uncertainties around ownership of data and AI clearly in contractual agreements. This is why businesses interested in acquiring AI should conduct in-depth due diligence into the different layers of ownership involved in AI.

The great power that comes of having a database, based on which AI can be programmed, also comes with great responsibility. Companies must not forget that the raw data in these AI machines is often personal and must be safeguarded appropriately.

International legislation may continue to adapt to technological developments around the world. A one-size-fits-all legal framework may not be suitable for AI due to the diverse sectors in which it is used, and the potential impact of AI on human lives. Due to the impacts, any form of legislation would be better focused on AI outputs to reduce bias rather than seeking to legislate the process. There are numerous forums and governmental studies to the ethical concerns of AI-related ethical concerns, for example, potential biases and discrimination. Data protection will also play its role in this future of AI, as collection, use, and retention of personal information in any AI or other algorithmic use will need to comply with data protection legislation.

Cynthia O'Donoghue is vice chair of our IP, Tech and Data group. She is based in London and her practice focuses on technology transactions, data, cyber security, and new and innovative uses of digital and smart technology.

Washington, D.C.-based **Gerard Stegmaier** focuses on IP and Internet issues, including data security and privacy.

Anette Gaertner is a patent litigator in our Frankfurt office, and has vast experience in both contentious and non-contentions IP related matters.

New York- and Shanghai-based partner **Dora Wang** advises businesses on a wide range of compliance matters, including trade secret protection.

Access the live recording here:
Global disputes in 2020 and beyond: Technology & risk

Contacts:

Cynthia O'Donoghue
Partner, London

Gerard M. Stegmaier
Partner, Washington, D.C.

Dr. Anette Gärtner LL.M.
Partner, Frankfurt

Dora Wang
Partner
Shanghai/New York

Real estate trends in the U.S. and the UK

Takeaways

- **Force majeure clauses may have limited application to excuse lease obligations.**
- **Landlords and tenants should consider renegotiating lease provisions rather than turning to litigation.**
- **When drafting force majeure clauses, provide both specific examples and inclusionary language.**

As the economic upheaval caused by COVID-19 continues, many commercial landlords and tenants find themselves carefully analyzing their leases and other agreements, looking for force majeure provisions or common law defenses that may excuse the payment of rent or other obligations. Clients must evaluate the strengths and limitations of their force majeure clauses or available defenses and reinforce best practices for drafting new and effective lease language.

In the United States, there is tremendous variety in the parameters and applicability of force majeure provisions. Some may include pandemics as force majeure events or may contain more general references to "acts of god," "disasters," and "other similar events." In some cases, leases may excuse tenants from certain non-monetary obligations, such as staying open during certain hours or performing maintenance on a property, but may still require tenants to continue paying rent. Companies should take note that, absent specific language or some other indication as to the intent of the parties, U.S. courts typically construe force majeure clauses narrowly.

In England and Wales, on the other hand, force majeure clauses are not typically included in leases at all – though that is changing in the wake of the current pandemic. And rent cesser clauses are gaining some traction.

In some cases, leases in the United States do not address force majeure at all, thereby leaving the parties to rely on common law defenses and remedies. Such tenants in both the U.S. and England and Wales may argue impracticability, impossibility, and frustration of purpose to avoid lease obligations, but U.S. courts have been reluctant to excuse nonpayment of rent, maintaining a high bar for such claims. And the courts in England and Wales are unlikely to accept such defenses either.

In England and Wales, landlords have been encouraged to negotiate with their tenants and work through this difficult period, such as by deferring rent payments in exchange for extending lease terms.

Landlords have generally been more accommodating in recent months, hesitant to evict delinquent tenants for fear that they will be unable to find replacement tenants during the pandemic. It is important to remember, however, that landlords are navigating payment challenges as well and may need to seek extensions from their own lenders.

As the pandemic continues, parties should carefully review their lease documents, evaluate applicable legal defences within their respective jurisdictions, and identify opportunities for lease negotiation moving forward – particularly as force majeure and rent abatement concepts continue to evolve in response to COVID-19.

Access the live recording here:
Real estate trends – A view from the U.S. and the UK

Contacts:

Dusty Elias Kirk
Partner, Pittsburgh

Peter L. Kogan
Counsel, Pittsburgh

Katherine A. Campbell
Counsel, London

Restructuring and insolvency market updates: Past, present and future

Takeaways

- **Bankruptcy filings worldwide have seen an uptick but it hasn't been as significant as some might have expected**
- **Global government support interventions have kept businesses afloat for now**
- **Companies that survive may come back stronger and more profitable**
- **Market will adapt to ongoing volatility**

2020 has been characterized by global volatility, distress and uncertainty, the likes of which we haven't seen since the financial crisis of 2008. While the Great Recession was, at its core, a top-down collapse driven by failings in the financial industry, our current economic crisis has proven to be broader and more bottom-up, in that it impacts day-to-day life across geographies and industries.

In this session, Reed Smith speakers **Aaron Javian** in New York, **Liz Tabas-Carson** in Philadephia, **Mandip Englund** and **Patrick Schumann** in London and **Kohe Hasan** in Singapore reflect on current trends in restructuring and insolvency across the U.S., UK and Asia. This team specializes in corporate bankruptcies and restructurings, distressed and special situations, and disputes, litigation and international arbitration.

The pace of bankruptcy filings across the globe has increased but not to the degree many expected early in the pandemic. Various types of government support – ranging from forgivable loans and prohibitions on evictions to reduced enforcement by tax authorities and targeted relief for hard-hit industries – have buoyed many businesses, enabling them to remain solvent.

Some key questions to consider:

What are the ripple effects into other industries? We may not have seen the full impact of depressed consumer demand. For example, companies tangentially linked to hard-hit industries may experience continual lags in demand (e.g., real estate companies that leased their properties to restaurants or retailers, or catering businesses that supplied airlines).

What happens when government measures come to an end? At some point government support interventions will inevitably be withdrawn or replaced. What will occur when such relief efforts sunset remains unclear. Panelists project that governments will take a staggered approach, reducing support as economies reopen and consumer demand gradually rises.

Where will opportunities emerge? Changes in pricing and divestitures in some businesses have allowed for growth in other areas. Global markets will continue to adapt and to embrace creative solutions. For example, we are seeing empty office buildings and a decline in commercial real estate, juxtaposed by greater demand for housing. As a result, some governments are now relaxing land use and zoning rules, allowing people to build houses in historically non-residential areas.

Looking ahead, much will hinge on the duration of the pandemic and subsequent recovery. If consumer demand remains depressed, businesses that withstood 2020's hardships by taking on debt and availing themselves of government support may ultimately consider restructuring or insolvency in 2021.

Access the live recording here:
Restructuring and insolvency market updates: Past, present and future

Contacts:

Aaron Javian
Partner, New York

Elizabeth Tabas-Carson
Partner, Philadelphia

Mandip Englund
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Patrick Schumann
Counsel, London

Kohe Hasan
Partner, Singapore

COVID-19-related litigation and regulatory developments worldwide

Takeaways

- **Increase in U.S. COVID-19-related litigation arises out of CARES Act and consumer issues.**
- **European countries implement forbearance requirements.**
- **Several Asian countries limit litigation.**

Financial institutions are facing a rapidly changing litigation and regulatory environment as a result of the COVID-19 pandemic. Governments across the globe are adopting different approaches – such as remote litigation, debtor forbearance, and stimulus loans – to address this ongoing crisis.

In this presentation, our U.S. speakers highlighted financial services litigation relating to financial relief available under the federal CARES Act. This includes claims related to ordering and prioritizing PPP applications, the payment of agent fees, moratoria on evictions and foreclosures, and more. Other U.S. issues include interest of escrow funds, price gouging, tuition refunds, lost income and safety in the workplace, and more.

After six months of regulatory and investigative standstill, our UK lawyers said they expect a backlog of regulatory enforcement and litigation, and they identified the areas in which they predicted more regulatory scrutiny. Our UK lawyers also attested to a seemingly smooth transition to remote hearings.

Our German lawyer explained changes to insolvency laws in response to the pandemic. Our Hong Kong lawyer described how the pandemic slowed down litigation in Singapore, Hong Kong, and the rest of China – and how attorneys, businesses, and governments are drawing on their experience with prior pandemics.

The session features Reed Smith partners **Casey D. Laffey** in New York, **Justin J. Kontul** in Pittsburgh, **Diane A. Bettino** in Princeton**, Doug E. Cherry** and **Eleanor E. Chapman** in London, **Daja Apetz-Dreier** in Munich, and **Stephen Chan** in Hong Kong.

Access the live recording here:
Financial services litigation in the U.S., Europe and Asia: Recent trends

Contacts:

Casey D. Laffey
Partner, New York

Justin J. Kontul
Partner, Pittsburgh

Diane A. Bettino
Partner, Princeton

Douglas E. Cherry
Partner, London

Eleanor E. Chapman
Partner, London

Daja Apetz-Dreier LL.M.
Partner, Munich

Stephen Chan
Partner, Hong Kong

COVID-19 is redefining corporate responsibility

Takeaways

- **Corporate responsibility is now more important – and more visible – than ever before.**
- **Employers must stay engaged with their employees and provide support.**
- **Organizations may need to make changes in their supply chains to respond to pandemic pressures.**
- **Law firms have a role to play in helping clients operate with integrity.**

Among COVID-19's many impacts on the global economy, one of the most universal has been a renewed focus on corporate responsibility and increased attention on policies adopted by companies to cope with the pandemic. The speakers on this panel, **Andrew Gordon**, Global Forensic & Integrity Services Leader, EY and Reed Smith attorneys **Betty Graumlich**, **Peter Hardy** and **Waseem Khokhar**, provided a global perspective on the economic repercussions of COVID-19 and ways in which governments and businesses are addressing challenges in the market.

In the face of hardship and uncertainty, corporations have more responsibility to act with integrity in relation to their employees and their supply chains. Employers across the globe have struggled to ensure and maintain productivity while also providing a collaborative work environment and being supportive of employees' physical and mental health. The pandemic has forced companies to address issues faced by their staff, for example, by implementing flexible working arrangements and in some cases providing childcare assistance.

Beyond their own personnel, employers also need to be agile when doing business with new or existing suppliers. It may frequently be necessary for companies to make changes addressing inefficiencies in their supply chains in order to ensure continuity of their businesses. Organizations may need to become particularly vigilant about the challenge of fraud, for example, as the pandemic's fallout has led to more financial pressure on individuals and companies, while at the same time it has weakened internal controls.

The pandemic has already changed the ways in which many businesses operate, and its economic effects are undoubtedly going to echo for years. One of the ways in which organizations can adapt to the current situation, maintain viability of their businesses and ensure future profitability is to operate with a culture of integrity. The rigors of the pandemic demand that employers be attentive to the needs of their workers, their supply chains, their stakeholders, and their bottom lines. Lawyers will need to adapt as well, increasingly providing clients with flexible, business-oriented solutions in addition to strict legal analysis.

Access the live recording here:
Corporate responsibility in unprecedented times: Has the pandemic given corporate behavior a new focus?

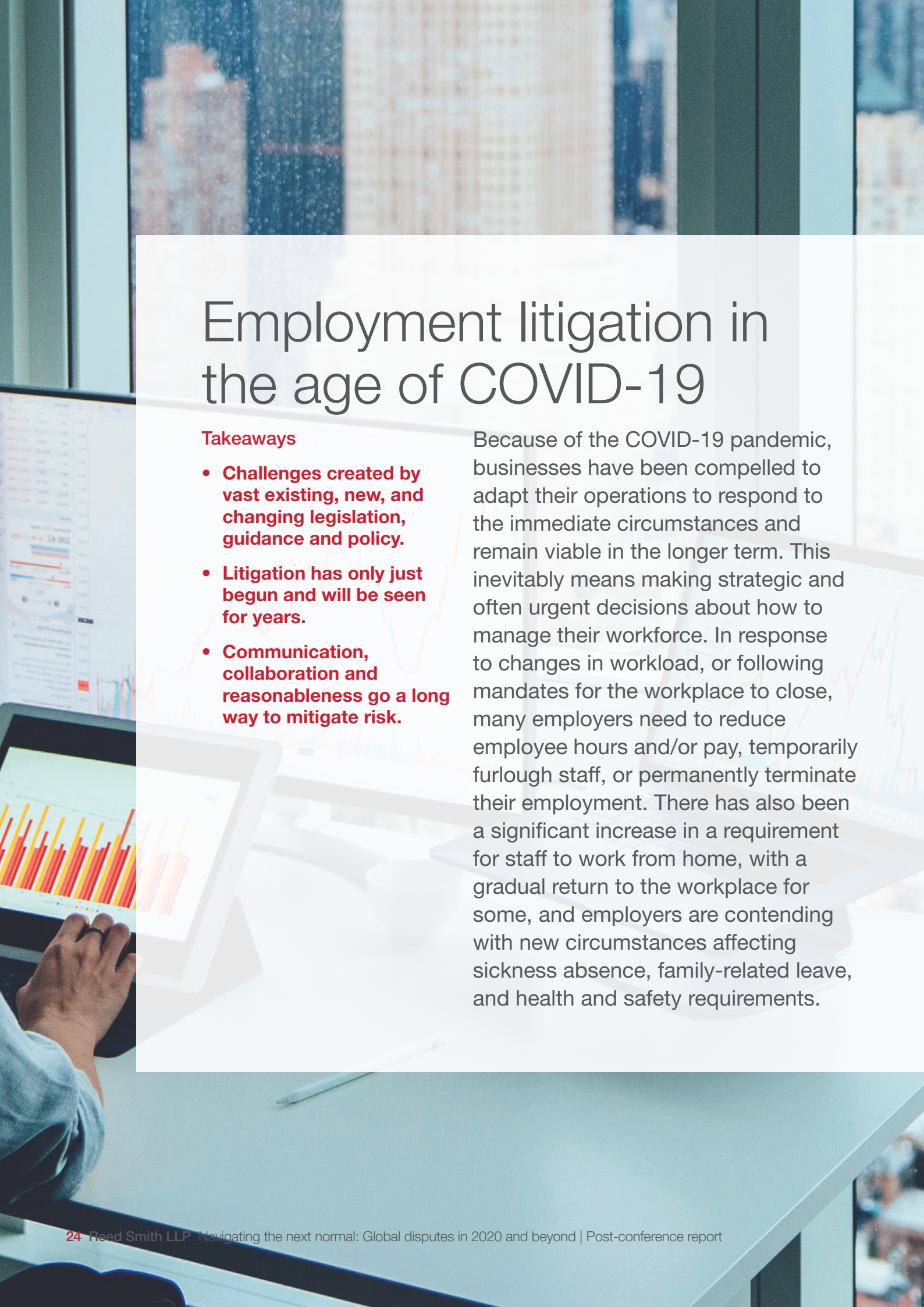
Contacts:

Andrew Gordon
Global Forensic & Integrity Services Leader, EY

Betty S.W. Graumlich
Partner, Richmond

Peter Hardy
Partner, London

Waseem Khokhar
Legal Consultant, Dubai



Employment litigation in the age of COVID-19

Takeaways

- **Challenges created by vast existing, new, and changing legislation, guidance and policy.**
- **Litigation has only just begun and will be seen for years.**
- **Communication, collaboration and reasonableness go a long way to mitigate risk.**

Because of the COVID-19 pandemic, businesses have been compelled to adapt their operations to respond to the immediate circumstances and remain viable in the longer term. This inevitably means making strategic and often urgent decisions about how to manage their workforce. In response to changes in workload, or following mandates for the workplace to close, many employers need to reduce employee hours and/or pay, temporarily furlough staff, or permanently terminate their employment. There has also been a significant increase in a requirement for staff to work from home, with a gradual return to the workplace for some, and employers are contending with new circumstances affecting sickness absence, family-related leave, and health and safety requirements.

While existing employment laws create a framework for businesses to operate within, governments across the globe reacted to the pandemic by introducing emergency legislation and new financial support schemes to help businesses and minimize unemployment. Although well-intentioned, the unprecedented circumstances – together with rushed legislation and changing guidance and policy – created legal ambiguity and uncertainty. Employers have had to react to this notwithstanding this, and their past and ongoing decisions and actions risk scrutiny through litigation in the coming months and years.

Employers' decisions and actions to date represent only the beginning of an expected wave of COVID-19 related employment litigation, with litigation expected to increase in all jurisdictions as the pandemic continues to take hold, economies continue to suffer, and employers continue respond to the ongoing crisis. Claims around health and safety, whistleblowing and discrimination are expected irrespective of jurisdiction, as well as wage and hour litigation in the United States, and complaints arising from changing terms and conditions in the UK and Hong Kong. Where causes of action have not yet arisen, employers can mitigate the risks of disputes by adopting a communicative, collaborative and reasonable approach with employees when working through the challenges created by these difficult times.

Speaking at this session are Reed Smith partners **Doug E. Cherry** (who served as moderator) and **David Ashmore** in London; **Lori Armstrong Halber** in Philadelphia; and **Asha Sharma** in Hong Kong. They have been advising and supporting clients throughout the pandemic. They bring experience from their respective jurisdictions to provide a practical and engaging global perspective on the litigation challenges arising from COVID-19.

Access the live recording here:
The next wave: What's coming in COVID-19 employment litigation globally

Contacts:

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Lori Armstrong Halber
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Partner, Hong Kong

Mitigating COVID-19's disparate impact on women and minorities

Takeaways

- **Women and people of color have disproportionately suffered economic hardship as a result of the pandemic.**
- **COVID-19 presents an opportunity to address long-term systemic inequalities in the workforce.**
- **Meaningful change requires commitment by leaders and policymakers.**

The COVID-19 pandemic has laid bare stubborn gender, racial, and socioeconomic inequities, including the fact that many women and racial minorities, and Blacks in particular, are losing ground in the economy. According to the panelists, the domino effect on our families, organizations, society, and the global economy has been dramatic.

Women make up only 39 percent of the global workforce but account for 54 percent of job losses during the pandemic. Research shows that women tend to be more concentrated in industries/sectors that have been particularly hard hit, such as retail and travel. In addition, responsibilities related to caring for the home and family disproportionately fall upon women, making them 1.8 times more likely to stay at home than men. This is a global phenomenon.

In the United States, the impact of the pandemic has been particularly acute in Black, Latinx, and Indigenous communities, which have historically tended to have higher rates of poverty. Racial and ethnic minorities in the United States have also been impacted by environmental racism, with housing and jobs often located in areas with poor air quality due to nearby power plants and factories. This has posed a major respiratory risk factor for COVID-19 patients. Many of these same communities also experience higher rates of preexisting health conditions that cause more severe COVID-19 symptoms. In addition, poverty leads to extreme stress and food insecurity, and often requires people to juggle multiple jobs in roles as essential workers, thereby increasing the risk of exposure.

The pandemic may have forever changed the labor force, which has a new opportunity to address these and other long-term challenges. The United States is starting to stick out among developed nations for neglectful policies on health care, childcare, and housing. COVID-19 gives us a chance to start over.

For example, leaders and policymakers must understand that women's roles in the economy are not divorced from other areas of life – there is an ongoing interplay of childcare, eldercare, and homecare linked with professional demands. Stimulus and funding support from government for childcare and eldercare across the board is needed. Nordic countries, for example, have generous flexibility policies and state-sponsored childcare. This systematic investment in care has resulted in a dramatic increase in the number of women in the workforce.

Even in more privileged white-collar settings the data shows that working women, who are able to work during the COVID-19 stay-at-home orders, continue to serve as the shock-absorbers of additional childcare and home-schooling responsibilities, eldercare, and overall household health and wellbeing. Many companies across the world have demonstrated an increased awareness of workforce inequities and have begun revising existing policies and practices. Research shows that moving an organization forward with meaningful change requires genuine conviction at the top levels of leadership and a commitment to destigmatizing the needs of women and normalizing flexibility.

Anu Madgavkar is a partner at McKinsey Global Institute, where she leads business and economic research teams. She has also co-authored several articles on gender equity and the pandemic. **Tina Sacks, Ph.D.**, is on the faculty of the University of California Berkeley's School of Social Welfare, and she serves as a lecturer at University of Chicago, where she studies race. In addition, she has 10 years of service at the U.S. Centers for Disease Control and Prevention and was a former legislative director at the Baltimore City Health Department. **Dana Alvaré**, J.D., Ph.D., is Reed Smith's global gender equity advisor. She has a Ph.D. in sociology with a focus on gender and law, and she teaches at Temple University and the University of Delaware. This discussion was moderated by Reed Smith partner, **Janet Kwuon**.

Access the live recording here:
Mitigating the disparate impact of COVID-19

Contacts:

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Tina Sacks, Ph.D.
University of California Berkeley School of Social Welfare

Dana Alvaré
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COVID-19 could cause proliferation of investor-state disputes

Takeaways

- **COVID-19 measures may give rise to an increase in investor-state disputes.**
- **States may use the pandemic as a pretext to justify economic decisions and regulatory changes.**
- **Foreign investors should consider whether COVID-19 gives rise to claims under investment treaties as well as the underlying contracts.**
- **Complex issues in investor-state disputes require specialist counsel.**

In response to the COVID-19 pandemic, states globally are engaging in a difficult balancing act of protecting public health, mitigating economic damage, and avoiding interference with private rights. Inevitably, some of these measures will affect foreign investors and their investments in host states, triggering investor-state disputes. Further, some states might use the pandemic as a pretext for wider reform, such as Mexico's recent attempt to use the pandemic to justify implementation of changes to its energy policy.

To escape international liability, states are likely to defend against COVID-19 measures on the basis of customary international law defenses, such as force majeure, distress, and necessity. States may also seek to rely on the doctrine of the state's police power that provides that state regulations, within the bounds of accepted police power or regulatory power of states, will not give rise to a duty to compensate investors for loss incurred.

Reed Smith lawyers **Chloe Carswell**, **Nicolas Borda**, **Clément Fouchard**, and **Ben Love** discussed complex high-value construction and investor-state disputes, as well as arbitral institutions such as ICSID, and arbitrations under the UNCITRAL Rules.

Our speakers, **Chloe Carswell**, **Shareena Edmonds**, **Nicolas Borda**, **Clément Fouchard**, and **Ben Love** have sector and geography knowledge, and experience in complex high-value construction and investor-state disputes acting for investors and states before arbitral institutions such as ICSID, and arbitrations under the UNCITRAL Rules.

Investors affected by state measures need to consider their rights of recourse and available remedies, including both those afforded under domestic law/contract as well as under international law. By way of example, the construction industry has been substantially impacted by the pandemic. Businesses operating in this sector should be aware that they may be able to invoke investment treaty protection, in addition to any other rights they may hold under the underlying contracts. In contrast, states need to understand their international obligations and the risks in implementing purported COVID-19 measures so as to avoid breaching such obligations. Given the complex economic and political situation caused by the ongoing COVID-19 pandemic, it will be important to consult specialist counsel with a view to assessing and mitigating risks, and consider carefully how applicable treaty standards and potential defenses may apply to the particular facts of each case.

Access the live recording here:
COVID-19: Opening the floodgates to an influx of investor state disputes

Contacts:

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Ben Love
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U.S. law offers tools for cross-border discovery

Takeaways

- **Discovery options in international arbitration can be restrictive and parties are increasingly turning to national courts for assistance.**
- **U.S. courts can assist international parties to obtain extensive discovery through the flexible and powerful Section 1782 procedure.**
- **Don't forget about personal data! Cross-border discovery still requires compliance with data protection regimes.**

International arbitration rules narrow the scope of discovery, especially with respect to third parties, who may hold documents and testimony that are critical to your case. U.S. law provides an invaluable mechanism under 28 U.S.C. Section 1782 to obtain third-party discovery for use in ongoing or contemplated foreign proceedings.

Specifically, Section 1782 gives U.S. federal district courts broad discretion to compel documentary and testimonial evidence from a discovery target (i.e., a person or entity) within its jurisdiction so long as: (1) the request is made by an international tribunal or "interested party," including a party to the foreign proceeding; (2) the discovery is for use in a contemplated or ongoing foreign proceeding; and (3) the discovery target is not a party or expected to be a party to the foreign proceeding. District courts weigh various factors when considering whether to grant a Section 1782 petition.

Discovery obligations both in the U.S. and around the world can involve the processing of large volumes of data. In cross-border discovery, this raises compliance issues, as countries will have different data protection rules regarding international transfers of data.

Ed Mullins is a partner in our Miami office. His practice is focused on international commercial litigation and arbitration in which he is board-certified by the Florida Bar. He is a leading expert on Section 1782.

Michelle Nelson is a partner in the firm's Energy and Natural Resources practice and is a specialist arbitration lawyer.

Thor Maalouf is counsel in our London office's Transportation department. Thor successfully sought a Section 1782 order and used it in front of a London tribunal.

Katalina Bateman is counsel with our London-based IP, Tech and Data team, and has broad knowledge and experience in global data protection laws, including international transfers of personal data.

The litigation landscape is changing and forum shopping for evidence is becoming more and more common.

Section 1782 allows liberal and flexible access to discovery orders from U.S. courts in support of foreign litigation. The power to seek third-party disclosure combined with rights of pre-action discovery arguably makes Section 1782 a more powerful tool for international arbitration parties than discovery in domestic US court proceedings.

Parties should think tactically when seeking an order. Choosing the right U.S. forum is vital because some federal circuits have established precedent prohibiting the use of Section 1782 in aid of commercial arbitration proceedings. Moreover, U.S. courts will not allow Section 1782 orders to be used for fishing expeditions. Parties should also consider whether the international tribunal will accept evidence obtained through the process or seek to exclude it in advance as well as the costs of compliance. Our speakers have extensive experience and success drafting, pursuing, and defending against Section 1782 petitions.

Parties can ensure data protection compliance in cross-border discovery by taking steps such as conducting as much discovery as possible within national borders, targeting review and recording legitimate interests.

Access the live recording here:
Litigating cases involving cross-border discovery, witness testimony and U.S.C. Section 1782 applications

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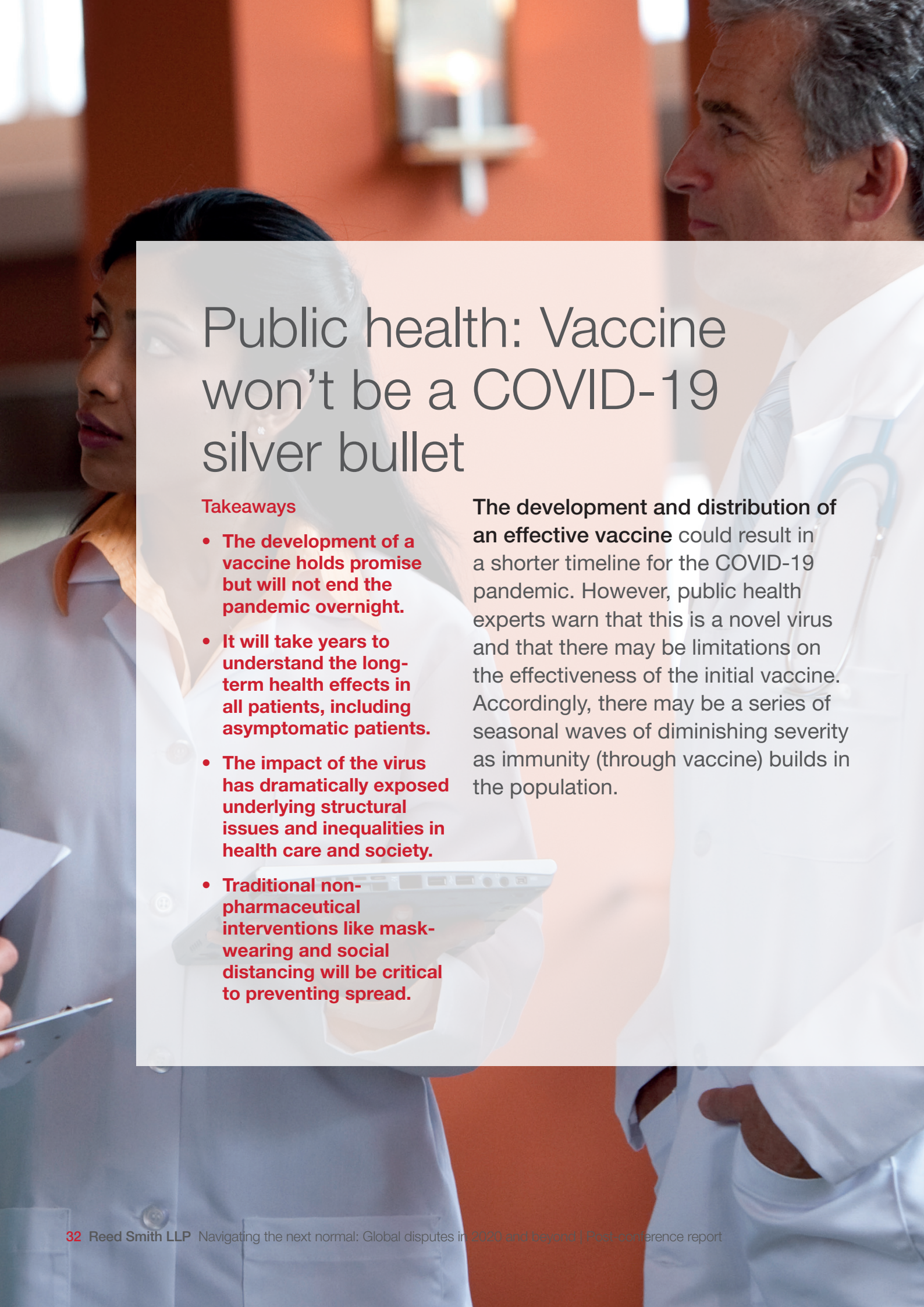

Public health: Vaccine won't be a COVID-19 silver bullet

Takeaways

- **The development of a vaccine holds promise but will not end the pandemic overnight.**
- **It will take years to understand the long-term health effects in all patients, including asymptomatic patients.**
- **The impact of the virus has dramatically exposed underlying structural issues and inequalities in health care and society.**
- **Traditional non-pharmaceutical interventions like mask-wearing and social distancing will be critical to preventing spread.**

The development and distribution of an effective vaccine could result in a shorter timeline for the COVID-19 pandemic. However, public health experts warn that this is a novel virus and that there may be limitations on the effectiveness of the initial vaccine. Accordingly, there may be a series of seasonal waves of diminishing severity as immunity (through vaccine) builds in the population.

Media coverage has put the race for a vaccine at center stage. It is important to note that the typical vaccine evaluation process involves extensive studies both before and after licensure. It is during phase 3 clinical trials, which often involve tens of thousands of participants, that it is possible to compare results, determine side effects and assess the efficacy of a vaccine among a large and diverse control group, prior to approval by the FDA.

There are currently four vaccines in phase 3 trials. Due to the unique nature of SARS-CoV-2, the vaccine candidates use innovative technology (either an RNA vaccine or non-replicating viral vector vaccine). Reports from the trials are expected before the end of the year. An emergency use authorization by the FDA is possible but still requires a thorough risk/benefit analysis.

Some U.S. manufacturers have begun producing large amounts of their vaccines in anticipation of eventual approval. However, health officials warn that distribution will pose complex logistical challenges as some vaccines (in particular, those that are RNA based) require very cold storage and all advanced candidates anticipate the administration of multiple doses in order to be effective. Given this, a rollout in the U.S. will take time as officials determine a strategy for ethical vaccine allocation that prioritizes high-risk populations. Regardless of when an effective vaccine becomes widely available, the long-term impact of the pandemic may take years to realize. It remains unclear what health repercussions may linger for individuals who have been infected.

Infectious disease experts warn that a bad flu season in the Northern Hemisphere could tax the health care system, particularly in communities that are already struggling with limited hospital capacity due to COVID-19. To minimize infection rates, specialists strongly advise the public to get a flu vaccine and redouble preventative measures such as masks, social distancing, and limited gatherings.

Although questions remain about how and when the pandemic will end, experts agree that the impact has been particularly acute for some populations, raising important concerns about disparate access to health care. COVID-19 outbreaks within skilled nursing facilities have shed light on issues related to aging infrastructure, overcrowding, and inadequate training and infection control practices. Amidst the challenges, there have also been encouraging developments, such as increased access to telemedicine, innovative approaches to patient care (particularly by nurses in relation to infection control), and an enhanced eye toward efficient treatment.

Reed Smith partner **Janet Kwuon** moderated this discussion which included speakers **Zachary A. Rubin MD,** head of Los Angeles County Department of Public Health, Acute Communicable Disease Control, Healthcare Outreach Unit, and; **Annabelle De St. Maurice MD, MPH,** assistant professor of pediatrics in infectious diseases and co-chief infection prevention officer, UCLA Health.

Access the live recording here:
Public health in a pandemic – COVID-19 updates

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Annabelle De St. Maurice MD, MPH
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Biometric data and emerging dispute risks

Takeaways

- **Rules around biometric data emerge in China.**
- **U.S. localities propose and enforce BIPA-like rights.**
- **Biodata at forefront of EU's data protection agenda.**

Biometric data has become integral to the modern technology landscape. The use of biometric technology has a number of advantages, including security and accuracy, centralization of information, and convenience in our everyday lives. However, with advantages come disadvantages, including surrendering biological data and the risks of uncorrectable compromises resulting in litigation, regulatory enforcement, and reputational harm. The applications of biometric data stretch across many industries, including health care, government services, public safety, and human resources. Biometric data collection also faces varied levels of regulatory and public scrutiny in different countries, making global compliance a challenge. In addition, COVID-19 poses particular considerations, as regulators scrutinize businesses' COVID-related collection of biometric data. While the collection and use of biometric data expands across the globe, it is important to be aware and understand the regulatory risks.

Across the globe, regulatory authorities are focusing on the present risks associated with biometric data, especially the degree of harm to the safety and security of an individual if biometric data is illegally collected, leaked or misappropriated. As the use of biometric technology becomes more prevalent, we recognize the increased likelihood of regulatory actions (and in some cases private litigation) with respect to biometric data, and as such, companies should remain mindful of developments in this area.

Our speakers, partners **Michael B. Galibois**, **Andreas Splittgerber** and **Dora Wang** have extensive experience with global institutions and technology companies, complex regulatory and compliance matters, as well as data protection and privacy matters with respect to biometric issues.

Access the live recording here:
Emerging dispute risks when using biometric data

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COVID-19 business interruption coverage: Comparing the U.S. and UK experiences

Takeaways

- **2020 is a watershed moment for BI coverage.**
- **A test case will help clarify BI coverage for UK claims.**
- **U.S. claims for BI coverage await appellate review.**

Business interruption claims take center stage. Business interruption (BI) coverage is found in insurance for property, construction, machinery, or cyber risks. Although BI coverage evolved out of property insurance, it is now considered effectively as a separate form of cover for insured policyholders with global operations and exposures. In scale, BI loss now dwarfs property damage loss; the average BI loss is almost 50 percent larger. Today, the leading insurance law question – and a leading concern for businesses – is whether BI cover is responsive to COVID-19 losses.

BI coverage in the United States and the United Kingdom pre-2020: Before March 2020, U.S. property insurance claims typically related to natural disasters. Much of the leading precedent comes from Hurricane Katrina litigation. The central legal questions in many of these claims surrounded whether the property damage was caused by a covered peril. U.S. property insurance is typically "all-risk" insurance, meaning loss from whatever cause is covered unless it is specifically excluded. Many policies contain exclusions for flooding, thus Hurricane Katrina cases often hinged on whether the insurance company could establish through expert evidence that damage was caused by flooding rather than wind-driven rain.

In the United Kingdom, it was not until the development of reliable financial accounts that insurers were confident enough to be able to underwrite business income losses. In 1939, comprehensive property insurance was introduced there that sought to assess the time it took for a business to get back to where it would be, but for the relevant loss.

BI coverage in the United States and the UK in 2020: After March 2020, the immediate response of U.S. insurers has been wholesale denial of coverage for COVID-19 BI loss without investigation. Litigation is now taking place in trial courts, with varying results.

Unless specifically covered, UK insurers saw the COVID-19 pandemic as a systemic economic risk that it did not intend to cover. Significantly, the UK Financial Conduct Authority (FCA), which regulates the insurance industry, brought a historic "test" case in May 2020 on behalf of policyholders in order to seek clarification and certainty on the responsiveness and coverage provided by "non-damage" BI insurance in light of COVID-19. Following an expedited process, in September 2020 the English Commercial Court clarified the meaning of key terms in a representative selection of 21 BI policy wordings, as well as key legal principles relating to the treatment of causation issues and certain quantum points. The judgment was broadly favorable to the policyholders' (FCA's) position, but was followed inevitably by "leapfrog" appeals to the UK Supreme Court by both the FCA and many of the relevant insurers.

Our speakers, **Mark Pring** and **Anthony Crawford**, are with Reed Smith's Insurance Recovery Group, a market-leading practice committed to supporting insured policyholders only.

2021 is set to bring more answers: As appellate courts in the United States begin reviewing cases, their decisions will yield more definitive answers to the most pressing questions on the availability of BI coverage.

The UK Supreme Court heard the appeals in the FCA test case during the week of 16 November 2020. While it is not yet clear when their decision will be handed down, this is anticipated by January 2021 at the latest. The judgment will provide significant clarification as to the scope of coverage of many BI policies in light of COVID-19.

Access the live recording here:
Business interruption insurance claims arising out of COVID-19: A global perspective

Contacts:

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Strategies corporate clients can consider when funding litigation

Takeaways

- **Litigation funding is moving from the fringe to the mainstream.**
- **The universe of sophisticated and reliable litigation funders remains relatively small.**
- **COVID-related claims may present opportunities for corporations seeking to monetize litigation.**

Litigation funding has exploded in size and sophistication in recent years, with an increasing number of funders and end-users entering the marketplace resulting in the financing of larger and more complex disputes.

Litigation funding broadly consists of an investor providing an up-front investment in litigation, thereby allowing a plaintiff or claimant to bring suit on a more riskless basis and often when the necessary resources to do so may not be available or may be better allocated to going concern elements of a business. Funders can invest in a single case or a portfolio of claims, and at the client or law firm level. If the suit is successful and damages are recovered, the litigation funder receives a portion of those recoveries.

Historically, litigation funders have invested in a variety of disputes, with more experienced funders favoring complex commercial disputes involving corporations that have incurred legitimate business losses. For example, if a company has an asset exploited by a foreign entity or government and the company board needs to act swiftly to recoup resulting losses, it may wish to explore funding options to pursue those claims.

As the litigation funding market grows and matures in the United States, the UK and Europe, it is important for corporations to vet potential funders carefully. Factors to consider may include the funder's background with similar claims, familiarity with experienced and well-qualified counsel, adherence to confidentiality and other ethical standards, and ability to impose budget discipline.

A well-aligned strategic approach among the claimant, counsel, and funder can yield significant benefits for all. Reed Smith regularly works in collaboration with litigation funding firms to help clients across the world monetize litigation, free up working capital, and avoid leaving money on the table.

As a result of the pandemic and ongoing economic uncertainty, litigation funding has grown in popularity and several types of claims may warrant consideration for litigation funding. In the months to come, counsel and funders anticipate a surge in litigation involving business interruption coverage, restructuring and insolvency, U.S. state tax claims, contested termination and loan disputes, and other commercial contract issues.

Speaker **Joseph Dunn**, managing director for the Fortress Investment Group, was joined by Reed Smith partners **Ben Summerfield**, **Christopher Hoffman, Daja Apetz-Dreier** and **Constantine Karides**, to give this presentation.

Access the live recording here:
Demystifying litigation funding: What is it? Why is it trending? And what do you need to know?

Contacts:

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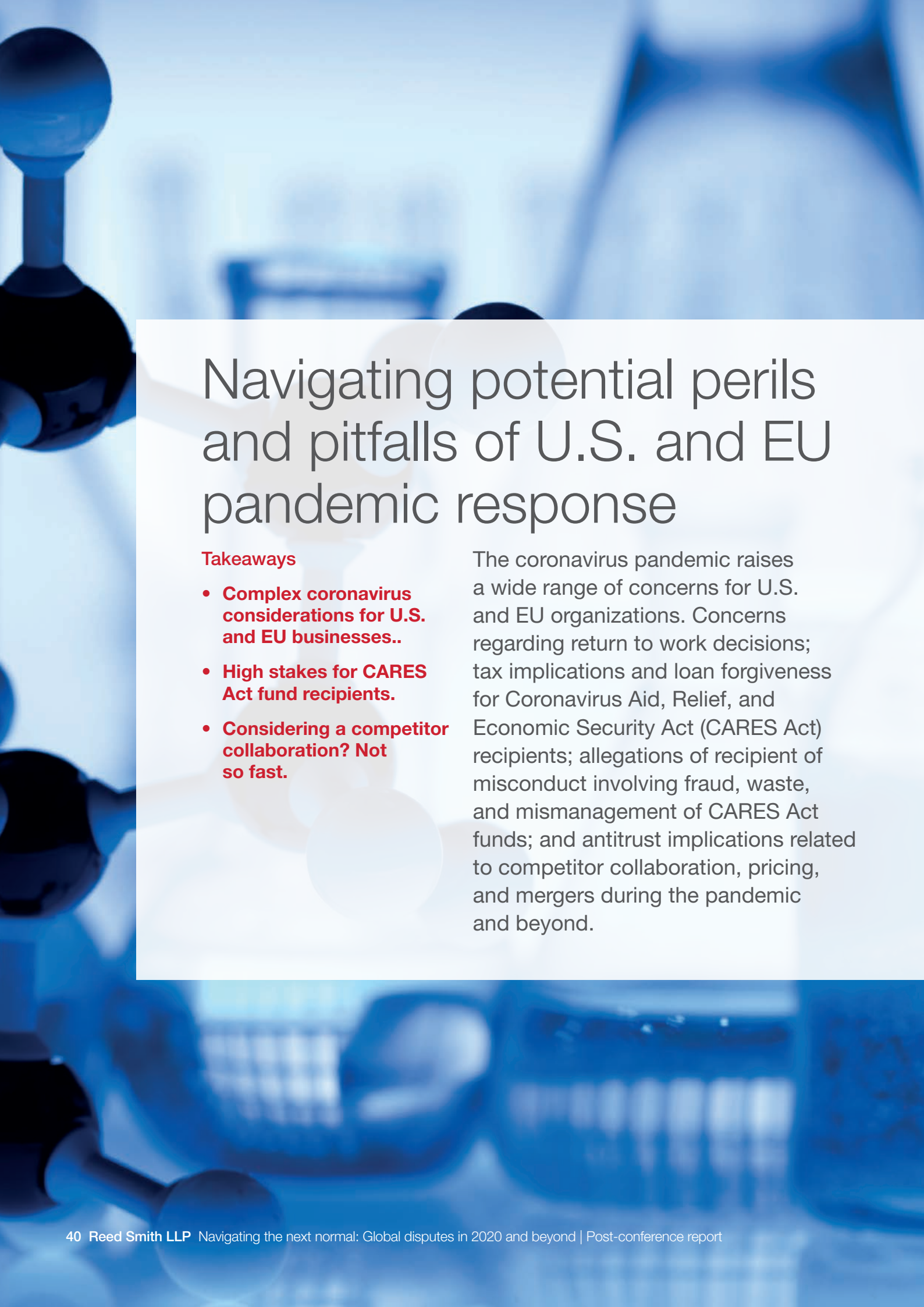

Navigating potential perils and pitfalls of U.S. and EU pandemic response

Takeaways

- **Complex coronavirus considerations for U.S. and EU businesses..**
- **High stakes for CARES Act fund recipients.**
- **Considering a competitor collaboration? Not so fast.**

The coronavirus pandemic raises a wide range of concerns for U.S. and EU organizations. Concerns regarding return to work decisions; tax implications and loan forgiveness for Coronavirus Aid, Relief, and Economic Security Act (CARES Act) recipients; allegations of recipient of misconduct involving fraud, waste, and mismanagement of CARES Act funds; and antitrust implications related to competitor collaboration, pricing, and mergers during the pandemic and beyond.

Companies are grappling with when to require employees to return to their physical workplaces, how to bring employees safely back, and how to balance the potential liabilities and long-term consequences of doing so. The answers to these questions are complex, and there is no one-size-fits-all approach. Likewise, there is no holistic approach to the tax and loan forgiveness impact on organizations that received CARES Act funds, nor for those that applied and received (or were denied) loan forgiveness.

Relatedly, organizations should be aware and prepared for enhanced government scrutiny of the $2 trillion in financial assistance that was distributed throughout the United States in response to the COVID-19 pandemic. Recipients of CARES Act funds, and their employees, should expect significant and continued oversight and enforcement by the government. In addition, the U.S. government has issued a "call to action" for private citizens to assist in suspected fraud investigations of CARES Act funds, so businesses should be warned: the stakes are high! False Claims Act penalties range from $11,665.00 to $23,331.00 per false claim, plus three times (treble) damages. For reporting malfeasance, whistleblowers may receive up to 30 percent of the government's recovery.

Government agencies have also acknowledged that an efficient response to the crisis may require certain competitor collaborations. Antitrust agencies in Europe and the United States made clear that temporary cooperation between companies are allowed under certain conditions. Such collaborations require careful vetting as missteps can lead to significant antitrust exposure.

This temporary relaxation of competition rules has by no means stopped competition law enforcement. Antitrust authorities have shown no softening in their merger reviews. Likewise, exploitative pricing is being carefully investigated by competition authorities as abuse of dominant position. Similarly, antitrust authorities across the globe have implemented antitrust actions to prevent price gouging during the pandemic. The European Commission has also issued temporary measures designed to facilitate state aid to companies and sectors particularly hard hit by the pandemic. These measures will be phased out as the crisis subsides, though they have not been without controversy as competitors of aid beneficiaries have challenged some state aid grants in court.

Reed Smith attorneys **Michelle Mantine** in Pittsburgh, **Geert Goeteyn** in Brussels, **Liza Craig** and **William Kirkwood** in Washington, D.C., and **Lora Spencer** in Houston spoke at the session.

Access the live recording here:
What businesses need to know about the CARES Act and antitrust concerns in the EU and U.S.

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