



“The pandemic was poorly anticipated by companies and legal documents.”

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What are the big trends you’re seeing in disputes?

The potential for wider searches on e-discovery – technology means it’s more possible to look at everything, rather than the small samples we had previously.

Is this a blessing or curse?

It’s just a natural evolution. In terms of the purity of dispute resolution, the better the disclosure, the fairer the court’s decision should be, because some of these disputes are so massive that courts are only taking a snapshot of what is relevant.

How has Markel’s handling of disputes evolved in recent years?

It has evolved a lot on e-disclosure, and we have much better visibility over costs and more use of tools like Apperio, where you are able to see costs in real time. We are seeing real-time billing by law firms with a much better view than with the old monthly or quarterly invoicing. It allows for a sharper focus on budget. There is still a lot of appetite for mediation and alternative dispute resolution, but in the insurance market, my sense is the Covid fallout will likely cause a large litigation cycle. The nature of the pandemic was poorly anticipated by companies and legal documents; the scope for a different interpretation from two parties as to what the contract was meant to do in a pandemic is broad.

How significant will that Covid-19 cycle be?

It will be significant, but the thing that may cut against it depends on how much there is a spirit of getting on with it. Where matters go down a more aggressive route, we will see a lot more things going all the way to court. As you saw with the FCA business interruption test case, there was enough uncertainty that a lot of resource had to get together to find a degree of certainty where normally you’d be walking down a path set out by precedent. It will take a while for that body of pandemic-related case law to build up to give enough direction.

Another interesting area of innovation is that the movement of courts to online has been much faster [thanks to the] pandemic. More of an online process should create efficiency and a degree of openness to justice. That is a positive thing for the profession.

The growth of online technology and hearings – will that revert to normal after the pandemic?

It’s part of a bigger shift because of the efficiencies it creates. If you look at the court services and their concerns around efficiency, there is a real opportunity to control costs. What worries me is how that affects openness to justice for the poorest in society. One of the important things about the justice system is bringing people to experience the seriousness of the justice system at work and that is somewhat removed in an online world.

"Insurtech products could very easily move into the legal space."

With large commercial disputes, there is often scepticism regarding the scope for change. It sounds like you take a more progressive view?

Technology will build in the smaller areas first, but there is a reasonable degree of disruption possible [in larger cases]. We'll see technology providing a better answer than we would have done previously – the junior lawyer slogging through documents into their 17th hour is likely to have a higher error rate than the AI equivalent. It should also open up access to some of the better research tools. At the top end, the quality of the lawyers you instruct can have a huge impact and that will still be the case – they will just have different tools to get their answers. But it will be harder for junior lawyers to come through that pipeline.

What new aspects of service would you like to see from your advisers?

Law firms can be more transparent around how they use technology to drive down cost or improve performance, or just to be honest that they've looked at some of the solutions but concluded that humans are pretty good. They could be more transparent with clients about what they are doing with technology, particularly to the extent that law is a dark art, or not always understood by the stakeholder within a company. The technology side is a common language between clients and law firms.

Legal technology companies are often solving problems that have a similar parallel with insurance. Insurtech products could very easily move into the legal space. Most companies think of them as separate but they overlap quite a bit.

How do you feel about London as a forum for high-end dispute resolution?

It's holding its position. Moving online will be an important part of how it maintains its place. As the market becomes that much more fluid, it's more important to maintain your position to keep the business flowing in.

Will English law maintain its drawing power in the next five years?

I think so. Some of the flexibility and strengths of the legal system will be seen in addressing something difficult and unique like the pandemic. Common law jurisdictions are well positioned to adapt to something like that – particularly in legal terms, where it's much harder in a civil law jurisdiction. I am expecting it to hold its place. The quality of the process and the judges is still pretty high.

What are the big trends you see ahead for commercial disputes?

An increasing focus on disclosure. A movement towards online and a continuing focus on alternative dispute resolution.

What are the big forces you see shaping disputes in the years ahead?

Cyber and data security can certainly drive a few issues. In terms of trade tensions, in a post-Covid world, some of those issues may move to a slightly smoother footing than they've been to date, but that's still quite heightened in the scheme of the last 10 years.

How much litigation would you foresee from Brexit?

There will be a few large disputes that come through, but the majority of significant issues should have been addressed by companies. There are always some things that come out that haven't been anticipated and potentially Covid has a magnifying effect on that. Where you will see more litigation is potentially with smaller companies that haven't had time to model all of the impact. One of the areas we are intrigued by is the impact of Brexit's unintended consequences at the SME level to create disputes.

How able is Markel to take a broad view of the litigation risks impacting it?

Where we see a lot of data is on the claim side, where we are insuring various companies. That's really important, not just in relation to one claim, but across the overall book: what the litigation risks are and where we think the costs will be. We're in a pretty good place, but it's one of those areas where any increase in data or certainty is fantastic.

What kind of disputes concern you the most?

Competition and anti-trust. The concerns around M&A generally in the insurance sector. Those come with the biggest fines and some of the highest risks. GDPR and data security is still a significant concern – particularly how that works through from a Brexit perspective.

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