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What have been the big trends you've noticed in global disputes in recent years?

In very broad strokes, over the last decade we have seen an increasing willingness by businesses to bring claims against other businesses. I see that in both litigation and arbitration. Importantly, I see it with respect not only to individual commercial disputes, but also in correlated disputes – especially when there is a preceding government finding of misconduct. Those two things are powering a level of growth in the commercial litigation market.

What has led to that shift in mindset?

Companies are no longer willing to leave money on the table for the sake of relationships and perception. The other reason is that cases today are increasingly made on a documentary basis, because we have much more email and written communication. It is easier to pursue a case when you have a black and white document that shows the other side has done something wrong.

Is that at a global level?

It's global. It manifests in different ways. In Europe, you are obviously seeing a move towards a greater level of business participation in group actions or correlated actions than previously. In the US, conversely, there's a greater propensity for businesses to opt out of group actions and bring their own follow-on actions.

What were the key trends in recent years in dispute funding?

The evolution of dispute finance has moved from a parochial concept of, "Gee, I'd like a way to pay my lawyer's bill this year," to a much broader perception of the use of legal finance as a corporate finance tool. Companies are increasingly looking at the underlying asset value of the pending claims as a financing opportunity, instead of 10 years ago when companies thought of legal finance as budget tool. It's a broadening of the use case.

How will litigation funding develop in the US? It is growing, but is still only a small slice of a huge market.

I see growth for exactly the reason you just mentioned. Burford has had 10 years of high growth and we're now one of the largest buyers of legal services in the world, if you want to think of it in those terms. Burford's portfolio is about \$4bn of litigation funding. That sounds like a big number – and it is when you think it was \$100m 10 years ago – but that is a single-digit percentage of annual US legal spending. The market is still nascent.

How much capital is committed to litigation across the funding industry?

The most reliable number is portfolio size, so the amount of capital that has been put to work in specific investments. For Burford, as I said, that amount is \$4bn, and for the

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industry I guess that number remains in the single-digit billions. There is also another collection of billions of dollars of available but undeployed investor capital that will come to the market over the next five years.

If you had to guess the size of committed funds across the sector in five years, what is a reasonable mid-range forecast?

It's hard to tell because so many do not disclose their numbers, but there's absolutely no reason you wouldn't expect that number to double in the next five years. The reason that growth rate is slower than the previous 10 years is because the numbers are larger. Burford went from \$100m to \$4bn; it's a lot harder to go from \$4bn to \$8bn.

How substantial do you see Covid-19 in driving the disputes cycle?

There are two different manifestations. One is the impact on cases already in the system, and also new cases that have nothing to do with the pandemic. In the US, you see a meaningful slowdown in jury trials, so you'll see a backlog of civil litigation that will take some time to clear. On the other hand, in arbitration, we've seen no perceptible slowdown, as the arbitration community moved pretty easily to an online forum. In some ways, remote hearings have possibly speeded up the process. The other side of that question then is: how much super-normal litigation volume is coming out of this? Clearly, there are lots of losses and claims, so the question is whether the courts will try early on to give some broad guidance, in the way the English courts have just done in the insurance coverage context. That will reduce the amount of litigation, because people know the answer in a set of circumstances.

Do you see Covid-19 having a marginal or a substantive impact on litigation?

There is going to be a substantive impact when you combine direct pandemic disputes – in other words, contract fights and coverage fights – and also at some point the end of the unprecedented level of economic stimulus. When that occurs, we'll have a whole lot of insolvencies and inevitably litigation arising out of those insolvencies.

There is some debate over whether arbitration is taking work from the courts. What's your take?

We see an ongoing, steady move towards arbitration. It's not as efficient and inexpensive as billed, but every time a company finds itself mired in a decade-long piece of litigation, with multiple levels of appeal and lots of frolics and detours, that's a company likely to think hard about arbitration the next time. I certainly see the shift to arbitration as a continuing trend.

How do you see the pecking order for global disputes centres changing?

When you get a pro-arbitration court system that is able to address disputes over arbitration quickly, that gives that jurisdiction a significant leg up. Combine that with good infrastructure and it being favourable to pursue your cases there, and that has been a successful strategy for Singapore. When you get into that position, there is a good deal of market power because it takes a long time to write a new arbitration venue into contracts.

Will London sustain its position in a more competitive global market?

There are two or three big concerns that London has to watch very carefully. One is the sheer cost of legal services there. The second is delays that are becoming endemic in the English courts. And the third is the impact of adverse costs, which are increasingly deployed as a tactical weapon in arbitration and High Court litigation. Offsetting that is the quality of the judges, but those economic factors are a real danger sign and there needs to be a greater perception that those things are a threat to the continued growth of London.

Where could that work migrate to?

You've already seen some migrate to Singapore. Look at how many London barristers are regularly doing work in Singapore.

How much scope do you see for radical change in how disputes are conducted?

I see incremental change. What will force some of that is just cost. Burford has been around for 11 years, so we have a broad history in case types. Looking at how much it costs to litigate the same type of case, you've seen cost inflation over those 11 years vastly above the growth rate of either the economy or corporate profits. Litigation left unchecked is costing more for businesses than it was 10 years ago, and that rate of growth is unsustainable.

How do you see the external funding industry evolving?

It will become more mainstream and look like just another form of speciality corporate finance. Just as today there's a thriving industry around aircraft finance or powerplant finance, litigation finance will be in that mainstream. There'll be fewer mom and pop-style shops trying to make a go of it, and we will have a world of institutional players.

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