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How was 2020 for you?

In March, we closed our first fund, so that was a really big thing. One downside is there's been a slight delay in some of the older investments. Some of the Australian courts didn't cope well initially with virtual hearings, but I don't think it's had any impact on the English or arbitral side. I wonder whether we'll ever go back in the arbitration world to this vastly expensive process of sending people around the world. Come April, May, when people realised Covid-19 wasn't going to be a three-month wonder, corporations already in the midst of disputes were reconsidering whether to settle or write it off. Another aspect was in March, April, companies about to launch proceedings thought: "Do we want to apply this budget elsewhere?" The knock-on effect has been from April, May, June the law firms thinking they might need to consider litigation finance because it could help clients pursue cases.

What were the key dispute trends in recent years and how did they play with external funding?

In terms of industries, there's an awful lot of bilateral investment treaty arbitration – there's always five or six looking for funding at any one time. In the last two years, there's been a lot of collective actions, whether trucks or Visa/Mastercard – there are many. The setting up of the Competition Appeal Tribunal, the way it prevented damages-based agreements but allowed funding, there had to be a way you could look at financing those cases.

There is a steady range of insolvencies, and there's been some big-ticket cases in the last five years. Less so now, but three years ago there was an awful lot of Russian stuff – the usual oligarch story. Today, when I think about the pipeline, it's a whole range of disputes. The difference is it's very international. Recent trends include franchise education establishments around the world, and those franchisors tend to be charities. They don't have a legal budget and we're seeing as times get tighter a reduction in quality of the franchisee's service and therefore a dispute. That's the next front, because we're already seeing that in the hotel and leisure management contract space.

Looking back, which cases were most significant for funders?

The big one was Excalibur – that's an example of why you should do proper due diligence, I guess. The Merricks decision on Visa/Mastercard – that's a huge decision.

There's a lot of debate about the size of disputes cycle post-pandemic. What's your view?

History dictates it should be big, the challenge is: against who? One of the reasons we're seeing an uptick in disputes is people are saying: "Will they still have money in six months' time? We need to get in now." The challenge is collection risk and counterparty risk. If you excuse the pun, there will be a first wave of disputes and then we'll see what happens. What usually happens in these situations is that it takes two, three, four, even six

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years because of limitations, then the professionals will be on the hook – valuers, auditors, solicitors, you name it. That’s been a feature of recession-forced litigation since time immemorial because they have insurance. There will be a wave of litigation and it will be initially against the corporates – I can’t think of any banking claims at the moment.

There are very mixed views on how significant collective actions will be in Europe in the years ahead. What’s your take?

There are lots out there. You’ll see funders adopting a more pan-European approach, because even if they can’t pick up work on collective actions in the UK, they can in The Netherlands, Belgium and Germany. It is significant, but also quite dangerous, because everybody presumes that once you’ve got a Commission decision in your favour, you’re home and dry – and it’s not that simple. Look at the air cargo cases and how long that ran.

In terms of the pandemic, beyond insolvency and negligence disputes, what are you expecting?

You’ve already had the Hiscox business interruption litigation, which I think will be a flash in the pan. What we’ve seen has been an acceleration and that’s happened for two reasons: the clients want to get on with it to make sure their opponents don’t run out of cash, but the lawyers are pushing claims because they need to make their numbers.

Do you see London holding its position as a global disputes centre?

London has to keep advancing and thinking about the cost of litigation, because it’s very expensive, but it has embraced funding. Other than that, I don’t see it as a massive issue. Where are the challenges? Singapore? New York’s even more expensive.

How should the funding industry evolve in the years ahead?

There’s been a real lack of innovation. What should happen is you end up in five years’ time with funders offering a range of financial products. Go back 30 years, most companies bought their equipment with cash, and then realised it was better to lease it for the cashflow benefits and allowances. In five years’ time, I’d like to see a situation where a corporation wants its IT equipment, it goes to its IT leasing company, when it’s got a dispute, it goes to its disputes financier. I suspect we won’t get there in five years, but you never know.

How do you think law firms should be adapting their services for the future of disputes?

Two things: they should be looking to use funding as a business development tool and should be understanding and assessing risk and taking on a bit more risk.

How do you see the balance in future between arbitration and litigation?

There has been a tilt to arbitration. This is solely gut feeling. The problem is while there are huge benefits of confidentiality with arbitration, arbitrators are a little more of a range of quality than the standard of a High Court judge. I suspect there will be a shift back towards litigation.

Do you see English law remaining as dominant in the years ahead?

Yes. Even in the Middle East, there’s still a lot of English law contracts. I don’t think I’ve seen any change in that. Given the length of time the English system has been around, you’d think it’s not going to blow itself up. They’re still doing all the right things.

How much scope do you see for radical change in commercial litigation?

Ultimately, technology will play a big part. There's no reason for everyone to roll up to court for anything on an interim basis. There's always going to be a wish to cross-examine witnesses in person if you can, but that technology has to be something that continues to be used. We're looking at what we can do with AI. What you need if you're a client, a lawyer or funder is data. The more data you have into potential outcomes or results, that can only be of benefit and it will increase. We're seeing that already with the number of AI firms.

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