

“The whole area of data security is ripe for disputes.”



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What litigation risks concern you the most?

We had a lot of issues when Covid struck. Force majeure was being declared in a lot of places, but none of that ended up causing disputes as the issues were global and pan-sectoral, and our response had to be operationally immediate and pragmatic. If you'd asked me at the beginning of the crisis whether there would be commercial contract risk, I might have thought that would materialise, but we haven't yet seen litigation out of that. The data risk is also an on-going and significant one for us, as it would be for any B2C business.

What litigation do you foresee coming out of Covid-19?

I don't anticipate huge litigation coming. We need to see what's going to happen with Brexit. Covid has also fast-forwarded everybody in the digital space. The whole area of data security issues and personal data is ripe for disputes, unless properly risk-managed.

Will Brexit drive wider disputes?

We are waiting for the United Kingdom to be accepted into the Lugano Convention and making some short-term modifications to our contracting in the meantime. Generally, when things stop working and people stop being happy, they start looking for places to bring claims. A breakdown in supply routes, together with the contracts not exactly working in the transitional phase and any general economic downturn, could result in potential claims.

What steps can you take to mitigate that risk?

We are working to adapt our supply contracts with most of our non-UK-based suppliers with some transitional provisions and, once the United Kingdom is accepted into the Lugano Convention, we will review the position.

Will English law maintain its position with international contracts?

Theoretically, I think so. We will certainly continue to keep the bulk of our contracting under English law.

Will London retain its status for global dispute resolution?

I certainly hope so.

What kind of disputes do you see increasing in the next three-to-five years?

I still see them as being linked to pretty basic breakdown in commercial relationships – inability to meet contractual requirements and agreed commitments under contracts.

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In contentious matters, what could your external counsel do differently that you would appreciate?

It’s that perpetual thing of outside counsel coming to grips with the nature of the dispute from our perspective and what would be the solution that’s best for us.

Do you have other tips for managing risks or avoiding disputes?

The key thing is that in our negotiations, we try to ensure our lawyers are involved to head off anything at the pass before it gets to being anything like a dispute. Our lawyers are embedded into the units conducting negotiations and they’re also involved in reviewing the contracts that come from the negotiations.

Is that easy to sell to the business?

If you have reliable lawyers that fit into the business, and are pragmatic, that is something the business is ready to accept. It’s more a question of the personality and approach of the lawyers, rather than the concept of lawyers being involved.

How should external counsel be evolving to help handle risks and litigation?

It comes less from anticipating trends that may affect us and more from the real immediacy when we pick up the phone to them and having them right there with us. You want to find a way forward, so the experience of litigators is there as the underpinning, and then finding a pragmatic solution on that basis.

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