Forum: Examine the Risks and Rewards for Cross-Border Deals

Bloomberg BNA and World Services Group are partnering to deliver business intelligence, drawn from market-leading news and data analysis, tailored for the advisers of international business.

The forum will be at Bloomberg LP's office at 120 Park Ave., New York 10017, on Tuesday, June 20, 2017. A pre-forum briefing will be 1-3 p.m., and the forum will be 3-5 p.m.

The **Cross-Border Deals Forum** will explore strategies for handling business and regulatory challenges impacting the industry, including:

• Tax reform, trade agreements, and policy shifts;

• Cross-border risk assessment;

• Expanding privacy and data security requirements; and

• Market and industry opportunities to watch.

Connecting deal-makers with a global group of peers and actionable insights, the Cross-Border Deals Forum covers the market shifts, opportunities and long-term trends executives are watching, and the political and regulatory changes affecting cross-border success.

Request an invitation.

The World's Best-Selling Drug Just Lost a Key Patent Battle

Fortune is reporting that AbbVie's Humira, the best-selling drug on the planet with a staggering $14 billion in 2016 sales, has lost a key patent battle with a prospective rival product by the small biotech Coherus Biosciences.

Reporter Sy Mukherjee explains that "The rheumatoid arthritis and psoriasis medicine has recently been a target of biopharma companies that are trying to make generic Humira copycats called 'biosimilars.' That's not surprising given both Humira's market reach and the steep price of the brand name medication – which has a list price of about $4,500 for a set of two syringes before discounts and rebates, making it a prime target for cheaper alternatives."

Humira sales make up more than 60 percent of AbbVie's revenues.

Read the *Fortune* article.

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Are You Prepared for GDPR? Take the Survey

The General Data Protection Regulation (GDPR) will become law in all EU jurisdictions on May 25, 2018 and will impact organizations that handle EU citizen data for any number of reasons, from employment to customer relations to marketing. Just because a company is not based in or even operating in the EU doesn't mean GDPR won't apply.

It is a broad and wide-ranging regulation that is posing significant challenges for the types of clients Yerra serves, namely global corporations in highly-regulated industries such as banking, consumer goods and pharmaceuticals.

To gauge readiness for GDPR across industries and global regions, Yerra has launched an **industry survey** to help benchmark where global corporations are in their preparations. The GDPR Reality Check survey is being run in collaboration with the Blickstein Group and will be open for submissions through the end of May 2017.

Take the survey.

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Arent Fox Advises Seattle Seahawks in Naming Rights Renewal of CenturyLink Field

Arent Fox LLP recently served as outside counsel to the Seattle Seahawks and its affiliate company, First & Goal Inc., in a renewal of the stadium naming rights transaction with CenturyLink, Inc.

The renewal includes naming rights to CenturyLink Field, home to both the NFL's Seahawks and the MLS' Sounders, and CenturyLink Field Event Center, brand exposure at the Seahawks owner Paul Allen-founded Museum of Pop Culture, and sponsorship of Seahawks community outreach programs. The extension of the agreement is subject to approval by the Washington State Public Stadium Authority and is expected to run through the 2033 NFL season.

In a release, the firm said Arent Fox Sports leader Richard L. Brand worked on the transaction with Ed Goines, Seahawks General Counsel and Vice President, Government Affairs, and a negotiating team led by Seahawks President Peter McLoughlin. Additional support was provided by Technology Transactions partner William A. Tanenbaum, and Communications, Technology & Mobile associate Adam D. Bowser.

This transaction is the latest in a recent string of NFL-related naming rights agreements led by Richard Brand, including representing the Miami Dolphins in an 18-year stadium naming rights agreement with Hard Rock International for Hard Rock Stadium, Mercedes-Benz in a naming rights and sponsorship transaction with the Atlanta Falcons and Atlanta United FC for Mercedes-Benz Stadium, the San Francisco 49ers in a naming rights and sponsorship transaction with Levi Strauss & Co. for Levi's Stadium, and Inova Health System in

connection with its multiyear training facility and headquarters naming rights and sponsorship transaction with the Washington Redskins for Inova Sports Performance Center at Redskins Park.

In recent years, in addition to NFL-focused transactions, Brand advised Golden 1 Credit Union in a naming rights and sponsorship transaction with the Sacramento Kings for the Golden 1 Center, the Los Angeles Lakers in a naming rights and health provider rights deal with UCLA Health for the UCLA Health Training Center, and Brooklyn Sports & Entertainment in a naming rights agreement for the Nassau Veterans Memorial Coliseum, presented by New York Community Bank.

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Arbitration Clauses Extending to Non-Signatory Affiliates: Are They Enforceable?

Image by NY Photographic

A recent decision of the New Jersey Appellate Division considered the enforceability of arbitration agreements by non-signatories, writes **Marissa Tillem** in Proskauer Rose's **Minding Your Business** blog.

She discusses a case in which the plaintiff filed a putative class action complaint against defendant alleging violations of New Jersey's Truth-In-Consumer Contract, Warranty and Notice Act, as well as the state's Lemon Law.

The panel determined, among other things, that by signing a lease agreement, plaintiff agreed to arbitrate her dispute not only with the underlying signatories of the lease, but with any of its affiliates. Now the plaintiff will need to decide whether to pursue her claims in arbitration, Tillem explains.

Read the article.

M&A Indemnification Provisions: Are You Drafting Unenforceable Time Limits?

In a merger-and-acquisition transaction, the convention is for the seller to make representations and warranties to the buyer regarding the target business, according to **an article** posted by Womble Carlyle Sandridge & Rice.

"When the target business is a private company, the acquisition agreement typically provides the buyer with a

post-closing right to indemnification if any of the seller's representations and warranties prove to be untrue," writes partner **Melinda Davis Lux**. "The purchase agreement also typically provides that the buyer's right to indemnification is the buyer's exclusive remedy for breaches of the seller's representations and warranties."

In her article, she discussindemnification time limits, shortening the statute of limitations and its consequences, time extensions, and lengthening the statute of limitations.

Read the article.

Company Lawyers Automate Contracts to Ease Pain of Quote-to-Cash

A recent presentation at Apttus Accelerate conference in San Francisco discussed how to take control of a company's quote-to-cash process.

Diginomica reports that some company lawyers explained how they automate contracts to remove manual, paper-based logjams from the process.

Michelle Swan talked with two companies that have recently

invested in Contract Lifecycle Management (CLM) – software that automates the process of managing a contract from initiation through execution, compliance and renewal. People from their legal teams told her about the benefits they are seeing from taking control of these defining moments.

Those companies were: Cadence, a company that sells software and hardware that other companies use to design everything from robotics and mobile phones to jets and medical devices, and Silicon Labs, a semiconductor company that makes the silicon, sensors and other software used in various devices.

Read the article.

Report: Uber Fired In-House Lawyers for Seeking Advice From Outside Firms

San Francisco Business Times **is reporting** that Uber fired two of its lawyers late last year after they sought advice from other law firms, a move Uber reportedly considered a fireable offense.

Reporter **Alisha Green** follows up on a report from *The Information* that says the lawyers reached out for input on proposed policy changes at the San Francisco-based ride-hailing giant related to how long internal documents and

company data are retained. The firings were "followed by the departure of three other lawyers over the next few months."

The article continues:

> The unrest in Uber's litigation team was apparently sparked by a proposal from Uber's general counsel related to "how the company handles corporate documents and other company data," according to The Information.
>
> "The two lawyers had expressed concerns to some colleagues about the new policy, according to two people briefed about the issue. The specific concerns couldn't be learned. The lawyers contacted several outside law firms to solicit an opinion about the proposed policy, a move that Uber deemed to be a breach of their responsibilities to the company, these people said."

Read the *SF Business Times* article.

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Mitigation of Construction Defect Litigation – Top 10 Construction Contract Issues

When negotiating a construction contract with a general contractor, the owner/developer should be aware of, and address, a number of issues to attempt to mitigate or limit the risk of construction defect litigation for a residential project, including multi-family

and for-rent residential apartment and senior housing projects, advises **Rebecca W. Dow** in Holland & Hart's **Construction Law Blog**.

She explains that tandard forms of construction contract – such as the American Institute of Architects (AIA) or ConsensusDocs – are more beneficial to the contractor than the owner in many respects.

A construction contract will need to be reviewed thoroughly and revised to better protect the owner, and in the case of residential construction, should in particular, address 10 key issues.

She discusses those issues, which include: scope of work, change orders, indemnification, warranties, subcontracts, insurance, dispute resolution, compliance with laws/environmental matters, construction lender, damages/attorneys' fees.

Read the article.

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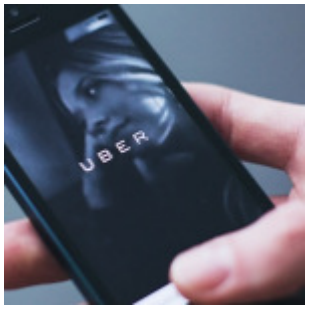
Uber Faces Criminal Probe Over the Secret 'Greyball'

Tool It Used to Stymie Regulators



Reuters is reporting that the U.S. Department of Justice has begun a criminal investigation into Uber Technologies Inc.'s use of a software tool that helped its drivers evade local transportation regulators, two sources familiar with the situation said.

Reporters Dan Levine and Joseph Menn write that Uber has acknowledged the software, known as "Greyball," helped it identify and circumvent government officials who were trying to clamp down on Uber in areas where its service had not yet been approved, such as Portland, Oregon.

"The criminal probe could become a significant problem facing the company that is already struggling with an array of recent business and legal issues," they explain.

Some Uber employees told Reuters that the Greyball technique was used against suspected local officials who could have been looking to fine drivers, impound cars or otherwise prevent Uber from operating.

Read the Reuters article.

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Creating Material Wealth for Business Owners & Labor with ESOPs

Bloomberg BNA, PKF O'Connor Davies LLP, Prairie Capital Advisors, and Sadis & Goldberg LLP will present an **exclusive live event** on using employee stock ownership plans (ESOPs) to support growth and ownership transition strategies.

The event will be Thursday, June 1, 2017, 3-5:15 p.m., with a reception to follow. The location will be at Bloomberg LP, 120 Park Ave., New York, NY 10017.

On its website, Bloomberg says this program will explore all of the ways in which a business can utilize ESOPs to create favorable conditions for financing, allow for acquisitions, attract top talent, and generate wealth for both owners and employees.

ESOPs are commonly used by an owner seeking to retire, however, in today's business market of successful start-ups, there's an opportunity to consider them earlier in the lifecycle of the company. ESOPs, when done properly, may position the company for financing, allow for acquisitions, help attract and retain top talent in a competitive environment, and create wealth for owners and employees.

Register for the event.

Kimberly-Clark Sues Spinoff Over $454 Million Gown Verdict

Bloomberg is reporting that Kimberly-Clark Corp. sued its spinoff Halyard Health Inc., claiming it wrongfully refused to pick up the entire tab for a $454 million verdict against the companies over the safety of some of their surgical gowns.

The plaintiff claims Halyard agreed to indemnify Kimberly-Clark for all costs tied to a lawsuit that accused the companies of misleading consumers about the safety of their MicroCool surgical gowns.

In its suit, Kimberly-Clark claims that Halyard must pay its $350 million punitive-damages portion of the jury verdict in the class-action case, reports **Jef Feeley**.

Halyard Health, which makes surgical masks, gloves and pain-pump accessories, filed its own suit in California, claiming it's not obligated to cover litigation costs.

Read the Bloomberg article.

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U.S. Accuses UnitedHealth of Medicare Advantage Fraud

The U.S. Justice Department has accused UnitedHealth Group Inc. of obtaining inflated payments from the government based on inaccurate information about the health status of patients enrolled in its largest Medicare Advantage Plan, **Reuters is reporting**.

The accusation against the company is the latest, following separate lawsuits in two separate whistleblower lawsuits against the country's largest health insurer.

"Medicare Advantage, an alternative to the standard fee-for-service Medicare in which private insurers manage health benefits, is the fastest growing form of government healthcare, with enrollment of 18 million people last year," writes reporter **Nate Raymond**.

A UnitedHealth spokesman said the company rejects the claims and will contest them vigorously.

Read the Reuters article.

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Lanier Law Firm Adds Experienced Oil & Gas Attorney Todd Grimmett

Veteran energy company in-house counsel **Todd L. Grimmett** has joined **The Lanier Law Firm** as a member of the commercial litigation team. His hiring bolsters the firm's growing focus on lawsuits affecting the oil and gas industry, the firm said in a news release.

Grimmett most recently served as an in-house counsel for Oklahoma City-based Chesapeake Energy Corp., one of the nation's largest natural gas producers. For the past six years, Grimmett represented Chesapeake in a number of civil litigation matters and provided legal counsel for the company's upstream and midstream divisions. In addition, he directed responses to regulatory inquiries and investigations and was responsible for managing the company's e-discovery department.

Before joining Chesapeake in 2011, he served as a trial lawyer with several Oklahoma-based law firms and tried cases in jurisdictions throughout the Southwest.

"Todd is an exceptional young lawyer with a deep understanding of the energy sector as well as a wealth of practical experience in the courtroom," said Mark Lanier, who founded the firm nearly 25 years ago. "This combination of skills will be a great asset as we take on an increasing number of cases related to oil and gas disputes, as well as other civil ligation matters."

In his new role, Grimmett is reunited with Regan E. Bradford, former Deputy General Counsel and Assistant Corporate Secretary for Chesapeake, who joined the Lanier Law Firm in

2016.

Grimmett earned his law degree in 2006 from the University of Oklahoma College of Law, and served as an intern in the office of the Oklahoma Attorney General while in law school. He received his undergraduate degree in business administration from Oklahoma State University in 2001.

The firm has offices in Houston, Los Angeles, and New York.

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Using a TRO to Stop Legal Opponents in Their Tracks

Sometimes a temporary restraining order, or TRO, can provide immediate relief from the court system when a party can show irreparable harm will be caused if someone is allowed to remain in control of assets that belong to the company, according to an article posted on the website of **Mehendru P.C.**

"It may be that a competitor has interfered with a business contract, an employee has stolen your trade secrets or breached a non-compete agreement, or a business partner has stolen from your company. You have to go to court to protect the company though you'd rather not," the post reads.

A judge can grant a TRO to stop an individual's actions even without that person or his lawyer being in court. And a TRO provides immediate relief from the court system when a party

can show irreparable harm will be caused if someone is allowed to remain in control of assets that belong to the company.

Read the article.

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3 Cases of Cross-Border Compliance Mishaps

Zapproved has published a free whitepaper revealing e-discovery insights on cases involving Volkswagen, Apple, Samsung and Takata. **The paper can be downloaded**.

The paper discusses three recent cases involving international brands, failure to meet U.S. compliance regulations yielded high penalties. Missteps like these not only cost billions in fines, they can also erode customer trust and public opinion.

Zapproved says this paper examines what went wrong and glean

tips to prevent the same cultural misfires in your organization. The cases involve:

- Apple
- Samsung
- Volkswagen AG
- Takata

While these cases paint a portrait of what not to do, they also illustrate why building a culture of compliance is so vital, Zapproved says on its website. The paper reveals three key takeaways:

- **First**, create and maintain a culture of compliance that champions ethical practices.
- **Second**, know the rules that apply to cross-border litigation, particularly discovery, and ensure that all participants understand those multinational rules.
- **Finally**, adopt smart, automated and secure e-discovery processes.

Download the white paper.

Best Practices for Limiting Liability Arising from Smart Contract Vulnerabilities

Jared Butcher, writing in the **Steptoe Blockchain Blog**, says it is no secret that smart contracts have vulnerabilities, but he suggests a mix of best practices to limit potential liabilities that may arise when vulnerabilities interfere with smart contract performance.

"There is potential for manipulation by insiders, which is of particular concern for smart contracts that operate based on 'proof of stake' protocols, given the ongoing concerns that those protocols will not be effective in ensuring that the parties play by the rules," Butcher writes. "Even without intentional interference by hackers or insiders, smart contracts may have software bugs that disrupt performance, and there is the possibility of unintended outcomes if the smart contract's code fails to anticipate an unusual situation."

In the post, he offers six best practices to consider when implementing a smart contract.

Read the article.

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Restrictive Covenants Can Swing Both Ways: A 3-Step

Plan To Avoiding Legal Risks When Onboarding New Employees

Employers have been using restrictive covenant agreements – contracts that contain non-compete, customer non-solicitation, employee non-solicitation, or non-disclosure of confidential information – with increasing frequency in recent times, writes **Michael Elkon** with **Fisher Phillips**.

"Increased media attention on the practice of forcing lower-level employees to sign non-compete covenants, combined with the widely publicized report on non-compete restrictions issued by the Obama White House in its waning days, has led to an increase in the number of reported cases. Further, several states are passing new laws or considering changes to existing laws on the subject," he explains.

He describes three basic steps a company can take to reduce the chances of a lawsuit from a competitor, or at least put the company in a favorable position if litigation is threatened.

These include "Ask questions on the front end," "Structure the job on the front end to ensure compliance," and "Emphasize the importance of purging all former employer materials."

Read the article.

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Not an Inside Job: How Two Analysts Became SEC Whistleblowers

Reuters tells the story of how two analysts who liked to swap notes on numbers they thought looked odd took a fateful step and tipped off U.S. regulators about a company that one of them had watched for months.

The story is illustrated with the case of Orthofix International NV, a Texas-based medical device maker that kept hitting ambitious earnings targets and many analysts had “buy” recommendations for the stock.

One of the analysts had a feeling about the company, noticing its earnings reports showed it was taking longer than usual for the company to get paid by wholesale customers, invoices were piling up and executives struggled to offer a convincing explanation, saying logistical problems at foreign offices were partly to blame.

Reporter Sarah N. Lynch tells how that analyst spent months tracking quarterly reports and earning calls, using algorithms to compare Orthofix’s ratios and patterns of sales and inventory turnover with financial data of its peers.

“By entering the SEC whistleblower program the duo showed how outsiders with analytical skills and tools and time to spare can accomplish what is typically done by those with inside access to confidential information,” Lynch writes.

The two could win as much as $2.5 million for their whistleblowing.

Read the Reuters article.

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Big Law Business Summit Set for May 24

Bloomberg Big Law Business will host its 3rd annual Summit in Manhattan.

The event will be Wednesday, May 24, 2017, at Bloomberg LP, 731 Lexington Ave., New York, NY 10022, from noon until 6 p.m. A networking lunch and cocktail reception will be included.

Attendance is by invitation only. Anyone interested in an invitation may **submit a request**.

The **agenda is available** online.

Some of the speakers will include:

- **Peter Beshar**, Executive Vice President and General

Counsel, Marsh & McLennan Companies

- **Matthew Cooper**, Executive Vice President, Head of Legal, Capital One Financial
- **Stephen Cutler**, Vice Chairman, JPMorgan Chase
- **Eric Grossman**, Chief Legal Officer and Managing Director, Morgan Stanley
- **Deborah Kaback**, Chief Legal Officer, Oppenheimer Asset Management
- **Aristedes Mahairas**, FBI Special Agent in Charge, Special Operations/Cyber Division, New York Office
- **Manisha Sheth**, Executive Deputy Attorney General for Economic Justice Division, Office of the New York State Attorney General
- **Patrick Speice**, Assistant General Counsel, Regulatory and Compliance, United States Steel Corporation
- **Mary Jo White**, Senior Chair, Debevoise & Plimpton

Request an invitation here.