

# quinn emanuel

quinn emanuel urquhart & sullivan, llp | business litigation report

los angeles | new york | san francisco | silicon valley | chicago | washington, d.c. | houston | seattle | boston | tokyo  
london | mannheim | hamburg | munich | paris | hong kong | sydney | brussels | zurich | shanghai | perth | stuttgart

## Opioids and Guns: Claims of Public Nuisance – Who May Be Liable

Two issues of importance to product liability lawyers—and indeed the public at large—have dominated recent news cycles: the opioid abuse crisis and the scourge of school gun violence. When crises like these arise, the question of who is responsible for the resulting harms is typically resolved in the courts, but often turns on thorny issues of public policy and the political will of legislators. For certain industries, like gun and vaccine manufacturers, Congress has sought to shield them from exposure in the courts through grants of a limited form of immunity. Other industries like the tobacco industry were not so protected and the courts were used to resolve the scores of claims brought against its members by various states and municipalities.

In the case of the current opioid crisis, dozens of cities, states, municipalities and third-party payors are seeking to hold the pharmaceutical companies

who manufacture FDA-approved prescription opioid medications and the companies that distribute them responsible for the consequences of opioid abuse, which in large part involves the use of illegal street drugs, such as heroin and fentanyl. Plaintiffs claim defendants created a public nuisance and they seek a wide spectrum of injunctive relief and damages, including costs for law enforcement, addiction treatment, and hospital care. *See, e.g., City of Cleveland v. AmerisourceBergen Drug Corporation, et al.*, No. 1:18-op-45132 (N.D. Ohio Mar. 6, 2018). The claims in these lawsuits could potentially make these and other FDA-approved medications unavailable to patients suffering from pain. This article examines how the courts and lawmakers have treated manufacturers facing potentially catastrophic liabilities, often resulting from the lawful use of their products.

(continued on page 2)

## INSIDE

U.S. Justice Department  
Issues Guidance on  
Dismissing Qui Tam False  
Claims Act Cases Over  
Relators' Objections  
Page 4

Practice Area Updates:

ITC Litigation Update  
Page 6

EU Litigation Update  
Page 8

Insurance Litigation Update  
Page 11

\$110 Million Antitrust and  
Trade Secret Victory Against  
Ticketmaster and Live Nation  
and Other Victories  
Page 10

## Top Appellate Lawyer Joins D.C. Office

Christopher Landau has joined the firm as a partner based in the Washington, D.C. office. Mr. Landau was previously a partner at Kirkland & Ellis for 25 years, where he was head of the firm's appellate litigation practice. Mr. Landau has vast experience in courts across the country, briefing and arguing appeals on a wide variety of subject matters in the U.S. Supreme Court, all of the federal courts of appeals, and multiple state appellate courts. In the October 2015 and 2016 Terms, the U.S. Supreme Court granted five consecutive petitions on which Mr. Landau was counsel of record. Mr. Landau is currently serving a three-year term as a member of the Judicial Conference Advisory Committee on Appellate Rules, which addresses the need for changes in the Federal Rules of Appellate Procedure. He received his J.D., *magna cum laude*, from Harvard Law School, where he was the Articles Editor for the *Harvard Law Review* and was awarded the Sears Prize, given to the two students with the highest GPAs in their second year. He received his B.A., *summa cum laude*, from Harvard College, where he was first in his class and Phi Beta Kappa. Mr. Landau clerked twice at the United States Supreme Court, first for Justice Antonin Scalia and then for Justice Clarence Thomas before entering private practice. [Q](#)

## Richard Smith Receives Houston Law Center Dean's Award

The University of Houston Law Alumni Association has honored Richard Smith with the Dean's Award, recognizing exceptional alumni of the University of Houston Law Center. Quinn Emanuel was one of the event sponsors, helping raise \$500,000 for the school's advocacy programs, faculty research, student outreach, library improvements, technology innovation, and student recruitment. [Q](#)

## ***Gun Manufacturers***

In the case of the gun industry, after several lawsuits sought to hold its members liable for wrongful death and public nuisance, the industry lobbied Congress for protection, claiming that such suits could bankrupt it, thus imperiling the nation's ability to manufacture weapons for the military. Those efforts were successful: Congress passed and President George W. Bush signed the Protection of Lawful Commerce in Arms Act ("PLCAA") in 2005 and codified at 15 U.S.C. §§ 7901 et. seq., which provides immunity to firearm and ammunition manufacturers and sellers from civil or administrative claims "resulting from the criminal or unlawful misuse" of firearms or ammunition. There are six limited exceptions to this immunity, including exceptions for negligent entrustment claims and actions where a manufacturer or seller knowingly violates a state or federal statute applicable to the sale or marketing of firearms or ammunition (the "predicate exception").

The PLCAA has survived multiple constitutional challenges, *e.g.*, *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), and has been relied on by gun manufacturers to obtain dismissals of common law tort actions, *e.g.*, *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 321 (Mo. 2016), *reh'g denied* (May 24, 2016), general negligence claims, *e.g.*, *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42 (D.D.C. 2013), public nuisance claims, *e.g.*, *Ileto*, 565 F.3d 1126, and design defect claims based on a failure to install safety features on firearms, *e.g.*, *Adames v. Sheahan*, 233 Ill. 2d 276 (2009). Several of these now dismissed claims were brought by family members of individuals killed in public shootings, including victims of the D.C. Sniper and the Aurora, Colorado movie theater shooting.

Currently pending in a Connecticut appeals court is a case of nationwide interest, in which the family members of first graders killed in the mass shooting at Sandy Hook Elementary School filed an action seeking an end run around the PLCAA. These families seek damages and injunctive relief against several gun manufacturers and distributors, including Bushmaster Firearms International and Remington Arms Co., LLC through a 33 count amended complaint, most of which sounds in wrongful death.

The plaintiffs attempted to fall within the PLCAA's negligent entrustment exception by arguing, *inter alia*, that the defendants knew or had reason to know that their respective trustees were selling military caliber AR-15s to the civilian population, which posed an unreasonable and egregious risk of physical injury.

The plaintiffs also tried to fall within the predicate exception by alleging that the defendants' sales and marketing practices violated the Connecticut Unfair Trade Practices Act ("CUTPA").

Unsurprisingly, the defendants moved to strike the amended complaint and prevailed on the grounds of immunity under the PLCAA because the plaintiffs' causes of action did not fall under any PLCAA exception. Specifically, the court held that the plaintiffs failed to state legally sufficient claims for a violation of the CUTPA, and failed to state legally sufficient claims for negligent entrustment under either Connecticut law or the PLCAA.

Two of the court's holdings—that the plaintiffs failed to state a claim for a violation of the CUTPA and for negligent entrustment under Connecticut law—dealt with state-law issues. The court's other holding directly addressed the scope of the PLCAA's negligent entrustment exception, where the court held that the plaintiffs' claims failed because none of the individuals or entities "entrusted" with the weapon by the defendants (*i.e.*, the store that sold the gun, the shooter's mother who purchased the gun) "used" it within the PLCAA's definition of "negligent entrustment." Rather, the only actionable "use" of the weapon was by the shooter, who was not entrusted with the weapon by the defendants. The plaintiffs have appealed this holding, arguing the lower court improperly interpreted the term "use," which is not defined in the PLCAA, to refer exclusively to discharging a weapon to cause harm.

The case is now pending on appeal to the Connecticut Supreme Court, which will review the state-law holdings and the lower court's analysis of the PLCAA's negligent entrustment exception. The defendants raised several arguments in response, including that the plaintiffs did not have standing to bring a CUTPA claim because they are not consumers, competitors, or other business persons with a commercial relationship to the defendants. The motion court, while acknowledging that the language of the CUTPA does not have a "relationship requirement," held that, based on binding appellate precedent, the plaintiffs did "not set forth legally sufficient claims" because they did not allege a business relationship with the defendants. The plaintiffs have appealed this holding, arguing the lower court misread one of the decisions it relied on and that the other was wrongly decided. The plaintiffs argue for a plain text reading of CUTPA, which does not include a relationship requirement.

### ***Vaccine Manufacturers***

The makers of childhood vaccines also received a limited form of immunity from civil suits from Congress. In the 1980s, vaccine manufacturers feared a scourge of lawsuits in response to a study suggesting that certain vaccines caused brain injuries in children. In response, the manufacturers ceased making certain vaccines, creating a threat to the public health. So Congress passed The National Childhood Vaccine Injury Act (“the Act”) in 1986 and codified at 42 U.S.C. § 300aa et. seq., which preempts various lawsuits against vaccine manufacturers and, at the same time, sets forth a remedial program to compensate those who suffer side effects from vaccines. Congress’ goal in passing the Act was to “end instability and unpredictability” in the childhood vaccine market, which was described in the Act’s legislative history as “one of the most spectacularly effective public health initiatives this country has ever undertaken.” *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 245–46 (2011) (concurring opinion) (internal citations omitted).

Under the Act, vaccine manufacturers are shielded from all civil actions for damages arising from vaccine-related injuries or deaths associated with administration of a vaccine after October 1, 1988, “if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.” 42 U.S.C.A. § 300aa-22 (West).

This broad grant of immunity encompasses failure to warn claims (so long as the manufacturer complied with regulatory requirements) and all design defect claims. Vaccine manufacturers are also generally immunized from punitive damages, and claimants must first seek relief through the remedial program before bringing a claim for more than \$1,000 in damages against a vaccine manufacturer.

The tradeoff for this immunity is a remedial program, which allows a person injured by a vaccine to file a petition for compensation with the Court of Federal Claims. To obtain compensation, a claimant need not prove causation, a design defect, or a manufacturing defect. Rather, a claimant must show that they received a vaccine listed in the Vaccine Injury Table, 42 U.S.C. § 300aa-14, and developed a covered injury within a specified time-period. The Secretary of Health and Human Services can rebut a *prima facie* case by proving that the injury was caused by factors unrelated to the vaccine’s administration.

The remedial program also includes mechanisms for compensating individuals who suffer side effects not listed in the Vaccine Injury Table or who manifest

symptoms outside of the specified time range. To date, nearly \$2 billion has been paid to successful claimants under the program, which is funded through a tax on vaccines.

### ***Tobacco Companies***

Tobacco companies have also received various degrees of immunity from civil suits. For example, from 1988 to 1998, the California legislature granted tobacco companies complete immunity from actions for injury or death caused by a tobacco product, except for actions based on a manufacturing defect or breach of an express warranty. *See* Cal. Civ. Code § 1714.45 (added by Stats.1987, ch. 1498, § 3, p. 5778); *Myers v. Philip Morris Companies, Inc.*, 28 Cal. 4th 828, 831–32 (2002) (“The first version [of section 1714.45 of California’s Civil Code], which we here sometimes refer to as the Immunity Statute, granted tobacco companies complete immunity in certain product liability lawsuits as of January 1, 1988.”).

Additionally, as part of the “Master Settlement Agreement” between tobacco companies and the Attorney General of 46 states, tobacco companies received immunity from future legal claims that states may have for, among other things, the use, sale, distribution, and manufacture of tobacco products. This settlement applies broadly to claims brought by states, but does not extend to suits brought by state residents. In exchange for this grant of immunity, tobacco companies agreed to curb various advertising tactics and pay a minimum of \$206 billion over the first 25 years of the agreement to settle lawsuits brought by states to recover tobacco-related health care costs and to pay for future health-care costs.

### ***Manufacturers and Distributors of Opioids and Other Pharmaceuticals***

Today, the companies that manufacture and distribute prescription opioid medications face an onslaught of civil litigation seeking to hold them responsible for the full range of social issues and costs that have arisen from the illegal use of their products and use of illicit opioids like heroin. In addition to the FDA, which has been addressing issues relating to the appropriate use of, labeling for, and communications about prescription opioid medications in many different ways, and the DEA, which regulates the distribution of these products, Congress recently acted, not to provide immunity to the makers of these products, but rather to appropriate \$6 billion in funds for drug treatment over a two-year period. *See* Bipartisan Budget Act of 2018, Pub. L. No. 115-123. That amount has been criticized as insufficient,

and numerous states and municipalities have sought to recoup public funds they claim they have expended in dealing with opioid abuse.

The City of Chicago and two California counties were the first to file lawsuits seeking to hold pharmaceutical manufacturers liable for costs associated with the public health crisis arising from misuse of opioids. *City of Chicago v. Purdue Pharma L.P.*, No. 2014-L-005854 (Ill. Cir. Ct. June 3, 2014); *The People of the State of California, acting by and through Santa Clara County Counsel Orry P. Korb and Orange County District Attorney Tony Rackauckas v. Purdue Pharma L.P. et al.*, No. 8:14-cv-01080 (Cal. Super. Ct. May 21, 2014). These suits allege that “aggressive marketing” of their products by several manufacturers has caused a drug epidemic that has cost taxpayers millions of dollars. Hundreds of similar suits have followed over the last two years.

Several factors should aid the manufacturers in defense of these suits. Their products are lawful and necessary drugs, approved and regulated by the federal government. The labeling for these medications provides physicians and patients prominent warnings about the risks of addiction, overdose, and even death. The manufacturers do not distribute the drugs directly

to the public; instead, there are several intermediaries in the distribution process, including the doctors who make individual prescribing decisions. There are also criminal actors who break the chain of causation between manufacturers and ultimate users by improperly diverting and selling these medications in the black market. People who die of overdoses from prescription opioid medications most often were not using these medications as they were prescribed.

Unlike tobacco products, opioid medications are as necessary as vaccines, so a solution must be found. Other than setting aside funds for drug treatment, Congress has not yet entered the fray. Recently, a federal court judge overseeing hundreds of opioid lawsuits that have been centralized in the Northern District of Ohio signaled that he is overseeing confidential settlement discussions. See *In Re: National Prescription Opiate Litigation*, Case: 1:17-md-02804-DAP (Dkt. 170). But clearly, given the number of such suits filed in jurisdictions across the country, those discussions are only the beginning in the process of finding an acceptable resolution to these issues that will hopefully strike the right balance between the public interest and those who may or may not bear responsibility for the crisis. 

## NOTED WITH INTEREST

### U.S. Justice Department Issues Guidance on Dismissing Qui Tam False Claims Act Cases Over Relators’ Objections

**Background.** In recent years, there have been record numbers of qui tam filings under the False Claims Act (“FCA”). The continued increase in qui tam filings over the last several years has not been met with a rise of DOJ interventions in such cases. On January 10, 2018, the head of the DOJ Civil Frauds Section weighed in on this trend, issuing an internal memorandum instructing all DOJ attorneys that admonish FCA cases to first consider whether the Government should dismiss meritless cases over relator’s objections. Although the impact of this guidance remains to be seen, it appears to represent an unprecedented act by the DOJ to expressly set standardized guidelines for the Government’s seldom applied authority to dismiss qui tam actions. And, it may well provide defendants with an increased ability to call on the aid of the Government when facing such claims.

**Qui Tam FCA Actions.** In common law, a writ of qui tam allows a private individual to sue on behalf

of a government for a public claim. Plaintiffs are incentivized to file these actions because they receive a portion of any recovery. Under the FCA, individuals with knowledge of fraud committed against the U.S. Government—“relators” or whistleblowers—may bring a qui tam claim on its behalf.

The rise of qui tam actions filed in recent years is in part due to the passage of the Affordable Care Act in 2010 and the large recovery given to successful plaintiffs who bring qui tam actions in the healthcare sector. Since passage of that Act, the Government has seen an explosion in qui tam activity in the healthcare and pharmaceutical sectors, where recovery can reach hundreds of billions of dollars, with the FCA granting relators between 15% and 25% of any award or settlement. On top of this, the FCA awards relators their attorneys’ fees, making qui tam filings especially popular for the plaintiff’s bar.

Once a whistleblower files suit on the Government’s behalf, the DOJ has three options: 1) intervene as

a plaintiff in one or more counts of the claim; 2) decline to intervene, leaving the relator to prosecute the action on the Government's behalf (although the Government often still expends valuable resources monitoring these claims); or 3) dismiss the action over the relator's objections, which the FCA expressly empowers the Government to do as long as it gives the relator notice and the court holds a hearing.

Historically, however, the DOJ has rarely exercised its dismissal power. One reason is that courts disagree over the standard of review. For example, in *Swift v. United States*, 318 F.3d 250, 252 (D.C. Cir. 2003), the District of Columbia Circuit held that the DOJ has an "unfettered right" to dismiss a qui tam action. Conversely, under Ninth Circuit law, the DOJ must identify a "valid government purpose" before it unilaterally dismisses an action. *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139, 1145 (9th Cir. 1998).

**The Guidance.** The guidance set forth in the DOJ's January 10 memorandum is multi-faceted. It outlines seven non-exclusive circumstances that DOJ attorneys should consider in evaluating whether to dismiss a claim:

1. Where "a qui tam complaint is facially lacking in merit—either because relator's legal theory is inherently defective, or because the relator's factual allegations are frivolous."
2. Where "a qui tam action duplicates a pre-existing government investigation and adds no useful information to the investigation."
3. Where "an agency has determined that a qui tam action threatens to interfere with the agency's policies or the administration of its programs and has recommended dismissal to avoid these effects."
4. Where "necessary to protect the Department's litigation prerogatives" and authority to control its docket.
5. Where necessary "to safeguard classified information" regarding agencies with sensitive national security information.
6. Where "the government's expected costs are likely to exceed any expected gain."
7. Where there are "problems with the relator's action that frustrate the government's efforts to conduct a proper investigation," such as failing to provide all material information to the government.

The goal of this non-exhaustive list is twofold: (i) provide a general framework for evaluating *when* the DOJ should dismiss a qui tam case, and (ii) ensure consistency throughout the process. Given the above

factors all represent circumstances where the DOJ has dismissed cases in the past, only time will tell whether the guidelines set forth in the Memorandum characterize a new policy or merely memorialize current practices.

In addition to outlining those seven factors, the Memorandum also sets forth the DOJ's view on the standard of review, addressing the disagreement among courts. Unsurprisingly, the DOJ sided with the D.C. Circuit, taking the position that the appropriate standard should be the "unfettered discretion standard," which is meant to be "highly differential." By doing so, the DOJ reaffirmed the Government's important "gatekeeper role," stressing that its dismissal authority remains "an important tool to advance the government's interests, preserve limited resources, and avoid adverse precedent."

The Memorandum is potentially significant for several reasons. First, it may signal an increased aggressiveness by the DOJ in dismissing qui tam claims where it has chosen not to intervene. Second, while not explicitly saying so, the Memorandum arguably signals support for FCA qui tam defendants, and defendants should avail themselves of the policies outlined in the Memorandum to argue not only in favor of non-intervention, but outright dismissal. Third, the Memorandum highlights the hurdles plaintiffs must overcome to avoid dismissal. For example, plaintiffs are now not only on notice that facially meritless claims could be dismissed, but that "even if the relator's allegations are not facially deficient, the government may conclude...that the case lacks merit" and dismiss it. This may discourage plaintiffs from bringing claims in the first place. Finally, the mere articulation of these guidelines may lead to an increase in relators voluntarily dismissing their cases after the Government declines to intervene. Specifically, the Memorandum instructs DOJ attorneys to "advise relators of perceived deficiencies in their cases as well as the prospect of dismissal."

**Conclusion.** Whether the DOJ's new guidelines for dismissing qui tam cases reflects a new policy of assertiveness in terminating cases or merely reflects a memorialization of past practices remains to be seen. Practitioners in this space would be well advised to closely watch the DOJ's actions in this space over the next 12 to 18 months. [Q](#)

## ITC Litigation Update

### ***ITC Determination on Trade Secret Misappropriation Preclusive in District Court.***

In a case of first impression, the United States District Court for the Eastern District of Wisconsin confirmed what many practitioners already believed to be true—that findings by the United States International Trade Commission (“ITC”) on trade secret misappropriation claims may have preclusive effect in district court litigation. The court’s holding in *Manitowoc Cranes, LLC v. Sany America Inc.*, may result in expedited relief, cost-savings, and discovery benefits for trade secret holders using Section 337 to adjudicate misappropriation claims. See *Manitowoc Cranes, LLC v. Sany America Inc. and Sany Heavy Industry Co., Ltd.*, No. 1:13-cv-00677-WCG, 2017 WL 6327551 (E.D. Wisc. Dec. 11, 2017). But there are limitations. Differences in state and federal law may defeat collateral estoppel, and even if the ITC’s determinations on liability are preclusive, trade secret holders must still establish that they are entitled to remedies available in district court.

**Case Overview.** On June 12, 2013, Manitowoc Cranes, LLC (“Manitowoc”) filed a Section 337 complaint against Sany America, Inc. and Sany Heavy Industry Co., Ltd. (collectively, “Sany”) alleging patent infringement and trade secret misappropriation relating to certain crawler cranes and components thereof. See *Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887, Compl. (June 12, 2013) (“Crawler Cranes”). The same day, Manitowoc filed a parallel district court action in the Eastern District of Wisconsin, which was subsequently stayed. The ITC action progressed through discovery and culminated with an evidentiary hearing in late March 2014. *Crawler Cranes*, Comm’n Op. at 3 (May 6, 2015). On July 11, 2014, the presiding Administrative Law Judge (“ALJ”) issued an initial determination finding a violation of Section 337 based on both (a) Sany’s infringement of two patents, and (b) Sany’s misappropriation of four trade secrets. On review, the ITC reversed several of the ALJ’s patent infringement findings, but affirmed the findings of trade secret misappropriation. *Id.* at 1. After the ITC’s decision was affirmed by the Federal Circuit Court of Appeals, the district court lifted the stay and reopened the case.

On July 14, 2017, Manitowoc filed a motion for partial summary judgment as to Sany’s liability for trade secret misappropriation. Manitowoc argued that, because ITC determinations in non-patent cases are entitled to preclusive effect in subsequent district court actions, the only remaining issue was the appropriate relief to be granted. Sany opposed the motion, citing the Federal Circuit’s decision in *Texas Instruments v. Cypress* holding that “Congress did not intend decisions of the ITC on

patent cases to have preclusive effect.” *Texas Instruments v. Cypress Semiconductor Corp.*, 90 F.3d 1558, 1569 (Fed. Cir. 1996). Sany argued that the same rationale should apply with equal force in the context of claims for trade secret misappropriation. Sany further argued that the ITC decision was not preclusive because the ITC did not apply Wisconsin law in finding Sany liable for trade secret misappropriation.

In a 12-page order, the district court granted-in-part Manitowoc’s motion for summary judgment, finding that “Sany is precluded from relitigating issues regarding Manitowoc’s misappropriation of trade secret claims and is therefore liable for trade secret misappropriation under Wisconsin law.” *Manitowoc*, 2017 WL 6327551, at \*6.

**The District Court’s Holding.** The *Manitowoc* decision addresses two main inquiries: (1) the threshold question of whether ITC decisions on trade secret misappropriation have preclusive effect in subsequent district court litigation; and (2) the more granular question of whether the elements of collateral estoppel had been met in this particular case. The court answered both in the affirmative.

The court first looked to Supreme Court precedent for the general proposition that the common-law doctrines of collateral estoppel and *res judicata* apply to administrative agency decisions, except when there is an express or implied statutory purpose to the contrary. See *Manitowoc*, 2017 WL 6327551, at \*3. (quoting *e.g.*, *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 107 (1991); *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1303 (2015)). The court then evaluated how federal courts address ITC findings in other contexts (*e.g.*, trademark infringement, antitrust, patent infringement), and concluded that “ITC determinations regarding the unfair trade practices of trade secret misappropriation are entitled to preclusive effect.” *Id.* at 4. In so doing, the court expressly rejected Sany’s argument that the holding in *Texas Instruments* created a “general rule” against preclusion with respect to all ITC determinations. *Id.* at 5. The court held that, unlike the patent determination at issue in *Texas Instruments*, there was no Congressional intent against preclusion in the context of trade secret determinations.

Having determined that ITC trade secret findings could be preclusive in certain circumstances, the court then considered whether Manitowoc had established the elements of collateral estoppel in the instant case. Under Seventh Circuit law, the elements of collateral estoppel are: “(1) the issue sought to be precluded is the same as an issue in the prior litigation; (2) the issue must have been actually litigated in the prior litigation; (3) the determination of the issue must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must have been fully represented in the prior action.” *Id.* at

6 (quoting *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014)). Sany's primary challenge was to the first element, arguing that the "issue" was not the same because the ITC's determination rested on federal law (*i.e.*, the Uniform Trade Secret Act ("UTSA") and Restatement (Third) of Unfair Competition), rather than Wisconsin law. The court addressed this argument by comparing features of the UTSA with Wisconsin's version of the Uniform Trade Secret Act ("WUTSA"), including their respective definitions of "trade secret" and "misappropriation." *Id.* at 10. While noting that issues are not ordinarily identical if the second action applies a different legal standard, the court found that Sany failed to identify any substantive difference between the UTSA and WUTSA, or that "Wisconsin courts would apply a 'significantly different ... analysis' to the issue presented here." *Id.* Accordingly, the court concluded the issue before it was the same as the one raised and litigated before the ITC, and, as such, all of the elements of collateral estoppel had been satisfied. *Id.* at 10-11.

**Impact for Future Trade Secret Actions Before the ITC.** For years, commentators and practitioners have extolled the virtues of using Section 337 to adjudicate a wide range of unfair acts in the importation of foreign goods. The recognition of Section 337's swift and powerful remedy has led to an increase in the number of complaints filed in the last 10 years. This growth in popularity among intellectual property owners has not, however, translated into a significant increase in the number of trade secret misappropriation actions before the ITC. While more than 400 new complaints and ancillary proceedings have been instituted since 2010, only 13 investigations have involved allegations of trade secret misappropriation. See [https://www.usitc.gov/intellectual\\_property/337\\_statistics.htm](https://www.usitc.gov/intellectual_property/337_statistics.htm). The *Manitowoc* decision provides further incentives for complainants to use Section 337 to adjudicate trade secret misappropriation claims in the future.

First, the *Manitowoc* decision should lead to significant time and cost-savings for trade secret holders who are seeking both injunctive relief and monetary damages in district court. Trade secret misappropriation cases by their nature are highly fact-intensive, expensive, and often take years to complete in federal and state court. Due to the accelerated nature of Section 337 actions before the ITC, however, a complainant can obtain necessary discovery in six to eight months and expect a final judgment in approximately 16 months. If successful, the ITC will issue a final determination of liability and issue exclusion and/or cease and desist orders preventing the importation and sale of unfairly traded goods. The advantage for trade secret holders is they will be able to argue the liability determination is preclusive in district court. They will then be able to seek damages or injunctive relief without

facing the ongoing threat of sales of imported goods in the United States.

A second advantage of using the ITC for trade secret misappropriation claims is the ability to obtain broad-ranging discovery from foreign defendants. Because the ITC exercises *in rem* jurisdiction over the accused imported products, named respondents are forced to appear and participate in discovery or risk entry of default judgment. Thus, by using Section 337, trade secret holders can fully and quickly develop the liability side of their cases and avoid many of the procedural and jurisdictional hurdles for obtaining foreign discovery in federal and state court.

**Limitations on the Manitowoc Decision.** The *Manitowoc* holding is not without limitations, however. First, collateral estoppel may not apply if the district court claims arise under different trade secret law than the ITC claims. Future cases could turn out differently than *Manitowoc* depending on the trade secret standards at issue in the ITC versus the particular district court. Like the *Manitowoc* court, a court asked to apply collateral estoppel will have to analyze differences between the applicable standards to determine if they require a "significantly different analysis." For this reason, trade secret holders who hope to benefit from the preclusive effect of ITC determinations should be aware of potential differences between the applicable legal standards.

A notable example is New York trade secret law. New York is one of two states that has not adopted a version of the UTSA. Instead, courts in New York apply common law that has developed, in part, from the Restatement (First) of Torts. One significant difference between New York common law and the UTSA is that a "single or ephemeral" event will not qualify as a trade secret; rather, a trade secret "is a process or device for continuous use in the operation of the business." See *Softel, Inc. v. Dragon Med. & Scientific Commc'ns, Inc.*, 118 F.3d 955, 968 (2d Cir. 1997) (quoting the Restatement (First) of Torts, § 757 (1939)). The UTSA, in contrast, does not include a "continuous use" requirement in its definition of "trade secret"—an express departure from the Restatement. It is quite possible that a district court applying New York common law would decline to give preclusive effect to an ITC determination based on the UTSA because it fails to consider the "continuous use" requirement. The district court may find that a "significantly different analysis" is required to determine whether subject matter the ITC found entitled to trade secret protection under the UTSA meets the additional "continuous use" requirement.

This possibility is not limited to situations where the district court applies New York common law. Although 48 of 50 states have adopted some form of the UTSA, variations exist from state to state. See generally Sid Leach, Anything but Uniform: A State-By-State Comparison of

the Key Differences of the Uniform Trade Secrets Act (Nov. 6, 2015). Trade secret holders should carefully review these differences when formulating their district court claims if they intend to seek collateral estoppel based on a companion ITC investigation.

A potential safety valve for trade secret holders is the recently enacted Defend Trade Secrets Act (“DTSA”). The DTSA provides a federal cause of action for trade secret misappropriation, as well as a potential vehicle for the ITC to analyze trade secret misappropriation claims in Section 337 proceedings. The statute promotes the Federal Circuit’s directive that “a single federal standard, rather than the law of a particular state, should determine what constitutes a misappropriation of trade secrets sufficient to establish an ‘unfair method of competition’ under section 337.” *TianRui Group Co. Ltd. v. Int’l Trade Comm’n*, 661 F.3d 1322, 1327-28 (Fed. Cir. 2011). Trade secret plaintiffs who file parallel actions in district court and the ITC would be wise to pursue DTSA claims in both actions. If the ITC finds a violation of Section 337 based on trade secret misappropriation under the DTSA, then the district court is likely to find that the parallel DTSA claims present the “same issue” for purposes of collateral estoppel.

A second, more straightforward limitation of the *Manitowoc* decision is that collateral estoppel based on an ITC finding of trade secret misappropriation would not extend to monetary damages in the district court action. Remedies available in the ITC are limited to (a) exclusion orders that bar imports, and (b) cease and desist orders that prevent the sale of previously imported goods in the United States. Because the ITC lacks authority to award money damages, trade secret holders should be prepared to litigate damages in the district court action, even if they benefit from a finding of liability based on collateral estoppel from an ITC determination.

The same is likely true for injunctive relief in the district court. Although ITC remedies are injunctive in nature, they result from different, more flexible standards than those applicable to injunctive relief in district court. In *Manitowoc*, for example, the ITC set the duration of the exclusion order at 10 years after evaluating the time it took the complainant to develop the asserted trade secrets and the time it would have taken the respondent to develop the same technology without the benefit of the complainant’s trade secrets. See *Crawler Cranes*, Comm’n Op. at 70-72. Section 337 did not require the ITC to consider factors that are relevant to a district court’s grant of injunctive relief, such as irreparable harm or the lack of adequate remedies at law. Trade secret holders will have to litigate injunctive relief in district court, even if liability flows from collateral estoppel.

## EU Litigation Update

***The CJEU’s Coty Judgment Provides Guidance on Online Platform Bans for the Distribution of Luxury Goods and Beyond.*** On December 6 2017, the Court of Justice of the European Union (“CJEU”) adopted its long-awaited ruling in Case C-230/16, *Coty Germany GmbH v. Parfümerie Akzente GmbH* (“*Coty*”). The *Coty* judgment clarified that a prohibition imposed by suppliers of luxury goods on the members of their selective distribution system of making sales through unauthorised third-party online platforms complies with Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), to the extent that such a restriction: (i) aims at preserving the luxury image of the products; (ii) applies uniformly to all distributors; and (iii) does not go beyond what is necessary to attain its objective. The CJEU also provided guidance as to the nature of such restrictions, clarifying that, were they to fall within the scope of Article 101(1) TFEU, they would not form “by object” restrictions of competition.

***Background of the Case.*** The *Coty* case concerns a selective distribution agreement entered into between leading luxury cosmetics supplier Coty and one of its distributors, Parfümerie Akzente, for the sale of luxury cosmetic products in Germany. Coty sought to revise the agreement to include a provision according to which “*the authorized retailer is entitled to offer and sell the products on the internet, provided, however, that internet sales activity is conducted through an ‘electronic shop window’ of the authorized store and the luxury character of the products is preserved*” (*Coty*, ¶ 15). Coty also sought to include a clause prohibiting Parfümerie Akzente from using a different business name and from engaging a third-party undertaking, which is not an authorized retailer of Coty (*Coty*, ¶ 15).

Parfümerie Akzente refused to accept those amendments, and sold Coty’s products via Amazon’s German website, Amazon.de. Coty brought an action before the German district court of Frankfurt am Main. The district court dismissed the action and concluded that, in the light of the CJEU’s ruling in Case C-439/09, *Pierre Fabre Dermo-Cosmétique* (“*Pierre Fabre*”), the objective of maintaining the prestigious brand image of a luxury product through a selective distribution system does not justify the inclusion of a hard-core restriction under Article 4(b) or 4(c) of the Vertical Block Exemption Regulation (“VBER”).

Coty appealed that decision to the Higher Regional Court of Frankfurt, which, in turn, sought a preliminary ruling from the CJEU pursuant to Article 267 TFEU. The Higher Regional Court of Frankfurt essentially asked whether:

1. A selective distribution system for luxury goods

designed, primarily, to preserve the luxury image of those goods complies with Article 101(1) TFEU;

2. Article 101(1) TFEU must be interpreted as precluding a contractual clause that prohibits authorised distributors in a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods, from using in a discernible manner, third-party platforms for the online sale of the contract goods; and
3. Assuming that such a prohibition forms a restriction of competition in the sense of Article 101(1) TFEU, whether such a prohibition constitutes a “by object” restriction of customers, within the meaning of Article 4(b) VBER, or a restriction of passive sales to end users, within the meaning of Article 4(c) VBER.

The key takeaways and practical implications of the *Coty* judgment are the following:

***Online Platform Bans Which Aim to Preserve the Image of Luxury Goods are Compatible with Article 101(1) FJEU Provided That They Meet Certain Criteria.***

The CJEU clarified that an online platform ban applied in the context of a selective distribution system of luxury goods, which is designed, primarily, to preserve the luxury image of those goods is compatible with Article 101(1) TFEU provided that the criteria set out in the CJEU’s ruling in *Pierre Fabre* are met, namely, that: (i) resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion; (ii) the characteristics of the product in question necessitate such a network in order to preserve the product’s quality and ensure its proper use; and (iii) the criteria laid down do not go beyond what is necessary to attain their objective (*Coty*, ¶ 58).

The CJEU also affirmed that the nature of luxury products necessitates their sale through a selective distribution system in order to preserve their image, which creates the aura of luxury that is essential for customers to distinguish luxury products from other types of products (*Coty*, ¶ 25, citing Case C-59/08 *Copad*, ¶ 28). The CJEU left some scope for interpretation because in the absence of a relevant question by the referral court, it did not define the term “luxury product.”

The CJEU also clarified previous case law on selective distribution, by stating that the *Pierre Fabre* judgment did not seek to establish a statement of principle prohibiting platform bans in selective distribution systems. Rather, in *Pierre Fabre*, which concerned a complete ban of online sales of non-luxury products (namely, cosmetics and body hygiene products), the CJEU concluded, based on the facts of that case, that the need to preserve the image of the products in question did not justify the restriction imposed

(*Coty*, ¶ 35).

The CJEU ultimately concluded that a prohibition on using, in a discernible manner, third-party platforms for the internet sale of luxury goods, like the one imposed by *Coty*, did not go beyond what is necessary in order to preserve the luxury image of those goods. The CJEU noted, *inter alia*, that in *Coty* there was no absolute restriction of online sales; rather, authorised distributors were permitted to sell the contract goods online both via their own websites (as long as they had an electronic shop window for the authorised store and the luxury character of the goods is preserved), and via unauthorised third-party platforms when the use of such platforms is not discernible to the consumer (*Coty*, ¶ 53). In this regard, the CJEU also referred to the Commission’s E-commerce Sector Inquiry, according to which, despite the increasing importance of third-party platforms in the marketing of distributors’ goods, the main online distribution channel is the distributor’s own online shops (*Coty*, ¶ 54).

***Online Platform Bans for the Selective Distribution of Luxury Goods Are Not “Hardcore Restrictions” of Competition.***

The CJEU ruled that online platform bans, such as the one at issue in *Coty*, do not amount to hardcore restrictions of competition, and, in particular, customer restrictions under Article 4(b) VBER or passive sales restrictions under Article 4(b) VBER, to the extent that: (i) online platform bans do not prohibit the use of the internet as a means of marketing the contract goods; (ii) it does not appear possible to circumscribe, within the group of online purchasers, third-party platform customers; and (iii) distributors can still advertise the products on third-party online platforms and use online search engines (*Coty*, ¶¶ 65-68).

***The Coty Ruling May Have Implications on Selective Distribution Systems for Non-Luxury Goods.***

Under a strict interpretation, the *Coty* ruling would appear to apply only to cases concerning luxury goods. However, that judgment may have implications for the assessment of restrictions in selective distribution systems for the sale of non-luxury goods.

Pursuant to the CJEU’s findings in *Coty*, and in light of the fact that the VBER does not distinguish between luxury and non-luxury products, an online platform ban imposed by a non-luxury product supplier on the members of its selective distribution system, which does not meet the *Pierre Fabre* criteria, and thus falls within the scope of Article 101(1) TFEU, would not be considered a “by object” restriction on competition. This means that such a restriction could benefit from the block exemption under the VBER, provided that each of the supplier’s and its distributors’ market shares are less than 30% (Article 3 VBER).

# VICTORIES

## **\$110 Million Antitrust and Trade Secret Victory Against Ticketmaster and Live Nation**

In the decades since it first reached prominence in the United States, Ticketmaster has been largely bulletproof when it comes to antitrust challenges. In the 1990s, for example, the rock band Pearl Jam publicly tried to fight Ticketmaster and its fees, but failed. The Department of Justice then examined Ticketmaster's conduct and declined to pursue any claims against the company. Similarly, in 2010, the DOJ once again took a pass on suing Ticketmaster and instead blessed its merger with Live Nation, which resulted in the creation of the world's largest live music company. With one notable exception, no private plaintiff has ever been able to proceed past summary judgment against Ticketmaster on any antitrust claim, let alone up to the eve of trial.

That sole exception is Quinn Emanuel's client, Songkick, which not only completely defeated Ticketmaster's and Live Nation's recent efforts to dismiss antitrust, trade secret misappropriation, and other claims at summary judgment, but also secured a \$110 million settlement payment two weeks before trial, along with the defendants' agreement to acquire its assets for a confidential amount. Notably, Quinn Emanuel achieved this result despite a decade-old Ninth Circuit opinion upholding dismissal on virtually identical antitrust claims.

Songkick was an artist presale ticketing service provider. In the United States and abroad, artists often secure a portion of their concert tickets to sell directly to their fans and retain companies like Songkick to conduct those direct-to-fan sales, which give the artists valuable consumer data and a long-term marketing relationship. All of this is in contrast to venue ticketing service providers (the most prominent of which is Ticketmaster), which a concert venue hires to sell the remainder of the tickets to an event. Songkick quickly became what Ticketmaster executives called an "existential" threat to its broader ticketing business, because Songkick represented a model in which venues and artists could dole out ticketing work on a non-exclusive basis, and because Songkick provided its clients other technology the defendants admitted they could not match. Songkick subsequently became the target of an all-out effort to exclude it and similar companies from the market, as well as a years-long corporate espionage campaign.

In its complaint, Songkick alleged that Ticketmaster, under Live Nation's direction and with its aid, committed several Sherman Act antitrust violations, as well as misappropriated Songkick's trade secrets through the help of a former Songkick executive. Due to these various acts, Songkick further alleged the defendants forced it out of business, which had been valued at \$100 million

in mid-2015. Among other amounts, Songkick sought its lost going concern value and the unjust enrichment the defendants obtained from their anticompetitive acts and trade secret misappropriation.

Following fact and expert discovery, the defendants moved for summary judgment on all of Songkick's antitrust and non-trade secret claims. The Court denied that motion in its entirety on the papers. Before that decision, no antitrust plaintiff had ever withstood summary judgment against Ticketmaster, making Songkick the first. The decision also set up for trial (for the first time ever) what the defendants' lead attorney acknowledged was a claim that put the legality of Ticketmaster's exclusive dealing practices "squarely at issue."

Faced with Songkick's claim and the prospect of a looming trial against Quinn Emanuel in late January 2018, the defendants resolved the dispute by paying Songkick \$110 million in settlement (nearly 100% of its lost going concern value damages) and acquiring its assets for a confidential sum.

## **Dismissal of \$4 Billion Claims Against Len Blavatnik and Access Industries Affirmed by Southern District of New York**

The firm recently achieved an appellate victory in the Southern District of New York for long-time clients Len Blavatnik and Access Industries. On January 24, 2018, U.S. District Judge Denise Cote overwhelmingly affirmed the trial decision of U.S. Bankruptcy Judge Martin Glenn in *Weisfelner v. Blavatnik*. There, the plaintiff, Edward Weisfelner, the Litigation Trustee of the LBI Litigation Trust, sought over \$4 billion in damages relating to claims arising out of the merger of Lyondell Chemical Company and Basell B.V. in December of 2007, and the bankruptcy of the combined company—LyondellBasell Industries, Inc.—in 2009.

The Trustee filed its lawsuit in 2009, asserting dozens of claims against numerous defendants. The Trustee amended his complaint several times, and the case included claims for fraudulent transfer, violations of Luxembourg law, avoidable preference, and breach of contract, among others.

After years of litigation, the case culminated with a 14-day trial, which included 21 live witnesses, 40 witnesses by deposition, and more than 600 exhibits. After trial, the Bankruptcy Court dismissed all but one of the Trustee's claims, awarding the Trustee a mere \$7 million in damages. The Bankruptcy Court found that the merger of Lyondell and Basell was supported by strong industrial logic and that the Trustee had failed to prove that LyondellBasell was insolvent, a threshold element of his claims. In the process, the Bankruptcy Court discredited the Trustee's baseless theories that our clients intended to defraud Lyondell's

creditors through the merger.

The Trustee then appealed two of his largest claims. First, the Trustee asserted errors relating to the claim for an alleged \$300 million preference claim based on the company's draw and repayment of a short-term loan provided by Access Industries in October of 2008. Second, the Trustee challenged the Bankruptcy Court's decision, on a motion to dismiss, to enforce a damages limitation provision in the company's loan documents.

Judge Cote affirmed the Bankruptcy Court's decision in virtually every respect—agreeing that dismissal of the

preference claim was proper and holding that the damages limitation provision is enforceable—but increased the Trustee's recovery by approximately \$5 million (from \$7 to \$12 million) on account of an offset to restitutionary damages awarded by the Bankruptcy Court.

While the Trustee still has the option to appeal to the Second Circuit, the decision reinforces Quinn Emanuel's complete victory for its clients and brings them yet another step closer to an overwhelmingly favorable resolution of the nine-year old LyondellBasell saga. [Q](#)

*(Practice Area Notes continued from page 9)*

## Insurance Litigation Update

**No “Security Blanket” Presumption on Facultative Liability Caps.** One of the most frequently litigated insurance questions in recent years is whether “defense costs, insofar as they are reinsured by a facultative reinsurance policy, count towards the limit in the [policy's] reinsurance accepted clause.” *Global Reinsurance Corporation of America v. Century Indemnity Co.*, No. 124, 2017 WL 6374281 (N.Y. Dec. 14, 2017). Or, to put it differently, do reinsurers have a “security blanket” that caps the total reinsurance available to the policy limit. The question is particularly acute where the underlying policy covers defense costs outside policy limits. Unfortunately, courts have not been unanimous, or consistent, in answering.

In recent years, several district courts have held that a reinsurance policy cannot be expected to cover defense costs that go beyond policy limits. Other courts, interpreting the same cases and similar policy language, have held that the question must be addressed on a policy-by-policy basis. Even the Second Circuit Court of Appeals seems split on the issue, recently calling into question its own prior decisions. In December, however, the New York Court of Appeals decisively addressed the question. Declining to adopt any “rule of construction” or even “strong presumption,” the Court of Appeals held that “[r]einsurance contracts are subject to the same rules that govern contracts generally” and there is no bright line rule capping liability. *Id.*

The decision arose out of a certified question from the Second Circuit Court of Appeals in a case that has been closely watched due to its size and how clearly it presented this issue. In the federal courts, Global Reinsurance Company (“Global Re”) has been engaged in a reinsurance dispute with Century Indemnity Company (“Century”). Century insured Caterpillar, which was sued thousands of times in asbestos litigation. Century's general liability policies obligated Century to pay both Caterpillar's liability up to policy limits and defense costs. Those defense costs ran \$50 million dollars. When Century sought payment,

Global Re took the position that its facultative reinsurance policies were capped at the liability limits specified in the “limits of liability” sections and filed a suit in the Southern District of New York seeking a declaratory judgment.

The Southern District, relying on prior cases from the Second Circuit and the New York Court of Appeals, ruled that the reinsurance certificates capped Global Re's obligations at the policy limits. When the case got to the Second Circuit, however, the Second Circuit cast doubt on its own earlier opinion in *Bellefonte Reinsurance Co. v. Aetna Casualty & Surety Co.*, 903 F.2d 910 (2d Cir. 1990), and certified a question to the New York Court of Appeals: Does New York law “impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs?” At that point, the case went from closely watched to a bellwether. In December, a unanimous New York Court of Appeals answered in the negative.

The New York Court of Appeals decision is already being regarded as seminal. The opinion goes far toward resolving one of the most hotly contested issues of recent years. As a result of the ruling, reinsurance carriers should no longer assume that “reinsurance accepted” and “limits of liability” provisions will act as caps on the reinsurance available for defense costs. That does not mean that under New York law reinsurance companies will automatically be required to pay such costs. On the contrary, the *Global Re* case will be watched closely in the federal courts for an early look at how courts will deal with this question in the absence of a bright line rule. For the next few years, until reinsurers begin to clarify their policies by stating clearly whether defense costs are covered beyond policy limits, there will likely be some upheaval, as courts struggle with particular policies to determine when reinsurers should be liable for defense costs outside policy limits. [Q](#)

PRESORTED  
STANDARD  
U.S. POSTAGE  
PAID  
PERMIT NO. 2399  
VAN NUYS, CA

## business litigation report

# quinn emanuel urquhart & sullivan, llp

Published by Quinn Emanuel Urquhart & Sullivan, LLP as a service to clients and friends of the firm. It is written by the firm's attorneys. The Noted with Interest section is a digest of articles and other published material. If you would like a copy of anything summarized here, please contact Elizabeth Urquhart at +44 20 7653 2311.

- We are a business litigation firm of more than 780 lawyers — the largest in the world devoted solely to business litigation and arbitration.
- As of March 2018, we have tried over 2,645 cases, winning 88% of them.
- When we represent defendants, our trial experience gets us better settlements or defense verdicts.
- When representing plaintiffs, our lawyers have garnered over \$60 billion in judgments and settlements.
- We have won five 9-figure jury verdicts.
- We have also obtained thirty-four 9-figure settlements and fifteen 10-figure settlements.

### LOS ANGELES

865 S. Figueroa St.,  
10th Floor  
Los Angeles, CA 90017  
+1 213-443-3000

### NEW YORK

51 Madison Ave.,  
22nd Floor  
New York, NY 10010  
+1 212-849-7000

### SAN FRANCISCO

50 California St.,  
22nd Floor  
San Francisco, CA 94111  
+1 415-875-6600

### SILICON VALLEY

555 Twin Dolphin Dr.,  
5th Floor  
Redwood Shores, CA 94065  
+1 650-801-5000

### CHICAGO

191 North Wacker Dr.,  
Suite 2700  
Chicago, IL 60606  
+1 312-705-7400

### WASHINGTON, D.C.

1300 I Street NW,  
Suite 900  
Washington, DC 20005  
+1 202-538-8000

### HOUSTON

Pennzoil Place  
711 Louisiana St.,  
Suite 500  
Houston, TX 77002  
+1 713-221-7000

### SEATTLE

600 University Street,  
Suite 2800  
Seattle, WA 98101  
+1 206-905-7000

### BOSTON

111 Huntington Ave.,  
Suite 520  
Boston, MA 02199  
+1 617-712-7100

### TOKYO

Hibiya U-1 Bldg., 25F  
1-1-7, Uchisaiwai-cho,  
Chiyoda-ku  
Tokyo 100-0011  
Japan  
+81 3 5510 1711

### LONDON

90 High Holborn  
London WC1V 6LJ  
United Kingdom  
+44 20 7653 2000

### MANNHEIM

Mollstraße 42  
68165 Mannheim  
Germany  
+49 621 43298 6000

### HAMBURG

An der Alster 3  
20099 Hamburg  
Germany  
+49 40 89728 7000

### MUNICH

Hermann-Sack-Straße 3  
80331 Munich  
Germany  
+49 89 20608 3000

### PARIS

6 rue Lamennais  
75008 Paris  
France  
+33 1 73 44 60 00

### HONG KONG

1307-1308 Two Exchange Square  
8 Connaught Place  
Central Hong Kong  
+852 3464 5600

### SYDNEY

Level 15  
111 Elizabeth Street  
Sydney, NSW 2000  
Australia  
+61 2 9146 3500

### BRUSSELS

Blue Tower  
Avenue Louise 326  
5th floor  
1050 Brussels  
Belgium  
+32 2 416 50 00

### ZURICH

Dufourstrasse 29  
8008 Zürich  
Switzerland  
+41 44 253 80 00

### SHANGHAI

Level 20, The Center  
989 Changle Rd  
Shanghai 200031  
+86 21 5117 5859

### PERTH

Level 24, Suite 24.28  
Allendale Square  
77 St Georges Terrace  
Perth, WA 6000  
Australia  
+61 8 6188 7541

### STUTTGART

Büchsenstraße 10, 4th Floor  
70173 Stuttgart  
Germany  
+49 711 1856 9000