

YEAR IN REVIEW

2019

Dechert  
LLP



Paul Dacey  
American. b. 1960  
*Crown and Thorn Quilt*, 1994-95  
Acrylic on plastic disks  
Dechert's Philadelphia office

Dechert is proud to support the arts. From commissioning artwork to providing a wide variety of support to institutions around the world, art is at the core of the firm's culture and community.



The summer of 2019 saw a blockbuster run of financial services M&A, culminating in US\$30 billion of deals run from our offices across the U.S., Europe and Asia. Despite all the political and market uncertainty, many of our clients still have an appetite for growth and investment.

We share that positive outlook, provided that businesses protect themselves from the ever-growing challenges of legal, regulatory and economic risks. This is where we believe that Dechert can make a tangible difference. Our focus remains on the most complex and challenging situations that our clients face, those areas that bring the most risks and require the most innovative thinking. We continue to support our clients as they explore evolving markets such as fintech, permanent capital and private credit, which will continue to expand and create new opportunities and value into 2020 and beyond. In the U.S. and Europe, we have been advising clients on identifying LIBOR exposure and counseling them on maneuvering through the transition process, as well as preparing for possible litigation.

In the celebrated *Calamos* litigation, we helped our client defeat an unfounded claim that advisory fees breached fiduciary duties. This victory will help the mutual fund industry turn the tide of vexatious ‘excessive fee’ litigation and will be crucial in protecting the investment management sector’s competitiveness. On behalf of Walmart, our white collar team helped settle one of the largest FCPA investigations in history, and we continue to advise on the largest ongoing investigation in Europe.

Our product liability team secured huge trial wins for Pfizer in the Lipitor and Zolofit disputes. Going into 2020, we will be defending Saint-Gobain Performance Plastics in several large-scale multi-state PFOA-related lawsuits across the U.S., as well as continuing to defend Purdue Pharma in some 1,300 opioid litigation cases aggregated in a multi-district litigation (MDL) in Ohio.

What binds these very different types of work, and makes Dechert such a formidable firm, is the quality of our lawyers and our culture. Dechert’s Culture Statement connects us with our clients, as it focuses on excellence in service, creative thinking and how we build community within the workplace.



Andy J. Levander, Chair and Henry N. Nassau, Chief Executive Officer

Innovation through alternative providers and AI-driven tech remains at the forefront of many clients' minds. In response to this demand, our technology team launched a number of transformative projects this year that aim to enhance client service and save both time and resources. Read on page 22 what this means for us and our clients.

In other key initiatives, we have rolled out a new gender-neutral U.S. parental leave policy that applies to all employees. Our SASS (Sponsorship and Sustained Support) program, launched by our Global Women's Initiative, reflects Dechert's commitment to the career development of our female associates and helps lawyers successfully navigate the path to partnership. In recognition of our commitment to building an inclusive firm that reflects the diversity of the world in which we practice, we have also achieved Mansfield Rule 2.0 Plus Certification.

We continue to encourage all our people to undertake service in the public interest. Over the past year, Dechert lawyers completed more than 80,000 hours pro bono as they worked

to serve local communities and provide vital assistance to those most in need. On page 29, you will read about Willie Veasy, a Philadelphia man convicted of murder in 1993, who was cleared of all charges and freed this year thanks to Dechert's James Figorski and Christine Levin, and the Pennsylvania Innocence Project. This was one of the most emotional and inspiring stories in our recent history and an example of what we can achieve when we give our time and resources back to the communities across the world that we so proudly serve.

Strategic growth remains critical to Dechert's success. The firm promotes and integrates star practitioners across practice areas and around the world, broadening and deepening our ability to serve our clients. We welcomed 16 new lateral partners across eight offices in the past 12 months, enhancing our presence in the economic centers that are most important to those clients. In 2019, we also elevated 11 new partners in six offices, reinforcing strategic strengths globally. As we continue to keep diversity and inclusion at the heart of who we are, we are delighted to see that six of those 11 and more

than 70 percent of newly arrived lateral partners this year are women.

As we look to the year ahead, Dechert remains determined to move the needle further. We hope you enjoy reading about some of the highlights of 2019. Thank you for joining us on this journey.

## Andy and Henry

Ranked by the *Financial Times* as the most innovative firm for legal expertise in North America, 2019. Just two other firms made the *FT's* top 15 for legal expertise in North America, Europe and Asia.

Dechert was named to *Law360's* Global 20 list of firms with the greatest global reach and expertise in 2019 – for the fifth successive year.

# Turning the tide for advisers facing ‘excessive fee’ litigation

Dechert has proved extremely effective in representing investment advisers and mutual fund independent trustees caught up in a wave of ‘excessive fee’ litigation brought under Section 36(b) of the Investment Company Act of 1940.

Since the Supreme Court’s 2010 decision in *Jones v. Harris Associates*, more than two dozen fund complexes have faced claims that fees paid to investment advisers are excessive and represent a breach of fiduciary duty. As the cases raise structural challenges to the entire mutual fund industry, litigating robustly is key to protecting the investment management industry’s competitiveness.

In the most recent trial victory, Dechert’s litigation team, led by Matthew Larrabee and David Kotler, received a comprehensive ruling in favor of Calamos Advisors LLC (CAL), rejecting a Section 36(b) claim brought by two Growth Fund shareholders. The plaintiffs claimed that the advisory fees paid by the fund to CAL were excessive and in breach of CAL’s fiduciary duty imposed by the Investment Company Act.

In September 2019, Judge Edgardo Ramos of the Southern District of New York rejected the plaintiffs’ core contention that fees charged to institutional or sub-advisory clients should act as a ceiling for fees charged to a mutual fund, finding



that significantly greater services and risks were entailed in advising the fund as opposed to CAL’s institutional or sub-advisory accounts. The court also found that the fund’s board was “fully informed, conscientious, and careful” in approving Calamos’ annual advisory fee.

The court also acknowledged and credited the board’s strong and transparent process, particularly with respect to its consideration of the fund’s performance history and the “numerous significant and costly” steps CAL took to improve the

performance of the fund for the benefit of its shareholders. The court also fully rejected the plaintiffs’ attacks on the manner in which CAL calculated profitability for purposes of the Section 15(c) process.

“This was a smashing victory for Calamos and a big win for the industry as a whole,” says Larrabee. “The court comprehensively rejected every substantive contention advanced by the plaintiffs and embraced all of the key points Calamos made and all of its witness testimony.”



We are gratified that the court recognized the important role that the fund’s board of trustees plays with respect to fees, in ensuring that CAL continually seeks to provide high-quality services to the fund’s shareholders.” **David Kotler Partner**

# Defending Saint-Gobain Performance Plastics

Saint-Gobain Performance Plastics is a producer of engineered high-performance polymer products for wide-ranging daily use from roofs for iconic sports stadiums to life-saving hazmat suits. When it found itself the target of large-scale multi-state lawsuits in New York, New Hampshire and Vermont over the industrial chemical perfluorooctanoic acid (PFOA), it turned to Dechert's market-leading product liability and mass torts team for its defense strategy.



Bert Wolff, Douglas Fleming, Sheila Birnbaum and Mark Cheffo

The litigation against Saint-Gobain – both individual and putative class actions – is currently active, defended by a formidable line-up from Dechert's product liability team: New York partners Sheila Birnbaum, Mark Cheffo, Douglas Fleming, Rachel Passaretti-Wu and Bert Wolff, counsel Paul LaFata, and associates from the New York, Chicago, and Philadelphia offices. As well as the high-profile litigation, the team also counsels Saint-Gobain on handling the recent

surge in regulation and legislation focused on PFOA.

Since the 1940s PFOA has been a common presence in products such as carpeting, upholstery, floor wax, fire-fighting foam and sealants. Unregulated for most of its history, it has become subject to increasing public attention; hence new state regulation and litigation targeting various companies. In Saint-Gobain's case, plaintiffs claim that its use of materials containing

PFOA during its past processing operations has caused property-related damage arising from the presence of PFOA in groundwater, and, as the case may be, personal injury, or the right to medical monitoring in individuals without disease.

So far, Dechert has persuaded the U.S. Court of Appeals for the Second Circuit to hear interlocutory appeals on vital legal points affecting the viability of the plaintiffs' assertions over property damage and request for medical monitoring in New York. In Vermont, Dechert has filed a petition to appeal to the Second Circuit, with amicus support from the U.S. Chamber of Commerce, the American Tort Reform Association and the National Association of Manufacturers. In New Hampshire, the team successfully opposed an effort to resist production of plaintiffs' medical records. Class certification and a *Daubert* briefing – a motion to exclude unreliable expert evidence – are in progress in the New Hampshire litigation.



Saint-Gobain frequently turns to Dechert to defend the company in its most consequential, high-stakes litigation in the United States. Their sophistication, depth of experience, and legal creativity – especially in the area of complex mass tort litigation – is simply unrivaled. When the case is unprecedented and alleged to be perilous, there is no better partner to have in the trenches than Dechert.”

**Saint-Gobain**

# More than the sum of its parts: Kymera and Vertex collaborate to change medicine

Kymera Therapeutics and Vertex Pharmaceuticals signed an agreement in May 2019 that stands out as a potential game-changer in collaboration between biotech platforms and big pharma.

Dechert partner Andrea Reid negotiated the IP aspects of this agreement on behalf of Kymera – one of only a handful of biotechs operating in a very niche field: targeted protein degradation. Its research is focused on the discovery of drugs that drive the elimination of disease-causing proteins, which are targeted and directed to the body's innate protein recycling system.

The cutting-edge technology powering Kymera's proprietary targeted protein degradation platform, known as Pegasus™, has the potential to transform the treatment of serious diseases involving inflammation and fibrosis, including cancer.

The US\$70 million strategic, four-year R&D collaboration aims to create novel medicines by leveraging the potential of the Pegasus™ platform to expand the current pool of available drugs and Vertex's scientific, clinical and regulatory capabilities.

As well as this upfront investment, Kymera is also eligible to receive more



Andrea Reid, who led the Kymera deal, was a finalist in the LMG Life Sciences Awards, 2019 in the "Patent Strategy & Management Attorney of the Year – Massachusetts" category

than US\$1 billion in potential payments upon the successful achievement of specified research, development, regulatory and commercial milestones spanning six programs.

Reid, co-leader of Dechert's global life sciences practice, oversaw the IP aspects of the collaboration from the initial negotiations to its completion in May 2019. A former medicinal and process chemist with more than three decades of experience in the pharmaceutical industry and an

inventor on 14 U.S. patents, Reid devised the innovative IP strategies that have underpinned some of the highest-profile collaborations between therapeutic platform companies and big pharmaceutical companies, such as Nimbus Therapeutics' novel agreement with Celgene Corporation in 2018.



We are fortunate at Dechert to be able to provide clients like Kymera with deep understanding of life science technologies and the best means to protect scientific breakthroughs. We augment our technical capability with a robust understanding of our clients' business models and the expertise to negotiate a complex commercial transaction, like this one." **Andrea Reid Partner**

# Sealing the deal: Funding the world's biggest real estate buyout

At US\$18.7 billion, the purchase price for Blackstone's acquisition of a major industrial warehouse portfolio from Singapore-based GLP made it the largest private real estate transaction ever.



While Blackstone would invest a mixture of cash and equity and would also absorb some of GLP's debt, it also sought to tap a Citi-led syndicate of six global banks for US\$8.5 billion of commercial mortgage-backed securities (CMBS) and balance-sheet debt.

As lead counsel to Citi and the co-lenders on the loan, Dechert's real estate finance team needed to structure the deal to take into account the interests of all

stakeholders involved, including the lenders, the borrower, servicers, ratings agencies, mezzanine lenders and subsequent investors in the debt.

The firm's lawyers had to juggle many moving parts and perform diligence on more than 500 industrial properties located in multiple states. In all, 70 lawyers and paralegals from seven of the firm's offices worked on the transaction. To add to the challenge, while US\$6.6 billion of

the debt was structured as CMBS and mezzanine loans to be securitized and sold, a US\$1.9 billion portion was syndicated by the banks, effectively dividing the deal into two parallel transactions. The CMBS loan was the largest single-asset, single-borrower CMBS transaction since the financial crisis and the second-largest ever.



Dechert performs well in negotiating deal structures that balance the interests of all parties – lenders, borrowers, servicers, ratings agencies, mezzanine lenders and investors. Our aim is to deliver win-win transactions.” **Justin Gdula** Partner

# Setting records with Starwood

In another landmark financing deal, the firm's global finance group advised Starwood Capital Group, a Connecticut-based private investment firm and long-time Dechert client, on the issuance of a US\$1.1 billion commercial real estate collateralized loan obligation (CRE CLOs), one of the largest since the financial crisis.

A team led by Rick Jones, co-chair of Dechert's global finance group,

advised Starwood's mortgage real estate investment trust, Starwood Property Trust, and various affiliates, as co-issuers and seller of the CLO, known as STWD 2019-FL1. Notes in the CLO were backed by floating-rate and fixed-rate commercial real estate loans. The entire transaction was consummated in less than 60 days, an extremely tight timeframe necessary to meet the company's pricing window.

Starwood Property Trust, the largest commercial mortgage REIT in the U.S., focuses chiefly on financing, managing, originating and acquiring commercial real estate loans and other commercial real estate debt. The transaction represented its debut CRE CLO issuance.



It takes expertise, confidence and a top-level team to clinch a debut CLO issuance of such size."

**Rick Jones** Partner



"Best Law Firm for CLO Managers" – *Creditflux* CLO Census, 2019

"Best Law Firm for CLOs" – *GlobalCapital* Securitization Awards, 2019

# Investing in 'real assets'

Dechert has been engaged by Barings LLC on numerous fund matters during the course of 2019, including as fund formation counsel to a target US\$2 billion global private equity fund focusing on investments in 'real assets', including infrastructure

and natural resources, as well as intangible assets such as copyrights and trademarks. This project included a parallel fund structure (Luxembourg RAIF and Delaware and Cayman entities) which permits the sponsor to attract multiple investor classes

worldwide. A cross-practice and cross-office team included partners Carl de Brito (corporate and funds, New York), Gus Black (funds, London), Joshua Milgrim (tax, New York) and Drew Oringer (ERISA, New York).



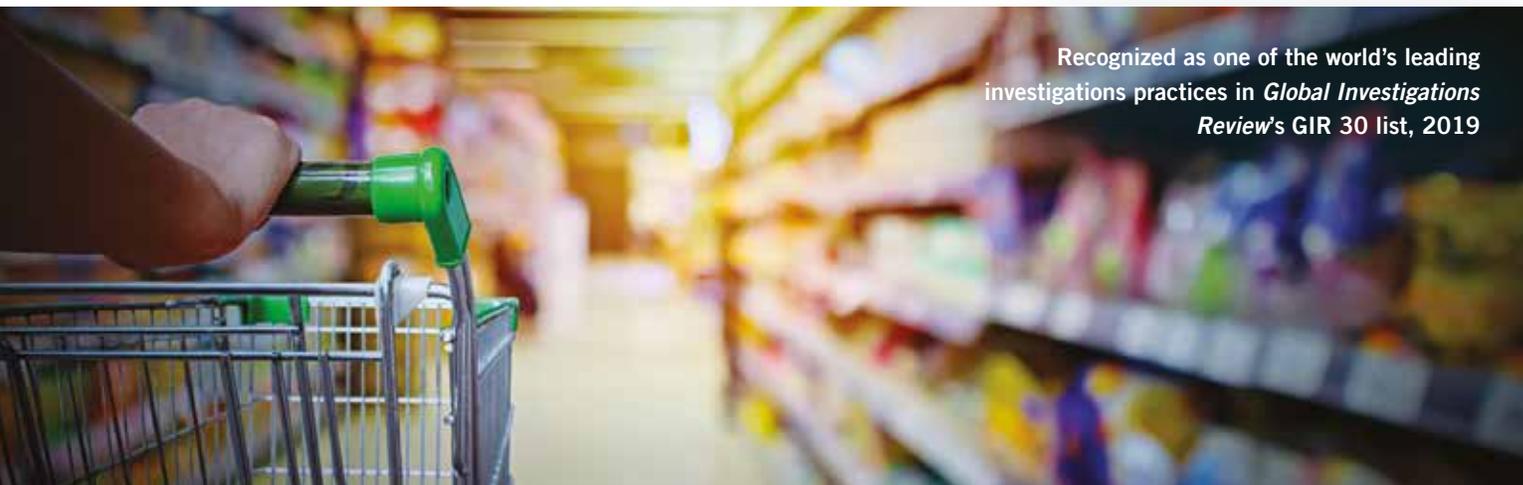
This new fund will enable Barings to offer its investors a differentiated investment opportunity in assets that target short-term income and value creation, which our client sees as an area of significant potential growth."

**Carl de Brito** Partner



# Future-proofing a multinational retailer

Walmart's rapid expansion from stateside retailer to sprawling multinational brought global success, but also regulatory challenges that threatened its reputation as one of the world's favorite brands.



Recognized as one of the world's leading investigations practices in *Global Investigations Review's* GIR 30 list, 2019

In 2011, the U.S. DOJ and SEC launched investigations into historic violations of the Foreign Corrupt Practices Act (FCPA), in what would become one of the most comprehensive probes of its kind. Eight years later, Dechert's New York-based white collar and securities team, led by former federal prosecutor David Kelley, helped bring the litigation to a successful close, with Walmart paying a combined settlement of US\$283 million.

"The protracted DOJ/SEC investigation of Walmart's alleged FCPA violations was initiated by a Pulitzer Prize-winning exposé in *The New York Times*, but which ultimately was shown by counsel to be more worthy of the Pulitzer for fiction than for journalism," says Kelley, who advised Walmart's Audit Committee. "This case ended with a settlement worth a mere fraction of that predicted by the FCPA pundits."

The investigation focused on Walmart's anti-corruption controls in Brazil, Mexico, India and China prior to April 2011. It was alleged that local intermediaries in these jurisdictions made payments on behalf of the company in violation of the FCPA. In response, Dechert, on behalf of the Audit Committee, together with company counsel, undertook a rigorous internal investigation. As well as handling the complex disclosure process and client interactions with the DOJ and SEC, the team overhauled Walmart's existing compliance program, establishing an integrated global anti-corruption compliance program that upscaled anti-corruption policies, procedures and internal controls in every country in which Walmart operates. "This was a considerable logistical undertaking for the world's largest company with a presence in 27 countries," says Kelley.

In 2016, Walmart won an award from New York Stock Exchange Governance Services, a subsidiary of the NYSE, for "Best Governance, Risk and Compliance Program" for large-cap companies. The DOJ/SEC's final determinations took account of Walmart's co-operation and the systematic steps it took – with Dechert's assistance – to embed gold-standard ethics and compliance into all its business operations.



““ This was vital for the ‘future-proofing’ of Walmart’s business, as well as satisfying the regulatory authorities.”

**David Kelley** Partner

# Thinking big: Qoo10 acquires ShopClues

Singapore-based Qoo10 Pte. Ltd. acquired ShopClues in October 2019 in order to enhance its own growing operations throughout Asia, and to access India's huge retail market. ShopClues is one of India's leading online retailers, selling electronics and lifestyle items through a network of more than 700,000 small and micro-merchants.



Singapore corporate partner Siew Kam Boon and counsel Timothy Goh took the lead advising Qoo10 on this transformative deal, which will connect ShopClues' merchants to global markets via Qoo10's presence across Singapore, Indonesia, Malaysia, China and Hong Kong, while at the same time giving Qoo10 access to the enormous Indian retail market.

This deal is part of a series of transactions undertaken by Qoo10 to realize its pan-Asian commercial strategy, involving growing and exiting North Asia through the divestment of its Japan business to eBay in 2018, consolidating its position in Southeast Asia, and then expanding into India. In 2019, Dechert also advised Qoo10's logistics subsidiary, Qxpress, in

fundraising and in the acquisition of Indian mobile payments app Momoe.

"Singapore is a crucial hub for cross-border deals of this sort," says Eric Deltour, co-head of Dechert Asia. "This has been another strong year for all of Dechert's practices in Asia, and many of our clients are looking forward very enthusiastically to 2020."



This deal will harness the full power of cross-border e-commerce

and bring together for our client some of the world's biggest and fastest-growing markets."

**Siew Kam Boon** Partner



The significant level of transactional activity in the technology space in South and Southeast Asia has been one of the few highlights over the past year in an investment environment that has been severely impacted by macroeconomic factors such as the China-U.S. trade war. This transaction is evidence that despite the global slowdown, there is still steady growth in some sectors and geographies, creating interesting opportunities for our clients."

**Dean Collins** Partner

# Dublin office expands to stay ahead of ETF boom

Funds are choosing to locate in Ireland more than ever. In 2019 assets in Irish-domiciled funds reached an all-time high of more than €2.5 trillion, with a major rise in exchange-traded funds (ETFs) – for which Ireland is the largest base outside the United States.



Photo courtesy of IPUT Real Estate Dublin.

Since joining Dechert in January 2019, new Dublin office managing partner Carol Widger has recruited a number of new associates as well as partner Ciara O’Leary, who specializes in exchange-traded funds (ETFs), European retail regulated funds (UCITS) and alternative investment funds (AIFs). These Dublin hires augment Dechert’s global funds team, which straddles Ireland, the UK, Luxembourg, France and Germany, as well as the U.S. and Asia. Expansion

ensures that asset managers can access best-in-class global, and not just Irish, legal advice.

The Dublin office is well placed to accommodate the continued uptick in Brexit-related work since the UK referendum in 2016. “We have helped to set up management companies in Dublin for our global clients,” says Widger. “Now that those clients have a physical presence here with boots on the ground they are starting to utilize

their Irish operations far more than originally anticipated.” The team also regularly works with global colleagues to assist businesses re-domiciling assets from other jurisdictions to Dublin, as well as keeping clients up-to-date with the rapidly evolving regulatory landscape in Ireland, where the Central Bank of Ireland is a particularly proactive regulator.

“Since Widger joined we’ve seen a lot of energy around our Dublin team,” says Christopher Christian, a U.S.-based financial services partner with strong links to Dechert’s Ireland practice. “We have seen a dynamic year of growth and change in our Dublin office, which acts as a key driver within Dechert’s global funds practice.”



Dechert was the first U.S. law firm to have a presence in Dublin, and 2019 has seen a substantial re-positioning, with more hires in the pipeline.”

**Carol Widger** Partner



Part of the attraction of joining right now is the ambition of the firm.

Our expanding team shows that Dechert is serious about growth and has a long-term strategy to achieve it.”

**Ciara O’Leary** Partner

# Refinitiv: Creating a market data and analytics giant

One of 2019's landmark corporate deals was the London Stock Exchange's announcement that it intends to acquire Refinitiv for US\$27 billion, bringing together the LSE's global information services and Refinitiv's market data, analytics and execution business.

This combination will create the world's largest listed financial infrastructure provider in a deal that the *Financial Times* stated would turn the LSE into "a global markets and information powerhouse to rival Michael Bloomberg's financial data empire."

Dechert is advising Singapore's sovereign wealth fund GIC as part of the selling consortium (which also includes Blackstone and the Canada Pension Plan Investment Board), as well as Thomson Reuters, which together own Refinitiv. The terms of the deal will see Refinitiv's backers retain approximately a 37 percent economic interest (but less than a 30 percent voting interest) in the combined company.

Central to Dechert's ability to advise GIC are the firm's capabilities in New York and London. Bringing together a cross-practice team of private equity, corporate, antitrust, trade/foreign investment, regulatory and tax lawyers also ensured that Dechert was able to provide a comprehensive advisory service, as well as geographical coverage. Financial services is a growing area with huge potential for deal activity in the coming years, and as a highly regulated sector it requires dedicated transactional and regulatory specialists who understand the industry and its complexities. Dechert is one of very few firms that can offer clients a deep bench of experience in this area across multiple offices.



Dechert also played a key role in GIC's original acquisition of its stake in Refinitiv (then branded as Thomson Reuters' Financial & Risk business), which took place less than a year before this disposal was announced. "Usually the hold will be three to five years," says Mark Thierfelder, Dechert's global chair of private equity, "so this was an unusually quick turnaround. It promises to be a very successful sequence of deals for GIC."



Combining our UK public company expertise with our global private equity capability was key to this transaction."

**Christopher Field** Partner



In addition to the opportunity to showcase our team's abilities across multiple jurisdictions and practice areas, the sheer scale and complexity of this deal made it the sort of challenge that private equity lawyers love."

**Jonathan Kim** Partner

# Protecting creditors against abusive restructurings

While most debtors do not deliberately attempt to evade their commitments, an increasingly globalized world offers opportunities for indebted businesses to seek to use different legal systems to do so. This year, Dechert has helped two major creditors fight back against such abusive restructurings in multiple proceedings in the United States, Europe and Asia.



In a landmark UK case between a creditor and the International Bank of Azerbaijan (IBA), London partner Adam Silver's team succeeded in upholding a fundamental principle of English law that protects creditors against foreign debt proceedings. Franklin Templeton Investment Management, which held many of IBA's US\$500 million Eurobonds, declined to participate in a US\$3 billion Azeri restructuring process. When IBA applied to the English court for a permanent moratorium, which would deny creditors the right to bring proceedings against IBA over debts governed by English law, Franklin Templeton instructed Dechert to oppose the application.

Silver's team devised a strategy resting on the 19th-century case of *Gibbs*, which ruled that a debt may only be discharged according to its own governing law. In June 2019, the UK's Supreme Court confirmed that it would not interfere with the Court of Appeal's decision that the rule in *Gibbs* applied in this case. IBA had exhausted its legal rights, and Franklin Templeton had the all-clear to recover US\$170 million on the IBA bonds.

At the same time, a transatlantic Dechert team of Gary Mennitt, Adam Silver and Allan Brilliant continues to advise two major global funds in a complex dispute with nine defendants

that addresses similar issues relating to abusive restructurings, involving a New York jury trial and an ongoing restructuring dispute with proceedings in New York and Singapore.

Adam Silver's team named "Insolvency and Restructuring Litigation Team of the Year" – *Legal Week*, Commercial Litigation & Arbitration Awards, 2019

# People and culture

Dechert is unwavering in its commitment to creating an environment where our people are empowered to perform at their best. We are a firm that cultivates creativity to harness the best ideas in client service, and we aim to create a shared enjoyment in all that we do.

- Culture is central to the way we work, the way we interact with one another and with our clients, and how we manage matters.
- We take great pride in delivering excellence in service. According to the Great Place to Work survey, 96 percent of our employees say our customers would rate the services we deliver as “excellent.”
- We are committed to enabling our lawyers to perform to their full potential, as evidenced by our market-leading Critical Skills Institute and implementation of our global training curriculum.
- The Critical Skills Institute is our in-house ‘university’ of training programs, offering customized learning on four skills which our extensive research has identified as critical success factors in lawyering – leadership, management, communications and client relations.
- An in-house performance coach is available to work with our lawyers individually, on topics ranging from integration to skills advancement.
- We have also made a concentrated investment into leadership training and optimal management of our client teams. An emphasis on inclusivity and the recognition of unconscious bias by firm leadership comes from the very top of our organization. We have launched intensive, ongoing Partner Inclusive Leadership Training with interactive sessions held every eight weeks since our Partners Retreat in 2018.
- Dialogue and self-reflection have become a regular part of the partner conversations and bring the concepts of diversity and inclusion to life through raising awareness of unconscious biases in the workplace, giving participants a firm grasp of the competencies of an inclusive leader and providing strategies and practical tools for how to lead more inclusively.
- Our Sponsorship and Sustained Support (or SASS) program further reflects our commitment to diversity and the career advancement of our female lawyers. SASS aims to do away with the glass ceiling women might encounter and brings a more diverse mix of individuals to firm leadership, by providing support in advance of the partnership consideration process. In the five years prior to its implementation, 18 percent of lawyers promoted to partner were women. In the five years since its implementation, 31 percent were women.

“



One main pillar of our global strategic plan is culture. We are relentlessly focused on what defines our culture and differentiates us from other firms. When people feel they are part of a dynamic community where their voices are heard and their contributions are valued, they will deliver exceptional client service.”

**Alison Bernard** Chief Talent and Human Resources Officer

# New lateral partners



**Andrew Boutros**  
White Collar, Chicago/Washington, D.C.



**Michelle Bradfield**  
International Arbitration, London



**Philip Dowsett**  
Corporate and Securities, Dubai



**Simon Fawell**  
Litigation, London



**Lindsay Flora**  
Corporate and Securities, New York



**Shari Ross Lahlou**  
Antitrust, Washington, D.C.



**John McGrath**  
Finance and Real Estate, London



**Robin Nunn**  
Litigation, Washington, D.C.



**Ciara O'Leary**  
Financial Services, Dublin



**Aparna Sehgal**  
Finance and Real Estate, London



**Maria Sit**  
White Collar, Hong Kong



**Marianna Tothova**  
Financial Services, London/Luxembourg



**Sozi Tulante**  
White Collar, Philadelphia



**Thiha Tun**  
Financial Services, London



**Carol Widger**  
Financial Services, Dublin

# New to the partnership

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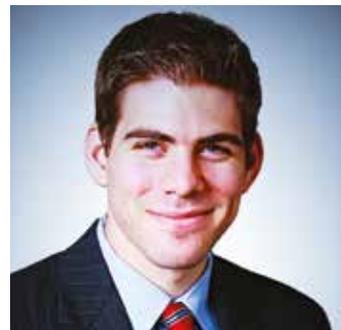
**Craig Borthwick**  
Financial Services, London



**Greg Chuebon**  
Intellectual Property, New York



**Mara Cusker Gonzalez**  
Litigation, New York



**Jonathan Gaines**  
Financial Services, New York



**Smridhi Gulati**  
Corporate and Securities, London



**Edward Newlands**  
Corporate and Securities, New York



**Rachel Passaretti-Wu**  
Litigation, New York



**Nisha Patel**  
Intellectual Property, Silicon Valley



**Kenneth Rasamny**  
Financial Services, Orange County



**Sara Roitman**  
Litigation, Chicago



**Laura Rossi**  
Financial Services, Luxembourg

*Sarah Smith also joined as a lateral partner in London's Finance and Real Estate group in 2019.*

# Promoting diversity and inclusion



To best address our clients' most complex problems, we need a diverse group of people with different viewpoints." **Abbi Cohen** *Partner and Deputy Chair of Diversity and Inclusion*

## Mansfield Rule

Dechert achieved Mansfield Rule 2.0 Plus Certification for 2019, as a result of the firm's strong commitment to moving the needle on diversity and inclusion. This certification recognizes law firms that have increased the representation of historically underrepresented lawyers in law firm leadership by broadening the pool of women, lawyers of color and LGBTQ lawyers who are considered for significant governance roles, senior lateral openings and promotions. In addition, Dechert achieved Mansfield "Plus" status, which means that the firm reached 30 percent diverse lawyer representation in a notable number of current leadership roles and committees

## Diversity Champions Award

With 26 offices around the globe, our diverse, multinational identity is a core component of who we are. Recognizing the individuals who serve as role models for the inclusive, open culture we value, Dechert offers the Diversity

Champions Award. In the program's first year, our people nominated more than 100 of their peers, ranging from partners to business service professionals. Five Diversity Champions were recognized by firm leadership at our annual all-hands event, with honorees each awarded a bonus.



Respecting and valuing everyone's voice is fundamental in our organization and in building a firm where people are trusted and empowered."

**Satra Sampson-Arokium**  
*Director of Diversity and Inclusion*



Carol Widger, Karen Coppens, Satra Sampson-Arokium and Clare Barnard at the Chambers Diversity & Inclusion Awards: Europe 2019

Most Outstanding Firm for Diversity and Inclusion – *Chambers Europe*

Perfect score in the corporate equity index (CEI) and named one of the best places to work for LGBTQ equality – *Human Rights Campaign*

Diversity Leader Award – *Profiles in Diversity Journal*

Top Companies for Executive Women – *National Association for Female Executives*

100 Best Companies – *Working Mother*

Best Law Firms for Women – *Working Mother*

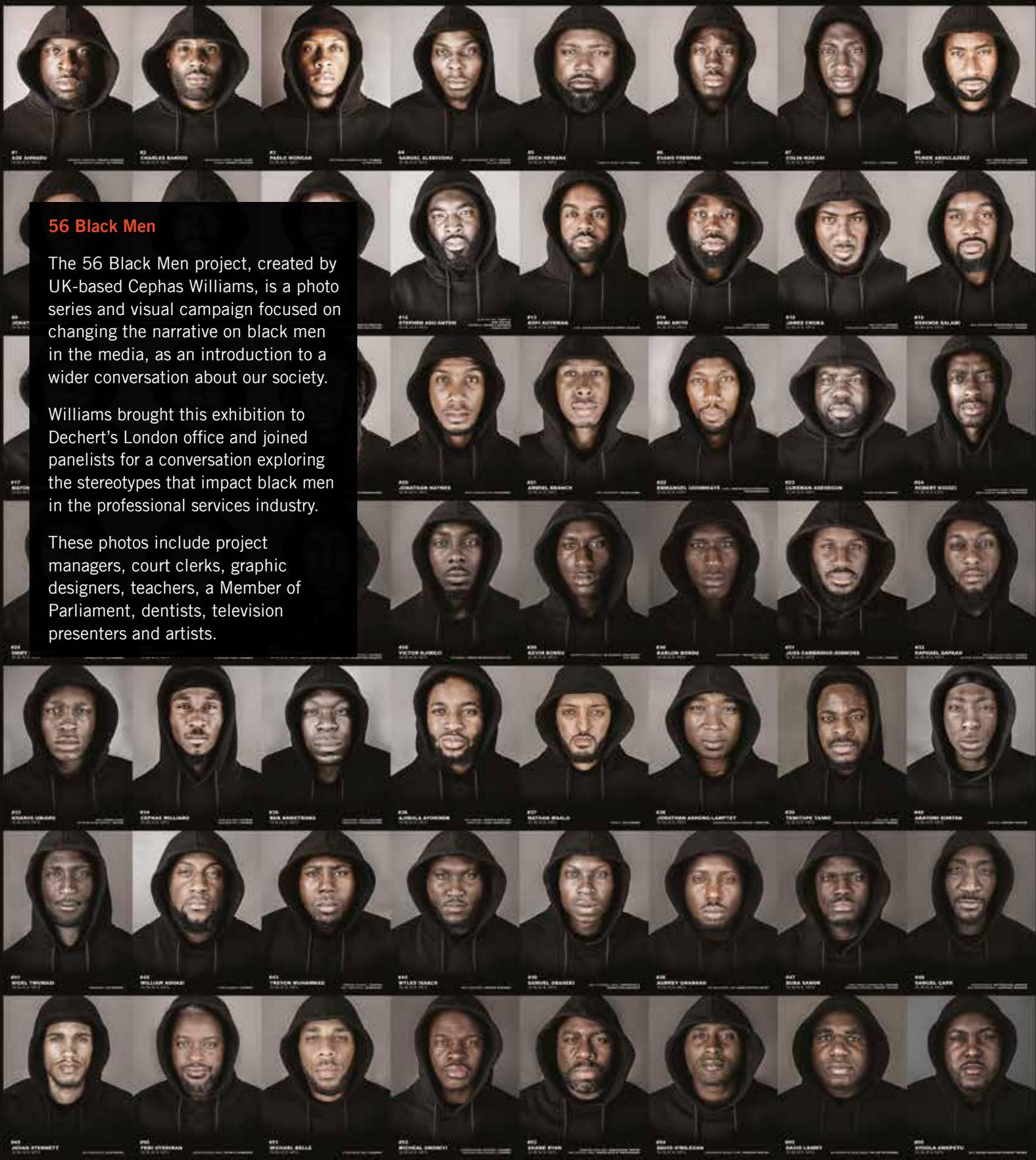
Top 10 Firms for Family Friendliness – *Yale Law Women*

43% of Policy Committee (senior leadership team) are women, LGBTQ or diverse partners.

42% of partner promotions over the last two years are women, LGBTQ or diverse partners.

40% of lateral partner hires over the last two years and 70+% of 2019 lateral partner hires are women.

36% of offices are managed by women, LGBTQ or diverse partners.



## 56 Black Men

The 56 Black Men project, created by UK-based Cephas Williams, is a photo series and visual campaign focused on changing the narrative on black men in the media, as an introduction to a wider conversation about our society.

Williams brought this exhibition to Dechert's London office and joined panelists for a conversation exploring the stereotypes that impact black men in the professional services industry.

These photos include project managers, court clerks, graphic designers, teachers, a Member of Parliament, dentists, television presenters and artists.

**56 BLACK MEN**  
**I AM NOT MY STEREOTYPE**

**#56BLACKMEN**  
**FOUNDER | CEPHAS WILLIAMS**

# A bold move saves Knight Assets

When London-based investment advisory firm Knight Assets & Co was joined to so-called ‘short and distort’ defamation proceedings in the New York Supreme Court, it needed U.S.-qualified defense counsel. But it didn’t need to instruct lawyers in the United States. The firm instead turned to the experienced team of American litigators who reside in Dechert’s London office.



Matt Mazur and Roger Burlingame

The action was brought by Eros International Plc, an Indian entertainment company, against Knight Assets and other defendants over statements posted on Twitter and the online investing website “Seeking Alpha” about its financial performance and management. Eros alleged that these “false and defamatory statements” were not merely expressions of opinion but had an ulterior motive: that Knight Assets had allegedly conspired with the other defendants to enrich itself by artificially depressing Eros’ stock price. Knight Assets denied ever taking a short position or conspiring with the other defendants for financial gain.

Former U.S. federal prosecutor Roger Burlingame led the case for Knight Assets, and its founder and chief investment officer Akshay Naheta, and partner Matt Mazur argued the motion to dismiss the complaint. In March

2019 their team, which also included New York-based associates, secured a complete dismissal of all claims.

Dechert moved to dismiss the case for, among other reasons, failure to state a claim. In his decision to dismiss all claims, Justice Joel M. Cohen accepted the arguments put forward by Dechert that the challenged tweets and other statements were protected opinions under the U.S. Constitution’s First Amendment. The allegedly defamatory statements on which Eros relied fully disclosed the underlying facts on which they were based, included conjectural language such as “I believe,” and were posted on online forums generally used to share opinion: all factors that supported the defendants’ case. The court also found that Eros had failed to show that the statements in question were actually false, only that the company disagreed with the points of view put forward.

Ranked in top tiers for: *Chambers UK*, Financial Crime: Corporates; *The Legal 500 USA*, Corporate investigations and white-collar criminal defense: individuals; *The Legal 500 UK*, Fraud: white-collar crime; *The Legal 500 UK*, Regulatory investigations and corporate crime.



This case highlights the unique selling points of our U.S.-facing, UK-based cross-border practice. We had a client in London working with his UK-based team of experienced U.S. litigators to achieve an exemplary result in a New York court.”

**Matt Mazur** Partner

# Billion-dollar bond issue

In 2019, a team led by Patrick Lyons completed the first Sharjah issuance eligible for inclusion in JP Morgan's emerging market bond indices (EMBI), the most widely used emerging market sovereign debt benchmark. At US\$1 billion, the issuance was twice as large as anticipated – and more popular – with investors placing orders totaling almost US\$4 billion.



*Financial Times* – European Innovative Lawyers Awards, 2019. An international capital markets team (led by Patrick Lyons) won the “Accessing New Markets and Capital” category with a “Standout” ranking for its work on Sindicatum Renewables’ multi-tranche green bond denominated in Indian rupees and Philippine pesos

JP Morgan first announced that it would expand membership of its EMBI to include sovereign (and quasi-sovereign) debt issuers from the United Arab Emirates and four other Gulf states in September 2018: an opportunity to attract billions of dollars in investment and reduce borrowing costs. Critically, this offer was extended to sukuk – an Islamic financial product similar to a bond – issued with the benefit of a credit rating from one of the three major ratings agencies.

In November 2018, Moody's reaffirmed its long-term rating of A3 for Sharjah

(one of the United Arab Emirates) as a foreign and local-currency issuer, and by April 2019 the first Sharjah issuance in JP Morgan's EMBI was completed, with Dechert advising the managers and dealer managers. The deal involved the issuance of US\$1 billion trust certificates by Sharjah Sukuk Programme Ltd, an SPV incorporated in the Cayman Islands by the government of the Emirate of Sharjah, as well the simultaneous completion of a tender and switch offer of over US\$500 million trust certificates due in 2021, issued by Sharjah Sukuk 2 Ltd.

This bond was innovative in incorporating a liability management exercise carried out to take advantage of the lower profit rate available through a new issuance. Holders of five-year certificates maturing in 2021 were, in exchange, offered new seven-year certificates maturing in 2026. This was effected through a tender and switch offer – still novel and a first for several of the parties.



As well as reaching the US\$1 billion mark, the strong demand generated by the issuance meant the trust certificates' profit rate was set at just 3.854 percent, substantially lower than the 4.226 percent rate offered by the 10-year Sharjah sukuk issued in March 2018: a boon for the issuing government of the Emirate of Sharjah.”

**Patrick Lyons** Partner

# Enhancing client service through transformative technology

In 2019, Dechert's technology team launched a number of transformative projects that aim to enhance client service and save both time and resources for Dechert and its clients.

"Being 'future-ready' means not only using tech to maintain the class of service that clients expect," says Michael Barrett, head of Dechert's technology team, "but actively innovating to anticipate future change."

An intelligent innovation strategy is one that challenges the status quo and is not afraid to experiment to find the best methods of delivering service to clients. In practice this has led to projects which embed software tools into common working processes, with sometimes startling results. One project has cut associate time for data analysis on a major client matter from around six weeks to half a day, freeing practitioners up for the more complex aspects of client work. In another project, Dechert is preparing an automation tool that can quickly review tens of thousands of documents to assist our clients in converting any LIBOR-related agreements efficiently and effectively.

The tech team works collaboratively with thought leader lawyers from each practice group to evaluate the tech that would best address core client

needs. Products created from scratch to aid interaction with clients include a country comparison tool, which allows users to view a specific answer from multiple countries, and specialist Brexit risk analysis software. Clients have been positive about the launch of various online portals, such as the Private Client Group extranet site, which simplify business communications.

Looking ahead to prepare Dechert's next generation of partners, tech tools have also been incorporated into junior associate programs to share the knowledge and experience of each individual through online programs and video training, so that clients benefit from the very best thinking in the firm.



We are always thinking of new ways to benefit the client and enhance their experience across the full portfolio of practice groups."

**Michael Barrett**  
Chief Information Officer



There is enormous untapped potential to harness tech tools and deliver real efficiencies to clients."

**Gus Black** Global Co-Chair of Dechert's  
Financial Services Group



# Jury trial win vindicates Quest Diagnostics in trade secrets case

When clinical laboratory Quest Diagnostics was sued by hospital-to-the-stars Cedars-Sinai Medical Center in Los Angeles for alleged patent infringement, misappropriation of trade secrets and breach of a confidentiality agreement, the company faced all the risks and stresses of an unpredictable jury trial. Cedars-Sinai claimed a US\$1 billion lost opportunity.



The story goes back to 2015, when Quest was in negotiations with Cedars-Sinai over commercializing a non-invasive blood test designed by one of Cedars-Sinai's physicians to diagnose irritable bowel syndrome. When the parties failed to reach agreement, Quest pulled out and subsequently developed its own test. Cedars-Sinai sued, claiming that Quest had improperly used Cedars-Sinai's discoveries, obtained trade secrets

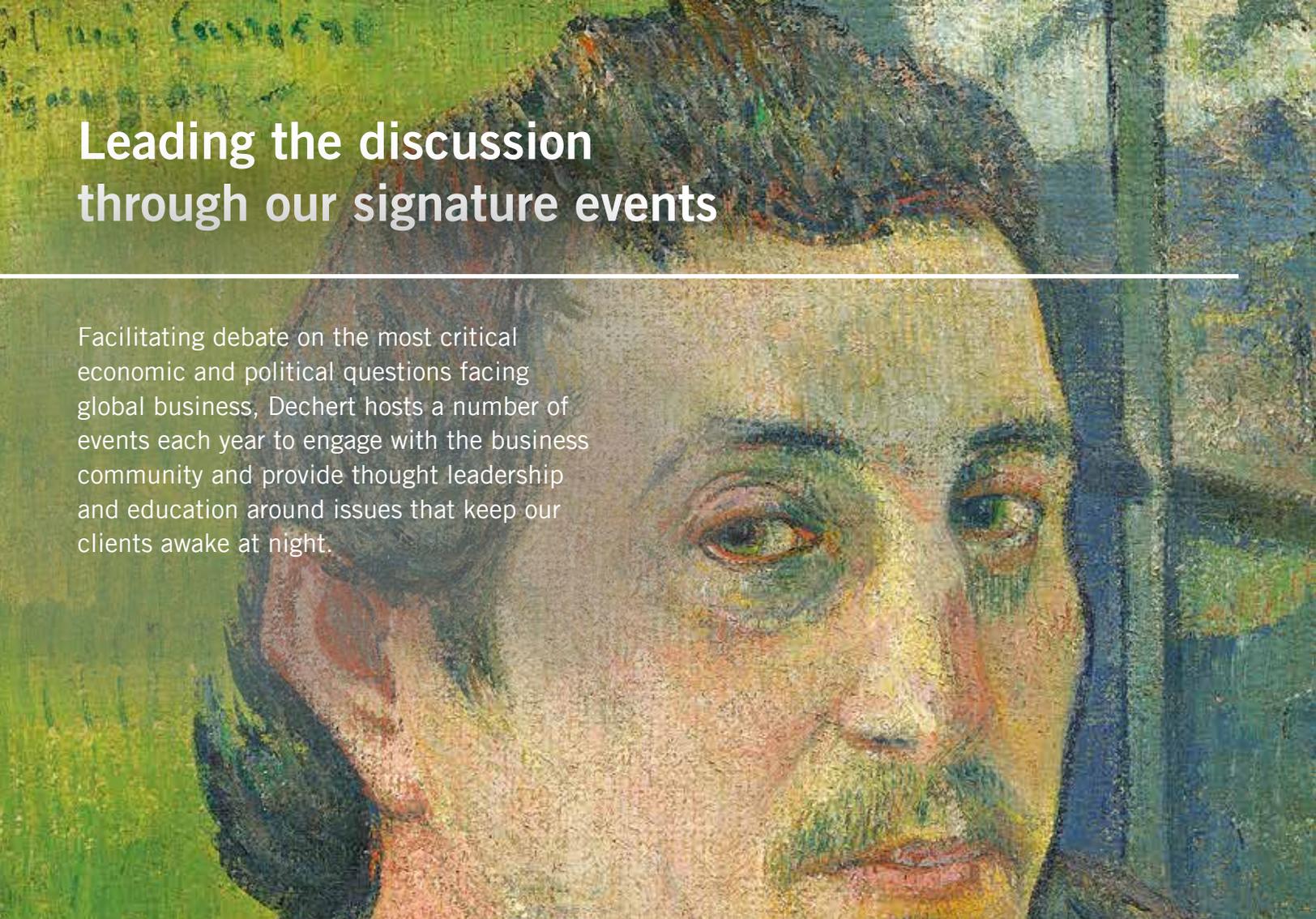
during licensing negotiations then terminated the discussions and used Cedars-Sinai's information to develop its own test.

Intellectual property partner Jonathan Loeb (Silicon Valley) and litigation partner Christopher Ruhland (Los Angeles) led Quest's defense strategy. Before the trial Dechert obtained summary judgment invalidating Cedars-Sinai's patent claims. The

trade secrets and contract claims went to a two-week jury trial, in which Dechert contended that Quest had developed the test using only public information and that therefore it did not misappropriate any trade secrets and had fully complied with the confidentiality agreement. The jury's verdict in September 2019 fully vindicated Quest on all of Cedars-Sinai's claims.



Jury trials are unpredictable, and in this case the stakes were extremely high. But we had the utmost confidence in our client and our team, and together we devised and executed an effective strategy.” **Jonathan Loeb Partner**



# Leading the discussion through our signature events

Facilitating debate on the most critical economic and political questions facing global business, Dechert hosts a number of events each year to engage with the business community and provide thought leadership and education around issues that keep our clients awake at night.

Our annual **Investment Management Symposia**, held in Los Angeles and San Francisco, brought together Dechert partners and leaders from the investment management and fintech industries to examine the evolving legal and regulatory environment across multiple panel discussions.

In London, 1,400+ people attended **Funds Congress**, the flagship global funds industry thought leadership and networking event, covering all asset classes and fund jurisdictions. Attended by CEOs, CIOs, key regulators and industry experts, Funds Congress focuses on key themes that will define the year ahead and is the ideal forum in which to discuss the effect of market developments on businesses. Our private funds group also holds an **autumn legal retreat** at

Cambridge University, covering trends and best practices relating to fund structuring and operations.

The **Dechert Distressed Investing Forum** is a multi-panel program featuring discussions on opportunities for distressed investors in the U.S., Europe and emerging markets. It focuses on the areas that have the potential to create the most value for clients, which this year included participants from the firm's restructuring, product liability and intellectual property groups. Each session included lively exchanges of points of view and discussions of the most important questions facing clients.

Offering insights into private credit and alternative asset diversification, Dechert's **Permanent & Private**

**Capital Summit** brought together fund sponsors, asset managers, credit investors and direct lenders for discussions on the shifting economic, financial and regulatory environment and its impact on the formation, financing and investment of permanent and private capital. The firm also hosts an annual **Private Equity Reception** which this year celebrated Dechert's position at the forefront of the private equity industry for more than 35 years.

In December, Dechert hosted its global finance drinks reception at London's National Gallery with an exclusive viewing of the Gauguin Portraits exhibition.

# Spotlight on permanent capital

Permanent capital developed in response to retail demand for access to 'alternative' assets, and in particular to high-yielding loans. This demand complemented a corresponding rise in non-bank direct lending resulting from a decline in conventional bank lending to small and mid-market companies.

Since the financial crisis, alternative asset managers, including many private equity firms, have launched permanent capital funds to diversify their product lines and institutionalize their firms. Traditional fund managers have now added permanent capital funds featuring investments in alternative assets to expand and diversify their offering of financial products.

These factors have increased demand for legal advice regarding fund formation, direct lending, capital markets, leveraged finance and related regulatory work – fields that form the backbone of Dechert's permanent capital practice.

Over the past decade, Dechert has emerged as an acknowledged industry leader, combining the cross-disciplinary experience of our fund management,

capital markets, leveraged finance, private equity and tax teams. Dechert now acts for 41 of the top 50 global private debt firms in some capacity, as identified by *Private Debt Investor*. Since Dechert hosted its first Permanent & Private Capital Summit in 2015, the team has grown substantially, with the firm navigating an ever-growing number of managers through every conceivable type of transaction. Now in its fifth year, Dechert's Permanent & Private Capital Summit has become a fixture in the diary for all the industry's major players.

“Five years ago, our first summit event attracted a little more than 100 people. The fact that we've almost quadrupled the number of attendees since 2015 is a great example of how rapidly interest in this market – and Dechert's position within it – have grown in a very short time.”  
**Thomas Friedmann Partner and Permanent Capital Co-Chair**

This year's summit highlighted some of the market's key emerging trends, including a continued preference for new 'private BDCs' over blind pool, listed-from-inception BDCs and continuously offered BDCs marketed by broker-dealers, as well as the rise of fund consolidation transactions as a means by which to enter the permanent capital market and expand within it.

“In recent months there has been a sharp increase in closed-end interval funds that offer retail investors exposure to various credit strategies, as well as closed-end funds of private equity funds. We have also noted a continued partnering of advisers and subadvisers with different skill sets.”

**Richard Horowitz Partner and Permanent Capital Co-Chair**

## 2019 Key Dechert Sponsorships

Alternative Investment Management Association

ALFI Global Distribution Conference

Association of Corporate Counsel

Concurrences (Global Merger Conference)

CRE Finance Council

FranceBiotech (HealthTech Investors Day)

ICC Miami Conference on International Arbitration

Information Management Network

Investment Company Institute

Irish Funds

MFA

Markets Group's PE conferences

National Association of Corporate Directors

Private Debt Investor

Structured Finance Association

Structured Finance Industry Group

# Vertical mergers continue to rise

**Dechert's Antitrust Merger and Investigation Timer Tracker (DAMITT)** is the leading source of data for significant U.S. and EU antitrust merger investigation and litigation trends. DAMITT's recent analysis shows that significant investigations into mergers with vertical elements are both rising in frequency and taking longer to complete.

Mike Cowie named to the *FT's* Top 10 Most Innovative Individuals list, 2019

CVS/Aetna named "Deal of the Year", *The Deal Awards*, 2019

Dechert antitrust lawyers worked on five of the last 11 significant U.S. vertical mergers, with two significant and complex examples completing in 2019.

Antitrust co-head Michael Weiner successfully obtained clearance for Fresenius, a healthcare company that is a leading operator of dialysis and the largest player in the distribution and sale of in-clinic dialysis machines, in its US\$2 billion acquisition of NxStage, the leading supplier of home dialysis machines. This matter raised both vertical and horizontal issues, as well as potential competition questions. After a Second Request investigation, Dechert obtained clearance for the merger after a 3-2 FTC vote, subject only to the sale of NxStage's plastic bloodline tubing business – a very minor divestiture.

Washington, D.C.-based partners Mike Cowie and Rani Habash steered CVS Health through a series of merger

reviews and court proceedings to obtain approvals for its acquisition of health insurer Aetna in the largest healthcare merger in history. In 2018, the U.S. Justice Department (DOJ) and five state AGs announced a settlement that allowed the US\$70 billion combination to proceed. The agreement followed one of the broadest-ever merger investigations by the DOJ, 19 state AGs, 38 state insurance departments and Congress.

What happened next surprised the legal, M&A and business communities. Subsequent to the merger's close, powerful opposition groups participated in an landmark legal challenge via the Tunney Act, which allows for judicial review to determine if a consent agreement is in the 'public interest.' Dechert's antitrust team represented CVS in this unprecedented antitrust merger trial.

In September 2019, the court issued an opinion clearing the transaction and finding the marketplace to be intensely competitive.



Leading publications rely on DAMITT data when writing about the antitrust merger review process, including *The Wall Street Journal*, the *Financial Times*, *The Street*, *The Street TV*, *Handelsblatt*, *Time*, *Fortune*, *Law360*, *FTC Watch*, *PaRR*, *Global Competition Review*, *American Lawyer*, and Dechert's very own *Crunched Credit*, as have other law firms.

# Modernizing directors' duties

Fund board directors' duties in the U.S. are set out in the Investment Company Act of 1940. Over the years, SEC regulations placed additional compliance burdens on directors, detracting from their ability to focus on issues important to fund shareholders and inhibiting funds from operating efficiently in a 21st century business environment.



Seeking to modernize and streamline directors' duties, the Independent Directors Council (IDC) instructed Dechert partners Douglas Dick, Corey Rose and Brendan Fox to liaise with the SEC's Division of Investment Management. The team was successful in two requests for no-action relief from the SEC: confirmation that frees up funds' boards to focus on the areas that most require their oversight and benefit shareholders.

In February 2019, the SEC issued a no-action letter allowing a registered fund's board of directors to meet by

telephone, video conference or other means in certain circumstances where the board would otherwise be required by the Act to meet in person. The exemption applies where directors are unable to meet in person because of unforeseen or emergency situations, or where they have previously met in person, but did not take a vote.

The Act had always been interpreted as requiring a registered fund's board to be physically present when approving certain items, including a fund's investment advisory contract and principal underwriting contract, as well as the board's annual approval

of the selection of an independent public accountant for a fund and the fund's '12b-1' Distribution Plan.

The successful request followed another representation by Dechert on behalf of the IDC querying whether a fund's board could rely on written representations from the fund's CCO (rather than quarterly determinations by the board) to state that a fund's transactions made in accordance with certain exemptive rules were fully compliant. The SEC confirmed this was permissible in a no-action letter: a welcome reduction of the burden imposed on funds and their boards.



The SEC's no-action letters are welcome in recognizing the need for modernizing fund directors' responsibilities. Today's boards have access to technology unimaginable in 1940. The letters permit a re-calibration of board duties, so directors can dedicate time and attention to where it is most needed." **Douglas Dick** Partner

# Service to the public

Dechert has a longstanding tradition of providing legal services to individuals and organizations who cannot otherwise afford legal counsel.

**5%** Dechert's pro bono hours are equivalent to more than five percent of our billable hours annually. All lawyers are required to perform at least 25 hours of pro bono work per year.

Winner, "Best International Pro Bono Award" and joint winner, "Best New Pro Bono Activity" – LawWorks Pro Bono Awards, 2019

Our lawyers handle hundreds of matters covering a wide range of issues, including civil and international human rights, child advocacy, special education, access to public benefits, asylum claims, landlord-tenant matters, and the representation of numerous nonprofit organizations.

Dechert's efforts continue to be recognized by numerous publications and institutions. *The American Lawyer* has named Dechert as one of the **top two** firms for international pro bono work for the last four years.

Dechert was inducted into the Community Legal Services of Philadelphia (CLS) **Hall of Fame** in May 2019, in honor of the firm's commitment to providing exceptional pro bono services to low-income individuals alongside CLS for several decades.

The ABA Business Law Section honored Eric Brunstad with a **National Public Service Award** in recognition of his extraordinary commitment to pro bono service. Mr. Brunstad represented many parties in bankruptcy-related cases that would otherwise likely never have seen their 'day in court.'

Ethan Fogel received the 2019 **Citizens Bank Achievement Award** from the Philadelphia Bar Association. Fogel was honored for his years of dedicated pro bono service to the Philadelphia community and, in particular, his efforts to ensure a right to counsel for tenants facing eviction.

The *Financial Times*' 2019 **European Innovative Lawyers Awards** commended a team of Moscow-based lawyers, including Maryana Batalova and Pavel Dunaev, in the "Access to Justice" category for fighting on a pro bono basis to win systemic reform on mental health in Russia.



We pride ourselves on approaching pro bono activities with the same energy, enthusiasm and resources as work for our commercial clients. At any given time, we've got more than 1,500 pro bono matters at the firm. I'm lucky enough to have a front-row seat and see how people step up – both as individuals and as teams, with support from other lawyers as well as our professional and administrative team. It can be a profound experience and I'm grateful to be a part of a community like Dechert where giving back is so central to who we are."

**Suzanne Turner** Pro Bono Partner



Willie Veasy (center) leaving Philadelphia's Center for Criminal Justice as a free man after spending 27 years in prison for a crime he didn't commit, with Dechert's James Figorski (left) and Marissa Bluestine (right) of the Pennsylvania Innocence Project. Photo courtesy of Heather Khalifa/The Philadelphia Inquirer via AP.

### Innocent man freed

Working with the Pennsylvania Innocence Project, James Figorski and Christine Levin secured the release of Willie Veasy. Veasy was first convicted of second degree murder in 1993, in connection with a 1992 shooting of two men in Philadelphia in which one man died. The conviction was based on an alleged confession, which Veasy immediately recanted and claimed had been fabricated. He was sentenced to life in prison without the possibility of parole. Ultimately evidence emerged that his case may have been part of a pattern of coerced false confessions and witness statements. Following an exhaustive review, the Conviction Integrity Unit at the Philadelphia District Attorney's Office recommended that the court vacate Veasy's conviction. The District Attorney's Office declined to re-try the case, and Willie Veasy has been freed.

### Standing up against arbitrary detention

A team led by Paul Kavanagh and Marie Fillon helped secure the release of Mohammed Ould Mkhaitir, a Mauritanian accountant originally sentenced to death for apostasy following a 2013 Facebook post. In partnership with Washington, D.C.-based nonprofit organization Freedom Now, Dechert filed a petition with

the U.N. Working Group on Arbitrary Detention, which the Working Group granted in 2017, finding that our client's detention violated international law, including denying his rights to a fair trial and freedom of expression, and calling for his immediate release. The Mauritanian Court of Appeals overturned Mkhaitir's death sentence, reducing it to two years and a small fine, but the government continued to detain him. Dechert continued to advocate with government officials and Mkhaitir was finally released in July 2019 and was taken to a destination outside Mauritania where now he lives safely.

### Legal aid for immigration detainees

In London, Dechert has worked with Bail for Immigration Detainees (BID) since January 2019, helping to obtain legal aid funding for individuals caught up in immigration proceedings. In their first such case, Dorothy Cory-Wright, Rachael Walsh and Tobias McKinnon secured exceptional funding and access to legal counsel, enabling a fair immigration appeal hearing for a Polish national living with his family in the UK since 2006. Following a conviction for assault he was imprisoned and subsequently deported to Poland in May 2019, before his appeal hearing. He was forced to live on the streets and

often could not afford phone calls to the Dechert team. Despite the precarious circumstances of the case, the application for exceptional funding was successful. Dechert continues to assist the client's immigration solicitor, and the team involved is offering support to colleagues taking on further BID cases.

### Supporting classrooms across America

Dechert has a longstanding partnership with DonorsChoose.org, a U.S.-based nonprofit that connects teachers and classrooms who need support with donors. Dechert has been providing pro bono advice since 2012, enabling DonorsChoose.org to launch new initiatives and reach more classrooms. In 2019, Dechert assisted with data collection and disclosure considerations in service of the #ISeeMe initiative, aiming to support classroom diversity, in part by supporting underrepresented teachers such as teachers of color and women teaching STEM. In August, as a special 'thank you' for all of Dechert's efforts, DonorsChoose.org sent US\$150,000-worth of gift cards for partners, associates and business service professionals to use to support the charity's work.

# Defending Endo in ‘reverse payments’ litigation

Dechert is currently defending Endo Pharmaceuticals in a series of putative class and individual private actions filed by indirect and direct purchasers of its pain relief drug OPANA ER – and generic equivalents – that raise crucial legal questions.

Dechert named to *Global Competition Review's Global Elite*, 2019

Philadelphia-based antitrust partner George Gordon has drawn together 12 patent and IP specialists from multiple offices – Washington, New York, Philadelphia and Chicago – to work on the actions, which are notable for their complexity and the novel legal points raised. The complainants allege that Endo made ‘reverse payments’ when settling an infringement action against Impax Laboratories in 2010. ‘Reverse payments’ is the term used when the instigator of a patent suit has paid the alleged infringer to end litigation and stop challenging the validity of the disputed patent.

This is an area of critical debate in patent law – whether ‘reverse payments’ are anti-competitive. Some argue that such arrangements, while legal, frustrate the purpose of the Hatch-Waxman Act, introduced in 1984 to boost competition and encourage the entry of generic medications. In 2013 the U.S. Supreme Court set out the

first antitrust evaluation framework concerning ‘reverse payments’ in *FTC v Actavis*.

Endo is also accused of ‘product hopping’ by launching a new, reformulated version of OPANA ER prior to generic entry. The team previously secured a favorable settlement for Endo with the Federal Trade Commissioners in a companion case *FTC v Impax*. That case is now on appeal to the Fifth Circuit, after the Supreme Court upheld the decision of the administrative court judge in finding that, in applying *FTC v Actavis*, antitrust concerns were raised.

Robert D. Rhoad, an IP partner based in Princeton, and Washington, D.C. antitrust partner Craig Falls have also helped to guide Endo’s response to the private litigation. The actions are currently at the expert discovery stage, with pending motions for class classification.



To obtain the best result for Endo, Dechert’s team has pooled the deep

knowledge and experience of its specialized patent, IP and antitrust practitioners in this evolving area of law to craft the most appropriate response to these actions.”

**George Gordon** Partner

# Removing tax impediments to boost investment in U.S. housing

In light of the financial crisis, Fannie Mae sought to transfer a portion of the credit risk on its loans, so that investors seeking a greater exposure to credit risk would share some of the losses that might arise.



Winner – *FT* Innovative Lawyers Awards for North America, 2019. Fannie Mae's legal team also "Commended" by the *FT*

The initial structure used by Fannie Mae for the issuance of these so-called 'credit-risk transfer securities' (CRT securities) contained tax features that impeded (and in some cases, precluded) investment by real estate investment trusts (REITs) and foreign investors, two frequent groups of investors in U.S. mortgage loans. That was until Dechert tax partner Will Cejudo devised a transformative solution: a tax structure first used in late 2018 and applied in every follow-up deal since.

The new structure, the first of its kind, came to Cejudo as that genuine lightbulb moment. Fannie Mae had long been aware that the tax treatment of the original CRT securities, issued under its benchmark Connecticut Avenue Securities program, posed difficulties for REITs and foreign investors, but was unable to find a workable fix. Cejudo's solution was a novel use of a 'real estate

mortgage investment conduit' (REMIC), a statutory vehicle for the securitization of mortgage loans provided for under the U.S. tax code. Although other counsel had considered using a REMIC to issue the CRT securities, they could not find a way to do so.

Under the new structure, REITs and foreign investors can invest in CRT securities, unimpeded by the tax constraints in the original structures. Plus, even though the new structure requires integrating the tax structure of the MBS with the CRT securities, this was done in a way that does not adversely affect the tax treatment of the MBS, avoiding any disruption to the US\$3 trillion MBS market.

Fannie Mae issued the first security under the new structure in October 2018, a US\$922 million transaction that provided credit protection for a

reference pool of some US\$24 billion in mortgage loans. Freddie Mac, Fannie Mae's competitor in the secondary mortgage market, is now implementing the same REMIC structure for its credit-risk transfer securities.



This structure was a game-changer for Fannie Mae, which decided

that all future CRT offerings would be issued as CRT REMICs.”

**Will Cejudo** Partner

# Keeping clients ahead of the curve in international trade

World trade is more complex than ever, with an upsurge in trade restrictions and tariffs, and the prospect of increased United States export controls over emerging technology. Dechert's international trade and government regulation team, which includes practice co-chairs Amanda DeBusk and Jeremy Zucker, as well as Melissa Duffy, Darshak Dholakia and Sean Kane, works hard to keep its clients ahead of the curve.

"The Trump administration has stepped up its use of trade restrictions as a diplomatic tool to curb the malign behavior of states," says DeBusk. "It's our job to mitigate any adverse impact on the global operations of our clients."

The team has longstanding relationships with businesses active in the international defense, banking, manufacturing, automotive, electronics, agriculture, aerospace, telecommunications and energy industries. "We know the companies, and we know their business," she says. "We also understand the government regulators – who they are and how they think." DeBusk, Duffy and Kane have all worked in-house at U.S. government agencies.

The U.S.'s trade war with China can impact companies with global operations. The Commerce Department is currently reviewing controls on

emerging technologies, expected to target China specifically, which include artificial intelligence, robotics and 3D printing. "We act as a valuable conduit between our clients and the government regulators," says Duffy, "in explaining the potential of this technology and the impacts of enhanced regulation on U.S. innovation."

Most recently, the team has been counseling clients on a proposed Commerce Department rule that would provide unprecedented new authority to block, unwind or require mitigation for transactions involving the information technology and communications industries, which is expected to focus on China. "The U.S. government continues to expand the array of tools that it can use to accomplish foreign policy objectives for China and other countries by targeting cross-border commercial activities," says Dholakia. "All companies, particularly those in

the IT and telecom sectors, need to be aware of the potential threats these measures might pose to their supply chain and customer base."

In addition to this year's extraordinary China-focused developments, the team regularly provides advice on structuring and implementing global compliance programs, the regulatory implications of transactions worldwide, as well as guiding companies through the process of obtaining OFAC sanctions licences and export licenses. Kane says, "OFAC regulations are constantly changing, and I draw on my experience at OFAC to help our clients understand and comply with new regulations."



Clients depend on Dechert for our leading CFIUS expertise, which is now



more crucial than ever due to the complicated geopolitical environment as well as the significant expansion of CFIUS jurisdiction to cover a broader range of industries and technologies."

**Jeremy Zucker** Partner



It is a privilege to work with such a range of clients, some of which are utilizing the most innovative technology to enhance their products."



**Amanda DeBusk** Partner



Melissa Duffy appeared live on the BBC's

Business program on BBC World, which is transmitted to a global audience, talking about U.S. trade deficit figures and the impact of the China-U.S. trade war.

# Defending Colombia in its first investment arbitration

As Dechert's international arbitration practitioners prepared to defend the Republic of Colombia before a World Bank arbitration panel in a US\$600 million dispute over mining royalties, they knew it was a case they had to win.

Dechert had worked hard to bring Colombia in as a new arbitration client. The World Bank case, brought by Swiss mining conglomerate Glencore and its Colombian subsidiary Prodeco, was the first the country had to face. Officials hoped that by mounting a robust defense against Prodeco they could dissuade other foreign investors from launching arbitration claims of their own.

The Prodeco dispute itself stretched back for more than a decade. The company, which operated the Calenturitas coal mine, one of South America's largest, had long sought to renegotiate the terms of its contract. In 2010, it pressed ahead with a contract amendment that changed the way royalties payable to the state should be calculated. Shortly after, Colombia's General Comptroller's Office found the new method detrimental to the state and ordered Prodeco to pay US\$19.1 million,

equivalent to the shortfall for that year under the new royalty regime. In parallel, Colombia's state mining agency, Ingeominas, began a legal action in the local courts to void the offending amendment.

Prodeco and Glencore brought a claim against Colombia at the World Bank's International Centre for Settlement of Investment Disputes in 2016, claiming that the measures taken by Colombia violated their rights under the Colombia-Switzerland Bilateral Investment Treaty. The two companies sought the repayment of the US\$19.1 million, damages of some US\$600 million – and injunctive relief that would force Ingeominas to abandon its court action and prevent the General Comptroller's Office from further investigation of Prodeco's amendment.

In its August 2019 decision, the ICSID tribunal ordered Colombia to repay the US\$19.1 million but rejected

Prodeco's damages claim entirely, resulting in a 97 percent reduction in the arbitration's monetary claims. Perhaps more importantly, the tribunal rejected the claimants' request for injunctive relief, upholding the right of Colombia's Comptroller General to investigate private companies whose activities concern the use or generation of public funds – thus providing Colombia with robust means to defend itself against a range of possible arbitrations.

Dechert's international arbitration team was "Commended" by the *Financial Times* in its European Innovative Lawyers Awards, 2019 in the "Dispute Resolution" category.



Dechert's success with the Republic's first ever arbitration sends a strong message that Colombia will defend itself resolutely and must be respected."

**Eduardo Silva Romero** Partner

# SK Siltron: Seizing opportunities in a booming industry

SK Siltron Co., Ltd, the semiconductor wafer arm of South Korean conglomerate SK Group, was looking to expand. Demand for its wafers – thin slices of semiconductor material used to make chips – has surged due to their use in electric vehicles and AI. So when United States chemicals conglomerate DuPont announced that it wanted to auction off its state-of-the-art silicon carbide (SiC) wafer production assets, SK Siltron saw a perfect opportunity to build on its position as the world’s fourth-largest wafer producer.



“Private Equity Deal of the Year” – IFLR Asia Pacific Awards, 2019, for SK hynix’s involvement in the US\$18 billion acquisition of Toshiba Memory Corporation

Kong, Singapore, Philadelphia, New York, Washington and Los Angeles. It was a complex transaction that required regulatory expertise, with additional input from the labor, intellectual property, tax, litigation and antitrust practice groups. The acquisition was signed in September and is subject to regulatory approvals.

The deal was timely for the client: in July, Japan imposed strict export controls on three key materials needed by South Korean companies to produce semiconductors and display panels. The acquisition comes at a time of critical industry expansion. Market Research Future predicts that the SiC semiconductor global market will grow from US\$260.5 million in 2017 to US\$689.5 million by 2023.

Dechert was retained by SK Siltron to advise from the early stages of the US\$450 million deal. Months of negotiation ensued, which involved convincing DuPont that SK Siltron was the best purchaser, despite the increased regulatory risk of a foreign buyer. “We were successful in providing assurances to the seller that we could proceed swiftly and obtain regulatory approvals in line with the tight timescale,” says Hong Kong-based co-head of Dechert Asia

David Cho, who led the firm’s global team. “And the input of Jeremy Zucker and our CFIUS team was essential in convincing DuPont that we had the necessary capabilities to pilot the deal through U.S. national security and foreign investment regulations.”

Under pressure from DuPont to close the deal by the end of 2019, Dechert assembled a cross-border team of more than 40 lawyers from offices around the world – including Hong



The acquisition highlights the rapid growth of the electric vehicle industry and the current appetite for investment in this market from Asian corporations. Our work on the deal demonstrates Dechert’s expertise on cross-border transactions and is a great example of our team’s ability to deliver the most value to clients when advising on complex financial transactions in regulated industries.”

**David Cho** Partner



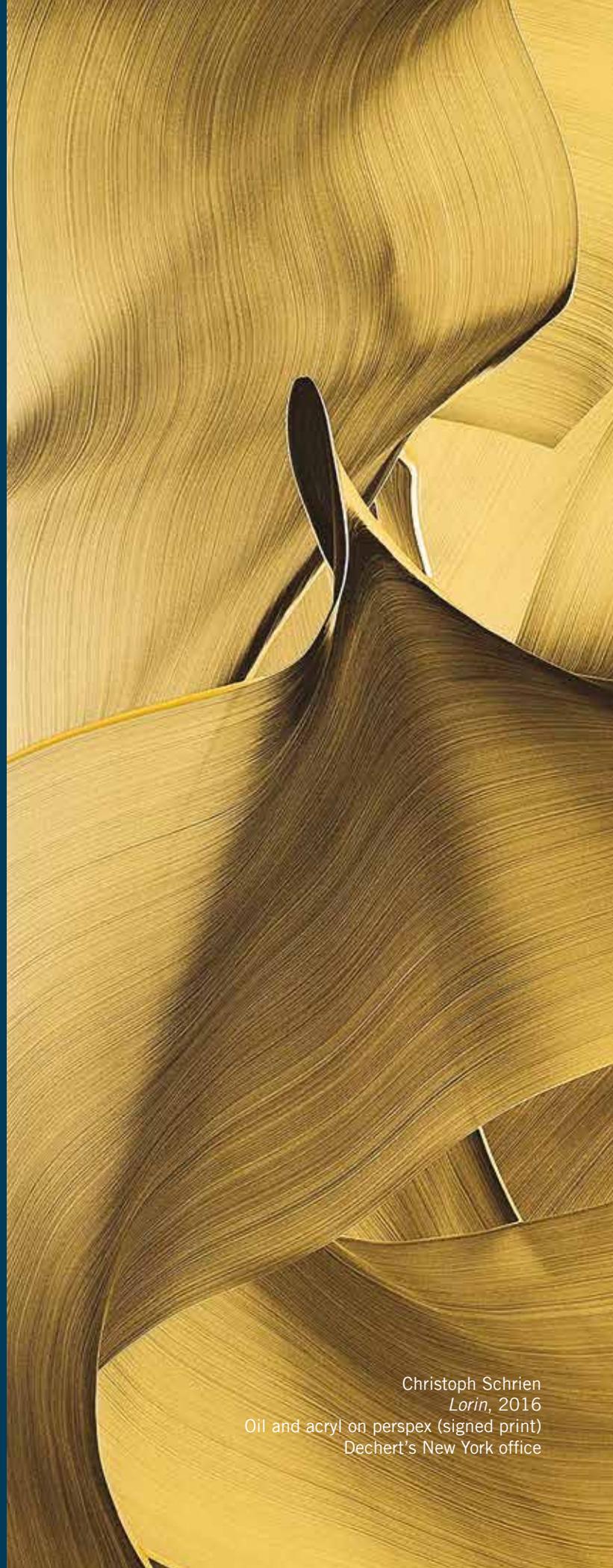
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