



GIBSON DUNN

Are We Speaking the Same Language?  
Privilege Issues in Cross-Border  
Litigation, Investigations, and  
International Arbitration

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# Today's Panelists



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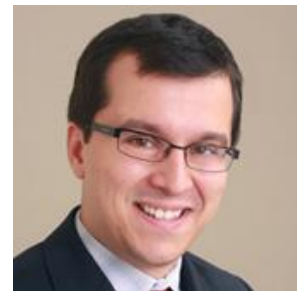
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# Overview

1. #MyLawOrYourLaw
2. #AnticipateChange
3. #LetLawyersLead
4. #HowToHire #Consultants
5. #PuttingPenToPaper
6. #HandleWithCare

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#MyLawOrYourLaw

## Assess from the Outset What Privilege Laws May Apply and Be Prepared to Prove It

- The forum of your investigation / dispute will be important in determining privilege law. However, the forum privilege law may not always apply.
- What are the privilege and work product protections in the relevant jurisdictions, and what are their choice of law rules?
- If there is a dispute, how do you prove foreign law?
- In the arbitration context, what rules are likely to apply?

# Privilege in the United States and Other Common Law Jurisdictions

- U.S.: Strong privilege and work product protections serve to counteract its broad discovery rules.
- U.S. courts generally view privilege issues to be questions of substantive law, and will engage in a choice-of-law analysis when presented with several potentially applicable privilege laws.
- By contrast, work product is viewed as a procedural matter, and the work product law of the forum will apply.
- U.K.: Privilege is viewed as a substantive right, but when a choice-of-law issue arises, U.K. courts generally treat it as a procedural question and apply the privilege law of the forum.



# The Continental Approach

- Civil Law jurisdictions: limited document discovery shapes privilege and confidentiality protections.
- In civil litigation, each party is generally expected to marshal its own evidence.
- Privilege and confidentiality are doctrines arising from the civil law jurisdictions' concept of professional secrecy, which is itself enshrined in criminal codes and ethical rules.
- Privilege is treated as a matter of procedural law.

# The Lawyer's Role

- In the U.S., the privilege is meant to protect the relationship between the attorney and the client; the lawyer's role is to serve the client: “In a society as complicated in structure as ours and governed by laws as complex and detailed as those imposed upon us, expert legal advice is essential. ***To the furnishing of such advice the fullest freedom and honesty of communication of pertinent facts is a prerequisite.***” *United States v. United Shoe Machinery Corp.*, 89 F. Supp. 357 (D. Mass. 1950).
- In Europe, the lawyer's role is more as an arm of the state or judicial function: “[T]he requirement as to the position and status as an independent lawyer . . . is based on a conception of the lawyer's role as ***collaborating in the administration of justice*** and as being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs.” *Akzo Nobel Chemical Ltd. & Akcros Chemical Ltd. v. European Commission* (Eur. Ct. Justice 2010).



# U.S. Federal Courts

- In federal courts in the U.S., generally, privilege “shall be governed by the principles of the common law as they may be interpreted by the courts.” FRE 501.
- “However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege . . . shall be determined in accordance with State law.” FRE 501.

# Applying Foreign Privilege Law in the U.S.

- When a foreign privilege law is implicated, U.S. courts generally apply the “touch base” choice-of-law test.
- Under the “touch base” choice-of-law analysis, a court will apply the law of the country that has the “predominant or the most direct and compelling interest in whether [the] communications should remain confidential to disputes involving foreign attorney-client communications, unless that foreign law is contrary to the public policy of this forum.” *Veleron Holding, B.V. v. BNP Paribas SA*, 2014 WL 4184806, at \*4 (S.D.N.Y. 2014).
- Note that if neither party raises the issue, the court may simply apply the law of the forum.

# Applicable Privilege Law in the U.S.:

## Applying Foreign Privilege Law

1. either the place where the allegedly privileged relationship was entered into, or
2. the place in which that relationship was centered at the time the communication was sent.
  - Fact-intensive inquiry.
  - Complicated analysis when a transaction may touch upon several different jurisdictions.
  - If communication pertains to U.S. legal proceedings or seeks U.S. legal advice, U.S. privilege law likely to apply.

## Documents “Touching Base” with a Foreign Jurisdiction

- Where the communication “touches base” with a foreign jurisdiction, and is privileged under that country’s laws, the U.S. generally, as a matter of international comity, recognizes the privileged character of the communication. *See Kiobel v. Royal Dutch Petroleum Co.*, 2005 WL 1925656, at \*2 (S.D.N.Y. 2005).
- But, the party seeking the privilege protections of a foreign jurisdiction carries the burden of showing that (1) the foreign jurisdiction’s privilege law is applicable, and (2) the challenged documents are protected under the applicable foreign law.

## Proving Foreign Privilege Law in U.S. Courts

- In U.S. federal courts, issues of foreign law are treated as questions of law. The court can look at otherwise inadmissible evidence to decide issues of foreign law (i.e., hearsay).
- Parties claiming privilege under a foreign law face a higher burden than other areas for which foreign law is presented to the court.

# Applicable Privilege Law in the U.S. . . . Back to Forum Law

- In the absence of sufficient privilege protections under an otherwise applicable foreign law, argue for the application of U.S. privilege law.
- “[V]astly different discovery practices, which permit only minimal discovery, are applicable to civil suits conducted in Korea. Indeed, none of the documents at issue here would be discoverable in a Korean civil suit. Under these circumstances . . . it is hardly surprising that Korea has not developed a substantive law relating to attorney-client privilege and work product that is co-extensive with our own law. It also seems clear that to apply Korean privilege law, or the lack thereof, in a vacuum without taking account of the very limited discovery provided in Korean civil cases would offend the very principles of comity that choice-of-law rules were intended to protect. . . . Therefore, the court will apply its own privilege law to the Korean documents, even though the communications do not “touch base” with the United States.” *Astra Aktiebolag v. Andrx Pharmaceuticals, Inc.*, 208 F.R.D. 92, 102 (S.D.N.Y. 2002).

# Choice of Privilege Law in International Arbitration

1. The arbitral clause (generally silent)
2. The law of the seat of the arbitration (*lex arbitri*)
3. The governing substantive law
4. The applicable arbitration rules (generally silent)
5. The IBA Rules of Evidence
6. The privilege law of the jurisdiction of each party in the arbitration
7. The law of the place where the challenged communication was created, sent from, or stored



# Most International Arbitration Rules Are Silent as to Applicable Privilege Rules

- Most institutional rules do not include provisions regarding resolving privilege, and even other types of evidentiary issues.
- Most arbitration rules entrust arbitrators with wide discretion as to rules of evidence.
- One exception is the AAA-ICDR's Guidelines for Arbitrations Concerning Exchanges of Information, which apply as a default to arbitrations commenced after May 2008 unless the parties agree otherwise.
- Article 7 of the Guidelines provides that where there are competing privilege regimes, the arbitrators should apply the most protective regime.

## The 2010 IBA Rules on the Taking of Evidence in International Arbitration

Art 9.2(b) allows the tribunal, upon the request of a party on its own motion, to exclude from evidence or deny from production documents on the basis of “a legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable.”

# The 2010 IBA Rules on the Taking of Evidence in International Arbitration (continued)

Art. 9(3) states that in considering privilege issues, an arbitral tribunal may take into account:

- (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
- (b) the need to protect communications made in the context of settlement negotiations;
- (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;
- (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and
- (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.

# Check for Additional Protections under International Treaties

Depending on the context, other protections may apply:

- Hague Convention
- Data Privacy Laws
- Blocking Statutes
- Mutual Cooperation Treaties

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# Develop a Plan

- Because privilege and work product protections differ so widely, you should plan for the least protective law to apply.
- At the outset of the investigation / dispute / project, assess what privilege law may apply and plan accordingly.
  - (Note that you may in some contexts be able to “choose” your privilege law, e.g., arbitration clauses.)
- What does this mean?
  - In investigations, assume interview memos and other fact-gathering work product will not be protected.
  - Avoid drafts. Do not email, save versions, or otherwise create copies of the document until it is final.
    - But do not destroy documents as that could lead to allegations of spoliation or worse.
  - Use technology: WebEx and other tools allow screen sharing and for multiple parties to view and edit a document.
  - Use the phone.



**SOLTANI:** Do you guys know if anybody can, uh, subpoena these videos?



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# Overview

- Retaining qualified counsel is a key step in protecting privilege with respect to a potential investigation or dispute.
- Not all jurisdictions recognize privilege for in-house counsel (e.g., EU).
- Even in jurisdictions that do, there could be a dispute about whether the in-house attorney is performing a legal or business function (e.g., U.S., U.K.).
- Educate the business people to get an attorney involved early.

## No Privilege for In-House Lawyers in the EU: *Akzo Nobel Chemical Ltd. & Akcros Chemical Ltd. v. European Commission* (Eur. Ct. Justice 2010)

In *Akzo*, the European Commission rejected application of the attorney-client privilege to in-house counsel. The court found that “no predominant trend towards protection under legal professional privilege of communications within a company or group with in-house lawyers may be discerned in the legal systems of the 27 Member States of the European Union.”

- It doesn't matter that the in-house lawyers had independent ethical obligations as members of the bar.
- “An in-house lawyer, despite his enrolment with a Bar or Law Society and the professional ethical obligations to which he is, as a result, subject, does not enjoy ***the same degree of independence from his employer*** as a lawyer working in an external law firm does in relation to his client. Consequently, an in-house lawyer is less able to deal effectively with any conflicts between his professional obligations and the aims of his client.”
- Protections may still be available under applicable national law.

# Legal Professional Privilege in the EU—Outside Counsel Required

- The legal professional privilege applies to communications (1) regarding the company's rights of defense and (2) with an independent external lawyer.
- Internal documents generated exclusively for the purposes of obtaining legal advice (e.g., summaries) from an external lawyer may be privileged even if not (yet) exchanged with the external lawyer.
- This can be hard to prove and care should be taken in generating such documents.
- Internal documents summarizing or reporting legal advice from external lawyers may also be privileged provided that the underlying communications with external counsel would have been privileged. Care should be taken that these documents do not reflect the commercial judgment or opinions of in-house personnel.

## *United States v. United Shoe Machinery Corp.*, 89 F. Supp. 357 (D. Mass. 1950) – Privilege Extends to In-House Lawyers Acting as Lawyers

- Recognized privilege for communications between **in-house counsel** and **employees** of the company: “The type of service performed by house counsel is substantially like that performed by many members of the large urban law firms. The distinction is chiefly that the house counsel gives advice to one regular client, the outside counsel to several regular clients.”
- However, privilege will not extend to “business” functions: “[T]he communication of a person in the patent department is as unprivileged as that of a lawyer who shares offices with his so-called client and gives him principally business but incidentally legal advice, or an attorney who acts principally as accountant and also renders legal advice on the basis of accounting data, or an attorney who negotiates the business aspects of a real estate transaction, or an attorney who acts as an investigator for the Federal Bureau of Investigation.”

# Protecting Privilege Over Corporate Investigations

- An “investigation” isn’t privileged simply because it is called an “investigation.” Rather, in order to be protected by privilege, investigations must be for the purpose of enabling counsel to provide legal advice. If the investigation is performed for business purposes it will not be protected.
- Document that ordered the investigation and for what purpose.
- *Cruz v. Coach Stores, Inc.*, 196 F.R.D. 228 (S.D.N.Y. 2000) (investigative audit was not privileged. It was commissioned by in-house counsel and her executive superior, who used the findings to dismiss implicated employees. It was not conducted consistent with *Upjohn*’s factors: Corporate employees were not informed that it was confidential and that its purpose was for the corporation to receive legal advice).

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# Privilege Over Communications With Non-Lawyers: *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961)

- “[T]he complexities of modern existence prevent attorneys from effectively handling clients’ affairs without the help of others . . . . The assistance of these agents being indispensable to his [whose?] work and the communications of the client being often necessarily committed to them by the attorney or by the client himself, the privilege must include all the persons who act as the attorney’s agents.”
- Kovel was a former IRS agent employed at a law firm; he refused to provide testimony to a grand jury investigating tax violations based on privilege and was subject to contempt.
- Analogizing Kovel’s services to those of an interpreter necessary to enable an attorney to provide legal advice to a foreign-language speaking client, the Second Circuit held:
- “Accounting concepts are a foreign language to some lawyers . . . . Hence the presence of an accountant, whether hired by the lawyer or by the client, while the client is relating a complicated tax story to the lawyer, ought not destroy the privilege . . . . By the same token, if the lawyer has directed the client . . . to tell his story in the first instance to an accountant engaged by the lawyer, who is then to interpret it so that the lawyer may better give legal advice, communications by the client reasonably related to that purpose ought [to?] fall within the privilege . . . . What is vital to the privilege is that the communication be made *in confidence* for the purpose of obtaining *legal advice from the lawyer*.”

## Limits of Privilege Over Communications With Non-Lawyers: *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961)

- But *Kovel* protections will not extend to communications to or from the non-lawyer that are not for the purposes of enabling the attorney to provide legal advice:

“If what is sought is not legal advice but only accounting service, or if the advice sought is the accountant’s rather than the lawyer’s, no privilege exists. We recognize this draws what may seem to some a rather arbitrary line between a case where the client communicates first to his own accountant (no privilege as to such communications, even though he later consults his lawyer on the same matter), and others, where the client in the first instance consults a lawyer who retains an accountant as a listening post, or consults the lawyer with his own accountant present.”

“We realize also that the line we have drawn will not be so easy to apply as the simpler positions urged on us by the parties — the district judges will scarcely be able to leave the decision of such cases to computers; but the distinction has to be made if the privilege is neither to be unduly expanded nor to become a trap.”

# How to Use *Kovel* to Protect the Privilege

## *Use it for:*

Accountants

Investigators

Consultants

Non-testifying experts

## *How to invoke it:*

Counsel should retain the accountant, investigator or consultant and direct the work.

The engagement letter should set forth that the accountant's, investigator's or consultant's work is intended to assist counsel in the provision of legal advice.

## *Kovel*-Type Arrangements Also Advisable in the U.K.

**U.K. Litigation Privilege:** Protects communications made for the dominant purpose of litigation which is pending, reasonably contemplated or existing.

- Extends to communications with expert witnesses and other third parties provided they are made with the purpose of giving or receiving legal advice in connection with a litigation.

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# An Engagement Letter Allows You to State What the Purpose of the Representation Is and Memorializes the Attorney-Client Relationship

“The privilege applies only if

1. **the asserted holder of the privilege is or sought to become a client;**
2. the person to whom the communication was made (a) **is a member of the bar of a court**, or his subordinate and (b) in connection with this communication is acting as a lawyer;
3. the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) **for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding**, and not (d) for the purpose of committing a crime or tort; and
4. the privilege has been (a) claimed and (b) not waived by the client.”

*United States v. United Shoe Machinery Corp.*, 89 F. Supp. 357 (D. Mass. 1950).

# An Engagement Letter Allows You to Identify the Client and Describe the Purpose of the Representation

**U.K. Legal Advice Privilege:** Covers confidential communications between the lawyer and client related to the lawyer's giving of legal advice. Two-part test used to determine whether the advice is sufficiently legal:

- Whether the advice relates to rights, liabilities, obligations or remedies of the client either under private law or under public law.
- Whether the advice falls within the policy underlying the justification for legal advice privilege in English law.
- Definition of "Client" is narrow. For companies, it's usually in-house counsel who are directing the work of outside counsel. "Client" generally does not include other employees of the company or third parties (e.g., no *Kovel* protections). This should be taken into account in the engagement letter.

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## Marking Documents Can Help Confirm Privilege

- Labeling can help confirm that a document is privileged and protect against waiver.
- Can help in reviewing documents for privilege in the context of litigation.
- BUT remember, marking a document doesn't, in itself, make it privileged and copying a lawyer doesn't, in itself, make it privileged.

# How to Mark Documents

Educate business teams on relevant privileges:

- **Attorney-Client Privilege:** providing legal advice, covers:
  - request for legal advice
  - request for information related to legal advice
- **Attorney Work Product:** documents prepared by or at the direction of an attorney in anticipation of litigation.
- **Confidential:** implies that communication only intended for recipient.
- **Prepared in Anticipation of Litigation:** covers all documents produced because litigation is anticipated.
- Use your title in your signature, so that at some later point there is no doubt that communication involved a lawyer.

## Don't Overuse Privilege Labels

- Do not overuse labels such as “privileged and confidential,” as misused labels can call into question documents properly marked.
- Ask yourself if you need a non-privileged record of the communication.

# Control Storage and Distribution of Privileged Documents

- Privileged documents should be stored on separate servers and in separate physical locations.
- Access should be controlled.
- This could play into a waiver analysis, as well as a “possession, custody & control” analysis under U.S. discovery standards.
- Sending a document that is privileged in the U.S. to another jurisdiction could result in waiver.

## #Conclusion

Protecting privilege in the cross-border context can be challenging but pitfalls can be avoided through:

- Advance planning;
- Awareness of conflicting rules across relevant jurisdictions;
- Seeking counsel as soon as a problem arises;
- Proper structuring and documentation of attorney-client relationships and engagement of consultants;
- Proper handling of privileged documents.

Questions?

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Joel M. Cohen, a trial lawyer and former federal prosecutor, is Co-Chair of Gibson Dunn's White Collar Defense and Investigations Group, and a member of its Securities Litigation, Class Actions and Antitrust Practice Groups. Mr. Cohen has been lead or co-lead counsel in 24 civil and criminal trials in federal and state courts. Mr. Cohen is equally comfortable in leading confidential investigations, managing crises or advocating in court proceedings. Mr. Cohen's experience includes all aspects of FCPA/anticorruption issues, insider trading, securities and financial institution litigation, class actions, sanctions, money laundering and asset recovery, with a particular focus on international disputes and discovery.

Mr. Cohen was the prosecutor of Jordan Belfort and Stratton Oakmont, which is the focus of "The Wolf of Wall Street" film by Martin Scorsese. He was an advisor to the OECD in connection with the effort to prohibit corruption in international transactions, and was the first Department of Justice legal liaison advisor to the French Ministry of Justice. Mr. Cohen is highly-rated in *Chambers*, where practitioners and clients have noted that he has "incredibly strong substantive depth melded with a risk-based practicality," and praised his ability to "handle very intense, complex matters with regulatory authorities and really just deliver great results." Mr. Cohen has been named a leading white collar criminal defense attorney by *The Best Lawyers in America*®, a "Litigation Star" and multiple times a national Top 100 Trial Lawyer by *Benchmark Litigation*, an "MVP" by *Law360*, and a "Super Lawyer" in Criminal Litigation, and his work is noted by *Legal 500* in the areas of white collar criminal defense and securities litigation. In addition, *The American Lawyer* named Mr. Cohen as one of its Litigators of the Week after winning a jury defense verdict in an insider trading case on behalf of Nelson Obus, general partner of Wynnefield Capital.

Mr. Cohen was featured in *The American Lawyer's* 2016 award of "White Collar/Regulatory Law Firm of the Year" to Gibson Dunn for his Obus trial victory. Noting that his client was "in awe" of his trial and cross examination skills, *The American Lawyer* linked Mr. Cohen's trial victory with the SEC's decision days after the defense verdict to avoid jury trials and seek administrative actions in the future.

Mr. Cohen previously was Head of U.S. Litigation at Clifford Chance, where he practiced from 2004 to 2009. From 1999 to 2004, he practiced with Greenberg Traurig. From 1992 to 1999, he served as Assistant United States Attorney in the Eastern District of New York, supervising the Business/Securities Fraud Unit, where he received numerous awards from the Department of Justice and law enforcement agencies.

Mr. Cohen received his bachelor's degree from Middlebury College, his master's degree in History from Duke University and his Juris Doctor from Duke University Law School, where he was a moot court champion. He is a member of the bars of New York and Massachusetts.

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William E. Thomson is a litigation partner in the Los Angeles office of Gibson, Dunn & Crutcher. He is Co-Chair of Gibson Dunn's Transnational Litigation Practice Group and a member of the firm's Appellate and Constitutional Law and Securities Litigation Groups. Mr. Thomson's practice focuses on federal and state appellate and Supreme Court litigation, and on strategic analysis and briefing in high-stakes cases in trial courts around the country. He has broad experience before both trial and appellate courts in a wide variety of high-profile cases, including civil RICO, mass tort, foreign judgment recognition actions, product liability, securities and consumer class actions, and First Amendment litigation.

In both the transnational and domestic settings, Mr. Thomson has played a lead role in numerous civil cases brought pursuant to (RICO), representing both civil RICO plaintiffs and defendants in a variety of industry contexts. He has written and spoken frequently on RICO-related topics.

In the appellate field, Mr. Thomson has extensive experience with constitutional challenges to punitive and statutory damages, working with companies to develop innovative, cutting-edge trial and appellate strategies for avoiding and redressing such awards. He has briefed or argued related motions and appeals in numerous jurisdictions around the country in a wide variety of substantive contexts, including product liability, environmental and mass tort, and insurance defense. Relatedly, in the First Amendment field, Mr. Thomson has represented media entities seeking access to public records and defended the free speech interests of clients in business and class action litigation.

In the securities area, Mr. Thomson has had major roles in defending clients in securities class actions, as well as corporate officers and directors in derivative cases. He has defended clients in front of and conducted investigations on behalf of corporate Special Committees.

Mr. Thomson served as a judicial clerk to the Honorable Robert J. Kelleher in the U.S. District Court for the Central District of California. He received his law degree from the University of California, Los Angeles, School of Law. He earned a Ph.D. degree and an M.A. degree from the University of Chicago, and an A.B. degree from Princeton University, all in the field of political science. At the University of Chicago, he was a John M. Olin Fellow at the Center for Inquiry Into the Theory and Practice of Democracy. For his dissertation on the political theory of Alexis de Tocqueville, he conducted research in Paris. He is fluent in French and conversant in Spanish.

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Anne M. Champion is a partner in the New York office of Gibson, Dunn & Crutcher. She is a member of Gibson Dunn's Transnational Litigation, Environmental Litigation, Class Actions, and Intellectual Property Practice Groups. Ms. Champion has played a lead role in a wide range of high-stakes litigation matters, including representing Chevron Corporation in its successful civil RICO suit against the perpetrators of a massive litigation fraud against the company. (*Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014)). As part of her work on the *Chevron* case, Ms. Champion was the lead associate in several discovery proceedings that resulted in courts applying the crime-fraud exception to the attorney-client privilege.

Recently, Ms. Champion represented Dole Food Company in a wrongful death case brought by dozens of Colombian plaintiffs who alleged Dole had provided support for the Colombian paramilitary organization, the AUC. After years of litigation, plaintiffs voluntarily dismissed their claims with prejudice after Ms. Champion obtained deposition testimony that plaintiffs' counsel had attempted to bribe one of the jailed paramilitary witnesses in the case.

Ms. Champion was also part of a team that successfully represented citizens of Albany County in a Voting Rights Act trial against the County of Albany and the County of Albany Board of Elections. (*Pope v. County of Albany*, 94 F. Supp. 3d 302 (N.D.N.Y. 2015)). Following a multi-week trial, the district court held that the County had violated Section 2 of the Voting Rights Act by adopting a redistricting plan that failed to add a fifth majority-minority district to the County Legislature following the 2010 Census, diluting the strength of minority voters.

Ms. Champion earned her Bachelor of Science in physics with distinction from the University of Iowa and received the James A. Van Allen and the Myrtle K. Meier awards for excellence in physics. She earned her Juris Doctor, *summa cum laude*, from George Washington University School of Law, where she served as an articles editor for *The George Washington Law Review* and published her casenote, *Another Brick in the Wall: United States v. Samuel and the Lower Courts' Narrow Reading of Apprendi v. New Jersey Before Blakely v. Washington*, 72 Geo. Wash. L. Rev. 1004 (2004). Upon graduation, she was awarded the Willard Waddington-Gatchell prize for academic excellence and the John F. Evans prize for outstanding achievement in the clinical law program, D.C. Law Students in Court, and was elected to the Order of the Coif.

Following law school, Ms. Champion clerked for the Honorable Max Rosenn on the United States Court of Appeals for the Third Circuit.



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Rahim Moloo is of counsel in the New York office of Gibson, Dunn & Crutcher. He is recognized as a leader in the field of international arbitration. *Law360* recently named Mr. Moloo as one of ten International Arbitration Rising Stars (under the age of 40) globally.

Mr. Moloo's practice focuses on assisting clients in resolving complex international disputes in the most effective and efficient way possible. He has extensive experience in international commercial arbitration, investor-state arbitration and arbitration-related litigation. He also advises clients on the structuring of foreign investments and matters of international law and sits as arbitrator in complex international cases. Mr. Moloo has experience across a number of industries, but especially in energy, mining, telecommunications, financial services, infrastructure, construction and consumer products.

Many of the disputes on which Mr. Moloo advises involve claims brought in multiple jurisdictions where important strategic choices must be made about which forum will provide the best result with respect to different aspects of the dispute. And legal solutions often need to be considered in light of other avenues available, such as media campaigns and negotiations between business teams, to reach a favorable result. Mr. Moloo has experience in navigating these various options. His prior experience as General Counsel of a multinational organization in Central Asia helps him to see things from the perspective of management and in-house lawyers operating in difficult political and legal environments. Indeed, Mr. Moloo has advised on many disputes where a favorable result was achieved without having to commence formal dispute resolution, such as arbitration.

Mr. Moloo has published several articles on international arbitration and litigation, international investment law, and public international law, many of which have been cited in arbitral decisions and leading treatises. He is currently co-authoring a book on Procedural Law in Investment Arbitration, which is due to be published by Oxford University Press in 2016 [update?]. Mr. Moloo has been invited to lecture on international arbitration and international law at a number of law schools, including Yale, Harvard, Columbia, NYU, Duke, Georgetown, the University of Cambridge, McGill, the University of Ottawa, and the University of British Columbia. He has also spoken at various industry conferences for clients, particularly in the oil and gas and mining sectors, as well as conferences hosted by the United Nations, the American Society of International Law, the Canadian Council for International Law, the European Society of International Law, and the British Institute of International and Comparative Law, among others.

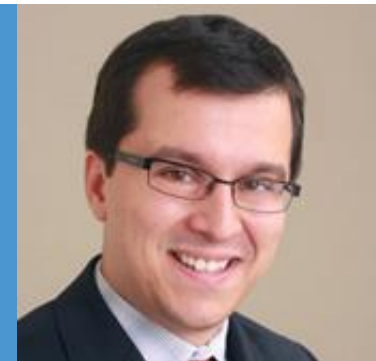
Mr. Moloo has degrees from Queen's University, the University of British Columbia (UBC) and NYU School of Law. He was named NYU's All-University Valedictorian for Professional and Graduate students and has received UBC's Outstanding Young Alumnus Award.

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Delyan Dimitrov is an associate in the New York office of Gibson, Dunn & Crutcher. His practice focuses on transnational litigation, international arbitrations, complex commercial disputes, as well as FCPA matters. Mr. Dimitrov has previously represented, for instance, Çukurova Holding A.Ş. in the successful Second Circuit appeal and reversal of a S.D.N.Y. decision confirming a \$932 million arbitral award against Çukurova. His other matters include the representation of GECAS and GECC in connection with domestic and foreign litigations concerning aircraft leasing agreements and a large oil services client conducting an internal FCPA investigation. Mr. Dimitrov has also represented RMBS trustees and investors in putback actions seeking the repurchase of mortgage loans from various RMBS sponsors and originators.

A native of Bulgaria, Mr. Dimitrov has extensive experience with international arbitrations. His past successes include critical contributions to a team that secured an attachment order worth hundreds of millions of dollars from a U.S. federal court in a dispute regarding the enforcement of four Russian arbitral awards that had been annulled at the seat of the arbitration. Mr. Dimitrov also had an active role in representing Yukos Capital in the enforcement of an ICC arbitral award that, following summary judgment, resulted in a \$186 million judgment in favor of Yukos Capital. Delyan has played a leading role in representing clients before the ICC and JAMS, regularly publishes in international arbitration treatises and journals, and has spoken as a panelist at the ICC Young Arbitrators Forum.

Mr. Dimitrov pro bono efforts have included coordinating assistance to Holocaust survivors for payments under Germany's ZRBG law, which provides for remuneration to those who worked in Nazi ghettos during their internment.

Mr. Dimitrov is also a Lecturer in Law at Columbia Law School, where he teaches a legal practice workshop for international moot courts.

Prior to re-joining Gibson Dunn, Mr. Dimitrov was a senior associate at the litigation boutique Holwell Shuster & Goldberg LLP and an in-house counsel at Amherst Advisory & Management LLC.

Mr. Dimitrov received his Juris Doctor from Columbia Law School.

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