

2025 Transnational Litigation Trends

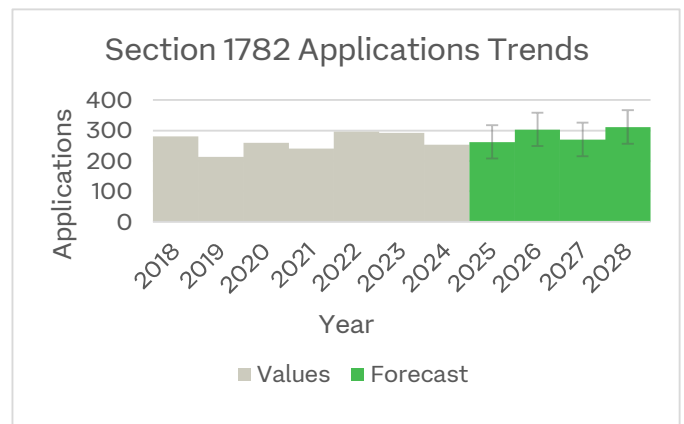
2024 was a year full of challenges for global businesses navigating complex legal issues across jurisdictions worldwide. As technological advancements, geopolitical issues, and the global regulatory landscape continue to evolve, 2025 seems likely to be no less demanding. Below, we highlight top cross-border litigation trends that we believe will impact multinational businesses in 2025.

1. Section 1782 Applications Remain a Popular Tool in Foreign Proceedings

We are seeing a steady increase in litigants using U.S. courts to get discovery in aid of global litigation. Section 1782 of Title 28 of the United States Code (“Section 1782”) allows an “interested party” to a foreign proceeding (including foreign civil and criminal proceedings) to seek U.S.-style discovery from a person or entity located in the U.S. The statute may be used by international litigants seeking documentary or testimonial evidence in the U.S. for use in foreign actions which are either pending or contemplated.

Section 1782 applications are now standard in many transnational litigations. An analysis of historical trends demonstrates that Section 1782 applications will continue to be a popular tool for litigants in foreign proceedings in 2025 and beyond.

Those facing global litigation risks, therefore, need to understand how 1782 applications can be used against them *and* how they might use Section 1782 to their advantage.



2. From Sanctions to Storms: Strengthening Supply Chains for 2025

The development of cross-border supply networks has opened new markets, increased the interdependence of nations, and become vital to economic globalization. However, increasing supply chain disruptions from geopolitical conflict, cyber-attacks, and climate change call into question the resilience of these networks and contribute to broader economic uncertainty in 2025.

Geopolitical conflict or weather-related disruptions in key corridors or supply pinch points put pressure on businesses and risk delays in service or increased prices of goods, as exemplified by the Red Sea shipping crisis spurred by the conflict in the Middle East. Such events have a cross-border ripple effect—triggering legal disputes along the supply chain.

For example, in *BAE Indus., Inc. v. Agrati-Medina, LLC*, the defendant sought price increases for its specialty parts sold to the plaintiffs due to an increase in the price of steel. 2022 WL 4372923 (E.D. Mich. Sept. 21, 2022). The defendant argued that COVID-19 pandemic lockdowns, the Russian-Ukraine war, lockdowns in China, the closing of steel mills, and U.S. Border restrictions were disruptions outside of the party's control and thus excused performance under the contract. Interpreting the force majeure clause of the agreement strictly and applying the impracticability and frustration of purpose doctrines conservatively, the court compelled defendant to perform at the contract price despite the disruptions that rendered the contract uneconomical.

Most recently, China's sanctions on essential battery supplies to American companies just days before the U.S. presidential election exposed the vulnerability of technology companies as they scrambled to secure new suppliers and avoid downstream legal disputes. In 2025, we anticipate an increase in "supply chain warfare" as a tool for countries and businesses to gain more political and economic leverage.

As a result, companies have begun to preempt disruptions as they become the new norm in cross-border transactions. To remain resilient and commercially agile, we have seen businesses increase maritime shipping rates, diversify their suppliers, shorten supply chains through "nearshoring" or "friend-shoring" by relocating raw material or production facilities closer to consuming markets, and incorporate more flexibility into contracts.

The looming uncertainty in 2025, especially with trade agreements like the United States-Mexico-Canada Agreement up for review by the new administration, makes transnational litigation an ever-present concern in the global business environment.

3. London, New York, and Singapore—Still the Darlings of Transnational Litigation?

Courts in London and New York remain the courts of choice for international commercial disputes. As for arbitration, Singapore has surpassed London as the venue of choice. While London, New York, and Singapore maintain their reign, there has been an uptick in the creation of courts in other countries for the purpose of hearing international commercial disputes.

France and the Netherlands have specialist commercial courts where judges have experience in private international law to cater to international disputes. Germany has established English-speaking commercial courts, and Switzerland will begin the creation of the same in 2025. The establishment of international-facing

courts in Europe follows an earlier trend in the Middle East and Asia. The Courts of the financial free zones of the Dubai International Financial Centre ("DIFC") and Abu Dhabi Global Market and the Qatar International Court are starting to rival London as the commercial court of choice for many international litigants. Indeed, in September 2024, the Court of Appeal of DIFC issued the first-ever judicial interpretation of U.S. sanctions law pertaining to Iran. See *American International Group Ltd., et al v. Qatar Insurance Co.*, [2024] DIFC CA 008. Looking to 2025 (and beyond), we expect to see an emerging influence of international commercial courts in developing substantive law, and the role of these courts' traveling judges in bringing expertise and legitimacy to their rulings.

4. Data Related Litigation is Here to Stay.

Recent trends show that data-related litigation will continue to be a primary concern for organizations globally. As cybersecurity threats continue to evolve at break-neck speed, regulators around the world are racing to keep up, increasing data-related regulatory enforcement worldwide. Many countries have aligned their data protection laws with the European Union's ("EU") General Data Protection Regulation ("GDPR"), which imposes strict obligations on companies handling data belonging to European citizens, even if they do not operate within the EU. The increased adoption of GDPR-style regulations is accompanied by rapidly growing cross-border coordination between data protection authorities ("DPAs"). These trends signify that regulators are focused on safeguarding their citizens' data, and businesses handling personal data should expect intensified scrutiny no matter where they operate.

As for private data-related litigation, we expect to see an upward trend in 2025. An analysis of United States federal court dockets shows that complaints mentioning "data breach" increased 283%, from 391 complaints in 2021 to 1,500 in 2024. The ease of identifying and recruiting potential plaintiffs, and the increase in plaintiff-side mass claims funding, have contributed to the activity of plaintiff firms in this field. It is also increasingly common for litigation proceedings to be initiated earlier, in parallel with regulatory proceedings.

Finally, there has been a rise in litigation related to cross-border data transfers, misuse of personal data, and shortcomings in businesses' privacy policies. Litigants and regulators alike are particularly focused on data scraping, the automated extraction of data from the web. For example, in the U.S., recent class actions have been brought concerning the use of mass data scraping for the purpose of training Artificial Intelligence ("AI") large

language models. Companies can expect this trend to continue following a joint statement from 16 countries' DPAs providing guidance related to data scraping. As data-related laws and regulations develop, the scope for new grounds of legal challenges is likely to expand.

These developments show that those facing data-related litigation need to start thinking globally, as litigation and regulatory risks in one jurisdiction may very well impact how the same risk is dealt with in another. In other words, those facing data-related litigation need to think in a cross-border way.

5. Cross-Border Legal Challenges in the Age of AI

As AI technologies become more integrated into business operations, they introduce new legal challenges and risks. Common types of AI-related litigation include intellectual property disputes, breach of contract, human rights, and product liability.

Different jurisdictions have varying approaches to AI regulation, complicating transnational litigation. For instance, the EU Artificial Intelligence Act introduces wide-sweeping AI regulations with extraterritorial reach over providers based outside the EU that "put into service" AI systems in the EU. In contrast, the U.S. has a more fragmented and industry-specific regulatory landscape. The result? Global businesses will be forced to adopt new compliance strategies as they face varying levels of scrutiny in global markets.

However, regulators are not the only risk for global companies leveraging AI tools. Companies in various industries have been increasingly subject to consumer class actions concerning AI services. Plaintiffs in the U.S. have sued companies for alleged misstatements about their use of AI and for allegedly using AI to manipulate

prices or harm consumers. These are just the beginning. We expect a wave of further AI-related litigation, especially in a cross-border context. Plaintiffs can forum shop on a global scale now – not just choosing between US states, but between different countries to try to get the best forum. We anticipate this trend to continue as more companies implement AI systems in their business operations worldwide.

As AI transforms business models, there is a growing need to revisit and restructure old business relationships and contracts. Contractual modifications relating to the use of AI may include diligence requests, AI-related representations and warranties, the restriction of a counterparty's use of AI, data anonymization provisions, and indemnification clauses. One of the most foundational challenges, however, is agreeing to a definition of "artificial intelligence." Given the rapid growth of AI use cases, parties must decide whether to use broader contractual definitions to capture the ever-evolving forms of AI processes or a more tailored approach to mitigate legal risks.

Understanding the diverse global regulatory landscape, revisiting contractual relationships, and implementing robust AI use policies are all imperative for being equipped to mitigate the legal challenges posed by AI technologies.

Conclusion

As we navigate through the uncertainties of 2025, it becomes evident that new technologies, changes in regulatory frameworks, and disruptions in global supply chains will continue to influence litigation trends. By anticipating these risks, global companies can position themselves to respond effectively, and proactively manage challenges presented by the evolving landscape.



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