

USA

Country Chapter



Kenneth R. Adamo
Law Office of KRAdamo



Alex Shtraym
Lathrop GPM LLP

Litigation & Dispute Resolution 2026

TABLE OF CONTENTS

Preface

Justin Michaelson

Quinn Emanuel Urquhart & Sullivan

Expert Analysis Chapters

- 1 Recent developments in worldwide freezing orders –
the decisions in *Lakatamia*, *Gilbert* and *Petrichor***
Justin Michaelson & Simon Camilleri
Quinn Emanuel Urquhart & Sullivan
- 8 Navigating the “rough seas” of discretionary denial**
Kenneth R. Adamo Law Office of KRAdamo
Alex Shtraym Lathrop GPM LLP
- 16 The Unified Patent Court: How Europe’s new Patent Court
is reshaping litigation**
Agathe Michel-de Cazotte, Andrew Hutchinson, Mike Gruber & Niels Hölder
Carpmaels & Ransford

Jurisdiction Chapters

- 29 Cayman Islands**
Alistair Abbott
Forbes Hare
- 37 Chile**
Mónica Pérez & Francisco Chahuán
Carey
- 45 Cyprus**
Constantinos Clerides, Alexandros Clerides & Antonis Georgiou
Phoebus, Christos Clerides & Associates LLC
- 56 England & Wales**
Rt Hon Alex Chalk KC & Alex Macpherson
Jones Day
- 67 Finland**
Markus Kokko & Tiia-Maria Ripatti
Borenus Attorneys Ltd
- 76 France**
Florence Karila & Arnaud Attias
DWF (France) AARPI

- 86 Ghana**
Gwendy Bannerman, Naa Kwaamah Owusu-Baafi, Lilian Sakyi & Emmanuel Twerefoo Agyarko-Mintah
N. Dowuona & Company | ALN Ghana
- 101 Greece**
Spyros G. Alexandris, Charilaos (Harry) Agathos & Marianna Papatheodorou
Bahas, Gramatidis & Partners
- 119 Japan**
Shinya Tago, Takuya Uenishi & Landry Guesdon
Iwata Godo
- 133 Liechtenstein**
Manuel Walser & Daria Tschütscher
Walser Attorneys at Law Ltd.
- 142 Luxembourg**
Jackye Elombo
EURAALEX Law Firm
- 152 Netherlands**
Reinier W.L. Russell, Jesper Nooij & Niek van der Graaf
Russell Advocaten
- 162 Singapore**
Mark Lee & Sarah Yeo
Mark Lee Chambers Law Corporation
- 173 South Africa**
Corlett Manaka, Faith Sikhavhakhavha & Amogelang Magano
Werksmans Attorneys
- 184 Switzerland**
Dr Urs Feller & Dr Martin Heisch
Prager Dreifuss
- 197 Taiwan**
Edward Liu, Meng-Ying Lee, Hao-Jou (Jo) Fan & Wei Lun Lin
Chen & Lin Attorneys-at-Law
- 205 USA**
Kenneth R. Adamo Law Office of KRAdamo
Alex Shtraym Lathrop GPM LLP

USA

Kenneth R. Adamo
Alex Shtraym

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Efficiency of process

The U.S. legal adjudicatory system is split between Federal and State courts, with certain causes of action statutorily delegated to a particular court system.

State courts have “general” jurisdiction over most types of civil cases. Where appropriate, State courts may apply the law of another State, Federal law, or even the law of another country, where required to do so by choice of law principles.

Federal courts, by contrast, are courts of “limited” jurisdiction over two principal categories of cases: (1) those invoking “federal question” jurisdiction over civil actions arising under the Constitution, laws, or treaties of the U.S.; and (2) those proceeding under “diversity” jurisdiction, where the amount in controversy exceeds \$75,000 and the dispute is between parties who are “diverse”. Diversity jurisdiction generally requires that the parties be citizens of different U.S. States, a citizen of a U.S. State and a citizen or subject of a foreign country, citizens of different States where a foreign citizen or subject is an additional party, or a foreign country as plaintiff and one or more U.S. citizens as defendants.

The jurisdiction of Federal courts is generally not exclusive. A plaintiff may choose to bring its case in either State or Federal court where subject-matter jurisdiction exists. A defendant sued in State court may “remove” the action to Federal court if the case is one that could originally have been filed there. Certain actions, however, may be brought only in Federal court by statute. For example, patent infringement claims, which arise under Federal law, may be litigated only in Federal court. Tort and property claims, for example, typically proceed in State court unless diversity jurisdiction permits Federal adjudication.

Each State maintains its own court system, including trial courts of original jurisdiction and one or more appellate courts. This structure broadly parallels the Federal system of district courts and courts of appeal. The U.S. Supreme Court exercises ultimate appellate authority over both Federal and State cases involving issues of Federal law, but reviews only a limited number of matters. There is no automatic right to Supreme Court review.

Cases in Federal court are governed procedurally by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. While each State has its own procedural and evidentiary rules, these are often analogous to (and in many respects modelled after) the Federal rules.

Litigation in the U.S. permits broad discovery of relevant documents and materials, including electronically stored communications and information. To manage the cost and scope of discovery, the Federal Rules of Civil Procedure limit discovery to information that is both “relevant” to the claims or defences and

proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). In practice, courts play an increasingly active role in supervising discovery, particularly with respect to electronically stored information and related proportionality concerns.

Since the COVID-19 pandemic, U.S. courts have also made lasting use of technology to improve efficiency. Remote depositions, virtual hearings, and hybrid proceedings (once exceptional) are now commonly permitted, particularly for pretrial conferences, routine motions, and discovery-related proceedings. While in-person appearances remain the norm for trials and evidentiary hearings in many jurisdictions, these technology-enabled procedures have reduced cost and scheduling burdens and are now a settled feature of civil litigation practice.

Efficiency in dispute resolution further relies on alternative mechanisms such as arbitration and mediation. Both Federal and State laws support the enforcement of binding arbitration agreements, and mediation before neutral third parties is widely accepted. Many courts have implemented mandatory mediation or settlement programmes aimed at resolving disputes at an early stage.

Integrity of process

The U.S. Constitution guarantees due process and various fundamental rights to fair court proceedings. Criminal defendants, for example, have the right to a jury trial. Many civil causes of action also carry with them the right to a jury trial, but many parties elect to proceed before a judge only. No one (person or entity) can be brought into a court case without a formal written notice of the proceeding, the grounds for the proceeding, and service of summons.

Once everyone is part of a case, each party has an opportunity to fully and fairly respond and defend itself. This includes the collection and production of documents, access to and the ability to present relevant witnesses and evidence to the trier of fact (judge or jury), and to cross-examine adverse witnesses. In criminal proceedings, defendants are presumed innocent unless and until guilt is proven beyond a reasonable doubt. In civil cases, claims are resolved based on the evidence presented and the applicable burden of proof.

Access to adequate legal representation is another hallmark of the U.S. legal system. Criminal defendants have the ability to request a defence attorney and many civil litigants may be able to secure *pro bono* counsel if they cannot afford to pay for representation. Many organisations have been formed throughout the U.S. to assist litigants to secure *pro bono* counsel based on the subject matter of the lawsuit. Similar protections are afforded to corporations and individuals.

Privilege and disclosure

Attorney-client privilege

The U.S. legal adjudicatory system protects communications between an attorney and a client made for the purpose of obtaining legal advice. The intention of this protection is clear: to allow the client to discuss their case and exchange information freely with their attorney to secure effective legal representation. The privilege is not absolute, however, and does not protect communications made to assist the commission of a crime or fraud. The privilege may also be waived or lost by, for example, disclosure of otherwise-protected information to a third party.

Attorney work product

The U.S. legal system also protects documents prepared by an attorney, or at an attorney's direction, in anticipation of litigation, including materials reflecting the "mental impressions, conclusions, opinions, or legal theories" of counsel or other representatives concerning the litigation. Fed. R. Civ. P. 26(b)(3). In

limited circumstances, factual work product may be discoverable upon a heightened showing, though opinion work product receives strong protection.

Waiver

The client, rather than the lawyer, holds the attorney-client privilege and therefore controls its waiver. Waiver may occur through voluntary disclosure of privileged information to third parties or by placing privileged communications at issue in litigation. Once waived, the privilege generally cannot be re-established as to the subject matter of the waiver.

Waiver is distinguishable from disclosures made pursuant to a joint defence or common interest arrangement. These doctrines permit separately represented parties with aligned legal interests to share privileged information without effecting a waiver.

Disclosure of information in the context of settlement discussions or mediation is likewise treated differently. Federal and State rules generally restrict the use of settlement communications as evidence and provide protections designed to encourage candid resolution efforts.

The U.S. legal system generally treats corporations and individuals alike for purposes of privilege, and corporate entities enjoy attorney-client privilege and work product protection under the same principles.

Evidence

The U.S. legal system permits parties to rely on relevant evidence to support their claims or defences. This includes documents, communications, and things (both tangible and electronic) as well as witness testimony (both deposition and live; fact and expert). In fact, discovery is not limited to evidence that would be admissible at trial.

As a result, the breadth of information potentially available to the parties makes the discovery process one of the most important and often most expensive aspects of U.S. litigation. Courts increasingly supervise discovery to ensure that it remains focused on information that is relevant and proportional to the needs of the dispute, particularly where electronically stored information is involved. Federal court discovery is, as a general matter, broader than discovery conducted in many State court systems.

Costs

Generally speaking, parties to U.S. litigation bear their own legal fees and expenses, win or lose, although there are some exceptions to this rule. A “prevailing party” may be able to recover some of its costs of litigation and any party can move the court to recover its attorney’s fees. However, recovery of attorney’s fees is rare unless, for example, the opposing party acted egregiously. Fee-shifting provisions may also change the *status quo* and be included in contracts between the parties or based on statute (Sherman Anti-trust and RICO). Even where authorised, only reasonable fees can be recovered.

Litigation funding

Contingency

The U.S. permits contingent fee agreements between clients and attorneys, where the attorneys are paid only if the client prevails. Generally, such agreements give the attorneys a percentage of the amount the client recovers. Contingent fee agreements have become common in personal injury cases as well as patent infringement litigation.

Third-party financing

Litigation financing by unrelated third parties has become an increasingly established feature of the

U.S. litigation landscape. Unlike contingent fee arrangements, third-party litigation funding shifts the financial risk of pursuing a claim from clients and law firms to specialised financing entities. These firms invest in litigation in exchange for a return that is typically tied to the outcome and timing of the case, and may recover less if a matter resolves early or a greater amount if it proceeds through trial.

In recent years, courts and policymakers have given increased attention to issues of disclosure and transparency related to third-party litigation funding, particularly in complex commercial disputes and collective actions. While there is no uniform federal disclosure requirement, some courts now require disclosure of funding arrangements by rule or order, and legislative proposals at both the State and Federal levels continue to address the role of litigation funding in the civil justice system.

Class actions

Class actions are permitted in both Federal and State courts. Such proceedings allow one or more representative plaintiffs to pursue claims on behalf of a class of similarly situated persons where it would otherwise be impracticable for individual plaintiffs to bring separate actions. It is not uncommon for a class action to encompass the claims of thousands of potential class members, including individuals who may be unaware that they possess a legally cognisable claim.

The outcome of a class action, whether resolved through settlement or adjudication, may bind absent class members only if a court determines that the procedural requirements for class treatment are satisfied and that the resolution is fair, adequate, and reasonable. Federal and State statutes frequently authorise an award of attorney's fees to class counsel, which can make class actions economically viable to pursue.

In recent years, class action activity in the U.S. has increasingly been driven by claims arising under consumer privacy, biometric, and data use statutes. Laws such as the Illinois Biometric Information Privacy Act (BIPA), California's consumer privacy regime (CCPA/CPRA), the Federal Video Privacy Protection Act, and various State wiretap statutes have generated substantial class litigation, particularly in connection with online tracking technologies, biometric identifiers, and digital consumer services. At the same time, the widespread use of arbitration agreements containing class action waivers has led plaintiffs to pursue coordinated "mass arbitration" filings as an alternative mechanism for collective relief. Courts and arbitral institutions have responded with heightened scrutiny and procedural controls, but aggregate litigation remains a prominent feature of the U.S. dispute resolution landscape.

Interim relief

U.S. courts have the authority to enter preliminary injunctions and temporary restraining orders, among other interim relief, to preserve the *status quo* pending resolution of the parties' dispute.

Enforcement of judgments/awards

Judgments and awards, whether compensatory or punitive, may be enforced differently depending on the type of relief. Specific performance of an obligation, or negative performance, may be ordered in appropriate circumstances, for example. Money damages can be enforced by direct payment, transfer of a posted bond (if ordered by the court), or by property attachment or garnishment where warranted.

Cross-border litigation

It is not uncommon for disputes to be multi-national in nature. A U.S. component of an international dispute may be litigated in U.S. courts where the defendant has sufficient "minimum contacts" for the court to exercise personal jurisdiction.

In addition to direct litigation, U.S. law permits parties to certain foreign proceedings to seek discovery in the U.S. for use abroad. Such applications are typically made under Federal statute and are subject to the discretion of the U.S. court where the discovery is sought. The availability and scope of this relief depend on the nature of the foreign proceeding and the character of the adjudicative body, and U.S. courts evaluate requests with regard to comity, efficiency, and fairness considerations.

International arbitration

The U.S. is favourable to international arbitrations and this pro-arbitration policy is embodied in the Federal Arbitration Act (FAA). The FAA controls the scope of arbitration agreements and requires courts to enforce such agreements according to their express terms. Under the FAA, U.S. courts will ordinarily honour a contractual choice of law provision, where specified, even where the court would otherwise be required to apply the law of another State or country.

Mediation and ADR

U.S. courts treat arbitration and mediation agreements like any other contract. In other words, courts look to principles of contract law to interpret the agreements. Contracting parties are free to choose the mechanisms and procedures. Significantly, some States have adopted default arbitration and mediation procedures that apply when an agreement is silent about the specifics.

Regulatory investigations

The U.S. Congress has created many agencies responsible for administering statutory responsibilities. Federal and State government agencies can launch investigations at their discretion, and many of these investigations are resolved through settlements. For example, the U.S. International Trade Commission is charged with investigating whether articles of commerce being imported into the U.S. infringe a valid intellectual property right. These investigations can conclude with a general or limited exclusion order or a cease-and-desist directive, which functions as if it were an injunction.

**Kenneth R. Adamo**

Tel: +1 312 527 0620 / Email: kradamo23@gmail.com

Ken Adamo is the Principal in the Law Office of KRAdamo in Chicago, Illinois. Ken has extensive experience as lead counsel in jury and non-jury cases before State and Federal courts and before the United States International Trade Commission, as well as *ex parte* and post-grant PTAB experience in the U.S. Patent and Trademark Office. He has had substantial experience as lead counsel in arbitrations and other alternative dispute resolution proceedings, and actively practises before the U.S. Court of Appeals for the Federal Circuit, having appeared in over 50 appeals to date.

**Alex Shtraym**

Tel: +1 469 983 6028 / Email: alex.shtraym@lathropgpm.com

Alex Shtraym is a partner in Lathrop GPM LLP's Intellectual Property Litigation Group. He handles complex patent and trademark disputes in Federal courts and before the U.S. Patent and Trademark Office, while also managing patent prosecution across mechanical, software, and emerging technologies. Alex's integrated approach to litigation and prosecution helps clients mitigate risk and maximise IP value, whether defending their rights or enforcing them. He represents a diverse client base, from early-stage innovators to mid-size and large national companies with operations across the United States and abroad.

Law Office of KRAdamo

360 W. Illinois, Apt 620,
Chicago IL 60654, USA
Tel: +1 312 527 0620
URL: www.kradamo.com

Lathrop GPM LLP

3131 McKinney Avenue, Suite 100,
Dallas, TX 75204, USA
Tel: +1 469 983 6028
URL: www.lathropgpm.com



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