

Welcome and Some Housekeeping Items

- Be sure to sign-in for MCLE Credit at the registration desk.
- Ask questions! Our panelists are happy to engage with you.
- If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week.
- Watch for the survey/feedback link sent to your email after the program.

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 - E-Groups and Committees on Substantive Practice Areas

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Navigating Situational Distress

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Speakers



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Navigating Situational Distress:
Market Forces and
Cross-Jurisdictional
Challenges

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Economic & Financial Volatility

- **Rates & Capital Costs:** “Higher-for-longer” policy stance from the Federal Reserve and ECB has kept financing expensive and tightened covenants. Companies with 2026-27 maturities are facing real refinancing pressure.
- **Private Credit vs Bank Lending:** Direct-lending funds now write nearly half of new U.S. leveraged loans; their bespoke terms require heavier legal oversight.
- **Inflation & Input Costs:** Headline inflation has moderated, but wage and benefit costs continue to rise.
- **Regional Divergence:** U.S. growth remains steady while Europe slows and China’s deflation weighs on global demand and global companies are revisiting pricing and repatriation provisions.
- **Currency & Interest Exposure:** Volatility in global currencies drives hedging and intercompany-loan adjustments.

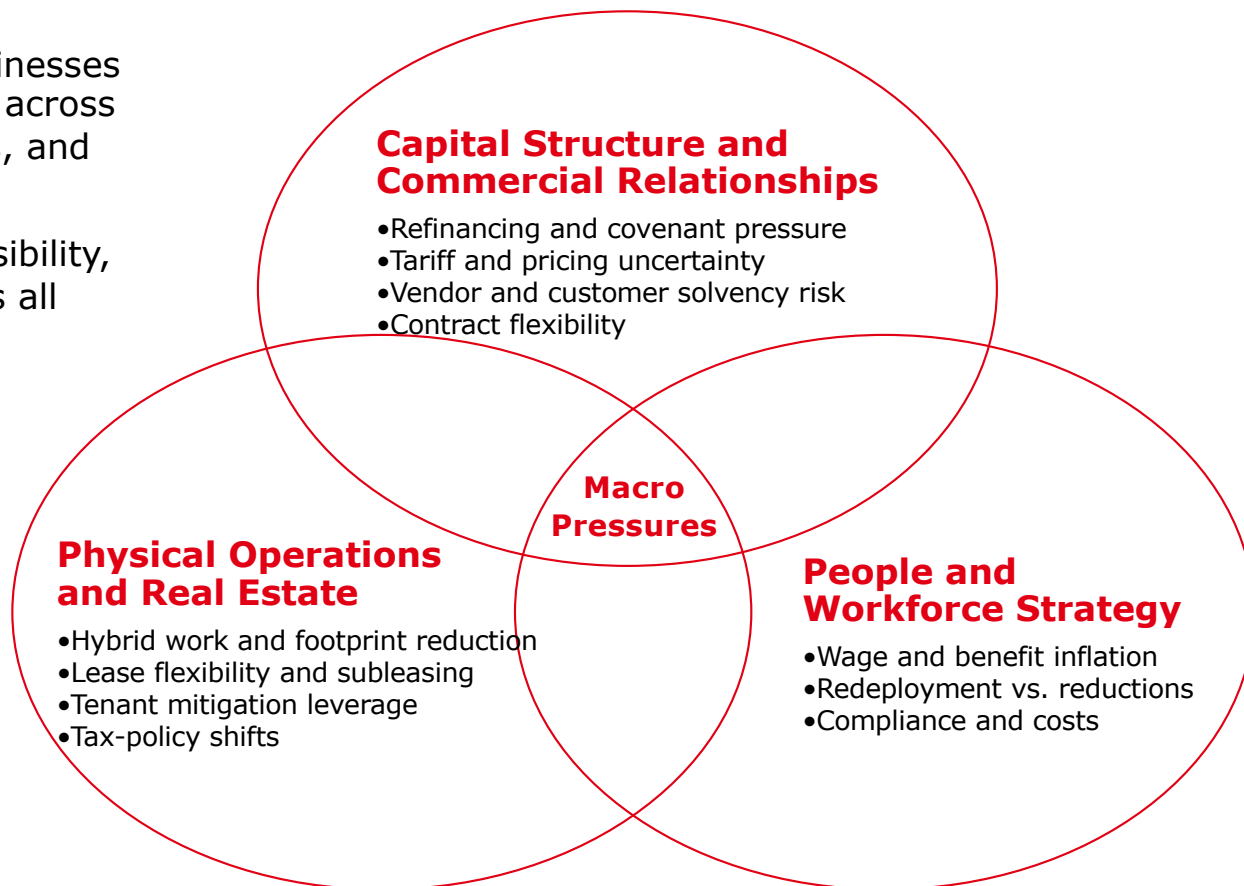
Policy, Trade & Regulatory Uncertainty

- **Tariffs and Trade Policy:** The pending *Learning Resources, Inc. v. Donald J Trump* Supreme Court case challenges the President's authority under Section 301 of the Trade Act, which could result in companies revisiting "change-in-law" and force-majeure provisions in supply contracts.
- **Cross-Border Investment & Sanctions:** Expanded CFIUS jurisdiction, a forthcoming outbound-screening regime, and evolving sanctions tied to Russia, Ukraine, and the Middle East require rapid diligence, counterparty screening, and clear contract-suspension rights
- **Conflicting Regulatory Regimes:** Patchwork global standards (EU AI Act, SEC climate-disclosure pause, California SB 253/261) create compliance mismatches that legal must coordinate across jurisdictions.
- **Technology, Digital Assets & Cyber Risk:** Growing use of AI-driven systems and digital payment platforms is heightening cyber and operational risk, prompting companies to strengthen vendor diligence, data-governance controls, and insurance and contractual protections.

Interconnected Aspects of Agility

Legal teams today are helping businesses navigate interconnected pressures across their capital structures, workforces, and physical operations.

The best strategy is to maintain visibility, flexibility, and preparedness across all three areas of focus.



Navigating Situational Distress:
**Managing Counterparty
Risks and Liquidity
Planning**

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Managing Counterparty Risk

- **Concentration risk:** Identify major customers or suppliers driving revenue or production. Even a healthy company can be exposed if one key partner fails.
- **Early diligence:** Monitor financial health, payment patterns, lien filings, and supplier performance to flag emerging distress.
- **U.S. protections:** Utilize UCC Article 9 security interests and reclamation rights; negotiate letters of credit, deposits, step-in rights or dual-sourcing to preserve supply chain.
- **Cross-border considerations:** Local security perfection, collection and enforcement laws vary, companies can use performance bonds, trade-credit insurance, or dual-sourcing to mitigate supply risk; pay close attention to governing-law and venue clauses and think about actually collecting and/or enforcing.
- **Balancing act:** Protect your position while maintaining counterparties' viability; early communication and flexible contract terms often prevent default escalation.

Proactive Liquidity Planning




- **Proactive planning:** Companies are undertaking internal reorganizations to optimize liquidity—often ahead of financing or M&A activity, not just during distress.
- **Targeted actions:** Ring-fencing liabilities, migrating valuable assets (IP, licenses, key contracts) into solvent or “finance-ready” entities, and simplifying complex subsidiary structures.
- **Governance comfort:** Yellow Corp. confirmed that well-documented internal realignments can be treated as ordinary-course business decisions, even under financial pressure.
- **Not LMEs:** Unlike liability-management exercises (uptiers, drop-downs, debt exchanges), these steps focus on internal structure and cash mobility, not altering creditor priority.
- **Balancing act:** Protect your position while maintaining counterparties’ viability; early communication and flexible contract terms often prevent default escalation.
- **Small scale actions:** Enterprise-wide reorganizations often unnecessary, can be implemented on a smaller scale through reallocating intercompany loans, refinancing a single subsidiary, monetizing excess or non-core assets, or tightening working-capital terms.
- **Key considerations:** Evaluate fraudulent-transfer risk, tax and accounting impacts, and lender or counterparty-consent requirements tied to collateral or guarantee movement.

Navigating Situational Distress:
**Managing Human
Capital and
Workforce Challenges**




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Reduction in Force/Redundancy

			
Concept of collective redundancy?	<ul style="list-style-type: none"> – Yes – Under the WARN Act, when 50 or more qualifying employment losses occur due to a plant closing or mass layoff within a statutory period (varying from 30-90 days), employees are entitled to 60 days' notice or the equivalent in pay and benefits 	<ul style="list-style-type: none"> – Yes – Triggered where an employer proposes to dismiss 20 or more employees as redundant within a period of 90-days or less 	<ul style="list-style-type: none"> – Yes – Triggered where an employer makes a certain number of redundancies within a period of 30 calendar days. The thresholds are: <ul style="list-style-type: none"> ○ 21-59 employees – 6 redundancies ○ 60-499 employees – 10% of the workforce or 26 redundancies ○ 500+ employees – 30 or more redundancies
I&C requirements	<ul style="list-style-type: none"> – Any applicable union representatives are entitled to notice of the reduction 	<ul style="list-style-type: none"> – With appropriate representatives of affected employees 	<ul style="list-style-type: none"> – Consultation requirements only with a works council
Other points to note	<ul style="list-style-type: none"> – Several States have laws similar to the WARN Act, that may apply when fewer employees separate or require a longer notice period – States may require notice of a group separation to the applicable labor agency 	<ul style="list-style-type: none"> – Certain information prescribed by law must be provided to the employee representatives – Prescribed timescales for I&C (depending on numbers) – Secretary of State notification requirement – HR1 – Statutory redundancy payment entitlement for employees with at least 2 years continuous service 	<ul style="list-style-type: none"> – Where there is a works council, negotiation for agreement will take place, including on payments on termination – Labour office notification requirement – After agreement with the works council and after one month of notifying the Labour authorities, dismissals can take place – Social Selection

TUPE/ARD

			
When ARD/TUPE applies	<ul style="list-style-type: none"> – No equivalent ARD/TUPE – But some labor contracts between employers and unions contain pledges by the employer to require any purchasers or successors to adopt the existing labor contract or to maintain the same T&Cs 	<ul style="list-style-type: none"> – Two definitions of TUPE: (1) “classic” business transfer and (2) service provision change – Transfer across borders possible, decisive issue is that located in GB prior to the transfer 	<ul style="list-style-type: none"> – No service provision change rules, so test is “economic entity transfers and retains its identity” – Distinction between labour and asset intensive business – Transfer across borders may or may not be an ARD transfer, partly dependent on geography
I&C requirements	<ul style="list-style-type: none"> – N/A 	<ul style="list-style-type: none"> – With appropriate representatives of affected employees – Failure to comply = protective award – Transferor and transferee each to do I&C in respect of their employees 	<ul style="list-style-type: none"> – Consultation requirements only if there is a works council and if there is a “change in establishment” – Individual, detailed information letters to all transferring employees, which trigger one month period for objecting to transfer
Other points to note	<ul style="list-style-type: none"> – The WARN Act provides that employers must provide 60 days’ notice of certain job losses. Layoffs following a transaction may aggregate with pre-transaction layoffs to create a qualifying event and entitlement to notice – There are some limited scenarios where the purchaser could incur WARN Act liability 	<ul style="list-style-type: none"> – Objection leads to termination on transfer without any entitlements (with exceptions) – No joint and several liability except for liability for I&C failure – Exception from transfer principle for occupational pensions – Transfer is sole or principal reason for dismissal = automatically unfair (2 years’ service requirement) – Change of T&Cs not effective even with employee consent unless unconnected or ETO reason – Collective agreements transfer 	<ul style="list-style-type: none"> – Obligation on transferor to provide employee liability information to transferee at least 28 days before transfer – Objection to transfer means employee remains with transferor – Pension entitlements transfer – Dismissal because of transfer is void – Change of terms by agreement usually possible (exceptions apply) – Potential transfer of collectively agreed terms

Navigating Situational Distress:
Managing Challenges
and Opportunities in
Real Estate

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Real Estate Challenges

Geopolitical and other factors can have unanticipated impact on Real Estate needs including:

- AI
- Work from Home Technology
- Political Administration Policies
 - Government Funding Cuts
 - Tariffs – Impact Supply Chains, Manufacturing
 - Taxation, Such As Chicago's Potential Corporate Head Tax
- M&A Activity



Real Estate Key Considerations

- Attorneys' Fee Shifting Provisions
- Mitigation of Damages
 - 735 ILCS 5/9-213.1 - "a landlord or his or her agent shall take reasonable measures to mitigate damages recoverable against a defaulting lessee."
 - A commercial landlord may waive the landlord's duty to mitigate by a specific provision in the lease. *Takiff Properties Group Ltd. #2 v. GTI Life, Inc.*, 124 N.E.3d 11, 15 (Ill. App. 1st Dist. 2018).
- Market Factors



Real Estate Opportunities

Others' consolidation provides opportunities for those seeking Real Estate space

- Favorable Terms
- Expanded Options
- Lower Costs



Distressed Landlords

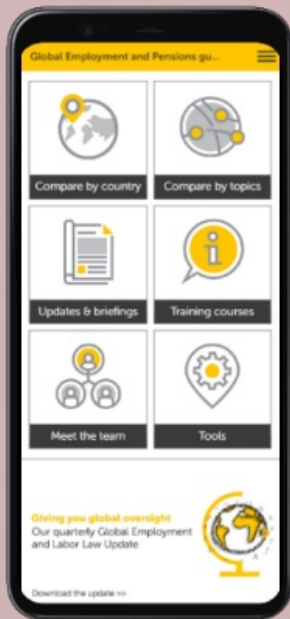
Beware distressed landlords as you leave

- Kicking and Screaming – Surrender Claims
- Read Your Lease
- Document, Document, Document

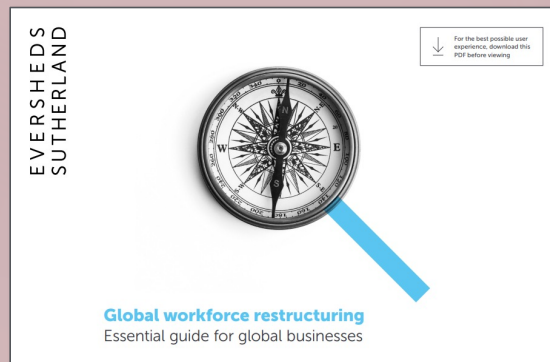


Useful Resources

Our guide to
International
Employment and
Pensions Law App



Global workforce
restructuring guide



Representation in the
workplace: Essential
guide for global
businesses



Questions?



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