

INTERNATIONAL-U.S. CROSS-BORDER

The multidisciplinary attorneys who make up Hodgson Russ's extensive international and cross-border practice provide U.S. counsel to clients on a broad range of international legal issues. We serve companies around the world, ranging from major, multinational technology, service, and industrial companies to startups and small family businesses, advising on the full range of U.S. legal issues involved in cross-border business. Our attorneys represent both foreign clients with business or personal dealings in the United States and U.S.-based clients with interests in foreign countries.

We also represent foreign clients in resolving disputes with U.S.-based business partners, including in the federal and state courts. Our attorneys handle arbitrations and mediations before all domestic and international bodies and represent clients before numerous administrative agencies, both state and federal.

Hodgson Russ has extensive experience counseling foreign-based businesses on the legal issues involved with entering and developing new markets for their services and products in the United States. Many of our clients are based in civil-law jurisdictions, in particular, France.

Strong teams in intellectual property, including patents; taxation; and business law permit our clients to plan their international development in a structured and risk-aware manner.

Hodgson Russ regularly advises businesses and individuals around the world in all areas of U.S. law, including:

- Acquisition and disposition of U.S. entities
- Agency compliance, including with the Food and Drug Administration, Federal Communications Commission, Federal Trade Commission, Department of Agriculture, U.S. Patent and Trademark Office, and numerous others
- Antitrust
- Bankruptcy and international creditors' issues
- Capital market transactions
- Customs and tariff matters
- Executive compensation and estate planning for international corporate executives
- Export control matters

Contacts

George Eydt
416.595.2671
geydt@hodgsonruss.com
Daniel Spitzer
716.848.1420
dspitzer@hodgsonruss.com

Professionals

Attorneys

James Bandoblu Jr.
Christine Bonaguide
Matthew Cameron
Katherine Cauley
George Eydt
Joshua Feinstein
Carol Fitzsimmons
Kevin Gluc
Joseph Goldberg
Debra Herman
Timothy Ho
Charles H. Kaplan
Michael Maxwell
Britta McKenna
Thomas Nelson
David Reed
Matthew Scherer
Daniel Spitzer
David Stark
Paul Vallone
Marla Waiss
Sujata Yalamanchili

Managing Partner
Benjamin Zuffranieri Jr.

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- Financing transactions
- Government relations, including foreign government issues
- Health law
- Immigration
- Intellectual property, including patent registration
- Labor and employment
- Real estate
- Renewable energy
- Taxation
- Technology transfers and joint ventures

Our attorneys work together to negotiate successful agreements for a broad spectrum of business relationships, including commercial agents, distributorships, employment, franchising, joint ventures, leasing, licensing, marketing, noncompetition, partnerships, sales, shareholder relations, strategic alliances, and other corporate and commercial matters.

With six offices in the United States and Canada, including in the major financial and business markets of New York and Toronto, and much of our infrastructure in lower-cost jurisdictions, we are able to offer our clients the full range of excellent-quality legal services of some of North America's top economic markets without the disproportionate expense of other large U.S. firms.

Of further benefit to our clients, Hodgson Russ is an active member of the United States Law Firm Group, a network of established U.S.-based law firms, many of which have offices outside the United States and all of which have extensive experience with lawyers and law firms in a number of countries. This network and our own extensive relationships help provide Hodgson Russ clients with effective assistance in selecting competent counsel in all of the significant commercial countries in the world.

Experience

Hodgson Russ attorneys represented an industrial ferrosilicon company in connection with its \$200 million-plus sale to an Eastern European conglomerate.

Hodgson Russ represented a Finnish client in the heat transfer industry in connection with the formation of worldwide joint venture company with a Texas corporation. We also represented this client in the subsequent purchase of the entire company. In addition to corporate work, we assisted this client with respect to compliance law and merger compliance matters.

Hodgson Russ was lead counsel for a publicly traded international metal and mining operation in connection with the closing of trade receivables financing facilities of \$300 million. The transactions involved assets and entities based in the United States, Canada, South America, Asia and Europe.

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A Hodgson Russ team represented a Finnish HVAC company in its acquisition of Italian-based competitor. Our services included mergers and acquisitions advice and representation in a U.S. Department of Justice post-closing antitrust investigation.

Hodgson Russ represented a specialty chemical manufacturer in connection with the acquisition of a manufacturing plant in Europe. The transactions involved international tax planning, senior and subordinated debt financing, environmental issues, and responding to a governmental investigation of the effects of the transaction on competition in the marketplace.

Hodgson Russ helped a France-based, publicly traded manufacturer of automotive fluid transfer parts complete the acquisition of a Michigan-based automotive parts manufacturer from one of the largest private equity firms in the United States, including handling all employment-related legal aspects of the transaction. As a result of the deal, the French manufacturer now employs 8,000 people in 11 countries with annual projected sales of €620 million, up from €410 million in 2010. Hodgson Russ was the lead firm for the U.S. aspects of this transaction, including advising on the U.S. aspects of a multimillion-dollar acquisition financing package from a consortium of French lenders.

Hodgson Russ attorneys represented France-based Cegedim, a leading provider of databases and software solutions for the health care industry, in a deal reached in March to acquire Dendrite International, a former rival in the pharmaceutical marketing solutions sector. The \$751 million deal was expected to result in a combined company with operations in more than 75 countries throughout Europe, North and South America and Asia Pacific, and with annual revenues of approximately \$1.1 billion. Hodgson Russ assisted with all employment-related legal aspects of the transaction.

Hodgson Russ acts as outside counsel to a Germany-based manufacturer and retailer of luxury consumer products with respect to U.S. distribution law matters.

When a privately held, multinational company underwent a corporate restructuring, the transaction had unintended consequences for the stock appreciation rights (SARs) of the company's U.S. employees. Hodgson Russ attorneys analyzed the tax compliance issues arising under 409A as a result of the transaction, prepared corrective amendments for the plan and award agreements, advised our client on the various correction options and reporting obligations, and prepared the required IRS statements and participant notices. Once the corrections were made, we assisted the client in designing new incentive plans suitable for the company's corporate structure and unique circumstances.

Hodgson Russ represented a corporate client in establishing Dodd-Frank-compliant reporting and record-keeping protocols. The client uses physically settled and financially settled derivatives to hedge its financial exposures to fluctuating prices. Although Dodd-Frank provides for certain exceptions to corporate "end users," the cross-border nature of the client required a customized approach to derivatives regulations.

Represented a United Kingdom-based real estate investor in closing of a refinance loan with a CMBS lender.

A Hodgson Russ team led by Joseph P. Goldberg obtained a ruling in favor of a France-based Hodgson Russ client in a suit brought against it by a Georgia-based U.S. company. The U.S. company originally brought suit in the Superior Court of Fayette County, Georgia State Court, alleging breach of contract, breach of express and implied warranties, and breach of implied covenant of good faith and fair dealing when a product produced by our client that the U.S. company purchased for resale to a passport agency allegedly could not be read by the passport readers. Our client refused to return the deposit the

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U.S. company had paid for the product. Hodgson Russ first had the case removed to federal court before moving to dismiss on several grounds, including a forum selection clause in the contract between the parties granting exclusive jurisdiction to the Commercial Court of Aix-en-Provence in France and lack of personal jurisdiction over our client. In arguing that the Commercial Court of Aix-en-Provence in France was a reasonable forum, our client's motion to dismiss noted that, contrary to the U.S. company's assertions in the complaint, the agreement between the parties was not governed by the Uniform Commercial Code, but instead by the United Nations Convention on Contracts for the International Sale of Goods. The U.S. company thereafter amended its complaint to correct its mistake as to applicable law and simultaneously filed an opposition to our client's motion to dismiss. The U.S. District Court for the Northern District of Georgia granted our client's motion to dismiss the complaint, finding that the evidence presented by Hodgson Russ weighed against the court's personal jurisdiction over our client. The court drew heavily from detailed client affidavits prepared and submitted by Hodgson Russ in deciding that our client did not have sufficient contacts with Georgia to establish personal jurisdiction.

Assisted two separate nations with leasing matters relating to consular spaces in New York City.

Represented a Consulate with the sale of a \$3,600,000 portfolio of consular properties, including negotiating broker agreements, sale agreements and closing.

When a European-based heavy machinery manufacturer sought to strengthen its presence in North America, it saw in a U.S. company the perfect opportunity to expand its product line and distribution capabilities in the United States. With the help of Hodgson Russ, the U.S. division of this manufacturer completed the acquisition of this company and its complementary product line, thereby significantly increasing the size of its U.S. operations and positioning itself for future growth in this market. The acquisition — valued at approximately \$43 million, combining a cash purchase price and assumption of debt — is the multinational manufacturer's largest U.S. acquisition to date. The company's U.S. employee base more than quadrupled with the addition of the U.S. company's approximately 400 employees, and it added locations in Alabama, Florida, Indiana, Iowa, Kentucky, Tennessee, Texas, and other states to its manufacturing and distribution network. Prior to this acquisition, Hodgson Russ handled the incorporation of the European manufacturer's U.S. division and its acquisition of a smaller U.S. manufacturing company. In connection with this expansion, we designed and drafted restricted stock plans to incentivize their key employees. Since this transaction, Hodgson Russ has represented this client in two additional acquisitions, one on the East Coast and one on the West Coast.

Assisted a member of the European Union with the purchase of various residential real estate properties for key governmental and diplomatic personnel.

Hodgson Russ acts as special U.S. tax counsel for a U.S. publicly traded company in connection with the redomestication of the company from the United States to a Caribbean jurisdiction. Our services include providing the U.S. tax disclosure language for the company and its shareholders in various SEC documents, tax structuring advice to provide for nonrecognition treatment to U.S. and foreign shareholders in the redomestication (Code Sections 368, 367), and minimizing the potential adverse effect of the U.S. anti-inversion tax rules (Code Section 7874) and the interaction of the anti-inversion rules with the U.S. real estate (FIRPTA) tax rules applicable to foreign shareholders.

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Hodgson Russ acts as special U.S. tax counsel to U.S. shareholders of a large Swiss pharmaceutical company in connection with the acquisition of shares of that company. For this client, we provide U.S. tax planning services and assistance with U.S. tax filings by U.S. shareholders and foreign intermediary entities to avoid potential U.S. withholding taxes, including Form W-8IMY, Form W-8BEN, and Form W-8EXP filings.

Hodgson Russ provides U.S. tax and estate planning advice to numerous trust companies that act as trustees or advisors of foreign-based family trusts, applicable to when the trust acquires U.S.-situs assets or has a beneficiary who becomes a U.S. resident. Our services to these clients include U.S. tax advice to avoid the U.S. accumulation distribution rules applicable to distributions from foreign trusts to U.S. beneficiaries and to avoid potential application of the U.S. passive foreign investment company (PFIC) rules for shares of foreign companies held by the trust, U.S. reporting obligations on IRS Form 3520, and recommendations for appropriate language in the trust agreement to provide U.S. estate tax protection for trustees or beneficiaries who are U.S. residents.

Hodgson Russ acts as general U.S. tax and corporate counsel for a large, privately owned company based in Austria. For this client, we provide tax planning for its U.S. operations and U.S. consolidated group; U.S. tax structuring for the acquisition of U.S. target companies, including use of Section 338 elections; and tax planning for repatriation of profits from the U.S. consolidated group.

Handled real estate and tax-related matters for a member of the European Union, including matters relating to real estate exemptions for consular properties, lease drafting, sales tax collection requirements for sales by bookstores operated as an adjunct to the French Consulate, loss of real property tax exemptions as the result of the leasing of consular property to non-exempt persons, among other issues.

Hodgson Russ intellectual property attorneys handle U.S. patent and trademark filings for a well-known German manufacturer of microscopes and related systems. The relationship is now more than two decades old.

Hodgson Russ acts as general U.S. tax and corporate counsel for a private multinational joint venture group of entrepreneurial companies with a principal owner domiciled in Hong Kong and business operations headquartered in the United States and Canada. Our services to this client include the integration of U.S. and Canadian tax planning for U.S. and Canadian shareholders with respect to structuring for new ventures and sales of U.S. and Canadian member entities, tax planning for the ownership of intellectual property rights, tax planning for the sale of a minority equity interest to a private equity firm, and general U.S. income tax and estate planning for foreign owners of the enterprise.

Hodgson Russ acts as general U.S. tax counsel and corporate counsel to a business enterprise whose principal owner is domiciled in Barbados, which also involves family trusts owning shares for estate planning and creditor protection purposes, and whose business operations are divided between Barbados, the U.S. and Canada. Our services to this client include tax advice for structuring for ownership of intellectual property rights, structuring of business operations for payments from the U.S. to qualify for benefits under the U.S.-Canada Tax Treaty, planning for U.S. estate tax protection for foreign owners, and transfer pricing and other general U.S. tax advice.

A victory obtained by Hodgson Russ partner Joseph P. Goldberg before the Arbitration Institute of the Stockholm Chamber of Commerce demonstrates the value to companies doing business internationally of including international arbitration provisions in contracts entered into with foreign entities. In this case, our U.S.-based client entered into an agency

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agreement with a Chinese company, pursuant to which the Chinese company agreed to pay certain commissions to our client in consideration for it putting forth its best efforts to ensure that the Chinese company would become the exclusive equipment supplier for a project to install a government-sponsored broadband network in Europe. The Chinese company won the contract but refused to pay our client any commissions, claiming that it did not fulfill applicable requirements of the initial contract and a later supplement. The agreement stipulated that resolution of any disputes would be decided by the Stockholm Chamber of Commerce. Hodgson Russ commenced the arbitration proceeding, and the hearing lasted three days. The panel ultimately agreed with our client's position that the Chinese company engaged in "ongoing and serial breaches of contract," and entered judgment in favor of our client awarding damages, plus interest and reimbursement of the cost of the arbitration, all of which were collected in full.

In the News

Enforceability of Wayfair Decision on Foreign Companies Unclear
Tax Analysts, June 28, 2018

You & the Law: Foreign Bank Accounts
WBFO, April 14, 2014

Global Law a Booming Practice in WNY
Buffalo Business First, December 12, 2011

Business Law Goes Global
Buffalo Law Journal, December 8, 2008

Paul M. Frank Appointed to New York City Bar's Council on International Affairs
August 21, 2006

Press Releases

Two Hodgson Russ Attorneys Selected to Author Monthly Columns in Tax Notes State
Hodgson Russ Press Release, April 27, 2020

Labor and Employment Attorney Charles H. Kaplan Joins Hodgson Russ
Hodgson Russ Press Release, March 24, 2020

Publications

Understanding Collection Options for Lenders Under Article 9 of the UCC
Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert, October 23, 2020

Iran Sanctions Eased, But Restrictions Remain
Corporate & Business Law Alert, February 19, 2016

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An Export Plan Should Include the Consideration of U.S. Distribution Laws if Selling Into the U.S. Through Sales Representatives or Distributors

Legal & Tax Newsletter, September 2014

The Right to Be Forgotten

Lawyers Weekly, July 11, 2014

Caution Urged for Green Card Holders Leaving U.S.

Lawyers Weekly, May 23, 2014

Proposed Food Import Regulations Issued Under the Food Modernization Act

Legal & Tax Newsletter, October 9, 2013

Medical Device Excise Tax Liability of Foreign Manufacturers Selling Into the United States

July 2, 2013

Medical Device Excise Tax Liability of Foreign Manufacturers Selling Into the United States

July 2, 2013

U.S. Government Blocks Foreign Investment in Renewal Energy Project

Legal & Tax Newsletter, a publication of the German American Chamber of Commerce, January 2013

Foreign Entities Doing Business in the U.S. Should Become Familiar With the State Tax Environment

Legal & Tax Newsletter, a publication of the German American Chamber of Commerce, November 5, 2012

Presentations & Events

US Readiness Online Immersive 6.0

June 20, 2023

Women in Niagara: Ask the Experts

September 22, 2021

Innovestor Ignite "What Works in the USA" Workshop

New York, New York, September 30, 2019

Bringing Your Baltic Food Brand to the U.S.

The Offices of Hodgson Russ, 605 Third Avenue, Suite 2300, New York City, NY 10158, July 2, 2018

The Next 150 Years - Transformational Change

Niagara-on-the-Lake, ON, October 26, 2017

Canada/U.S. Cross-Border Estate and Income Tax Planning

Toronto, Ontario, September 17, 2014