

8 Questions For Latham's UK Disputes Chief Martin Davies

By **Paige Long**

Law360, London (July 31, 2020, 5:51 PM BST) -- After two decades in the London disputes market, Latham & Watkins LLP's Martin Davies has his eye on the burgeoning class action scene as reforms and litigation funders spur more suits.

Davies, the global vice chair of the firm's litigation and trial department, has taken a personal interest in the area, handling both sides of disputes. He represented big institutional shareholders including Legal & General, Prudential and Aviva in the RBS rights issue suit and is currently representing one of the banks facing a group action over alleged foreign exchange manipulation at the High Court.

With a resume including time at McKenna & Co., Olswang LLP and litigation firm Quinn Emanuel Urquhart & Sullivan LLP, he joined Latham as a partner in April 2017.

He now leads a litigation team that has increased from six partners to 14 since he joined, as he set about building up the litigation practice by expanding its white collar, competition and commercial litigation capabilities. Davies is one of four global vice-chairs for litigation at Latham and the only one based outside the U.S.

Here, Davies talks to Law360 about how the London litigation market has developed over the years, major differences between the U.S. and U.K. approach to class actions, and some predictions for how the COVID-19 pandemic could play out in the courts.

What is one skill that you think is overlooked in being a disputes lawyer?

If you want to be a good litigator, you need to be able to genuinely determine what the key issues are. That entails thinking about what is absolutely essential and where you are willing to give so that the case stays on track. It requires a more balanced outlook than I think some people think.

How do you go about learning that?

Some things are instinctive, but then there are other things that you learn on the job and you get better



Martin Davies

at as you get older. The old phrase of being able to see the wood from the trees is absolutely key. There's a skill some of the best advocates have, where you think there are 40 issues, and they stand up and tell the judge there are actually only three issues. And you realize they're absolutely right.

You spend on average about three years running up to trial, and you've only got "X" days in court. And the judges won't listen to everything. By the time you get there, you've got to have it distilled down to the essence of the case.

What are some of the biggest changes you've seen over the course of your career?

The business of law has certainly changed. Litigation in firms such as Latham is a billion-dollar business, and so you need people looking strategically and figuring out what the firm is going to focus on. As a law firm, you need to have a position in the market, because if you are too similar to everyone else, then why would anybody use you compared to the next firm?

Historically in London, you've got the strength of the Magic Circle firms. Now, you have the top-tier U.S. firms such as Latham providing that same quality but with the international handle as well. You also have purely litigation firms, which have a clear message of what they do.

Twenty years ago you didn't have either of those, but they are now key players in London.

What sets Latham apart from its competitors?

For litigation, particularly on international matters, we have the ability to field top-tier talent in multiple jurisdictions across the world and then act as one team. We started, of course, across the U.S., but then we've built out across Paris, Germany and so on. We want to make sure that in London we have a team that can match any other team at the top end of major disputes.

We're committed to being a free-standing practice, winning its own mandate by going out and getting clients, not just waiting for the work to come in. It is an active business development role that all litigators should have — not just be the leadership's role.

What's one big development in the London market that you're currently keeping your eye on?

We've got a lot more major class actions and group litigation orders than we have had historically. And I think there is a whole series of trends to explain that.

One is increased regulation, because when a corporation is fined or punished for falling foul of compliance, it opens up the opportunity for private actions to be brought by its shareholders or its customers based on those findings.

There is also the growth of litigation funding in the market, which is backing claims that may have been too expensive for claimants to bring, or where on their own they may not have been large enough to pursue on their own. And finally, you have courts around the world providing procedures to allow you to pursue those class actions.

In the U.K., we have group litigation orders and now a class action opt-out procedure under the Competition Appeal Tribunal. You add all those things together, and it's not surprising that we're seeing a greater increase in particular sectors, the financial sector for one. I think that is a trend that is

here to stay.

What's the main difference between how the U.S. and the U.K. deal with group claims?

The introduction of the CAT's class action procedure was modeled on the U.S. market — where once a class is certified you don't need to do anything unless you want to come out of it. But interestingly, here in the U.K. there are still a lot of group actions being pursued in the courts via the group litigation order, which is different because you have to opt in to be considered part of the claim.

The key difference is that in the U.S. you can commence an action without any fear of adverse costs. But having adverse costs in the U.K. acts as a gateway threshold to ensure that most claims that are commenced have at least some prospects. With the development of litigation funding, you don't need to bet your own money anymore, but the funders still analyze prospective cases very carefully and there are a lot of hoops they put a case through before deciding to take it on.

Do you have any predictions for the future of the U.K. market?

I think the next stage is whether law firms are robust enough to effectively do the litigation funding themselves. It won't be a stage that is for everyone, because obviously the risks are higher. You're not being paid, or you're being paid at a significantly lower rate than your hourly fee would be.

But I think a number of firms, including our own, believe there is an opportunity to take a position on it. We've quietly come out to the market on this. It can't be done in every jurisdiction, and you need to be large and robust enough to pick and choose cases as part of your wider practice, where you are charging on a normal basis.

And lastly, how is your firm dealing with the COVID-19 pandemic?

The pandemic has ushered in mass technological advances to court systems around the world, with e-filing and virtual trials becoming increasingly commonplace. For a court system under increasing pressure for time and cost-effective justice, embracing the benefits of technology is proving very attractive.

While fast-paced changes to regulation have been designed to ease pressure on businesses, we may see a rise in investigations or litigation focused on the financial and organizational strategy of businesses, as well as market conduct and culture. The financial effects of the pandemic will likely generate a myriad of questions for the courts as commercial parties look for ways to avoid or enforce contractual obligations in a difficult market.

I also think that when assessing the possible impact of the pandemic, we can learn lessons from the financial crisis. The major disputes coming out of the crash did not start in 2008 but in the years afterwards. While we are already seeing numerous issues arising from COVID-19, it's likely the major cases will start to come through next year and beyond.