ADAMS AND REESE LLP

LIKE DOMINOS FALLING: THE IMPACTS OF A WORLD IN CRISIS ON THE GLOBAL SUPPLY CHAIN AND THE RESULTING LITIGATION

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I. INTRODUCTION

In this era of unprecedented global challenges, businesses face a rocky landscape where supply chain disruptions are no longer an aberration but rather are a persistent threat. COVID-19, war, natural disasters, inflation, and recession have all born supply chain disruptions generating far-reaching, adverse effects on company operations and posing threats to a company's financial stability. The ability to anticipate and manage these disruptions have become a strategic imperative for maintaining competitive advantage and operational resilience. In-house and outside counsel must understand and prepare for these disruptions to advise our clients on how to best traverse the challenging terrain of the modern supply chain landscape. This article attempts to provide counsel with practical advice to protect against and prepare for the inevitable supply chain disruptions.

II. CAUSE AND EFFECT

The causes of supply chain disruptions are myriad. We discuss five major disruptors below: global political tensions, labor shortages, regulation and compliance, transportation and logistical constraints, and technology.

A. Geopolitical Unrest

Global political tensions are a leading cause of supply chain issues. Geopolitical strife gives way to trade wars, sanctions, and conflicts between countries that can interrupt the flow of goods and services, impact supply routes, create economic instability, and lead to supply shortages.[2] According to a survey by Systems, Applications, and Products in Data Processing ("SAP"), 58% of business leaders believe supply chain issues stem from global political unrest.[3] Ultimately, political instability in the form of political unrest, strikes, and government policy changes can

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[2] Lizzie Davey, "7 Supply Chain Issues: How to Overcome Them in 2024," Shopify, May 30, 2024, https://www.shopify.com/blog/supply-chain-issues.

[3] Sean Ashcroft, "Political Unrest Causing Supply Chain Problems - SAP Survey," Supply Chain Magazine, October 25, 2022, https://supplychaindigital.com/supply-chain-risk-management/political-unrest-causing-supply-chain-problems-sap-survey.

disrupt trade routes and logistics. Examples of geopolitical tensions that have negatively impacted supply chains include the Russia-Ukraine War, the Israel-Hamas War, and strained relations with China.[4] Flight and ground route restrictions caused by these events have made it more difficult for brands to source and import products from Asia and Europe.

Beyond the human toll on regions directly affected, geopolitical tumult often results in tariffs and economic sanctions (à la Russian), interruption of the continuity of supply lines, rising energy costs, shortages, and increasing transportation expenses. For example, the Russia-Ukraine War has made it more expensive for suppliers to store and ship products due to soaring energy costs. Gas prices have also spiked since the pandemic and remain high despite more recent declines in 2024.[5] Further, more general factors, such as inflation, recession, and currency fluctuations can affect purchasing power, alter cost structures, and influence the stability of supply chains. According to the previously noted SAP survey, 40% of business leaders cite rising fuel and energy costs in resulting supply chain issues and 31% cite inflation.[6]

B. Labor Shortages

"Millennials" are those born between 1981 and 1996, and they became the largest segment of the US work force in 2016.[7] According to Gallop, there are approximately 73 million Millennials in America.[8] While often questioned, several sources cite that by the year 2025, seventy-five percent (75%) of the global workforce is predicted to be Millennials.[9] In the face of a millennial-led economy and decreasing volume across the workforce following the pandemic, businesses are struggling with ever-growing, persistent labor shortages that impact their supply chain. Shortages of skilled labor affect production and logistics, leading to delays and increased costs. And yet, businesses struggle to hire and retain talented labor. After the pandemic, an unprecedented number of people quit their jobs in the U.S.[10] In addition, the global birth rate is declining while the population is advancing in age.[11] China, Japan, and Europe all are experiencing declining populations. As of late 2023, just under 1 million job openings remained in Europe, and employers in Australia had nearly 400,000 vacant positions. Also, Singapore had 1.94 job vacancies for every available candidate in mid-2023.[12] Moreover, young people are moving away from potentially demanding supply chain jobs to those less labor intensive or offering more benefits, such as tuition

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[4] Robert Handfield, "The World Is Unstable: Get Used To It!," Supply Chain Resource Cooperative, July 30, 2024, https://scm.ncsu.edu/scm-articles/article/the-world-is-unstable-get-used-to-it.

[5] Lizzie Davey, "7 Supply Chain Issues: How to Overcome Them in 2024."

[6] Sean Ashcroft, "Political Unrest Causing Supply Chain Problems - SAP Survey." *See infra,* fn. 3.

[7] Dawn Heiberg, "Key Statistics about Millennials in the Workplace," First Up Blog, May 10, 2024, https://firstup.io/blog/key-statistics-millennials-in-the workplace/#:~:text=Millennials%20already%20are%20the%20largest,be%20made%20up%20of%20Millennials

[8] *Id*.

[9] *Id*. *Cf*. Anita Lettink, "No, Millennials will NOT be 75% of the Workforce in 2025 (or ever)!" Linkedin Sept. 17, 2019. https://www.linkedin.com/pulse/millennials-75-workforce-2025-ever-anita-lettink?utm_source=share&utm_medium=guest_desktop&trk=social-share

[10] Davey, "7 Supply Chain Issues: How to Overcome Them in 2024." *See infra*, fn. 2.

[11] John Gramlich, "For World Population Day, a look at the countries with the biggest projected gains – and losses – by 2100." July 10, 2019. https://www.pewresearch.org/short-reads/2019/07/10/for-world-population-day-a-look-at-the-countries-with-the-biggest-projected-gains-and-losses-by-2100/

[12] Sandra Ebbers, "Why is there a global labor shortage?" February 20, 2024. https://www.randstad.com/workforce-insights/talent-acquisition/why-there-a-global-labor-shortage/

aid programs.[13] "Activity rates" defined as the number of people of working age and their willingness to work, have been declining the past decade in France, Canada and Spain.[14] People appear less willing to participate in the job market.[15] In Europe, where the working-age population is already decreasing, finding talented workers is an even greater challenge.[16] Finally, as for expected future population trends, according to the Pew Research Center, "Brazil, Bangladesh, Russia and Mexico are among the world's ten most populous countries today. By 2100, they are projected to be overtaken by the Democratic Republic of the Congo, Ethiopia, Tanzania and Egypt – none of which are currently in the top 10."[17]

C. Regulation and Compliance

Regulatory changes and compliance pose additional challenges to maintaining the supply chain and avoiding disruptions. New regulations, compliance requirements, and trade policies changes can greatly impact how goods are produced, transported, and sold.[18] For example, new ESG standards are being imposed and companies have more compliance responsibilities than ever before. Companies are being required to reduce their carbon emissions, endorse heightened business ethics, and promote fair labor practices. Examples of legislation protecting environmental and moral interests include the Regulation on Deforestation Free Products (EUDR) (which goes into effect on December 30, 2024),[19] Canada's Fighting Against Forced Labour and Child Labour in Supply Chains Act (Bill S-211),[20] the Corporate Sustainability Due Diligence Directive (CS3D),[21] and the Uyghur Forced Labor Prevention Act.[22] New regulations mean companies and suppliers must commit to making ethical decisions, decreasing their carbon footprint, and engaging in fair labor practices.[23] As a result, companies will be required to be more nimble and implement supply chain adjustments. Companies that are slow to enact change or those

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[13] According to Gallop, "Millennials change jobs more often than other generations. About 21 percent of Millennials report switching jobs within the last year, and 62 percent are open to a different opportunity." Deloitte posits "less than 43% of Millennials envision leaving their jobs within two years while only 28 percent seek to stay beyond five years. The 15-point gap was a seven-point increase from the previous year." *Cited in* Heiberg, "Key Statistics about Millennials in the Workplace." *See infra*, fn. 7.
[14] Ebbers, "Why is there a global labor shortage?" *See infra*, fn. 12.
[15] *Id.*
[16] *Id.*
[17] *See infra,* fn. *13.*
[18] Davey, "7 Supply Chain Issues: How to Overcome Them in 2024." *See infra*, fn. 2.
[19] EUDR applies to entities placing on the EU market or exporting from the EU: palm oil, cattle, soy, coffee, cocoa, timber and rubber as well as derived products (such as beef, furniture, or chocolate). Operators must collect information, documents and data showing that the product is deforestation-free and legal, such as geolocation coordinates, quantity, country of production. Further, Operators must assess whether there is a risk the product does not comply with the rules, and if such a risk exists, adopt risk mitigation procedures.
[20] Enacted to increase industry awareness and transparency and drive businesses to improve practices. Entities and government institutions doing business in Canada have a responsibility to ensure that exploitative practices of forced labour and child labour are addressed and eradicated from their supply chains.
[21] The EU's CS3D is a comprehensive policy that requires companies which are within scope to integrate due diligence into their own operations and to monitor upstream and downstream partners, with the ultimate objective being to "end or mitigate adverse impacts on human rights and the environment."
[22] 19 U.S.C. 1307 and 4681; 22 U.S.C. 2656, 6901, 7101 and 7107. (Ensures that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market.)
[23] Davey, "7 Supply Chain Issues: How to Overcome Them in 2024." *See infra*, fn. 2.

that cannot make necessary adjustments timely become more vulnerable to supply chain disruptions.

D. Transportation and Logistical Constraints

Unsurprisingly, there are also constraints on transportation and logistics within supply chain processes. Increasing complexity and the global nature of supply chains can lead to vulnerabilities where issues in one area can cascade through the entire network.[24] Challenges include transportation disruptions, *e.g*. shipping container shortages, port congestion, and problems with transport infrastructure, or even natural disasters like hurricanes, earthquakes, floods, and wildfires, which damage infrastructure, halt production, and upset transportation networks. Supply chains have seen increases in transportation disruptions as increasing demand for global trade and commerce caused by high customer expectations post-pandemic have strained transport abilities.[25]

E. Technology

Technology including artificial intelligence, software, and cybersecurity are potentially major sources of supply chain disruption. A critical challenge arises from "AI," artificial intelligence. AI has arrived, and it is expected to transform every industry. It can be harnessed to assist companies with its supply chain disruptions such as labor shortages. However, legal issues including regulatory compliance, warranties, and responsible usage, impose additional compliance requirements upon businesses which increase costs and demand resources to meet the required standards.

Another concern is raised by embedded software written to control devices that are not typically thought of as computers. Manufacturers build embedded software into the electronics of cars, telephones, modems, robots, appliances, toys, security systems, televisions, and digital watches (to name a few). This connectivity has many benefits, including integration of multifaceted systems and instantaneous information gathering and distribution. Yet, should this collected data fall into the hands of an unauthorized user, a myriad of legal issues arise. For example, potential legal fall-out includes liability allocation, ownership and use of the data, cybersecurity exposure. The protection and proper use of the of proprietary, sensitive business data is a substantial challenge.

III. THE PROTECTIONS AGAINST SUPPLY CHAIN DISRUPTIONS

With so many factors causing supply chain disruptions, it can be overwhelming to think about how to protect a business. Supply chain disruptions are ultimately inevitable; however, many options exist to mitigate and even prevent negative impacts. Your best practices should include both managerial and legal solutions that can be implemented to limit the adverse effects of supply chain disruptions. There are, however, no set rules, and each company should perform its own deep-dive to customize its solutions and preventative actions.

[24] *Id*.
[25] *Id*.

A. Inventory Management

The first step management can take to decrease the potentially detrimental outcomes of supply chain disruptions is to be intentional with inventory.[26] This means moving from a "just in time" inventory plan to a "just in case" plan. By holding extra inventory, companies can prepare for risk events, and while it may not be possible across all components, it can pay off extensively when feasible. One of the biggest restrictions on holding additional inventory is expense; however, being in touch with what customers expect from a brand allows the brand to focus on meeting customer demand and expectations.

B. Contract Review

The first line of legal defense for supply chain disruptions is its contracts. Careful fine tuning and specificity is critical to having downside protection.[27] Flexible contracts allow businesses to change orders as demand shifts; however, specificity is integral to naming the rights and obligations of each party and avoiding litigation.[28] Use of risk shifting, force majeure and time is of the essence provisions help protect buyers and sellers from supply chain disruptions.[29]

In its contracts, businesses should consider allocating or reallocating risk arising from market changes. Indexing and price adjustments are useful in this regard. Price shocks for raw materials, labor, or transportation can be indexed to attempt to reduce price spikes. Other possible risk-sharing or risk reallocation includes volume commitments, hedges, and allocating risk and responsibility for increased expense necessitated by a party or market events *e.g*. expedited transportation expense arising from a rail strike. In addition, Long Term Agreements should be reviewed to reassess the risk that it is embedded in those contracts negotiated prior to the current supply chain disruption landscape arising.

While force majeure provisions in general can excuse a party's performance when events occur beyond the party's control,[30] general catch-all language may not be specific enough to provide adequate protection. Thus, it is recommended to consider including multiple detailed clauses depending on the nature of the transaction.[31] For a buyers contract consider limiting the time to resume performance, identifying specific events and defining the trigger event as narrowly as practicable, excluding labor strikes, requiring prompt notice and details on the expected

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[26] Davey, "7 Supply Chain Issues: How to Overcome Them in 2024." *See infra*, fn. 2.

[27] Timothy Lowe and Mark Steiner, "Supply Chain Litigation and What to Expect When Your Supply Chain Stops," McDonald Hopkins, September 5, 2023, https://www.mcdonaldhopkins.com/insights/news/supply-chain-litigation-and-what-to-expect-when-your-supply-chain-stops.

[28] "Disputes Arising Out of Supply Chain Disruptions," MehaffyWeber, December 21, 2021, https://www.mehaffyweber.com/news/disputes-arising-out-of-supply-chain-disruptions; Keenan and Moore, "11 Supply Chain Trends That Will Shape ECommerce (2024)."

[29] *Id*.

[30] "Force Majeure," Legal Information Institute, December 2021, https://www.law.cornell.edu/wex/force_majeure.

[31] "Disputes Arising Out of Supply Chain Disruptions." *See infra*, fn. 28.

duration. Finally, consider a safe-harbor provision that permits termination after a certain length of time. The end goal is to shift as much risk to the Seller.

As for the seller's contracts, consider including as many triggering "events" as the buyer will accept, a broad "catch-all" that includes any event that is beyond seller's control, and a suspension of performance until the force majeure ceases. Another potential protection is the doctrine of commercial impracticability. In the United States, the Uniform Commercial Code (UCC) Section 2-615 allows sellers to limit their obligations if it's "commercially impracticable" to comply with its obligations under a contract. This section is cited as a defense in various circumstances including: the unfulfilled contingency, unanticipated occurrences, and the allocation of scarce goods. Commercial impracticability is limited to highly unusual situations that the parties could not have reasonably expected would arise. Examples included earthquake, fire, flood, strikes, the sudden failure of a supplier.

"Time is of the essence" provisions also afford protection against supply chain disruption. There are general and specific "time is of the essence" provisions. Specific clauses are narrow and focus on specific obligations, such as the delivery date or payment schedule. General clauses do not identify a particular contractual obligation. However, general "time is of the essence" clauses can be found to be unenforceable as boilerplate.[32]

These type of provisions are generally enforced when performance on the specified date is vital, such as when the buyer has contracted with a third-party to whom it must deliver the goods.[33] Courts may find an implied time is of the essence clause if the subject of a transaction has a fluctuating value or the delay in performance would cause one party to suffer a serious loss."[34] Regardless whether a court enforces a time is of the essence provision or reads the obligation into a contract, the concept of reasonable time for performance may be applied. This occurs most often when the parties did not intend the "time is of the essence" clause to be a material term or if enforcement would be unreasonable.[35] Courts may also find impracticability of performance, although such a finding relies on the breaching party's ability to prove objective circumstances that it cannot perform because performance cannot be completed rather than subjective impracticability where the breaching party is unable to perform due to circumstances within its control.[36]

The best legal protection against supply chain disruption is specific contracts that include clauses allocating or shifting risk when certain identifiable disruptions occur and some mechanism to resolve allocation of loss and risk for the *primum fieri* circumstance.[37] Parties' responsibilities for issues from delayed production, raw material scarcity, expedited transportation and/or cybersecurity can be detailed in a properly worded contract before the problems occur[38]

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[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *BD Med. Supplies v. Bluestem Mgmt. Advisors*, No. 21-1226-DDC (D. Kan. Aug. 2, 2023).
[37] UN Legal Group, "The Maze of Supply Chain Disruptions: Strategies and Legal Considerations."
[38] *Id*.

C. Dispute Resolution

Resolution mechanisms, including mediation or arbitration, should also be written into a contract. Even without such contractual obligations, in the event of some disruption occasioning a loss, negotiations should be considered before litigation. Litigation may be avoidable by communicating clear expectations of a willingness to renegotiate or amend the agreement.[39] Considerations to account for prior to filing suit are important. First, what are the larger implications of litigation: (i) a lawsuit or arbitration demand could trigger counterclaims and third-party claims from the opposing party, resulting in additional legal expense, and (ii) the lawsuit could affect supplier relations and the client's reputation, costing the client their sole supplier. Other factors to weigh include: the costs – both for legal fees and to switch suppliers, and if the applicable law is favorable.[40] In light of these factors, it is crucial to thoroughly evaluate all possible outcomes and alternative solutions before proceeding with litigation.

D. Diversify

Diversification of product sources and labor can decrease business supply chain disruption. By diversifying supply product sources, companies create more options and potentially increase supply stability.[41] To achieve supply line stability, it is important to know the "health" of suppliers, including financial strength and performance evaluations. Is this supplier chronically late in delivery? Do they ask for payment inconsistent with agreed upon terms or non-market terms? While obvious, relying on a single supplier could result in a disproportionately negative impact on the supply chain should the sole-source fail to perform.[42] It is a best practice for companies to have a "Plan B" *i.e.* back-up suppliers. Research finds that 30% of merchants have sought new suppliers and 29% receive their products from multiple sources.[43] In addition, companies may also benefit from examining their suppliers' source supplier to assure multiple source suppliers down the supply chain. Diversification reduces dependency and creates alternatives during disruptions.

Similarly, businesses should "diversify" and strengthen its labor force. Businesses can offer long-term incentives and implement retention plans to keep employees. Additionally, cross-training employees limits disruptions, allowing for increased functionality and flexibility if an individual separates from the company.

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[39] "Disputes Arising Out of Supply Chain Disruptions." *See infra*, fn. 28.

[40] Alexis B. Chandler and Vanessa L. Miller, "Supply Chain Disruptions: Drafting Contract Clauses to Mitigate Risks, Navigate a Breach, Avoid Litigation."

[41] Michael Keenan and Kaleigh Moore, "11 Supply Chain Trends That Will Shape ECommerce (2024)," Shopify, April 1, 2024, https://www.shopify.com/hk-en/enterprise/blog/supply-chain-trends-strategies.

[42] UN Legal Group, "The Maze of Supply Chain Disruptions: Strategies and Legal Considerations," LinkedIn, September 2, 2023, https://www.linkedin.com/pulse/maze-supply-chain-disruptions-strategies-legal-considerations/.

[43] Shopify Commerce Trends 2023 Report. https://www.shopify.com/plus/commerce-trends/supply-chain?utm_campaign=2022-01-future-shipping-report&utm_content=core_foc_think_more_local&utm_medium=content&utm_source=blog.

E. Analytics and Digitalization

By investing in analytics and digitalization, companies can be more intentional and restrict unnecessary costs. Computer programs, data collection, and AI can determine inventory demand patterns, tackle excessive return rates, optimize warehouse space, and more.[44] Most importantly, companies can employ analytics to map their supply chain and engage in reshoring or regionalization. By mapping their supply chain, businesses can understand potential pain points and track issues and transparency. Companies can also ensure they are abiding by regulations and decide whether reshoring or regionalization is necessary. The farther products and parts travel, the less control a company has over the transport and the greater the potential for something to go wrong. Sourcing certain supplies and operations closer decreases potential issues and can incentivize new businesses to open to support their largest buyers locally.[45]

IV. The Law and Supply Chain Disruptions.

As organizations grapple with the complex, unpredictable nature of supply chain disruptions, the interplay between existing legal frameworks and operations challenges becomes increasingly apparent, especially in the wake of COVID-19. The legal fall-out is illustrated recent litigation cases in the areas of securities, antitrust, and contract law.

A. Impact on Securities Litigation

Beginning with the pandemic, securities litigation has been on the rise in conjunction with production delays. The aftermath of COVID-19 saw an increasing abundance of supply chain disruptions. These delays can often lead to company-wide disruption, and in the case of publicly traded companies, can result in decreasing stock prices. Such instances have fermented into shareholders bringing securities claims, alleging the company's financial results are inconsistent with the company's representations.[46]

Romeo Power Inc. Securities Litigation is an apt example. Romeo Power Inc., an energy storage technology company that manufactures battery packs for electric vehicles, faced securities litigation after stock prices fell 20% in April 2021. The drop in stock price followed constraints in production caused by a shortage of battery cells. The production delays led to revenue projections 87% lower than previously provided, which left the door open for a suit.[47] The rise in cases of this nature underscores the importance for companies to communicate their operational challenges transparently and proactively mitigate supply chain disruptions.

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[44] Keenan and Moore, "11 Supply Chain Trends That Will Shape ECommerce (2024)." *See infra*, fn. 41.

[45] *Id*.

[46] "Unexpected Events from Covid to Supply Chain Disruption," Curtis, September 20, 2022, https://www.curtis.com/our-firm/news/unexpected-events-from-covid-to-supply-chain-disruption-implications-for-us-contract-securities-and-antitrust-law.

[47] *In re Romeo Power Inc. Sec. Litig*., 21 Civ. 3362 (LGS) (S.D.N.Y. Jun. 2, 2022).

B. Antitrust Risks and Considerations

One way companies have attempted to mitigate supply chain interruptions is through cooperation and joint conduct with other organizations. For instance, companies like Mercedes and BMW have collaborated to create backup networks, enhance distribution capacity, and share supplier data to improve supply chain transparency.[48] While these collaborative efforts can effectively reduce risks associated with supply chain processes, they also raise potential antitrust concerns. U.S. law often prioritizes antitrust harm over potential benefits, viewing such collaborations as risks for creating monopsonistic markets and facilitating collusion through cost standardization. Additionally, sharing information among competitors can be deemed anti-competitive, further increasing the risk of collusion.[49]

C. Contractual Specificity as Protection

To navigate the legal complexities and mitigate risks associated with supply chain disruptions, companies should implement robust contracts from the outset. As discussed above, well-crafted contract terms outlining responsibilities and establishing protocols for handling disruptions are a strong line of defense for businesses. Three cases illustrate the importance of contract specificity.

Cooper-Standard Automotive Inc. v. Daikin America, Inc.

In *Cooper-Standard Automotive Inc. v. Daikin America, Inc.*,[50] the court highlighted the crucial role of precise contractual terms in supply chain agreements. Daikin, the sole supplier of a key product, sought to increase prices and withhold supplies, jeopardizing Cooper-Standard's operations.[51] Faced with the prospect of running out of supplies within six weeks and potentially shutting down operations – an outcome that could disrupt the broader automotive industry – Cooper-Standard filed a lawsuit against Daikin. The court's decision underscored the fragility of the "just-in-time" supply chain model, which can lead to significant disruptions if contractual obligations go unmet. The court ruled in favor of Cooper-Standard, emphasizing that the contract explicitly prohibited Daikin from withholding the product or increasing the price, demonstrating how clear contract terms can prevent significant disruptions and resolve disputes effectively.[52]

The Avon Company and LG H&H Company, Ltd. v. Fareva Morton Grove, Inc. and Fareva S.A.

The case of *The Avon Company and LG H&H Company, Ltd. v. Fareva Morton Grove, Inc. and Fareva S.A.*[53] highlights how robust supply chain contracts can protect buyers. When Avon sold its manufacturing facility to Fareva at a reduced price, contingent on Fareva's commitment to manufacture Avon's products for ten years, the contract included a *force majeure* clause requiring written notification and restricting Fareva to producing only Avon's products during any such

[48] "Unexpected Events from Covid to Supply Chain Disruption." *See infra*, fn. 46.
[49] *Id*.
[50] *Cooper-Standard Auto. v. Daikin Am., Inc.*, 568 F. Supp.3d 846 (E.D. Mich. 2021).
[51] *Id*.
[52] *Id*.
[53] *The Avon Co. v. Fareva Morton Grove, Inc.*, 22 Civ. 4724 (AKH) (S.D.N.Y. Sep. 21, 2023).

events.[54] In 2021, Fareva terminated the contract, and Avon sued, leading to a preliminary injunction requiring Fareva to continue production. In subsequent court proceedings, Fareva admitted it avoided a *force majeure* declaration to escape the obligation of exclusively manufacturing Avon's products.[55] This case underscores the importance of detailed contract clauses and adherence to procedural requirements. Clear provisions can prevent disputes and ensure parties fulfill their commitments even in challenging circumstances.

<u>*BD Medical Supplies LLC v. Bluestem Management Advisors, LLC, and Thomas D. Johnson*</u>

The case of *BD Medical Supplies LLC v. Bluestem Management Advisors, LLC,*[56] *and Thomas D. Johnson* underscores the importance of contract clarity and the limitations of *force majeure* clauses. In late 2020, BD Medical contracted with Bluestem to purchase gloves, but Bluestem was not transparent about its suppliers, and one supplier, SkyMed, turned out to be fraudulent. Bluestem's failure to seek alternative suppliers or notify BD Medical promptly exacerbated the issue.[57] When Bluestem could not deliver the gloves, BD Medical sought a refund, which Bluestem could not provide due to SkyMed's fraudulence. BD Medical sued Bluestem for breach of contract, arguing that the *force majeure* clause was inapplicable because both parties were aware of COVID-19's risks at the time of contracting, and Bluestem was not obligated to use SkyMed.[58] The contract also had clear provisions requiring timely written notification of delays and compliance from subcontractors and suppliers. Bluestem's failure to adhere to these requirements highlighted the contract's role in protecting BD Medical's interests. The court found Bluestem's late notifications and misrepresentations constituted fraud, demonstrating how precise contract terms and compliance requirements protect parties from inadequate performance.[59]

V. CONCLUSION

Within the evolving landscape of supply chain management, it is evident that disruptions are unlikely to diminish without significant changes. Issues causing supply chain disruptions, *i.e.* global political unrest, labor shortages, regulatory changes and compliance, transportation and logistical constraints, and technology are expected to continue influencing supply chain stability. Therefore, it is imperative for companies and their legal advisors to proactively implement both managerial and legal strategies designed to mitigate and even prevent losses. Key practices, such as diversifying suppliers, maintaining intentional inventory, and preparing specific contracts, can address complex challenges and enhance resilience during times of uncertainty. The increasing prevalence of legal cases related to supply chain disruptions underscores the urgency for businesses to adopt practical measures that protect their interests across supply chain relationships. As businesses navigate these challenges, they must remain adaptable and forward-thinking, continually reassessing and refining their strategies to safeguard against future disruptions. In doing so, they will not only protect their operations but also strengthen their competitive advantage in an increasingly volatile global market.

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[54] *The Avon Co. v. Fareva Morton Grove, Inc*., 22 Civ. 4724 (AKH) (S.D.N.Y. Sep. 21, 2023).
[55] *Id*.
[56] *BD Med. Supplies v. Bluestem Mgmt. Advisors*, No. 21-1226-DDC (D. Kan. Aug. 2, 2023).
[57] *Id*.
[58] *Id*.
[59] *Id.*

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