



Helping Manufacturing & Automotive Industry Companies Navigate the COVID-19 Pandemic

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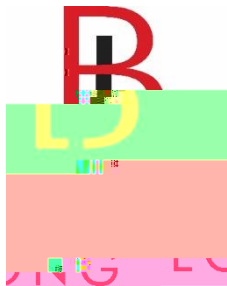
Overview of Current COVID-19 Landscape

David Carlson,

Defense Production Act/Legislative Update & Their Impacts



Jennifer Dukarski, Attorney
Butzel Long

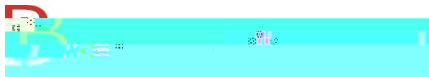


Managing the Various Impacts of COVID-19: The Defense Production Act

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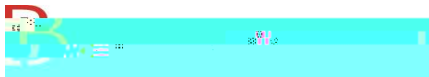
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THE DEFENSE PRODUCTION ACT



These are Challenging Times...

During World War II, the Arsenal of Democracy mobilized. In 1950, at the start of

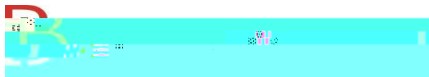
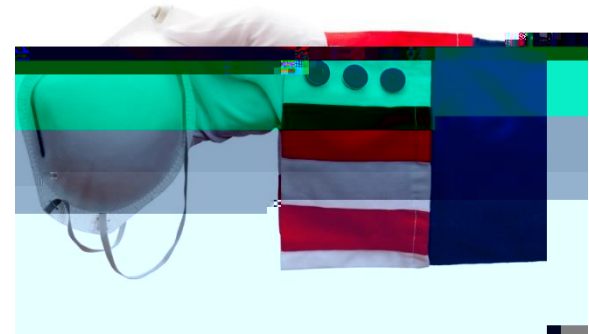


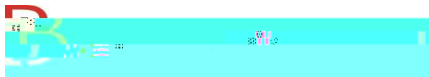
These are Challenging Times...

The DPA matters today because:

Its priority and allocation powers may affect your current business

Its productive capacity and supply authorities could provide compelling federal benefits to businesses working with the federal government in the COVID-19 response



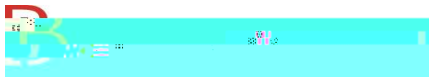


What is the Defense Production Act?

Section 4512 (50 U.S.C. § 4512):

Authorizes the President to *require acceptance and performance* of contract or orders and to allocate materials, services, and facilities as he deems necessary or appropriate to promote the national defense.

The President cannot use the powers to control the general distribution of materials in the civilian market unless he finds (1) that material is *scarce and critical* / essential to the national defense, and (2) that *requirements cannot be met* without creating a significant dislocation of the normal distribution channels



What is the Defense Production Act?

Section 4512:

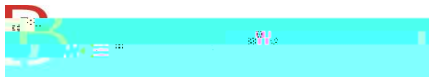
Allows for the *prevention of hoarding* beyond the reasonable demands of consumption. The President can publish the amount deemed reasonable.

Section 4513:

Penalties for failure to comply can include *fines of \$10,000 and one year imprisonment*.

Section 4514:

Wage and price controls must have the prior authorization of a joint resolution of Congress.



What is the Defense Production Act?

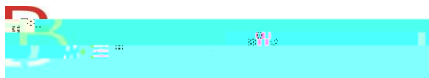
Section 4517:

Allows for the strengthening critical industrial components of the U.S. that may be essential for the national security strategy including maintaining *reliable sources of supply* and restricting solicitations accordingly.

Section 4531 - 4534:

Allows the President to *provide economic incentives* to secure domestic industrial capabilities essential to meet national defense and homeland security requirements.

Allows the President to authorize the *guarantees of loans or the provision for loans* by private institutions for the creation, maintenance, expediting, expanding, or restoration of production.

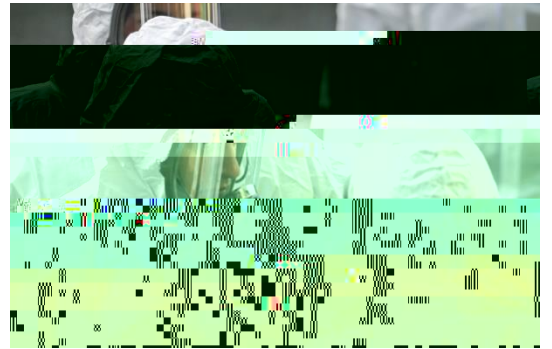
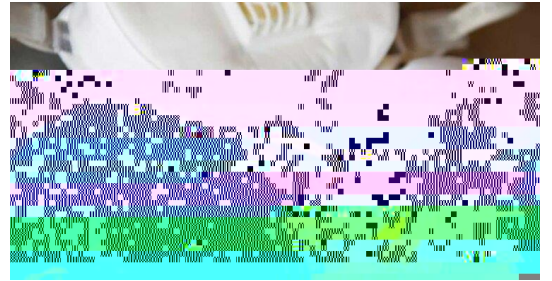


How Could the DPA be used? Personal Protective Equipment (PPE)

Under *Title I*, the President could prioritize domestic production of PPE to ensure sufficient national stockpiles, and allocate them according to the needs of the emergency.

Under *Title III*, the federal government could use authorized incentives to expand domestic capacity for PPE manufacturing to meet the needs of the emergency.

Under *Title VII*, the President could establish voluntary agreements with private industry—which might normally be subject to anti-trust statutes—to coordinate industry PPE production.



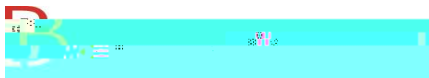
The Extent of the Act

Can I be forced to produce goods?

Possibly, but unlikely in some situations.

Under *U.S. v. K&F Packing and Food Corp.*, the DPA was held to be constitutional and the company was compelled to produce.

But manufacturers haven't been asked to stray from core products.

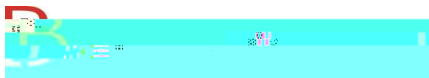


The Extent of the Act: Government Indemnification

Will the government indemnify me if a product harms others?

Probably not.

In Hercules Inc. v. U.S., the DPA did not provide the basis for an indemnification claim where the manufacturer produced the defoliant known as "Agent Orange."



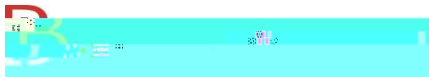
** Under the DPA (but see the PREP Act)*

The Extent of the Act: Loss of Existing Contracts

Will I be compensated by the government for the loss of other contracts?

Probably not.

In *Kearney & Trecker Corp. v. U.S.*, the government required a manufacturer to expedite delivery of a machine which frustrated a sale to third party. The court found that there was no "taking" under the just compensation clause of the 5th Amendment nor of the third party contract. It was merely a "frustration of expectations."



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A POSSIBLE VISION OF A DIVERSIFIED FUTURE

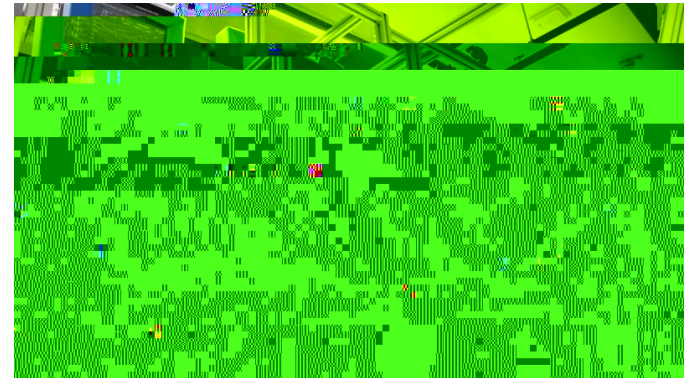
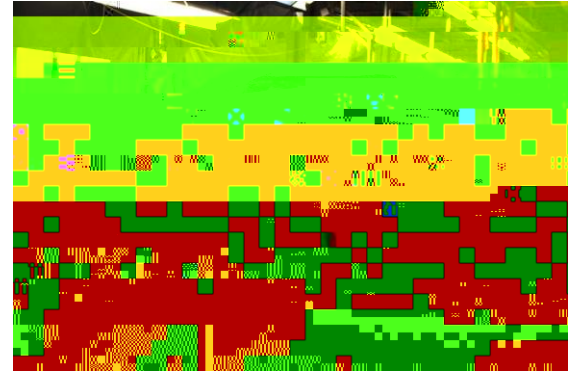


When General Motors becomes General Ventilators

This potential future could leave us in a “new normal” where diversification into the healthcare field remains...

Will you have a role in the new, diversified supply chain?

Will companies ever restore 2019/2020 production levels?



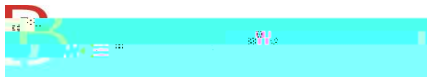
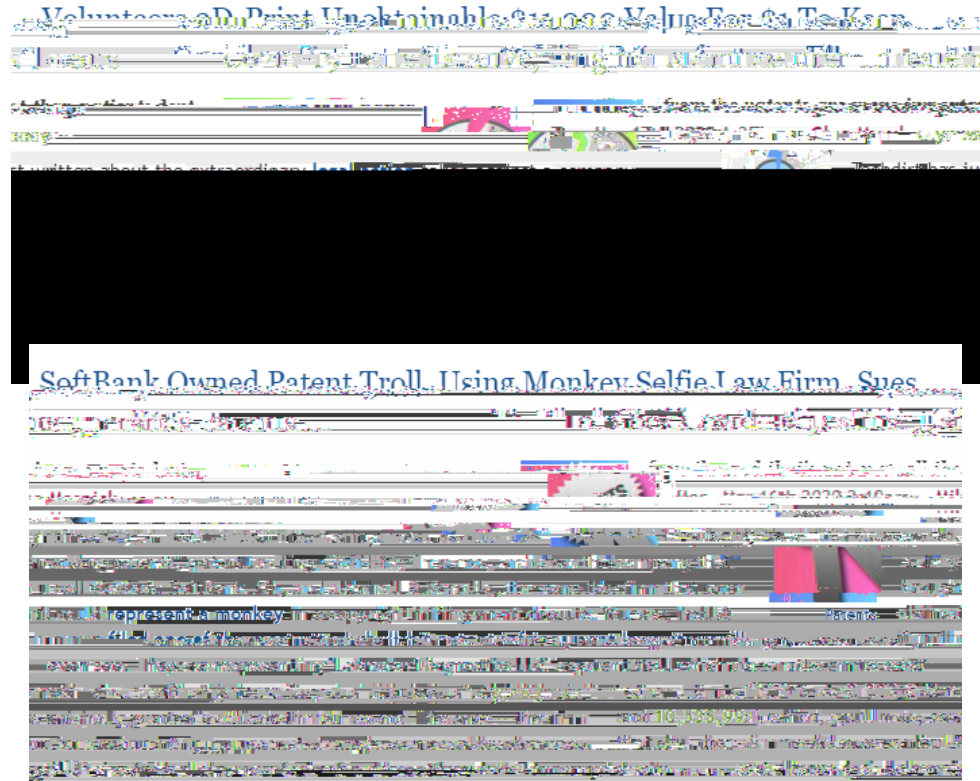
Traditional Legal Issues Are Continuing

Intellectual Property Disputes

Do you have the rights to produce new products?

What happens if you develop new technology during this time using someone else's background intellectual property?

Could you be compelled to produce an infringing part?



Traditional Legal Issues Are Continuing

State Consumer
Protection Acts

Price Gouging

Deceptive Advertising

Unfair Competition

Federal Trade
Commission

FTC Warning letters (25+)

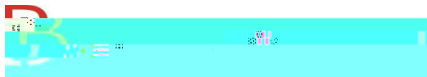
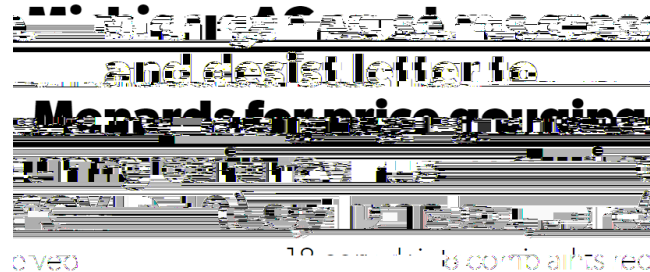
[FTC Caravan Issues Warning Letters to Companies](#)

FTC AND FDA WARNING LETTERS

to companies allegedly selling unapproved ability to treat or cure coronavirus (COVID-19) products that may violate federal law by making deceptive or scientifically unsupported claims about their effectiveness.

The Federal Trade Commission and U.S. Food and Drug Administration (FDA) have sent warning letters to companies that may violate federal law by making deceptive or scientifically unsupported claims about their products.

Company	Date
Speech Systems LLC	4/9/2020



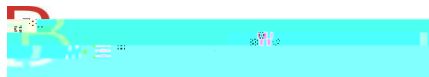
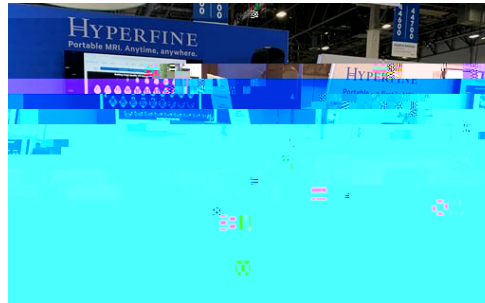
If Diversifying, Be Prepared

Intellectual Property

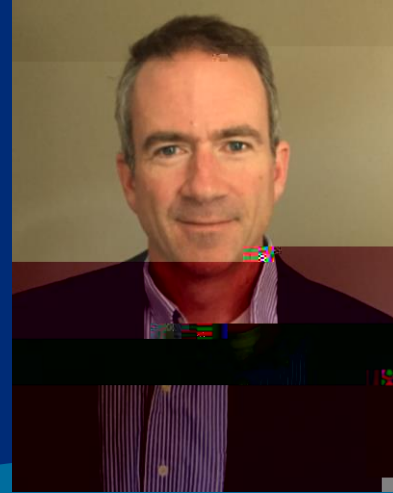
End User Liability Risks (The
PREP Act)

Contractual Risks

Regulatory Requirements



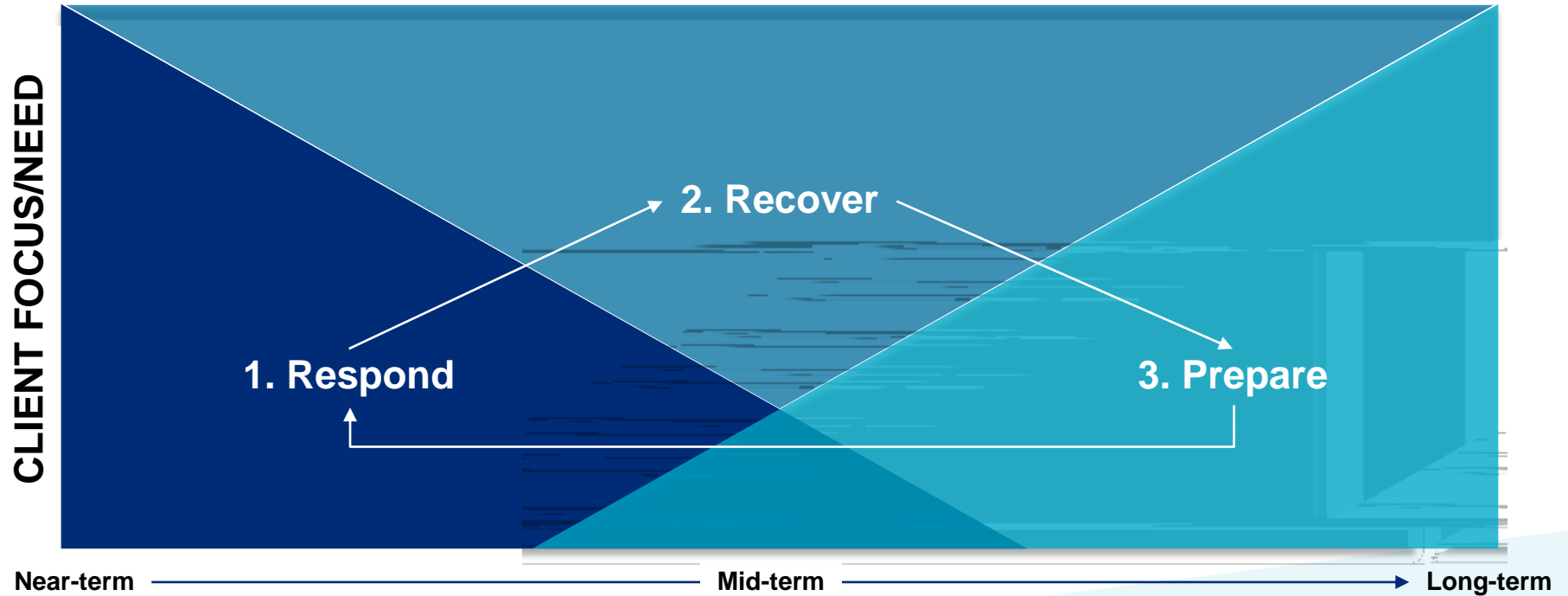
Pandemic Supply Chain Resiliency



Andrew Tait, Managing Director, Strategic Risk Consulting
Marsh/JLT Specialty

While you Respond - Prepare to Recover

The crisis is fluid and organizations may find themselves in each stage simultaneously



THE MOVING TIMELINE

People

Communicate regularly

Coronavirus Response, Recovery, and Preparedness

Longer Term Vision and Actions



People

Continue to communicate regularly with employees to ease anxiety until it is completely over.

Plan return to work considering potential new constraints to address.



Operations

Continue to protect critical operations.

Prioritize start-up activities based on value to company and inventories/demands.

Reload supply chains based on global product movement.

Refocus supply chain modelling to expedite decision making.



Reputation

Communicate regularly with all stakeholders.

Document decision making.

Re-engage with clients, considering their issues.



Finance

Monitor COVID-19 related spending.

Model revenue impacts and return to normal changes.

Q&A/Open Forum



David Carlson, US Manufacturing & Automotive Practice Leader
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Thank You!



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For more information on the COVID-19 Pandemic visit [Marsh's Pandemic Risk Resource Center](#) or contact your Marsh

