Podcast Transcript

The Rise of Tariff Litigation

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Kattman: Recent weeks have seen a rise in consumer class action lawsuits seeking refunds or restitution tied to tariffs imposed on importers under the International Emergency Economic Powers Act, or IEEPA, and later invalidated by the U.S. Supreme Court in *Learning Resources, Inc. v. Trump*. Plaintiffs' firms have filed lawsuits against a growing list of retailers, manufacturers, logistic providers, and consumer brands, and they appear to be preparing to target even more businesses. This rapidly developing litigation trend calls for close attention as companies evaluate and pursue tariff refunds from the federal government, or, as very recent litigation has shown us, choose to forgo seeking refunds.

BakerHostetler has formed a tariff task force to guide companies through the rapidly evolving tariff rules, enforcement actions, and mitigation strategies. With us today are two members of the task force, Julie Singer Brady, co-leader of the firm's Class Action Defense team and a member of the tariff task force, and Kyle Cutts, a commercial litigation partner representing clients in complex and multi-district litigation across the U.S. During today's program, we aim to provide a clear, practical roadmap for assessing litigation risks that accompany tariff refund requests. Welcome to the show, Kyle and Julie.

Cutts: Great to be here.

Brady: Thank you for having us.

Kattman: Kyle, let's start with you. Could you tell us how we got here?

Cutts: Sure. I think to understand this litigation trend, it is helpful to start with the Supreme Court's February 2026 decision in *Learning Resources v. Trump*. So as most people know, shortly after taking office, President Trump issued a series of executive orders that imposed tariffs on a wide range of imports. In doing this, the president invoked the International Emergency Economic Powers Act, or the IEEPA. And this permits the President, among other things, once he declares a national emergency, to regulate the importation of goods.

So following this, multiple plaintiffs, everything from small businesses directly impacted by tariffs to several states, started filing lawsuits challenging these measures. And what they were arguing was that the IEEPA did not allow the President to impose the tariffs and that he'd exceeded his statutory authority in doing so. And so the Supreme Court ultimately agreed. In a decision with many concurrences and dissents, the Supreme Court ultimately issued a 6-3 decision that held that the IEEPA did not allow the President to impose the tariffs in the manner he did. The court reasoned that the power to impose tariffs is a form of taxation that the Constitution assigned to Congress.

The majority got there in a little bit of different ways. Three justices said this is a matter of the major questions doctrine, meaning that if Congress intended it to delegate a taxation-like authority to the President, it would have done so expressly. Other justices said this is at a matter of pure statutory interpretation and that resolves the question. So, as a practical matter, the ruling invalidated the challenged tariffs and raised immediate questions about the status of tariffs collected while the program was in effect. And these numbers are substantial. It is well over $100 billion, and some estimates put it at about $200 billion.

Brady: Kyle, the Court's decision didn't actually say that the tariffs had to be refunded, did it?

Cutts: That is exactly right. The court did not address whether the government was required to issue refunds to importers. And it didn't resolve the question that is becoming pertinent in this litigation we're talking about today, who should receive refunds the government ultimately issued? So following *Learning Resources*, what did happen is the Court of International Trade directed Customs and Border Protection to set up a way to return tariffs paid by importers. The CBP launched a centralized refund portal known as CAPE in April of this year, and it is around that same time that we started seeing litigation.

Kattman: Julie, what types of trends are emerging with these IEEPA class actions?

Brady: Sure. As Kyle mentioned, this decision came out in late February of this year, and as early as the first week in March, class actions were being filed. To date, there have been over 30 class actions filed in jurisdictions across the country. Of course, California is a hotbed, as well as Florida, Washington, Pennsylvania, Georgia, New York, Nevada, Oregon. And most of these cases assert claims for unjust enrichment, basically that the importers received, passed on these tariffs to consumers, and if they receive refunds, they're being unjustly enriched.

Also, money hadn't received, which is of an antiquated statute. It is similar to unjust enrichment, but that basically the money that was received belongs to the consumers and the companies, it needs to be refunded for them in good conscience. It is more of an equitable theory, and it doesn't require wrongdoing. It is just saying you took their money, which should be refunded.

We are also seeing cases for claims for dec judgment of a declaration that it was unlawful to charge the fees. And then in several cases, there are claims of violations of state consumer protection acts, the state version of unfair deceptive acts and practices. It is interesting, the cases almost assert wrongdoing in charging the tariffs and passing them on to the consumers in their wording. But basically saying that it was deceptive and unfair to pass these charges on to the consumers and they need to be refunded.

And the recent round of cases, now that the portal opened, I believe on April 20th, to allow for refund submissions, is that some companies are not seeking refunds to try to curry favor with the administration. And so, we're seeing class actions arise out of that as well.

Kattman: Kyle, would you describe some practical implications for companies involved in or trying to protect themselves against future litigation involving IEEPA?

Cutts: Yeah, I'd be happy to. So the pressures on companies are really trifold right now. As Julie mentioned, there is that initial question about whether to seek a refund, how to seek a refund, and how to position the company in a place to do so. Then there is managing this new litigation exposure that is arising from the decision to or to not seek any of the refunds established by this program. And then, of course, there is the everyday pressure of maintaining pricing and business consistency, effectively companies being able to run their businesses. And so, I think what we're seeing already is that this is going to be one of those areas where internal communications and external messaging in particular is really important.

Plaintiffs in these cases are going to focus on how companies talked about pricing when tariffs were in place, and how they talked about refunds or the refund program or the decision to pursue refunds after the fact. And plaintiffs are going to line that up with what the company said publicly and try to build a narrative from there. So when companies are thinking about these decisions, keeping track of pricing obviously is important, watching what you say in the press, in various statements to the public, to regulators and so on, because those statements may find their ways into a complaint.

Kattman: Julie, how do you envision these cases are going to be defended?

Brady: Yeah. So, these cases are really a variation on the types of pricing class actions we've been defending for years. We actively defend cases that pricing is unfair, deceptive, extra fees, hidden fees, strip pricing. And in those cases, the claims are often that the defendant represents a fee as being government-imposed when really it is profit. Now here, we have a situation where it is a government-imposed fee. And these litigations are essentially of two different types. There is the ones where plaintiffs are claiming that a price increase is a result of the tariff, that a company increased their prices to account for the tariffs. And then there is also complaints where the fee is actually represented as a separate line item as a pass-through charge to the government. So, a person, there is some complaints where they show the bill and they show the statement and there is an additional $18.75 for tariff. And those are similar to the surcharge cases that we've been defending.

But there are a number of defenses that I see that are available to defendants, starting with standing. The refunds go to the importers, not the consumers. Also, ripeness. These cases are being filed essentially beginning within two weeks of the Supreme Court's decision. A lot of these companies haven't gotten money back yet, and it is not even determined how much money they're going to get back. But there is essentially $166 billion at stake, that is some of the figures I've seen. And so that is why there is a race to basically file these before the dust settles.

But I think an initial line of defense will be arbitration provisions and class action waivers, and Ts and Cs, especially for online purchases, and many of these claims are against e-commerce, your big retailers, manufacturers, distributors. So a lot of this is all done over the internet, where there are often terms and conditions and acceptance of arbitration provisions.

I think there is also defenses available along the lines of the voluntary payment doctrine, that essentially you knew the price you were paying, it was disclosed, and you agreed to pay it. There is nothing deceptive, unfair, or wrongful there. And I do believe that these claims under the UDAP statutes are a long shot. These fees were required by the government. They were charged in accordance. And to make the assertions that these entities unlawfully charged these, that they were unlawful fees that they shouldn't have charged or pass on, I do think those claims are a stretch. And I think there will be defenses available in that regard.

And then, certainly, the claims where the price was just increased, there wasn't a separate surcharge, there will be a lot of factual considerations that go into how do you determine that the amount of the price is attributable to the tariffs. I've seen some of these complaints do a two-year average of pricing on a bar chart to try to show that the price skyrocketed when the tariffs went into effect. But I think there are a number of defenses available in that regard as well.

Cutts: Julie, I think one additional item that folks should be mindful of when thinking about these cases is where these cases will be heard. Right now, we're seeing these cases, as you said, a lot filed in California, seeing them scattered around the country, not a lot of coordination among there. There may be potential for parties to seek coordination of these cases later on, either informally or through multi-district litigation. It is certainly something to keep an eye on as these cases continue to get filed against individual companies and collectively.

Brady: Yeah, certainly. Because a lot of these defendants are all, they're all on the way to be raising the same defenses. The complaints in some regards are almost mirror images. So certainly, and none of these cases have yet reached the stage where we're seeing motions to dismiss be filed or answers to complaints. I envision there'll be motions to dismiss first. But there does seem like these will lend themselves to consolidation.

Cutts: Yeah, that is absolutely right. It'll be interesting to watch.

Brady: So, as I stated, these cases are being filed, quite honestly, left and right. Every day we see at least one, if not multiple filings. So, we continue to monitor the case filings and the development, a crossroads between BakerHostetler's tariff task force and our Class Action Defense team. Like I stated, we've been defending pricing litigation for years, and this is a variation on those types of cases. So we are monitoring the developments and seeing what arises in this space.

Kattman: Great. Thank you so much for joining us today, Julie and Kyle.

Cutts: Thanks so much for having us.

Brady: Thank you.

Kattman: If you have any questions for either Julie or Kyle, their contact information is in the show notes. As always, thanks for listening to BakerHosts.