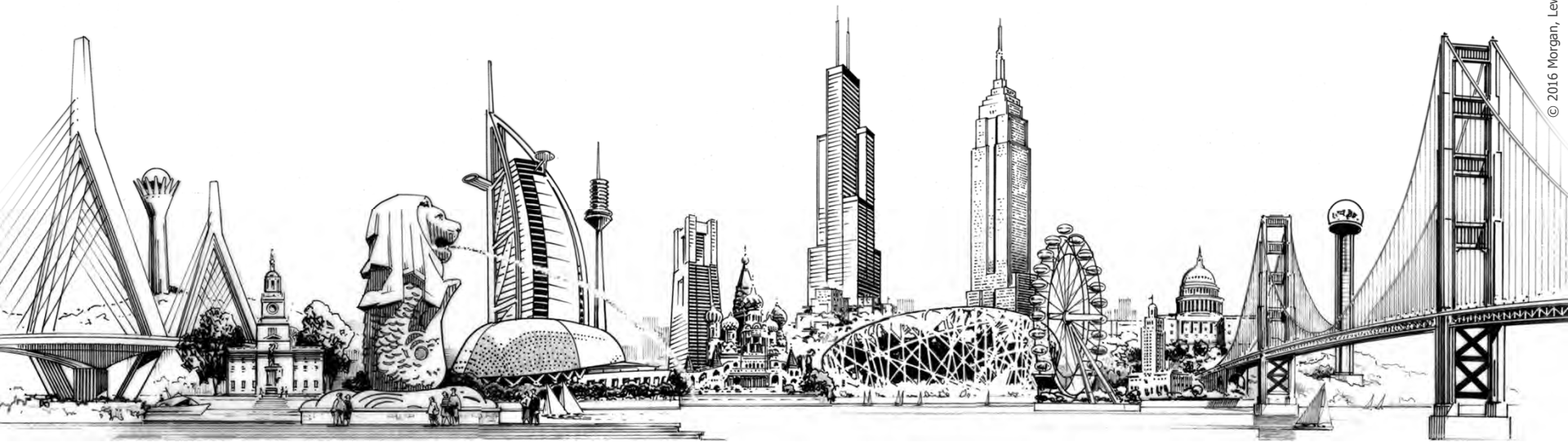


Morgan Lewis

# DOING BUSINESS IN THE GOLDEN STATE – A YEAR IN REVIEW 2017

December 6, 2017



# Calendar of Webinars – 2017

Topic	Month
California's Response to the New Administration	February
Crisis Management—Advanced Planning	March
Immigration	April
Privacy and Cybersecurity	May
Energy—The Energy Battle Between CA and Trump	June
Regulating the Future: Innovation	July
Trade Secrets and Noncompetition	August
Trends in Class Actions in the Food & Beverage Industry	September
Changes in California Tax Disputes	October
Endangered Species Act	November

<https://www.morganlewis.com/events/doing-business-in-the-golden-state-webinar-series>

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# Agenda

- **Innovation**
  - Lucy Wang
  - Jack Stoddard
- **Tax Reform**
  - Sarah-Jane Morin
- **Energy Legislation**
  - Camarin Madigan
- **California Enforcement Activities**
  - Collie James
  - Brian Rocca

The MCLE Alphanumeric Code is: **SP2111**

## SECTION 01

# INNOVATION

### LUCY WANG

- Drones
- Initial Coin Offerings



### JACK STODDARD

- Autonomous Vehicles



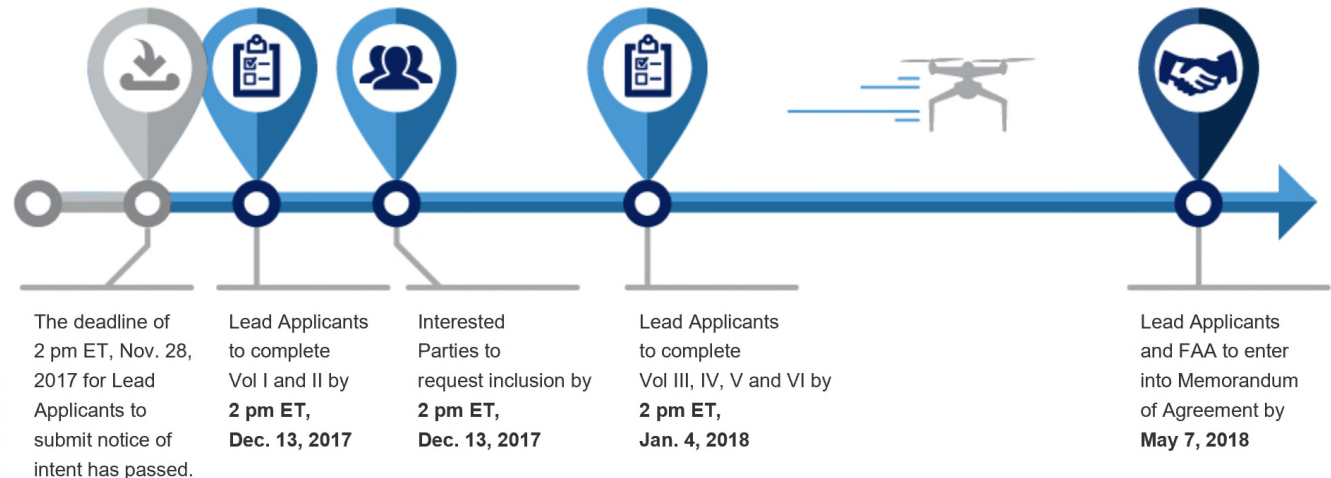
# UAS Integration Pilot Program

LAWFLASH

## DOT LAUNCHES UNMANNED AIRCRAFT SYSTEMS INTEGRATION PILOT PROGRAM

November 06, 2017

### Key dates after publication of Federal Register Notice (FRN)



# Initial Coin Offerings

**BLOG POST**

## **TECH & SOURCING @ MORGAN LEWIS**

TECHNOLOGY, OUTSOURCING, AND COMMERCIAL TRANSACTIONS  
NEWS FOR LAWYERS AND SOURCING PROFESSIONALS

### **Despite Growing Regulatory Scrutiny, Initial Coin Offerings Remain Popular**

August 29, 2017



**Canadian Securities Administrators**  
Autorités canadiennes en valeurs mobilières

**Morgan Lewis**

# Regulation of Autonomous Vehicles in California

- Steps 1 & 2: Testing and Deployment for Private Use
  - California Department of Motor Vehicles
- Step 3: Passenger Transportation Service
  - California Public Utilities Commission
- Commercial passenger pilot already underway in other jurisdictions
- Federal activity
  - NHTSA guidelines and standards

## Level 5 Automation

“The vehicle is capable of performing all driving functions under all conditions. The driver *may* have the option to control the vehicle.”

- Potential preemption



## **SECTION 02**

# **TAX REFORM**

**SARAH-JANE MORIN**



# Tax Reform (or Tax Bill)

Tax law  
changes –  
where are we?

The New York Times | <https://nyti.ms/2kbkOZ4>

POLITICS

## Senate Republicans Pass Sweeping Tax Bill



## THE WALL STREET JOURNAL.

Home World U.S. **Politics** Economy Business Tech Markets Opinion Life & Arts Real Estate WSJ. Magazine

POLITICS

## GOP's Late Changes to Tax Bill Buoy Key Industries

Amendments deliver wins for oil and gas firms, cruise-ship operators, others

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Wall Street week ahead: It's all about tax reform and the jobs report

The Washington Post

Business

## Senate GOP tax bill passes in major victory for Trump, Republicans

# Tax Reform (or Tax Bill) – Process

- House bill passed & Senate bill passed by simple majority (instead of 60 of 100 members in Senate) under reconciliation process (not subject to filibuster)
- Reconciliation process:
  - Step 1: House and Senate pass joint budget that fixes total amount of revenue that can be lost to tax cuts over 10-year window ending 2027 – done; cap on cuts set at \$1.5 trillion
  - Step 2: Tax bill cannot add more than agreed-upon \$1.5 trillion to deficit over next 10 years
  - Step 3: Tax bill cannot add to the deficit beyond the 10-year budget window (“Byrd Rule”)
- Next: Conference Bill – could be Senate bill (unlikely – AMT issue), formal or information negotiations or “ping pong” approach

# Corporate – Statutory Rate Change

- Both bills: 20% statutory rate (reduced from 35%)
- Senate delays until 2019
- But...

## THE WALL STREET JOURNAL.

U.S. Edition ▾ | December 4, 2017 | Today's Paper

[Home](#) [World](#) [U.S.](#) [Politics](#) [Economy](#) [Business](#) [Tech](#) [Markets](#) [Opinion](#) [Life & Arts](#) [Real Estate](#) [WSJ. Magazine](#)

Dec 2, 2017 at 11:37 am ET

### President Donald Trump Opens Door to 22% Corporate Tax Rate

President Donald Trump, hours after Republicans delivered the 20% corporate tax rate he insisted on, said the final rate may be 22%.

# Other Changes to Corporate Tax Base

- Repeal 199 domestic manufacturing deduction
- Limited carryover and carryback of NOLs
- Modify deductibility of business entertainment expenses
- Change deduction limitations for executive compensation
- House bill: loss of 174 R&D deduction and change to capitalization

# MNCs – Changes to International Tax

- Move U.S. from a system of WW taxation to a “participation exemption” regime with current taxation of certain foreign income (not pure territorial)
  - How? 100% exemption for dividends received from certain controlled foreign corporations (10%+ ownership)
  - But...
    - Both bills impose minimum taxes apply to certain foreign earnings (Senate bill calls this **GILTI** (global intangible low-taxed income))
    - Base erosion excise tax in both bills on payments to related foreign parties (excise tax or via disallowing deductible payments) – supply chain? U.S. manufacturers and U.S. distributors that manufacture offshore goods particularly affected if buy from foreign related parties?
    - Both bills have forced repatriation (House: 14% cash and 7% hard assets; 8 installments; Senate 14.5% cash and 7% hard assets; 8 installments but bulk in last two years)

# Individuals – Statutory Rate Changes

- Changes to statutory rates
  - Current law: seven rates (10, 15, 25, 28, 33, 35, and 39.6%)
  - House: four rates (12, 25, 35, and 39.6% after 2017); permanent changes
  - Senate: seven rates (10, 12, 22, 24, 32, 35, and 38.5% after 2017); sunsets after 2025
- Neither bill changes current tax treatment of qualified dividends or capital gain
- Individual mandate becomes zero in Senate bill
  - Other “Obamacare” taxes not repealed (net investment income tax, additional Medicare tax, medical device excise tax, etc.)


# Individuals – Deductions and Credits

- Both bills make significant changes to some popular individual credits and deductions
  - Example 1: both bills repeal state and local income tax deduction; property taxes up to \$10K could be deducted under both bills
  - Example 2: home mortgage interest deduction retained but modified (House reduces \$1M limit to \$500K; no deduction for HELOC interest)
- House: permanent
- Senate: sunset after 2025
- Likely results in greater number of taxpayers using standard deduction (which both bills also increase)





# Pass-Through Businesses

- Current law: owners of partnerships, S corporations, and sole proprietorships – as “pass-through” entities – pay tax at the individual rates, with the highest income tax rate at 39.6%
  - House: proposes a 25% tax rate for certain pass-through income after 2017, with a 9% rate for certain small businesses
  - Senate: generally would allow a temporary deduction in an amount equal to 23% of qualified income of pass-through entities, subject to a number of limitations and qualifications
  - Both bills: the remaining portion of net business income – subject to a variety of anti-abuse rules – would be treated as compensation subject to ordinary individual income tax rates
- What about carried interest? 
  - Both bills: 3-year minimum holding period required for capital gain treatment on carried interest

# Will California Follow?

- If Washington sneezes, most states will likely get a cold
- Nearly every state imposes individual income and a corporate income tax – including CA
- Each state has to choose to follow federal (or not)
  - How will it affect budgets?
  - How can CA respond effectively in a short time?
  - Will CA pick and choose?

## **SECTION 03**

# **ENERGY LEGISLATION**

**CAMARIN MADIGAN**



# Energy Legislation – AB 398 Passed

## CAP AND TRADE EXTENSION AND REFORM

- **History:** AB 32 (the California Global Warming Solutions Act of 2006)
- **Program:** Market-based regulation designed to reduce greenhouse gases (GHGs) from multiple sources by placing a firm limit on GHGs
- **Extension:** AB 398 extends cap and trade through 2030
- **Reform:** cost containment, adjustments to allowances and efforts to reduce speculation



# Energy Legislation – SB 584 Did Not Pass

## 100% RENEWABLE PORTFOLIO STANDARD (RPS)

- **Current Mandate:** 50% renewable by 2030
- **Most Aggressive RPS in the US:** Hawaii
- **Proposed Legislation:** 100% renewable by 2045 and 50% by 2025
- **Missing Components:**
  - Rooftop solar
  - Large hydroelectric power
  - Energy storage



## **SECTION 04**

# **CALIFORNIA ENFORCEMENT ACTIVITIES**

**COLLIE JAMES**

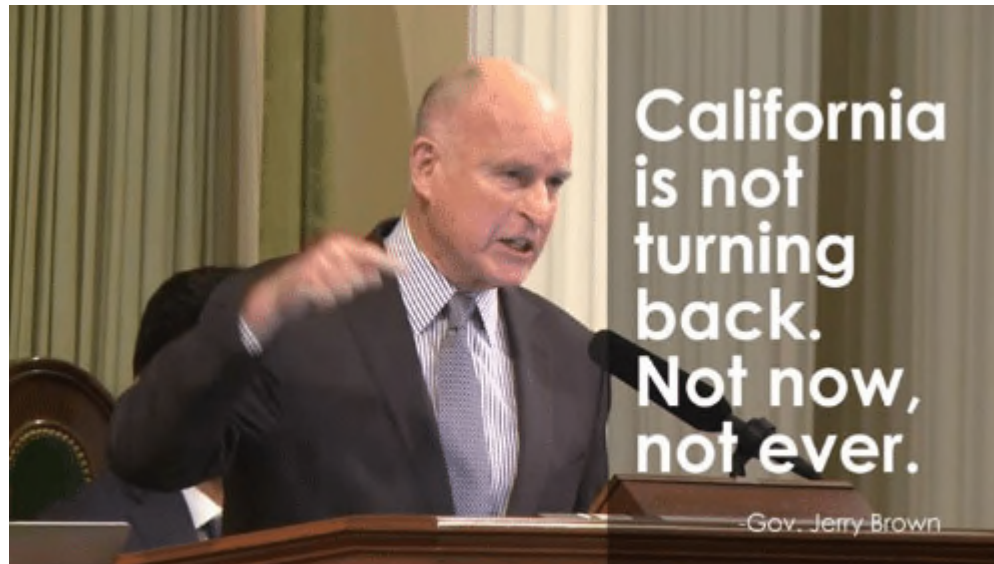


**BRIAN ROCCA**



# Environmental and Consumer Protection Enforcement

- California has positioned itself as the counterbalance to changes in Washington, D.C.



# Environmental and Consumer Protection Enforcement

- AG, DAs, County and City Counsel prosecuting very lucrative enforcement actions.
  - Universal Waste Dumpster Diving Investigations
  - Opioid litigation
- Increased resources for investigation and enforcement.
- Expanding business model into new areas.
  - Toxics in Packaging, Prop 65 and other unique CA statutes
  - Consumer Goods and Retail Practices
    - Health supplements
    - Food storage and transportation
  - Marketing/Advertising Activities
    - Company website statements (*e.g.*, background check programs)
    - Labeling statements




# Prop 65: New “Clear and Reasonable” Warning Regulations

- Effective August 30, 2018
- Mandate significant changes to appearance of warnings.
  - The name of at least one chemical in the consumer product.
  - A warning symbol consisting of a yellow triangle and an exclamation point.
  - The word “WARNING” in bold, capital letters followed by mandatory language.
  - On-product warnings can be truncated to symbol, WARNING, and link.
  - Signs must be product-specific.
  - For internet purchases, warning must be on product page prior to purchase.
- Provide specifically tailored warnings for certain products/methods of transmission.
  - Food and dietary supplements
  - Alcoholic beverages
  - Bisphenol A exposures from food and beverages
  - Prescription drugs
  - Raw wood products
  - Furniture
  - Vehicles
  - Recreational vehicles
  - Enclosed parking garages
  - Petroleum products
  - Service stations
  - Designated smoking areas

# New “Clear and Reasonable” Warning Regulations

## New Warning Label

 **WARNING:** This product can expose you to chemicals including [name of chemical], which [is/are] known to the State of California to cause [cancer]/[birth defects or other reproductive harm]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## Old Warning Label

**WARNING:** This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

# Consumer Financial Protection Bureau (CFPB)

*CFPB: Protects consumers from unfair, deceptive, or abusive practices in financial markets*

Acting Director Mick Mulvaney



Bio coming soon.

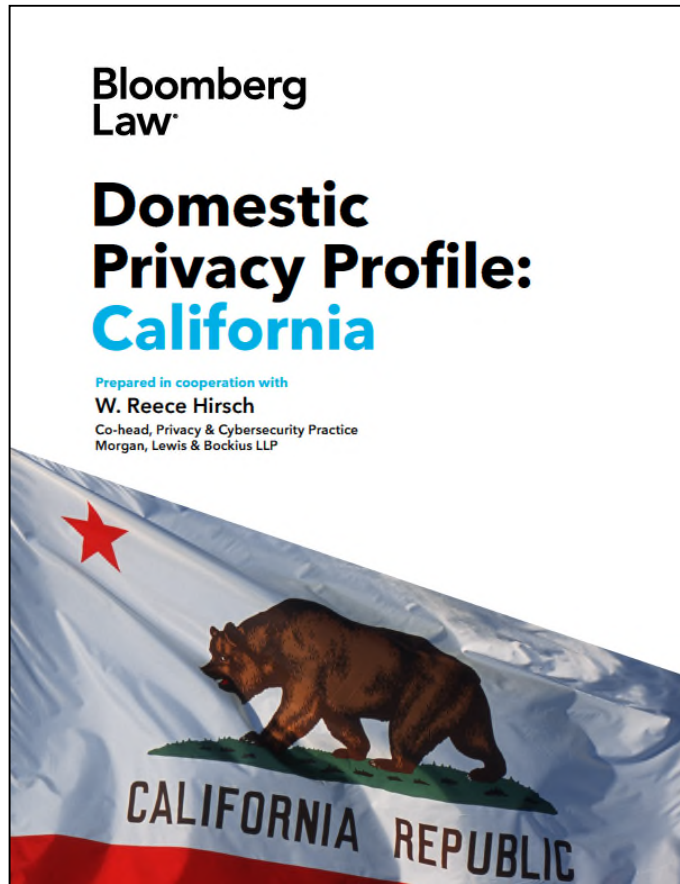
CFPB Sues Four Online Lenders for Collecting on Debts Consumers Did Not Legally Owe

The CFPB Settles Litigation and Enforcement Action with Lead Aggregator, Zero Parallel, and its CEO

CFPB Sues Debt Relief Attorneys for Collecting Illegal Fees from Struggling Consumers

**Sections 17200 and 17500 to fill the void?**

# Regulating Privacy in California



## Emerging Issues:

- California Consumer Privacy Act (ballot initiative requiring notable disclosures to consumers)
- Workplace privacy - salary history
- Security of connected devices (inactive)
- Broadband privacy (inactive)
- California Cybersecurity Integration Center (vetoed)

# Merger Enforcement



**Sept. 2017:** After legal action by CA AG, Valero Energy drops bid to buy the last independent petroleum distribution terminal in NorCal.



**Nov. 2017:** DOJ sues to block AT&T acquisition of Time Warner, claiming AT&T would "use its control of Time Warner's popular programming as a weapon to harm competition."

**Oct. 2016:** Trump campaign stated it would "break up the new media conglomerate oligopolies that have gained enormous control over our information."

# Key Antitrust Case Before U.S. Supreme Court

## 2018: BIG YEAR for “two-sided markets”?

*Ohio v. American Express Co.*



How to apply the “Rule of Reason” in two-sided markets:

- Must plaintiff show anticompetitive harm on both sides of two-sided market?
- Must plaintiff only show harm on **one** side of market, which then shifts the burden to defendant to demonstrate procompetitive benefits?

# Upcoming “Doing Business in CA” Webinars

- January 3<sup>rd</sup> – Recent IP Cases and How they Might Affect Your Business
- February 7<sup>th</sup> – Business Immigration Under the Trump Administration
- March 7<sup>th</sup> - California Consumer Protection Litigation

The MCLE Alphanumeric Code is: **SP2111**

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# Biography



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Collie F. James IV counsels clients on complex business litigation matters, including mass tort, product liability, environmental litigation, unfair business practices claims, and consumer class actions. In the toxic tort and product liability arenas, Collie has a track record of resolving high-profile matters for his clients through motion practice, summary judgment, and favorable settlement. He represents companies in state and federal courts across the United States and arbitrates matters before multiple agencies including the International Court of Arbitration.

# Biography



Camarin E.B. Madigan focuses her practice on real estate, energy, land use, natural resources, and environmental law. She advises developers, landowners, lenders, and public agencies regarding energy, land use entitlements, acquisitions/dispositions, and leasing for complex development projects and commercial properties.

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Sarah-Jane Morin focuses her practice on representation of public and private companies, private equity funds, venture capital funds, real estate funds, portfolio companies, and real estate investment trusts in the tax aspects of complex business transactions and fund formations, including domestic and cross-border investment strategies, sponsor investment strategies, limited partner investment strategies, mergers, acquisitions, integrations, buyouts, recapitalizations, debt and equity restructurings, and ongoing operations and tax compliance issues. Additionally, she advises on international tax issues, including the tax aspects of offshore vehicles (CFC/PFIC regimes), anti-deferral rules (Subpart F), withholding, cost sharing, and transfer pricing.

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Brian C. Rocca focuses on antitrust and complex litigation matters. He is managing partner of the San Francisco office and leader of the Firm's California antitrust practice. Brian has worked on litigation, investigation and counseling matters in many industries, with particular emphasis on technology and internet-based services. In 2017, Brian was named a "Top 40" lawyer in California under the age of 40 by the San Francisco and Los Angeles *Daily Journal*, and was named by *Law360* as one of five "Rising Star" competition lawyers.

# Biography



## **F. Jackson Stoddard**

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F. Jackson Stoddard represents and advises clients on energy regulatory matters and proceedings before state and federal agencies, including the California Public Utilities Commission, the California Air Resources Board, the California Energy Commission, and the Federal Energy Regulatory Commission. Jack also represents clients in matters involving the California Independent System Operator (CAISO), including the Transmission Planning Process, Interconnection Process, and CAISO stakeholder processes.

# Biography



Lucy Wang has broad experience representing financial institutions and high-tech companies in complex and cross-border disputes. Lucy's practice focuses on securities and regulatory actions as well as a range of intellectual property and commercial litigation. She has been recognized as a Rising Star in Securities Litigation by Super Lawyers.

## **Lucy Wang**

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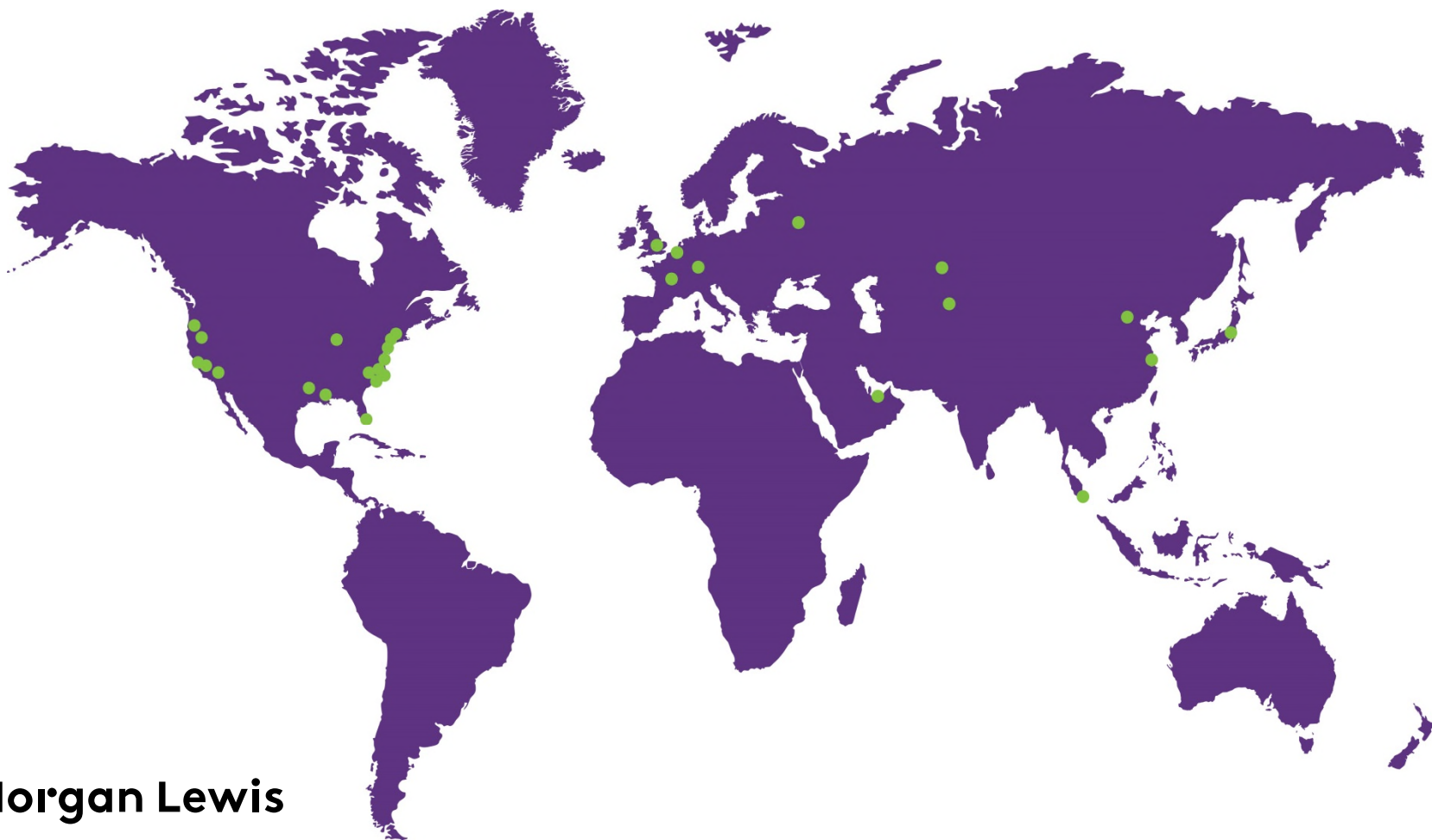
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## Our Global Reach

Africa  
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Europe  
Latin America  
Middle East  
North America

## Our Locations

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