

# Managing Risk in Turbulent Times

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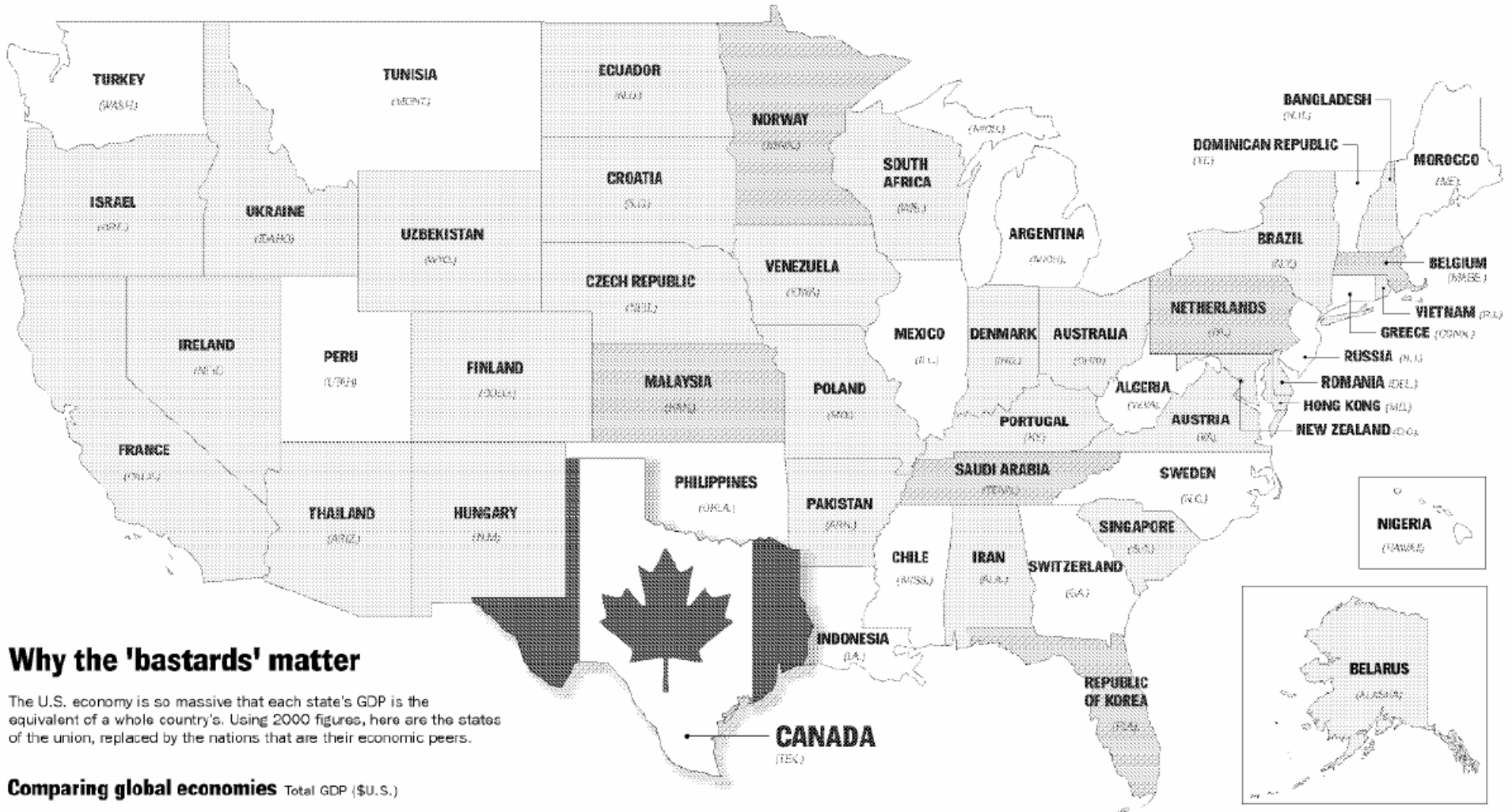
## FINANCIAL EXECUTIVES INTERNATIONAL CANADA



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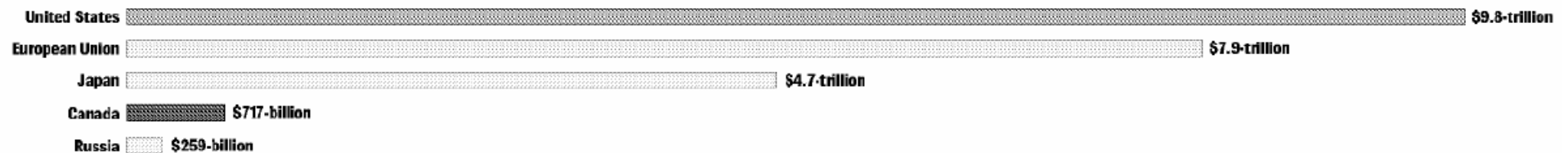
# The United States of the world



## Why the 'bastards' matter

The U.S. economy is so massive that each state's GDP is the equivalent of a whole country's. Using 2000 figures, here are the states of the union, replaced by the nations that are their economic peers.

## Comparing global economies Total GDP (\$U.S.)





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## FINANCIAL EXECUTIVES INTERNATIONAL CANADA



### Dealing with NPE's (Non-Practising Entities)

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- A. Disclaimer**
- B. When the Demand Arrives**
- C. Negotiating the License**
- D. Take Aways**

## A. Disclaimer

- This presentation does not concern itself with validity, merits or morality
- Commonly accepted terms are:
  - “NPE” – non-practising entity
  - “PLEC” – patent licensing and endorsement company
  - “Troll” – is generally thought to be pejorative and has been banned in some hearings

## **B. When the Demand Arrives**

- **Hire a patent litigation and a patent licensing expert**
  - **Rarely the same person**
- **Contact others in same industry to see if you can form a coalition**
- **Is indemnity/hold harmless available if technology was acquired?**
- **Consider early settlement – may get better terms**
- **Consider attacking validity of the claims in question**

## C. Negotiating the License

- Fees requested will always be less than costs of defending
- Fees requested will isolate on deal lines
- NPE will sometimes disclose what others have paid and why
- It's about the money; you can trade valuable rights to access your own IP portfolio
- Try for present and future patents in same area
- Try for MFN clauses
- Include all present and future affiliates including future dispositions

## C. Negotiating the License ... con't

- Patent laws change and patents are disallowed - fees should end if that happens
- If an early target, establish milestones that the NPE must achieve to maintain your fees

## **D. Take Aways**

- **Build your own patent portfolio**
- **Consider freedom to operate opinions**
- **Conduct detailed prior art due diligence**
- **Get solid indemnities for acquired or licensed technology**



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## FINANCIAL EXECUTIVES INTERNATIONAL CANADA



**WHAT TO *THINK* WHEN THE COMPANY IS ON THE *BRINK!***

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## Practical Considerations for Management In Insolvency

- **Duties of Directors in “Insolvency Zone”**
- **Employees**
- **Creditors**
- **Statutory Obligations**

## Duties of Directors in “Insolvency Zone”

- **No shift of duty in “zone of insolvency” in Canada**
- **However:**
  - **last minute “juices” on inventory; and**
  - **broad promises of solvency should be avoided**

## Employees

- **Risk Management of employee claims (wages, severance, vacation pay)**
- **Union Successorship**
- **Pension/RRSP Issues**
- **Key employee retention**

## Creditors

- **Senior Lenders**
  - **Early support for restructuring plan**
  - **Seek professional help early**
  - **Operating line requirements / avoid freeze of funds**
- **Other Creditors**
  - **Identify key suppliers / customers**
  - **Stay within ordinary course of business**
  - **Watch for trusts**

## Statutory Obligations

- **CRA**
  - Employee source deductions have super priority and directors liability
  - GST priority can be shifted but director's liability may remain even if exercise reasonable degree of care
- **Provincial**
  - Employment Standards (wages, vacation pay, severance)
  - Sales Tax
  - Worker's Compensation
  - Pension Benefits
  - Medicare Premiums
  - Environmental
  - Watch for industry specific statutory trust requirements



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