

“Truth or Dare”

Trump Tariffs – Truth v. Fake News

GDLSK
GRUNFELD DESIDERIO LEBOWITZ
SILVERMAN & KLESTADT LLP

Presented by:

Frank J. Desiderio, Partner
fdesiderio@GDLSK.com
(212) 973-7740

&

Arthur W. Bodek, Partner
abodek@GDLSK.com
(212) 973-7704

www.GDLSK.com

Agenda

- ▶ **Brief History of Trade War Tariffs**
- ▶ **Review of Trade Actions under Trump 1.0**
- ▶ **Current “Proposals” and Actions under Trump 2.0**
- ▶ **What Implementation may Look Like**
- ▶ **Strategies to Consider to Reduce Adverse Impact of Tariffs**
- ▶ **Case Studies**

Brief History of Trade War Tariffs

▶ Chicken Tax

- ▶ 1964, President LBJ imposed 25% tariff on light trucks in response to tariffs placed by France and West Germany on importation of U.S. chicken.

▶ Banana Wars

- ▶ 1993, the newly formed EU gave preference to bananas from their former colonies (tariffs and quotas). The U.S. responded with tariffs on Pecorino cheese and cashmere sweaters.

Brief History of Trade War Tariffs (cont.)

▶ Byrd Amendment

- ▶ 2000, U.S. law that redistributed antidumping and countervailing duties collected on imports to U.S. companies.
- ▶ 2003, WTO ruled against the law prompting retaliation from Canada, the EU, Japan, and other nations.
- ▶ 2005, Byrd Amendment repealed.

▶ Beef Hormones

- ▶ 1989, the EU banned the import of beef treated with growth hormones. U.S. and Canada challenged, arguing it was not based on scientific evidence and constituted an unfair trade barrier.
- ▶ 1997, WTO ruled against EU ban.
- ▶ 1999, U.S. and Canada impose retaliatory tariffs on EU products such as cheese, mustard, and pork.

Trade Actions under Trump 1.0

► China 301 – Forced Technology Transfer Policies and Practices

- Initiated August 24, 2017
- Gradual rollout of four lists for retaliatory tariffs. Still in

List	Effective Date	Scope	Products	Tariff Rate
1	July 6, 2018	\$34 billion worth of Chinese imports	Industrial goods, machinery, electronic components (e.g., engines, aircraft parts, medical devices)	25% additional tariff
2	August 23, 2018	\$16 billion worth of Chinese imports	Chemicals, plastics, motorcycles, electronics, semiconductors	25% additional tariff
3	September 24, 2018	\$200 billion worth of Chinese imports	Consumer goods such as furniture, electronics, seafood, luggage, and clothing	10% additional tariff, Raised to 25% on May 10, 2019 after negotiations failed
4a	September 1, 2019	\$300 billion worth of Chinese imports	Apparel, footwear, consumer electronics, school supplies	15% (later reduced to 7.5% in January 2020 as part of the Phase One Trade Agreement)
4b	Scheduled to take effect on December 15, 2019, suspended due to negotiations		popular consumer items like smartphones, toys, and laptops	N/A

Trade Actions under Trump 1.0 (cont.)

▶ **Section 301 – EU Large Civil Aircraft Dispute (Airbus / Boeing)**

- ▶ **Initiated April 12, 2019**
- ▶ **Targeted tariffs against selected products of specified EU member states**
- ▶ **Suspended for five years (until 2026)**

Trade Actions under Trump 1.0 (cont.)

▶ **Section 301 – Digital Services Taxes in 11 Jurisdictions**

- ▶ **Initiated July 10, 2019 and June 5, 2020**
- ▶ **Tariffs announced, agreements reached, action suspended**

Trade Actions under Trump 1.0 (cont.)

▶ **Section 232 Tariffs on Steel and Aluminum**

- ▶ **March 8, 2018**
- ▶ **Still in place**

Trump 2.0 – Canada and Mexico

- ▶ 25% tariffs on CA and MX went into effect on March 4, 2025
 - ▶ 10% for Canadian [energy](#) exports
- ▶ **Authority:** IEEPA (50 U.S.C. 1701 et seq.)
- ▶ [De minimis](#) treatment is available “but shall cease to be available for such articles upon notification by the Secretary of Commerce to the President that adequate systems are in place to fully and expediently process and collect tariff revenue”
- ▶ March 5, 2025, White House press secretary Karoline Leavitt said President Trump is giving a one-month [exemption to U.S. automakers](#) from the round of tariffs that took effect on March 4
- ▶ Effective March 7, 2025, goods of Canada and Mexico that qualify and are entered under the [USMCA will be exempt](#) from the newly announced tariffs. The situation remains fluid
 - ▶ Goods not meeting the above condition will be subject to the new tariff

Trump 2.0 – Canada and Mexico

- ▶ We expect to see an increase in claims being made under the USMCA.
- ▶ Many companies are importing products already unconditionally duty-free and have not been claiming USMCA.
- ▶ USMCA claims must:
 - ▶ Cover goods that satisfy the rules for "originating status."
 - ▶ Be covered by a required certification.
 - ▶ Be supported by documentation demonstrating eligibility.
- ▶ Different rules for different products.
 - ▶ Some subject to tariff shift rule.
 - ▶ Some subject to Regional Value Content requirement.
- ▶ Already seeing increased USMCA verifications by CBP.
- ▶ Additional uptick expected.

Trump 2.0 – China

▶ ALL GOODS

- ▶ 10% additional tariff on all goods to stop flow of illicit drugs, effective February 4, 2025
- ▶ Additional 10% (totaling 20%), effective March 4, 2025
- ▶ Authority: IEEPA (50 U.S.C. 1701 et seq.)
- ▶ De minimis exemption until “notification by the Secretary of Commerce, in consultation with the Secretary of the Treasury, to the President that adequate systems are in place to fully and expediently process and collect tariff revenue”
- ▶ 60% threat

▶ Section 301-China-Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance

- ▶ On April 17, 2024, USTR initiated a Section 301 investigation targeting China’s maritime, logistics, and shipbuilding sectors
- ▶ It proposes to charge a fee on international maritime transport vessel operators of China. Currently receiving comments.

Trump 2.0 – Reciprocal Tariffs

- ▶ On February 13, 2025, President Trump signed a presidential memorandum ordering the Office of the U.S. Trade Representative (USTR) and the Department of Commerce to initiate **investigations of “harmful” nonreciprocal trade arrangements** by foreign trading partners and to prepare a report setting out proposed remedies
 - ▶ Report is due by April 1, 2025
- ▶ Trump said during his March 4, 2025, address to Congress that reciprocal tariffs will go into effect April 2, 2025

Trump 2.0 – Steel & Aluminum 232

- ▶ **Beginning March 12, 2025, aluminum 232 duties will increase from 10% to 25%**
 - ▶ Steel 232 tariffs are already 25%
- ▶ **Current country and product **exclusions** for steel and aluminum products **expire** March 12, 2025**
- ▶ **Tariffs on Steel and Aluminum **Derivatives****
 - ▶ **Exempt:**
 - ▶ Derivative steel products that are melted and poured in the US
 - ▶ Derivative aluminum products that are smelted and cast in the US
 - ▶ **Effective Dates:**
 - ▶ Tariffs on derivatives from chapter **73** and **76** will be effective March 12, 2025
 - ▶ Tariffs on **derivatives outside of those chapters** “shall be effective upon public notification by the Secretary of Commerce, that adequate systems are in place to fully,

Trump 2.0 – Other 232 Investigations

- ▶ President Trump initiated a 232 investigation on [timber](#) and [lumber](#) on March 1, 2025.
 - ▶ Secretary of Commerce must submit a report to President within 270 days.
- ▶ President Trump initiated a 232 investigation on [copper](#) on February 25, 2025.
 - ▶ Secretary of Commerce must submit a report to President within 270 days.

Trump 2.0 – Miscellaneous: Automobiles

- ▶ **Trump said to reporters in February 2025, that he intends to impose tariffs on automobiles, semiconductors and pharmaceutical imports “in the neighborhood of 25%.”**
 - ▶ **No official action**
- ▶ **February 26, 2025, two US chassis manufacturers filed AD/CVD petitions on certain chassis and subassemblies from Mexico, Thailand, and Vietnam**

Trump 2.0 – Miscellaneous

▶ **Colombia – crisis averted!**

- ▶ 25% tariff on all goods, escalating to 50% for refusal to accept deported Colombian nationals

▶ **Universal tariffs**

- ▶ Threat of 10-20% tariff on all goods from all countries

▶ **EU**

- ▶ Threat of tariffs because “European Union is very, very bad to us”

▶ **For good measure – BRICs, Denmark, Panama, etc., etc., etc.**

What Implementation may Look Like

▶ 301

- ▶ Unfair trade practices, USTR investigation for up to 12 months, followed by recommendations to President
 - ▶ Previous implementation had proposed lists of goods and provided opportunity for comment
 - ▶ Good-specific exclusion process

▶ 232

- ▶ National security concern, DOC investigation for up to 270 days, findings submitted to President
 - ▶ No requirement for notice and comment
 - ▶ Party-specific exclusion process

▶ IEEPA

- ▶ President declares an emergency, implements tariffs immediately

What Implementation may Look Like (cont.)

	Section 301 (Trade Act of 1974)	Section 232 (Trade Expansion Act of 1962)	IEEPA (International Emergency Economic Powers Act of 1977)
Purpose	Addresses unfair trade practices, particularly intellectual property theft, forced technology transfer, and market access barriers	Protects national security by restricting imports that threaten domestic industries critical to defense	Grants the president broad authority to regulate trade and impose economic restrictions during a national emergency
Trigger	Initiated by the U.S. Trade Representative (USTR) based on foreign trade violations, often involving China or other countries	Initiated by the Department of Commerce, which investigates whether imports threaten national security	Requires a presidential declaration of a national emergency related to foreign threats
Investigation Process	The USTR conducts an investigation, often lasting up to 12 months, followed by recommendations to the president	The Department of Commerce conducts an investigation (typically within 270 days) and submits findings to the president	The president declares an emergency and directs agencies (Treasury, Commerce) to impose trade restrictions, sanctions, or tariffs
Implementation Authority	The president decides whether to impose tariffs or negotiate trade agreements	The president determines the need for tariffs or quotas based on national security concerns	The president directly orders sanctions, tariffs, or trade restrictions without needing additional Congressional approval
Recent Examples	Trump's tariffs on China, citing intellectual property theft and unfair trade practices	Trump's steel & aluminum tariffs, citing national security risks from imports	Trump's threat to impose tariffs on Mexico and Canada to address illegal immigration and illicit drugs, delayed one month. Trump imposed 10% tariff on all goods from China for illicit drugs
Legal Challenges	Often challenged at the WTO and in U.S. courts by affected companies and trading partners	Controversial, but upheld as a national security matter; has faced WTO disputes	Often challenged for overreach but upheld in many cases due to national emergency powers
Duration	Can remain in place indefinitely but may be reviewed or adjusted based on negotiations or policy changes	No fixed expiration, but subject to presidential review and modification	Lasts as long as the national emergency is in effect; Congress can terminate it

Strategies to Consider to Reduce Adverse Impact of Tariffs

► Reclassification

- When tariffs are based on specific HTSUS headings/subheadings

- Case study – Gaiters

- Classified as hats under HTSUS 6505.00.60 as hats and headgear subject to tariffs at the rate of 20¢ per unit plus 7% - plus section 301 duties (25%).

- I was able to convince CBP HQ to reverse the decision and reclassify gaiters as shawls, scarves, muffler duty at the rate under 6117.10.2030 at 11.3% but no 301. Refunds approximately 20%.



Strategies to Consider to Reduce Adverse Impact of Tariffs

► Condition as Imported

► Case study: Split Airconditioning Units

- When Mr. Trump rolled out his first or second round of 301 tariffs on the list included air conditioning units.
- We found the ruling that if imported together, classifiable as...



Strategies to Consider to Reduce Adverse Impact of Tariffs

- ▶ If imported as a unit classifiable as air conditioning machines under HTSUS 8415.81.00 subject to Trump 25% 301.
- ▶ If imported separately, classified under 8415.90.80 as “parts of air conditioning units,” a provision not subject to 301 tariffs.



Strategies to Consider to Reduce Adverse Impact of Tariffs

► Country of Origin

► Shifting production or origin engineering

► Case Study: Wine Preservation Units

► [NY N325952](#) (June 2, 2022)

► “the country of origin of the hand-held devices should be determined by their **essence**, which is the **valve assembly**, as it controls the flow of gas and in turn, the flow of wine. The **country of origin of the valve assembly** is Indonesia, as the origin of the valve body is Indonesia. Therefore, the origin of the hand-held devices is Indonesia. Accordingly, the origin of the Model Three SL and Model Three Plus systems is Indonesia”

► Therefore **not subject to additional 301 duties** (other parts were manufactured in China)

Strategies to Consider to Reduce Adverse Impact of Tariffs

► Country of Origin

► Shifting production or origin engineering

► Case Study: Motor Controllers

► N305104 (July 16, 2019)

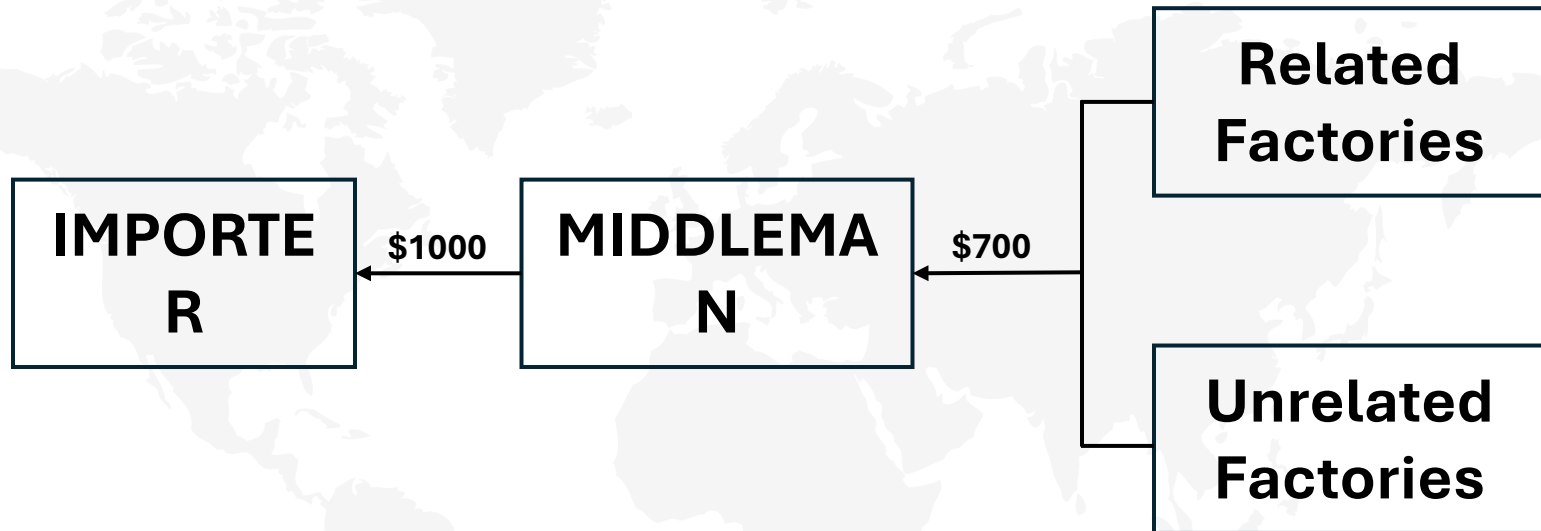
► “In our view, the Control and Power PCBAs impart the essence of the finished controller. These items are not substantially changed by the addition of the Chinese materials or the assembly operations performed in Canada. Since both the Control and Power PCBAs are produced in Canada, for purposes of the application of subheading 9903.88.01, HTSUS, the country of origin of motor controllers is Canada. Therefore, AC Controller... and the DC Controller Item ... are not subject to the Section 301 trade remedies...”

Strategies to Consider to Reduce Adverse Impact of Tariffs

► **Basis of Appraisalment**

- **First sale and other duty-savings strategies**
- **Buying agents**

First Sale



THE APPLICATION OF “FIRST SALE” APPRAISEMENT ALLOWS A TRANSACTION (DUTIABLE) VALUE WHICH EXCLUDES NON-PRODUCTION COSTS (e.g., EXECUTIVE SALARIES, PROFIT OF MIDDLEMAN, INTERNATIONAL ADVERTISING EXPENSES, ETC.)

INSTEAD OF PAYING DUTY ON \$1000, THE IMPORTER WOULD PAY DUTY ON \$700 THEREBY REDUCING DUTIES PAID BY 30%.

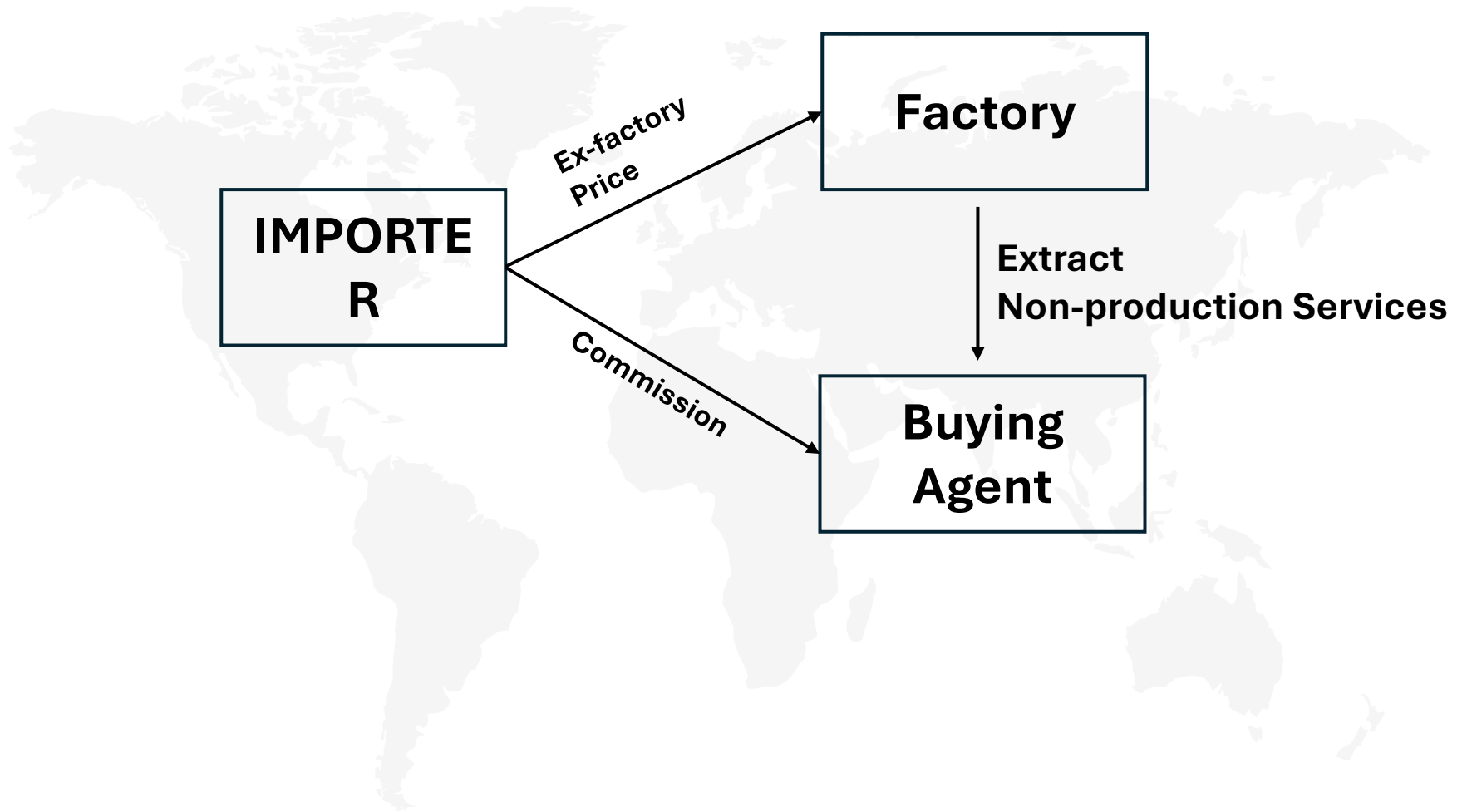
BUYING AGENCY

- ▶ In cases where a multi-tiered transaction structure is not already in place (not purchase through a middleman) or cannot easily be inserted, duty savings can alternatively be achieved through the Buying Agency program.
- ▶ This program recognizes that in addition to actually producing the merchandise, the prices charged vendor includes the cost of certain non-product services. Many of these services are identifiable as traditional buying agency type services and thus can be considered non-dutiable.

BUYING AGENT SERVICES

- ▶ **Placing orders for merchandise on behalf of the buyer.**
- ▶ **Conveying the buyer's specifications to the manufacturers/sellers.**
- ▶ **Visiting the manufacturer facilitating and monitoring production to ensure compliance with the buyer's needs and legal requirements.**
- ▶ **Inspections/issuance of inspection certificates.**
- ▶ **Forwarding samples from the factory to the buyer.**
- ▶ **Supervising the packaging of the merchandise and to ensure compliance with the buyer's specifications.**
- ▶ **Assisting the manufacturer in locating and obtaining all necessary raw materials, components, etc.**
- ▶ **Arranging for the transportation/insurance of the merchandise.**
- ▶ **Assisting the buyer with documentation issues (e.g. purchase orders, export documents, etc.).**
- ▶ **Reporting on market conditions, new products, styles and trends.**
- ▶ **Facilitating communication between the buyer and seller.**

BUYING AGENT



Strategies to Consider to Reduce Adverse Impact of Tariffs

▶ **Product Exclusions, if applicable**

- ▶ **301 – Item specific**
- ▶ **232 – party specific**

Conclusion

- ▶ **Tariffs should not be considered fixed costs**
- ▶ **There may be opportunities to reduce or eliminate oppressive tariffs**
- ▶ **All must be done with transparency**
- ▶ **Presentation to Customs must be carefully researched**
- ▶ **Customs planning should not be done in a vacuum**
- ▶ **Before implementation, firms should confer with tax or corporate lawyers**
- ▶ **Without consultation with Customs counsel – problematic. We can usually generate the best results when we collaborate**

QUESTIONS?

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP
599 Lexington Avenue FL 36
New York, NY 10022
Fax: (212) 557-4415
www.gdlsk.com



Frank J. Desiderio, Partner
fdesiderio@GDLSK.com
(212) 973-7740



Arthur W. Bodek, Partner
abodek@GDLSK.com
(212) 973-7704

DISCLAIMER

The information contained herein is provided for informational purposes only. The information is not offered as legal or any other advice on any particular matter and should not be construed as legal advice on any subject matter. The content herein contains general information and may not reflect current legal developments, verdicts, or settlements. Recipients of content from these materials, clients or otherwise, should not act or refrain from acting based on any content without seeking from an attorney licensed in the recipient's state the appropriate legal or other professional advice on the facts and circumstances applicable to the specific situation. GDLSK expressly disclaims all liability in respect to actions taken or not taken based on the contents herein.

©2025. Copyright Notice – All materials contained herein are protected by United States copyright law and international conventions, and is the exclusive property of Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP. The materials may not be reproduced, distributed, transmitted, displayed, published, or broadcast without the prior written permission of Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP. You may not alter or remove any trademark, copyright, or other notice from copies of the content. Reproduction of part or all of the contents in any form is prohibited other than for individual use only and may not be recopied and shared with a third party.