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Welcome to the seminal edition of PCB Byrne Quarterly – Q1 2022. This newsletter is a round-up of dispute resolution news and analysis of key market developments and court judgments in the last quarter, as well as internal firm insights.

PCB Byrne's Quarterly series will bring you up to speed with key developments in commercial litigation, fraud, insolvency, investigations and more.



PCB BYRNE ANNOUNCEMENT

PCB Byrne recognised by The Times Best Law Firms 2022

We are delighted to be recognised by The Times "Best Law Firms 2022" as the "New kid on the block" and "a force to be reckoned with". [Please see The Times article here.](#)

An asset class riddled with fraud, risks and scams

Partner Priyanka Kapoor provides an insight into current developments in virtual currencies. In the post-pandemic world, with the shift to remote working, ransomware attacks have exploded in volume and criminals have come to rely on digital currencies to force victims to pay millions of dollars to regain access to their own files and to prevent leaks of stolen data.

This article was first published in ThoughtLeaders4 Dispute's Magazine Issue 3 on 21 December 2021.

[Please read full article >>](#)

Can Crypto be held on trust? A look at the recent decision of Wang v Darby

In Wang v Darby [2021] EWHC 3054 (Comm) the High Court considered for the first time whether cryptocurrencies could be held on trust. While on the facts of the case it was held that no trust relationship arose between the parties, Wang v Darby will arguably be more consequential for its possible implications in respect of Non-Fungible Tokens ("NFTs") as opposed to its impact on English trust law. This and more is written in the article of Senior Associate Steven Bird. The article was published in the ThoughtLeaders4 FIRE Magazine - Issue 8.

[Please read full article >>](#)

Embargos on draft judgments - how not to handle a suspected leak

Optis Cellular Technology Inc and another v Apple Retail UK Ltd and others [2021] EWHC 2694 (Pat)

Mr Justice Meade was notified about a suspected leak of his draft judgment by EIP, the solicitors acting for Optis. However, he was not fully informed and was misdirected as to the circumstances of the suspected leak; it was eventually ascertained that there was no leak at all. Further to the parties' and Meade J's investigations, it transpired that there had been a misunderstanding and that while the finger had been pointed at Meade J's 'office' by a non-lawyer, this was an erroneous assumption. Meade J ordered a hearing at which he expressed his criticism of the conduct of both Optis and EIP. He also criticised the use of so called 'email exploders' and warned about the provision of draft judgments to an excessive number of people.

This article was first published on Lexis@PSL on 22 October 2021.

[Please read full article >>](#)



Akhmedova v Akhmedov - a case study in dealing with difficult defendants

In this article, Senior Partner Anthony Riem and Associate Andrew McLeod review the recent litigation in the judgment of Mrs Justice Knowles in the Family Division of the High Court in Akhmedova v Akhmedov 2021 EWHC 545, [2021] 4 WLR 88 (Fam), and the lessons that can be learned about dealing with a recalcitrant defendant in civil fraud proceedings. Such defendants seek to ignore their obligations to the Court or even actively frustrate the Court's orders and processes. That type of litigation conduct might be seen in the short term to have benefits, in disrupting or even derailing claims against them. Yet the various powers of the English court to grant interim remedies enable it to interrogate a defendant's claims and if necessary, find other methods to compel a defendant to comply with their obligations. These present not only the ability to counteract a defendant's efforts to defeat the court's processes, but the opportunity to convert that litigation conduct into a successful outcome at trial. The article was published in the ThoughtLeaders4 FIRE | TL4FIRE Magazine "2021 Asset Recovery Year in Review" – Issue 7.

[Please read full article >>](#)

Ready, Set, Plead - Best Practice Guide for Pre-Action Disclosure Applications

Wang v Otaibi [2021] EWHC 2896 (Ch)

PCB Byrne reviewed a recent judgment on pre-action disclosure applications, where several aspects of best practice are set out in the context of a contemplated dishonesty claim against professionals. This article was first published on Lexis@PSL on 10 November 2021 and [can be accessed here](#).



Striking Gold: The Meaning of a Jurisdiction and Applicable Law Agreement in Favour of ‘Great Britain’

Country Gold LP v Farm Investments Corporation SA

Partner [Jon Felce](#) and Associate [Anastasia Tropsha](#) analyse a recent decision where the court had to grapple with unique interpretative issues due to the fact that the contract in question included a jurisdiction clause in favour of the “appropriate court institutions of Great Britain” and provided for the governing law to be that of “the Great Britain”. Such an agreement presents unique interpretive issues because the United Kingdom is composed of three distinct legal systems (England and Wales, Scotland and Northern Ireland) and there are no ‘Courts of the United Kingdom’ as such. In *Country Gold LP v Farm Investments Corporation SA*, the Commercial Court has provided some helpful guidance as to the proper approach to the construction of such agreements.

[Please read full article >>](#)

The return of Black Swan and more?

Convoy Collateral Ltd v Broad Idea [2021] UKPC 24; *Black Swan Investment ISA v Harvest View Ltd* BVIHCV 2009/399 (unreported) 23 March 2010

Partner [Nick Ractliff](#) and Senior Associate [Steven Bird](#) comment on the implications of the Privy Council’s judgment in *Convoy Collateral Ltd v Broad Idea International Ltd*, handed down on 4 October 2021, in *ThoughtLeaders4 Fire Magazine*.

[Please read full article >>](#)

Recent Russian Cases in the English Courts

PJSC Tatneft v Bogolyubov & Others [2021] EWHC 411 (Comm) and *PJSC National Bank Trust and another v Mints and others* [2021] EWHC 692 (Comm)

PCB Byrne has written about some recent important decisions for Russian parties who chose to litigate before them. This article was published in issue 2 of the *ThoughtsLeaders4 Disputes* magazine. Please see the full article here.

[Please read full article >>](#)

Without Prejudice Correspondence

Jones and another v Lydon and others [2021] EWHC 2322 (Ch)

Associate [Anastasia Tropsha](#) has written about a recent judgment on without prejudice privilege, where silence was held to be insufficient to give rise to an estoppel exception. This article was first published on Lexis@PSL on 3 September 2021 and can be [accessed here](#). The full text of the judgment is available here.

[Please read full article >>](#)

Litigation risk in the post-Covid world: steering the ship on stormy seas

This feature article discusses how businesses that are in financial distress can manage the risks associated with litigation brought against them, as claims of all kinds are expected to rise in the wake of the COVID-19 pandemic. This article by Partner [Natalie Todd](#) and Associate [Clara Browne](#) was first published by Thomson Reuters on 26th August 2021.

[Please read full article >>](#)

Commercial court rejects a novel approach to litigation funding

Farrar (deceased) v Candey Ltd and another [2021] EWHC 1950 (Ch)

Natalie Todd and Anastasia Tropsha analyse a recent decision where the court rejected the substitution of a law firm as the claimant following the assignment of the claim to it. The agreement, entered into by way of an innovative litigation finance arrangement, was not one of the two models permitted by the CLSA 1990 and was therefore invalid. This article was first published on Lexis®PSL on 30 July 2021.

[Please read full article >>](#)

Enforcing against sovereigns: The state of play.

PCB Byrne provides an overview of the State of play in relation to some recent interesting recent developments in the area, such as (i) sovereign immunity, (ii) adjudicative immunity; (iii) identifying third party assets; and (iv) procedural issues.

[Please read full article >>](#)

Independent review into SFO disclosure failings: “Does the future of the SFO hang in the balance?”

Senior Associate Emmeline Coerkamp considers the potential impact of the independent review commissioned into the workings of the SFO following disclosure failings identified in the Unaoil case. Please see the full article here.

[Please read full article >>](#)

Suspects under criminal investigation have a reasonable expectation of privacy

Senior Associate Ilana Baines considers the recent landmark Supreme Court ruling Bloomberg (Appellant) v ZXC (Respondent) which clarifies that “a legitimate starting point” is that a person who is the subject of a criminal investigation but is yet to be charged, has a reasonable expectation of privacy in respect of information relating to that investigation.

[Please read full article >>](#)

[Please read full judgment >>](#)

CPR and PD Updates

Coronavirus: Temporary Provisions in Relation to Possession Proceedings (PD 55C)

The entire practice direction has remained in force in relation to claims issued before 1 December 2021. Secondly, the requirement for claimants to provide notices about their knowledge of the effect of the COVID-19 pandemic on the defendant and (where relevant) as to their compliance with the Pre-Action Protocol, continues until 30 June 2022.

Disclosure Pilot Scheme (PD 51U)

New regime for “Less Complex Claims”:

New Appendices 5 to 7 introduce a simplified regime (including a revised DRD and Guidance) for “Less Complex Claims”. These are defined as claims which, by virtue of their nature, value, complexity and the likely volume of Extended Disclosure, may not benefit from the Extended Disclosure regime. Claims valued at less than £500,000 (including non-financial relief) should be treated as Less Complex Claims unless the other specified factors “indicate to the contrary”.

Multi-party claims:

PD 51U.1.12 and 13.5 recognise that a bespoke approach by the court is likely to be required for multi-party claims.

Lists of Issues for Disclosure and Extended Disclosure Models C and D:

Modified wording on Lists of Issues for Disclosure, Model C

and Model D Extended Disclosure aims to make the process of agreeing Lists of Issues simpler and less contentious, and to discourage “excess” regarding Model C. Revised provisions on Narrative Documents are designed to prevent greater expense being incurred by excluding them than by leaving them in. PD 51U.7 to 10 and the DRD and Guidance have also been amended.

Disclosure Guidance:

Revisions to PD 51U.11 remove the emphasis on the need for a hearing. New PD 51U.6A explains that “court control” over disclosure can be provided by guidance or in the “traditional way” by making an application for court determination of an issue.

Disclosure Certificate:

Amendments have been made to the Disclosure Certificate.

Case Round-up



SFO v Litigation Capital & 46 Others (In re Gerald Martin Smith) [2021] EWHC 1272 (Comm)

The Court rejected submissions from the main non-Settlement Party groups that because their equitable proprietary claims did not engage all of the Settlement Parties' arguments / equitable proprietary claims, no or only a minimal costs order should be made against them. The Court also declined the invitation to make issues-based costs orders, which "would necessitate an assessment exercise of fiendish complexity". Instead, the Court recognised that a range of percentage deductions should be made which reflected the position of each non-Settlement Party, as well as the costs which the Settlement Parties had incurred in contesting the arguments of other Settlement Parties before their settlement, and other costs which could properly be considered as irrecoverable. The Costs Judgment is likely to be of interest to practitioners dealing with the fallout of fraudulent activities which have led to equitable claims in favour of several parties, who are competing to establish their interest and / or priority, and who wish to see how the Court may approach costs liability at the conclusion of such cases.

R (on the application of Javadov) v Westminster Magistrates' Court [2021] EWHC 2751

Resolves points of principle and practice concerning open justice in the context of applications for Account Freezing Orders (AFOs). The High Court summarised the patchwork regulations governing AFO applications. It recognised that the rules are silent on whether they can be determined in private. The Court concluded that there is no presumption of privacy in AFO applications. Instead, "the ordinary rule is that court proceedings take place in public, a rule which can only be displaced in unusual or exceptional circumstances". For example, a without notice AFO application may proceed in private to avoid "tipping off" the defendant. There may also be human rights arguments for privacy. Ultimately, "each case will turn on its own facts" in respect of whether a derogation from open justice is merited during an AFO application. In postscript, the Court observed that an anonymity order "represents a significantly more effective and proportionate approach". Like an application for privacy, however, any application for anonymity also infringes open justice and so must also be justified.

Wang v Darby [2021] EWHC 3054 (Comm)

The first judgment to address the question of whether cryptocurrency was held on trust. The Claimant asserted that Tezos he had transferred to the Defendant were held by the Defendant on express trust, Quistclose trust, or constructive trust. However, (1) in return for the Tezos, the Claimant had received Bitcoin from the Defendant; (2) at the end of the agreed period he had to re-transfer Bitcoin in return for the re-transfer of Tezos; and (3) in the intervening period, he claimed that the Bitcoin were at his free disposal. Whether or not the Tezos were held on trust was considered in the context of (1) the Defendant's application for summary judgment on the proprietary claims; and (2) the Claimant's application to continue a proprietary injunction (as well as a WFO). The essential economic reciprocity in the arrangement was held sufficient to preclude any trust. Summary judgment was granted to the Defendant on the proprietary claims and the proprietary injunction was discharged.

Case Round-up

Betamax Ltd v State Trading Corporation (Mauritius) [2021] UKPC 14:

The appeal was brought from a judgment of the Supreme Court of Mauritius. The Supreme Court had set aside an international arbitration award made in favour of Betamax on the grounds that the Award conflicted with the public policy of Mauritius, because the underlying contract between Betamax and STC had (it was said) been entered into in breach of the public procurement law of Mauritius. The court held where a tribunal has expressly considered issues which have required it to inquire into circumstances suggesting illegality, and held that there was no such illegality, that decision was final and could not be reopened (absent fraud, a breach of natural justice or any other vitiating factor). This decision is likely to have a major influence on the approach to the public policy ground of non-enforcement or setting aside in most leading arbitral jurisdictions. Importantly, the Privy Council's judgment makes it clear that there is no reason of principle to adopt a different approach to public policy in setting aside cases (such as the appeal in Betamax) and in enforcement cases under the New York Convention.



THE HUB The latest updates from the Firm



PCB Byrne receives recognition as an international law firm to watch in the Indian Business Law Journal 2021

Partner [Priyanka Kapoor](#), who is dual qualified in India and England and Wales, leads the Middle East and Asia practices at the firm. Priyanka regularly advises multinational companies, businesses and entrepreneurs on transactions and disputes relating to activities in India, Asia and the Middle East. The firm has strong relations with Indian banks, having acted for them in various regulatory matters involving multi-jurisdictional regulators and enforcement agencies. Priyanka offers strategic advice in matters involving bribery and corruption allegations and investigations under the UK Bribery Act and the Foreign Corrupt Practices Act, anti-money laundering and cybercrime.

PCB Byrne LLP ranked in the top band for Global-Wide Asset Tracing & Recovery

We are extremely proud and pleased to announce that the recent rankings in Chambers and Partners have placed PCB Byrne LLP in the top Band for Global Wide Asset Tracing & Recovery.

[Please see the ranking table >>](#)

PCB Byrne contributes to TL4 Fire Magazine “2021 Asset Recovery Year in Review”

PCB Byrne has made several contributions to the December 2021 edition of The Thought Leaders 4 Fire Magazine “2021 Asset Recovery Year in Review” including: a 60-Second Interview with [Anthony Riem](#).

[Please read full article >>](#)

Congratulations to [David Johnson](#) on his prize winning submission to the Thought Leaders 4 FIRE Starters Essay Competition on the cross over between fraud, insolvency asset recovery and economic change.

#FutureThoughtLeaders #FIREStarters
#essaycompetition #TL4FIRE #dublin



PCB Byrne – **RECENT WINS**



PCB Byrne defeats £6m bribery case

In *Solland and another v Watkins and another* [2021] EWHC 3447 (Ch), PCB Byrne represented the successful second defendant in challenging the jurisdiction of the English court in respect of a £6m claim based on alleged bribery of the agent of property developers. The court was persuaded that there was no serious issue to be tried based on the width of an earlier contractual release of claims, and that the claimants had misled the court when obtaining permission to serve the proceedings out of the jurisdiction by failing to refer to the release and its effect. The PCB Byrne team for the trial comprised of [Trevor Mascarenhas](#) and [Eamon Khorsheed](#).

\$1.2 billion damages claim dismissed

On 15th February 2022 the \$1.2 billion claim by Vale SA, against eight Defendants including Benjamin Steinmetz, was dismissed by Mr Justice Andrew Baker.

Vale admitted during trial that all of its pleaded claims were out of time and applied to discontinue. Three of Vale's witnesses had been cross-examined. Vale provided late disclosure of documents previously said to be privileged. The dismissal ends Vale's claims.

[Nicola Boulton](#), [Elizabeth Seborg](#) and [Caitlin Ferguson](#) of PCB Byrne acted for the Balda Foundation (Liechtenstein) and Nysco Management Limited, and instructed Ruth den Besten of Essex Court Chambers.

We are grateful for the fantastic advice and consistent support from Essex Court over the course of the proceedings.

We particularly enjoyed having an all women trial team achieve this result!

PCB Byrne delivers final blow to claims by the LIA

PCB Byrne delivers a final blow to the claims brought by the Libyan Investment Authority against its client, Walid Giahmi, setting aside orders permitting service of claims that the Court has now found to be time-barred. The Court found that once knowledge of a fact is attributed to a corporate entity such as the Libyan Investment Authority for limitation purposes "it is to be treated as remaining within that entity's knowledge even if the relevant individual subsequently forgets it or leaves the company".

Mr Giahmi's application was successful because it was shown from the accumulation of knowledge acquired over several years that the Libyan Investment Authority had been put on notice for the need to make reasonable enquiries and that following such enquiries it could have discovered the necessary facts to plead its claim prior to the limitation cut-off date.

These are the second proceedings that the Libyan Investment Authority has brought against Mr Walid Giahmi which PCB Byrne has successfully had set aside at an interlocutory stage.

The PCB Byrne team comprised of [Anthony Riem](#), [Trevor Mascarenhas](#), [Jonathan Gould](#), [Joshua Oxley](#) and [Jack Beevers](#).

Senior Associate [Ilana Baines](#) has been selected to sit on the Female Fraud Forum committee as Publicity Secretary.



PAST SPEAKING ENGAGEMENTS

- **THOUGHTLEADERS4'S FIRE UK SUMMIT – RELIGHT THE FIRE!** (23-24 September 2021, Syon Park, London)
 - [Nicola Boulton](#) sat on a panel debating “the Future of the Industry” at the TL4 Fire – Relight the Fire Summit.
 - [Nick Ractliff](#) was the co-chair and a panel speaker on Director’s Duties and Liabilities on day 1 of the TL4 Dispute Summit on Shareholder Disputes and Class Actions.
- **XIII ABA CONFERENCE ON THE RESOLUTION OF CIS-RELATED BUSINESS DISPUTES** (22 September 2021, Moscow)
[Uliana Cooke](#) spoke at a roundtable discussing a call for civility and the new ICCA guidelines addressing behavior in international arbitration falling “below minimum civility standards” at the ABA conference in Moscow.
[Please see the link to the event here.](#)
- **GAR LIVE MOSCOW** (12 October 2021)
[Uliana Cooke](#) moderated a session on the use of arbitration in financial disputes at the GAR Live Moscow event. [Please see the link to the event here.](#)
- **THOUGHTLEADERS4'S FIRE STARTERS CONFERENCE** (20 October 2021, London)
[Ben Davies](#) co-chaired the “FIRE Starters: Rising Stars of Asset Recovery” Conference in London on 20 October 2021. Ben also moderated a panel discussion on marketing techniques and co-led a workshop on third-party liability, as part of the same event.
- **THOUGHTLEADERS4 FIRE 'QC SURGERY: FRAUD'** (Merchant Taylors Hall, London, 2 November 2021)
[Anthony Riem](#) and [Elizabeth Seborg](#) co-chaired this unique QC surgery on fraud, which delved into the technical issues dealt with by FIRE (Fraud, Insolvency, Recovery and Enforcement) practitioners day-to-day.
- [Elizabeth Seborg](#), [Jonothan Gould](#) and [Charlotte Bhanja](#) attended the Thought Leaders4 asset recovery conference - the Next Gen Asset recovery (Dublin 23 – 25 February) and [Elizabeth Seborg](#) spoke on a panel in relation political manoeuvring in claims against states.

FUTURE SPEAKING ENGAGEMENTS

- [Anthony Riem](#) will be on a panel discussing asset recovery being held by Informa (Dublin, 11- 13 May 2022).
- [Nicola Boulton](#) and [Elizabeth Seborg](#) will be hosting an interactive roundtable at the Thought Leaders4 Conference (Vilamora, Portugal on 18 – 20 May 2022).
- **THOUGHTLEADERS4 INDIA DISPUTES CONFERENCE** (June 2022) [Priyanka Kapoor](#) will be chairing a panel focusing on key issues to be considered in cross-border disputes and enforcement of judgments on the second day of the conference.
- [Elizabeth Seborg](#) will be speaking on a panel at the VOCAL (Victims of Crime Association of Lawyers) conference (Stockholm, 17 June).



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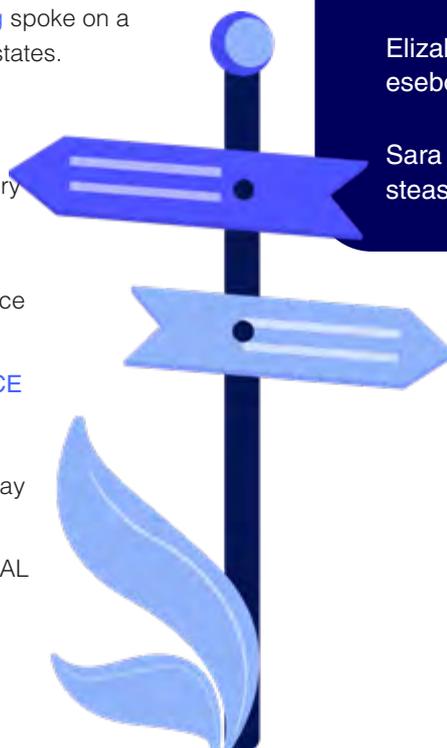
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