

“
PCB Byrne regularly acts in some of the most complex and high-profile disputes. The firm is well versed in experiences of asset recovery proceedings, and also has strong capabilities in the related areas of fraud, money laundering, bribery and corruption law.”

Chambers & Partners, 2022



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PCB Byrne WINS

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Welcome to the seminal edition of PCB Byrne Quarterly – Q2 2022. This Quarterly series is a roundup of news and analysis of key market developments and court judgments in the last quarter, as well as internal firm insights.

This series will bring you up to speed with all the key developments in commercial litigation, fraud, insolvency, investigations and more.



PCB BYRNE ANNOUNCEMENT

PCB Byrne LLP has just been ranked in Chambers & Partners in Band 1 for law firms in Global-wide Asset Tracing and Recovery

Thought Leaders 4 Disputes Magazine, Issue 4 features a 60-second interview with partner Nick Ractliff and Issue 5 with partner Charlotte Bhanja

Service Under s.1140

Farrer & Co LLP v Meyer [2022] EWHC 362 (QB)

Associate [Anastasia Tropsha](#) reviewed a recent judgment, which confirmed that service on directors at the address registered with the Companies House under s.1140 of the Companies Act 2006 is valid for all purposes. This article was first published on LexisPSL on 2 March 2022

[Please read text of the judgment >>](#)

Championing Champerty

Farrar v Candey Ltd and another [2022] EWCA Civ 295

Associate [Anastasia Tropsha](#) reviewed a recent Court of Appeal decision in Farrar v Candey, which confirmed that a firm of solicitors – acting for a claimant under a DBA and then a CFA – could not validly take an assignment of their client's cause of action. This article was first published on LexisPSL on 17 March 2022

[Please read text of the judgment >>](#)

Hook, Line and Anchor

Public Institution for Social Security v Banque Pictet & Cie SA and others [2022] EWCA Civ 29

Associate [Anastasia Tropsha](#) reviewed a recent Court of Appeal decision in the PIFSS v Pictet proceedings, which focuses on specific elements of jurisdiction and challenges to it under CPR Part 11. The decision considers, in particular, the rules surrounding proof of agreement to exclusive jurisdiction clauses under Article 23 of the Lugano Convention 2007 and forum non conveniens arguments in the context of a plethora of foreign, variously domiciled individual and corporate defendants.

This article was first published on LexisPSL on 9 March 2022

[Please read text of the judgment >>](#)

Jurisdiction in company cases:

Article 24 of the Brussels I (Recast) Regulation (1215/2012)

Associate [Clara Browne](#) considers the treatment of Article 24 of the Brussel I (Recast) Regulation (1215/2012) by the courts and its impact on jurisdiction in company cases following Brexit. This article was published in the recent edition of Thought Leaders 4

[Please read full article >>](#)



Arguments delayed are arguments rejected

Samsung Electronics Co Ltd and others v LG Display Co Ltd and another [2022] EWCA Civ 423

Associate [Anastasia Tropsha](#) reviewed a recent Court of Appeal decision in Samsung v LG contribution proceedings, rejecting strong forum arguments, which may have succeeded had they been made at first instance and supported by the right evidence. Males LJ provides practical advice to litigants, who may face similar circumstances in the future. This article was first published on LexisPSL on 6 April 2022

[Please read text of the judgment >>](#)

Be careful what you wish for

Al Saud and another v Gibbs and another [2022] EWHC 706 (Comm)

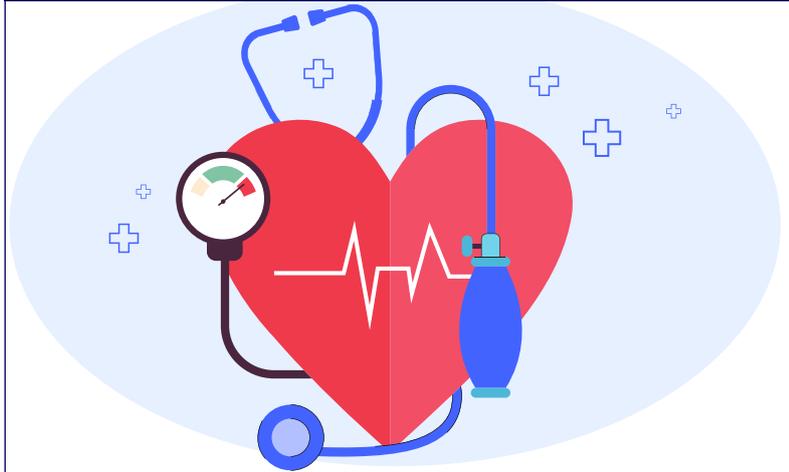
Associate [Anastasia Tropsha](#) reviewed a recent Commercial Court decision in Al Saud v Gibbs, which relates to procedural limits for the use of requests for further information under Part 18 of the CPR. This judgment contains a helpful analysis and gloss on the test for such requests and their enforcement. The judge, in particular, reminds litigants that Part 18 requests ought not be seen as an automatic or routine part of litigation. This article was first published on LexisPSL on 8 April 2022

[Please read text of the judgment >>](#)

From 6 April 2022, the Civil Procedure (Amendment) Rules 2022 (SI 2022/101) (SI) and the 140th Practice Direction (PD) Update make several amendments to the CPR and accompanying Practice Directions. Of particular note are:

- The introduction of entirely re-drafted versions of CPR 10 (Acknowledgement of Service) and CPR 12 (Default Judgment), reflecting efforts by the Civil Procedure Rule Committee to simplify and compress these parts of the CPR.
- Amendments to CPR 2 (Application and Interpretation of the Rules) and CPR 42 (Change of Solicitor) relating to the implementation of an online system for filing notices of change of solicitor.
- CPR 39 (Miscellaneous Provisions Relating to Hearings) has been changed (at CPR 39.2(4)) to include all occasions in which the court may use its jurisdiction to grant anonymity to a person (rather than merely a “party or witness”) under the same procedural requirement.
- A change to Practice Direction 3C (Civil Restraint Orders) that extends the maximum period of a Civil Restraining Order from two to three years.
- Changes were made to Practice Direction 23A (Applications), Practice Direction 25A (Interim injunctions), the Application for a Warrant under the Competition Act 1998 Practice Directions, and the Practice Directions for Civil Recovery Proceedings in order to modernise the language involving electronic communication and better reflect present and future practice.

Case Round-up



Following the collapse of NMC Healthcare PLC, the Commercial Court rules on a £1 billion fraud lawsuit.

Following the discovery of US \$3 billion of previously undisclosed debt in 2020, NMC Healthcare PLC (the owner of one of the largest private healthcare chains in the Middle East), was placed into administration. Following this action, the Abu Dhabi Commercial Bank (one of NMC's main lenders) issued proceedings in England against several of the company's shareholders and management team members. In summary, the bank claimed the defendants had participated in a dishonest scheme involving fraudulent misrepresentations, resulting in the bank lending over £1 billion to NMC. To support this claim, the bank obtained an ex parte worldwide freezing order from Mr Justice Bryan for £1 billion. However, following a judgment handed down to his honour Judge Pelling QC (sitting as a Judge of the High Court) on 1 April 2022, the first to fourth defendants were granted the applications made: 1) challenging the English Court's jurisdiction; and 2) seeking the discharge of the worldwide freezing order. The Judge concluded that Abu Dhabi was more appropriate than England for the trial due to the following factors: 1) the claim is governed by the UAE law (which includes a significant Islamic element), 2) the witnesses live and work in the UAE, 3) the bank is based in the UAE, and 4) the costs of proceedings in the UAE would be far lower than the equivalent English proceedings. The Judge also concluded that the bank had breached its duties of full disclosure and fair presentation in relation to the ex parte application before Mr Justice Bryan in several respects.

[Please read text of the judgment >>](#)

Case Round-up

The High Court examines section 13A of the Insurance Act 2015 and the law of insurable interests.

In the decision of *Quadra Commodities S.A. v XL Insurance Company SE and Others* [2022] EWHC 431 (Comm) grain cargoes were purchased by the insured Claimant under a number of contracts, and payment was made in exchange for the sellers' presentation of warehouse receipts generated by Ukrainian warehouses. However, those warehouses were taking part in a fraud in which various customers received several warehouse receipts for the same commodities. There was not enough grain available to fulfil physical deliveries in accordance with those warehouse receipts. The Claimant asked its cargo insurance for compensation after the grain it had paid for was lost. The insurers denied responsibility, citing, among other things, the absence of any physical property loss or the lack of any property in which the Claimant could demonstrate an insurable interest.

Mr Justice Butcher decided in favour of the insured Claimant. The Claimant was successful in demonstrating that commodities with an insurable interest and matching the cargoes in number and description were actually present in the warehouses at the time the warehouse receipts were issued. Due to (a) having paid for unascertained goods and (b) having an immediate right to possession of those items, along with an economic interest therein, the claimant had an insurable interest. This was the case even though, according to section 20A of the Sale of Commodities Act of 1979, the Claimant had no exclusive interest in the goods, and they might have been the subject of competing interests. Mr Justice Butcher concluded that the loss was brought on by "misappropriation" as defined by the relevant policy, and that the Claimant's acceptance of forged warehouse receipts did not result in that loss.

[Please read text of the judgment >>](#)



In a \$2 billion financing dispute, the Commercial Court grants anti-suit and declaratory relief.

On 1 April 2022, the Commercial Court upheld claims for final anti-suit injunctive relief and dismissed the defendant's applications to challenge jurisdiction and set aside an interim anti-suit injunction previously granted in December 2020. The underlying dispute concerns two financing agreements totalling US \$2 billion between eight 'onshore' lenders and one 'offshore' lender and the defendant (the borrower) regarding the purchase of oil fields and facilities in Nigeria. Both facilities contained agreements in favour of London-seated ICC arbitration, and when the borrower obtained ex parte interim injunctive relief from the Nigerian Federal High Court, the majority of the lenders appealed this ruling in the Nigerian Court of Appeal, which remains pending.

The lenders commenced arbitration proceedings under both facility agreements, and also obtained anti-suit and declaratory relief on a without notice basis from the English High Court in December 2020. The borrower challenged jurisdiction and applied to set aside the interim antisuit order. Both applications were combined into the hearing of final relief on the lenders' claim, which took place on 22-24 March 2022 and included cross-examination of Nigerian law expert witnesses.

[Please read text of the judgment >>](#)

Case Round-up

Attempt to rely on arbitral findings in proceedings against non-parties is dismissed by the Commercial Court

On the 11 April 2022, Mr Justice Foxton dismissed the claimant bank's PJSC National Bank Trust applications for permission to amend their Particulars of Claim to plead that the First to Third Defendants (D1-3) were precluded from challenging certain findings made by an LCIA arbitration tribunal in an arbitration between the bank and three companies alleged to be under D1-3's control, on the grounds of issue estoppel or to prevent an abuse of process, and for summary judgment on those amendments.

[Please read text of the judgment >>](#)



THE HUB The latest updates from the Firm



PCB BYRNE promotes Charlotte Bhanja to partnership

We are delighted that [Charlotte Bhanja](#) joined the partnership at PCB Byrne as of 1 April 2022. Charlotte has been a senior associate with the firm for several years, during which she has played an integral role in some of our most significant cases. She is a specialist in civil fraud and arbitration and a key member of the firm's cryptocurrency group. We have no doubt that she will be a valuable addition to the partnership and very much look forward to seeing what the future holds for her.

David Johnson and Andrew McLeod have been promoted to the position of Senior Associate

We are also happy to announce that [David Johnson](#) and [Andrew McLeod](#) have been promoted to the position of Senior Associate. Since joining the firm, David and Andrew have played important roles in some of the firm's most notable cases. David focuses his expertise on advising clients in complex insolvency and fraud cases. Andrew focuses on complex civil fraud proceedings, utilising his background working on major commercial disputes, banking, fraud and regulatory investigations and anti-money laundering matters. We consider both Andrew and David to be future stars in their respective fields and look forward to seeing what the future holds for them.

PCB Byrne – **RECENT WINS**



PCB BYRNE WINS US\$1BN COMMERCIAL COURT CLAIM

As reported on page 3, for the second time this year, PCB Byrne has successfully defeated a US\$1bn+ Commercial Court claim, this time on behalf of major shareholders in NMC Health PLC, accused of deceiving Abu Dhabi Commercial Bank into lending money to the NMC Group. The Bank accused PCB Byrne's clients of implied fraudulent misrepresentations in relation to the financial health of NMC as a consequence of undisclosed borrowing of billions of dollars.

The PCB Byrne team was led by [Trevor Mascarenhas](#), assisted by [Andrew McLeod](#), [Cath Eason](#) and [Caitlin Foster](#) instructing Tim Penny QC, James Sheehan, Sam Goodman and Fred Allott.

[Please read the full judgment >>](#)

ACCOUNT FREEZING ORDER SUCCESS

Senior Associate [Ilana Baines](#) together with Partner [Emma Brooks](#) successfully defended an application to extend an Account Freezing Order, securing the return of over £730,000 to their client. Ilana and Emma were instructed by a Chinese national who was the subject of an Account Freezing Order pursuant to s. 303Z1 Proceeds of Crime Act 2002.

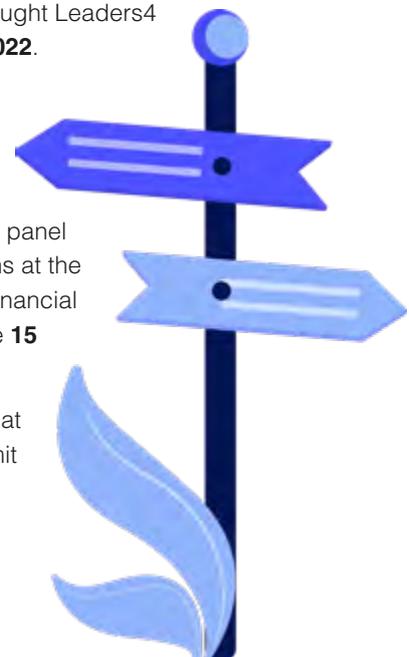
Following the submission of a lengthy and detailed witness statement appending 33 exhibits and written and oral submissions by counsel, [Tom Godfrey](#) of 23ES, the application to extend the Order by 6 months was refused by the court.

PAST SPEAKING ENGAGEMENTS

- [Elizabeth Seborg](#) co-chaired and [Jonathan Gould](#) and [Charlotte Bhanja](#) attended the Thought Leaders4 asset recovery conference - the Next Gen Asset recovery **Dublin, 23 – 25 February 2022.**
- [Uliana Cooke](#) took part in the Paris Arbitration Week 2022 Paris, **27 – 31 March 2022.**
- [Anthony Riem](#) was on a panel discussing asset recovery being held by Informa **Dublin, 11 – 13 May 2022.**
- [Nicola Boulton](#) and [Elizabeth Seborg](#) held a workshop on how to plot the right asset recovery path with inadequate information at the Thought Leaders4Fire Conference at Vilamora, Portugal **18 May 2022.**
- [Anthony Riem](#) was part of a panel at the Joint Fraud Lawyers Association/European Fraud and Compliance Lawyers Conference that presented a case study on how to deal with cryptocurrency fraud **10 June 2022.**
- [Anthony Riem](#) was invited to participate at the Cambridge Forum on the International Enforcement of Judgments & Awards **12 – 14 June 2022.**
- [Emma Brooks](#) spoke on the Cross Border Investigations panel at the IFSEA 3rd Annual International Conference. The panel discussed risks, strategies and reputation management for executives involved in high-profile, cross-border matters involving fraud, bribery and other alleged wrongdoing.
- [Elizabeth Seborg](#) spoke on asset forfeiture at a panel at the VOCAL (Victims of Crime Association of Lawyers) conference **Stockholm, 17 June 2022.**
- [Charlotte Bhanja](#) was on a panel speaking at the Thought Leaders 4Crypto in Disputes conference at the Law Society **29 June 2022.**
- [Anthony Riem](#) spoke at the Thought Leaders4 HNW Divorce Event **30 June 2022.**

FUTURE SPEAKING ENGAGEMENTS

- [Nick Ractliff](#) is a member of the panel speaking on Shareholder Claims at the Thought Leaders 4 Disputes' Financial Institution Litigation Conference **15 September 2022.**
- [Anthony Riem](#) will be speaking at FIRE UK: Welcome Back Summit London, **22 September 2022.**





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