

Developments Offshore In Third Party Disclosures in Wrongdoings (Norwich Pharmacal Relief)

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In the last several years to assist tracing of assets and discovery of perpetrators, courts in English common law countries have shown a willingness to assist victims by ordering third parties to disclose information through discovery about wrongdoings under *Norwich Pharmacal* relief. Developments in the Cayman Islands and BVI provide the following insights for counsel assisting these victims.

Cayman Islands

- Relief endorsed whether or not there is a sound basis for bringing proceedings. *Discover Investment Company v. Vietnam Holding Asset Management Limited & Saigon Asset Management Corporation* (unreported, Kawaley J. 5 November 2018)
- Relief available to assist in enforcement of foreign arbitral awards. *Arcelormittal USA LLC v. Essar Global Fund Limited & Essar Capital Limited* (unreported Kawaley J, 29 March 2019)
- Precluded relief available to respond to requests from foreign courts (England in this matter) for evidence to be used in foreign proceedings. *Ramilos Trading Limited v. Buyanovsky*, 2016 EWHC 3175

BVI

- Relief appropriate where there is a “general pattern of willfully evasive conduct”. It is not necessary to show a particular transaction to demonstrate concealment of assets meant to frustrate post judgment collection efforts. *UVW v. XYZ*, (unreported, Wallbank J. , 27 October 2016)
- Allows for relief other than bringing legal proceedings such as for disclosure of customer due diligence documents where the failure to provide those documents demonstrated a pattern of willful and evasive conduct amounting to wrongdoing. *Rui Manuel v. Harneys Corporate Services BVIC HC (Com)* 182 of 2017
- Focus of application is to “enforce the duty in a person who has facilitated the wrongdoing to

assist and provide information". On that basis, the duty arises first, which then enables the victim to file an application. The court refused to follow *Ramilos* from the Cayman Islands as the court opined that decision was too narrow. *Q v. R Corp*, (unreported, Wallbank J. 13 December 2018)

Thus, the latest developments offshore show that both the Cayman and BVI courts will not permit offshore structures to be used to misappropriate assets and promote a broad and flexible approach to ordering disclosure against the innocent third parties or wrongdoers themselves. This is particularly important in BVI where courts had issues with the extent to which *Norwich* Pharmacal relief was available to support foreign proceedings.

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