



WAYNE FINN, PARTNER, CAROL MAGUIRE, PARTNER, HARRY FEHILY, MANAGING PARTNER, SANDRA EGAN, PARTNER, MICHAEL WALSHE, PARTNER AND ANNA OWENS, PARTNER.

On behalf of all at Holmes, I am delighted to bring you the latest edition of our firm's newsletter. We are living in turbulent times of global geopolitical uncertainty where unpredictability has become the new norm; as a result, the provision of trusted, reliable and commercially minded legal advice has become more important than ever.

As a firm, we pride ourselves in helping you to navigate these challenges. In order to ensure that we are best positioned to do so, we are pivoting our firms' services and technology to support you and your business. It is in that context that this edition brings you the latest updates, insights, and successes from our team. In this issue, we share recent achievements, important legal developments, and practical guidance designed to keep you, our clients, fully informed and consistently supported in an ever-changing legal and economic landscape. Whether you are seeking out industry news, firm updates, or thought leadership, we remain diligently committed to delivering content that matters and is tailored to you.

We are now coming up on our first year since Holmes and OCWM merged together with a common shared vision and goal – to harness our combined strengths, expand

our respective knowledge and expertise, and, ultimately, provide an even higher standard of service to our collective clients. We are delighted to report that the merger has been an overwhelming success at every level. Our teams have blended seamlessly, our services have become more diversified, our resources have grown considerably, and we have been able to deliver faster, more comprehensive solutions for our clients. This paves the way for an exciting future for our firm through enhanced capabilities and a reinforced commitment to partner led, personalised, attentive approach you have come to expect from us. We look forward to building on this momentum and to continuing to achieve excellent outcomes together.

Harry Fehily,
Managing Partner

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Promotions at Holmes

We continue to recognise and reward our people by announcing two new promotions in our Insurance Defence Litigation and Employment units. We are committed to retaining and appointing the brightest and the best in the legal profession and these promotions reflect the firm's continued strategic growth and investment in talent.



TRÍONA WALSH

Triona Walsh has been promoted to Of Counsel specialising in insurance litigation.

Triona joined Holmes as a Trainee in 2005 and since then, has gained extensive experience and expertise in insurance litigation and dispute resolution. She practices in "Special Investigation Unit" (SIU) claims and she manages our anti-fraud services, with a particular focus on complex cases involving alleged fraud or exaggeration. Triona adopts a thorough, data-driven approach to the investigation of alleged fraudulent and exaggerated claims and is market-recognised for her robust defence of such claims and for the many successful outcomes on behalf of insurance clients.

Robert Kennedy, Head of Insurance Defence Litigation, welcomed Triona's promotion and said "this promotion reflects Triona's dedication and commitment and is a well-earned recognition of her expertise, experience and hard work. Congratulations Triona and continued success in your new role".

We would also like to congratulate Jana O'Higgins who has been promoted to Legal Executive in our Financial Lines Unit.

Jana joined the firm in 2014 in a support role before completing her studies and moving to a legal executive role in the firm. We are delighted to recognise Janka for all her hard work and dedication and wish her all the best in her new position.



ED KELLY

Ed Kelly has been promoted to Associate Solicitor.

Ed returned to Holmes in 2023 as a Senior Solicitor specialising in Employment Litigation. Ed has a deep understanding and experience on a range of issues, including employment injunctions, TUPE (Transfer of Undertakings Protection of Employment), whistle-blowing and protected disclosure, disputes investigations and litigation, re-organisations, corporate immigration and interpreting regulatory frameworks. Ed also has expertise in areas of health and safety compliance and employee incentive schemes and aims to deliver tailored solutions for every employment law challenge.

Harry Fehily, Managing Partner said "I am proud to announce Ed's promotion which is testament to his hard work, strategic thinking, experience and client focus. Congratulations Ed, and best of luck in this next step on your legal journey".

Broker Claims Update — Norman Hay PLC v Marsh Ltd

The recent UK Court of Appeal decision in Norman Hay PLC v Marsh Ltd offers critical insights for policyholders, brokers, and insurers on the duties of insurance intermediaries and the assessment of liability for losses when insurance coverage falls short. This case is especially relevant for clients operating in complex or cross-border risk environments.

Mark Healy,
Senior Associate

BACKGROUND: CROSS-BORDER INSURANCE OVERSIGHT

Norman Hay PLC ("NH"), a UK-based parent company with global subsidiaries, found itself exposed following a serious road traffic accident that occurred in the USA in 2018. An employee of the company's German subsidiary, Internationale Metall IMPrägner GmbH ("IMP"), was involved in a collision that left a third party severely injured. NH settled the injury claim for \$5.5 million in early 2021.

During its investigation into the accident, NH discovered that contrary to its belief, their insurance cover did not include non-owned auto liability insurance for IMP. Marsh Ltd ("Marsh"), the insurance broker responsible for arranging worldwide coverage, had allegedly failed to secure this essential protection.

THE LEGAL DISPUTE

NH sued Marsh for professional negligence, claiming the broker's error cost them not just the settlement payment, but also the chance of being indemnified under a policy that should have been in place.

In response, Marsh argued that NH had no legal entitlement to recover because it had not alleged in its pleadings (defending the claim of the Third Party) that it was legally liable for the accident. Marsh also argued that it was not retained to carry out a risk assessment or for risk consultancy services generally, and that it was NH's responsibility to provide Marsh with all relevant information about the group's business. It argued further that worldwide non-owned auto cover was not a typical feature of liability policies written in the United Kingdom so that it was under no obligation to arrange such cover or to advise about it.

Marsh sought to strike out the claim by way of preliminary application. However, both the High Court and Court of Appeal disagreed with Marsh's attempt to strike out the claim. In the Appeal hearing, the Court clarified that in broker negligence cases, the standard is not whether the claimant would have been indemnified under a policy, but whether the claimant lost a real and substantial chance of indemnity due to the broker's failure.

This "loss of chance" doctrine is a flexible and realistic way to assess liability in cases where the outcome of a theoretical underlying insurance claim is uncertain.

KEY TAKEAWAYS FOR CLIENTS

1. Broker responsibilities are significant:

Insurance brokers must exercise reasonable care and skill in understanding their risk exposure and arranging appropriate coverage. They must hold detailed meetings with their clients so that they have a solid understanding of their client's business and insurance requirements. Errors can have serious financial and reputational consequences, especially in multinational and multi-jurisdictional operations.

2. Loss of Chance is enough for a liability to arise:

Even if there is no guarantee that an insurer would have paid a claim, clients can recover damages if they can show they might have been indemnified had the proper cover been in place.

3. Courts will adopt a pragmatic understanding of how claims are handled / settled generally:

The UK Court of Appeal acknowledged that insurers often settle claims based on commercial considerations rather than strict legal liability. This common-sense view supports the rights of policyholders who have had to settle third-party claims out of pocket due to broker errors.

4. Documentation and communication are crucial:

As always, brokers should maintain a record of communication, including emails, policy documents, and advice given. These records could be vital if a dispute arises.

WHAT THIS MEANS FOR YOU AS BROKERS

If a similar claim arises in the Irish jurisdiction, we expect that Irish Courts will adopt a similar view to their UK counterparts. In that regard, this case underscores the importance of robust risk management and diligent broker oversight, particularly in cross-jurisdictional contexts. It also demonstrates the courts' willingness to take a realistic, commercially aware approach to insurance disputes.

CORPORATE AND COMMERCIAL

Third Country Investment Screening Regime Comes into Force



Susan O'Reilly,
Of Counsel

IN BRIEF

Ireland's new mandatory notification regime for investments from countries outside the EEA and Switzerland (such as Northern Ireland, Great Britain and the US) means notifiable transactions may not complete without clearance.

The Screening of Third Country Transactions Act 2023 (the "Act") commenced on 6 January and introduces a mandatory notification regime for third country investments i.e. from countries outside the EEA and Switzerland and is designed to bolster Ireland's national security and public order by scrutinising certain foreign investments.

If a transaction meets the four criteria set out below, the parties must notify the Minister for Enterprise, Trade and Employment (the "Minister") and obtain prior approval. The notification obligation rests on all parties to a qualifying transaction, although only one notification is required.

TO QUALIFY, A TRANSACTION MUST:

1. Result in an undertaking from outside the EEA and Switzerland, or a person connected with such undertaking, acquiring control of an asset or undertaking in the State, or increasing its control above 25% or 50%.
2. Have a cumulative value ≥ €2 million.
3. Not be an internal reorganisation.
4. Relate to, or impact on, one or more sensitive activities or sectors, as set out in the legislation. The activity undertaken by the Irish target is, therefore, a key determining factor. For example, the legislation provides those transactions relating to, or impacting upon, critical infrastructure – whether physical (such as energy, transport, water, health and defence) or virtual (such as media, data processing or storing) are included.

The Department of Enterprise, Trade and Employment (the "Department") has published detailed guidance, the 'Inward Investment Screening Guidance'. Although it provides

that notification will only be required where the activity or sector comes within one of the categories listed, the categories are so broadly drafted, and the Minister's powers so extensive, that it seems likely many investments and acquisitions by non-EEA or Swiss entities will be notified, if they otherwise exceed the thresholds.

Holmes' corporate team recently made one of the first notifications under the new regime, and obtained confirmation from the Department within days of the notification that the transaction did not require full investment screening, and so could proceed to completion.

NOTIFICATION PROCEDURE

- Notification should be made at least 10 days prior to completion.
- The Department operates an IIS Notification Portal and has published a standard notification form. Notifications are confidential.
- The Department will confirm as soon as possible whether a transaction is to be reviewed for full investment screening. If it falls outside the regime, the Department will aim to issue a letter within 7-10 days of receipt of the notification.
- Where mandatory notification applies, the Minister has 90 days from the date of notification to issue a screening decision (or, where the transaction has been "called-in" (see below) within 90 days from the date on which the Minister issues a screening notice). This period can be extended to 135 days. The Minister may request further information which "pauses" the review period.
- The parties cannot complete, or take steps to complete, a transaction until clearance has been obtained.

"Holmes' corporate team recently made one of the first notifications under the new regime, and obtained confirmation from the Department within days of the notification that the transaction did not require full investment screening, and so could proceed to completion."

IMPLICATIONS OF FAILURE TO NOTIFY

Failure to notify the Minister is a criminal offence with fines up to €4 million and/or up to 5 years' imprisonment.

The Minister may 'call in' non-notifiable transactions for 15 months post completion, with reasonable grounds for believing the transaction affects, or would be likely to affect, security or public order in Ireland. The Minister has power to review notifiable transactions which have not been notified before the later of 5 years from completion or 6 months from becoming aware of the transaction.

CONSEQUENCES OF SCREENING DETERMINATION

If the Minister concludes that a transaction affects, or would be likely to affect, the security or public order of Ireland, he can:

- A. prohibit the parties from completing the transaction, or parts of it;
- B. make completion of the transaction subject to conditions; or
- C. where the transaction has already been completed, direct the parties to take such action as the Minister may specify to protect the security or public order of Ireland.

CONCLUSION

This regime is in addition to the requirement to notify certain Irish mergers to the Competition and Consumer Protection Commission. The potential impact on deal timelines should be considered early in the process.

FINANCIAL LINES

Professional Negligence Lawyers Association Conference 2025

ANOTHER FANTASTIC TURN OUT FOR THIS YEAR'S PNLA – The Professional Negligence Lawyers Association and Holmes annual conference. We were joined by special guest, Minister for Justice Jim O'Callaghan, and moderator, Mr Justice MacGrath, and are very grateful to all of the excellent speakers who generously gave their time to share their insights and expertise and to the engaged audience who have shared such positive feedback since the event.

A huge thank you again to all those who attended and to our wonderful panel of speakers, Sara Moorhead SC, Peter O'Brien BL, Paul Harvey - former Managing Partner of Morr & Co LLP, Niamh Moloney - Liberty Specialty Markets, John Barry - McGill & Partners, Andrew Nugent - Andrew P. Nugent & Associates, Quantity Surveyors, Carol Lynch - Tax Partner & Head of Customs and International Trade Services, BDO, Howard Elgot, Barrister – Parklane Plowden Chambers, Shane Santry RIAI- SSA Architects and Catherine Sanz, Legal Affairs Editor of the Business Post.



MINISTER FOR JUSTICE, JIM O'CALLAGHAN.



FROM LEFT TO RIGHT, KATY MANLY, MINISTER FOR JUSTICE JIM O'CALLAGHAN, MR JUSTICE MACGRATH AND HARRY FEHILY.

MAKING POSITIVE IMPACTS

CORPORATE RESPONSIBILITY

International Women’s Day 2025

Holmes celebrated International Women’s Day 2025 with a lunchtime event on Friday 7th March 2025.

This year, the IWD 2025 campaign focussed on the need to Accelerate Action. Data from the World Economic Forum indicates that at the current rate of progress, it will take until 2158 to reach full gender parity and one of the best ways to forge gender equality is to understand what works and to do more of this at a faster pace.

Our guests enjoyed a delicious lunch, engaged in lively conversation and were inspired by a series of insightful speakers: Mary Harney, Current Chair of the Amber Research Centre, Trinity College Dublin, and former Chancellor of University of Limerick, Aongus Hegarty, an alumnus of the University of Limerick, renowned for his insights on leadership, digital transformation and sustainability, and Sinéad McSweeney, barrister, Global Vice President @ Twitter until 2022 and former government advisor. Each shared their thoughts on how their leadership journeys have shaped their outlooks and motivated them to create an impact so that we all may accelerate action and create a fair and equal world.

Holmes is honoured to host this event annually to celebrate the social, economic, cultural, and political achievements of women and to promote gender equality and diversity.



CONGRATULATIONS TO UL BOHEMIAN RFC

Holmes was proud to sponsor UL Bohemian RFC who retained the Energia All Ireland Women’s Division 1 Final on Sunday 27th April 2025, making them back-to-back champions! What a fantastic achievement for the club—congratulations to the players, staff and supporters.



SANDRA EGAN, COMMERCIAL PROPERTY PARTNER, SINÉAD MCSWEENEY, MARY HARNEY AND AONGUS HEGARTY.

TUS BUSINESS STARTUP AWARDS

The TUS Business Startup Awards 2025 took place on 1st April in celebration and recognition of some of the incredible startups making an impact in the Midwest region. Holmes is proud to continue a long-standing support of TUS New Frontiers and build upon our culture of quality and community values.

Edel Conway, Partner and Susan O’Reilly, Of Counsel, of our Corporate Team were delighted to continue Holmes’ close association with TUS New Frontiers by delivering a ‘Becoming Investor Ready’ workshop to the founders, sponsoring the awards with consultancy prizes and attending the awards ceremony in Limerick. **Best of luck to each of the founders for the future development and growth of your business.**



EDEL CONWAY (FIRST FROM RIGHT) AND SUSAN O'REILLY (FIRST FROM LEFT).

HOLMES O’MALLEY SEXTON UL LAW SCHOLARSHIP

At Holmes O’Malley Sexton LLP, we believe in investing in the future by supporting bright minds who demonstrate exceptional academic performance and potential.

This year, we are thrilled to announce that the prestigious Holmes O’Malley Sexton UL Law Scholarship has been awarded to Saoirse Breen.

The Holmes O’Malley Sexton UL Law Scholarship plays a pivotal role in fostering the development of future legal professionals. The scholarship provides essential financial support towards course and study-related costs, enabling recipients like Saoirse to focus on their education without the added burden of financial stress.

Our commitment to fostering young talent is a testament to our firm’s long-standing relationship with the University of Limerick. This partnership, originally established under the stewardship of Gordon Holmes, one of our founding partners is dedicated to quality, knowledge, experience, integrity and competition supporting the communities in which we operate.



DONAL CREATION, INSURANCE LITIGATION, DISPUTE RESOLUTION, EMPLOYMENT LAW, PARTNER, SAOIRSE BREEN & SINEAD EATON, DIRECTOR OF PROFESSIONAL ENGAGEMENT, SCHOOL OF LAW.

SHANNON CHAMBER LUNCH

Holmes were delighted to be amongst the sponsors for the Shannon Chamber Lunch event at Dromoland Castle Hotel & Country Estate held on Tuesday, 1st April. It was a wonderful event full of networking and insights and it was particularly inspiring to listen to Michael Lohan, CEO of IDA Ireland, who shared the ambitious 5-year strategy for the IDA.



St. Gabriel’s Foundation Lunch

Holmes were happy to host a lovely table of clients and friends of the office at the St. Gabriel’s 2025 annual Ladies Lunch held at the Dunraven Arms Hotel on 15 May. All proceeds from the event go to St. Gabriel’s Foundation.

This summer lunch is an annual fundraiser and Holmes are delighted to continue to support this very worthy cause. Thank you to all our guests for attending and we hope that you had an enjoyable afternoon.



Tennis Champs!

Holmes sponsored the Leinster tennis team for the Over 50 and Over 55 Veteran Interprovincial Tennis Championships which took place in Wexford on 13th and 14th of June 2025 in the Wexford Boat Club.

Congratulations to our very own Audrey Bolger, Senior Legal Executive and captain of the Leinster team, who were tournament winners!

COMMERCIAL PROPERTY

Conveyancing and Climate Change: Legal Considerations for Practitioners

IN BRIEF



Michael Carrigan,
Consultant

“Climate change is affecting every sector of society, and legal professionals (particularly conveyancers) must now incorporate climate-related risks into their legal advice.”

In May 2025, the Law Society of England and Wales issued a new practice note on the relationship between climate change and property transactions, following earlier guidance published in 2021 and 2023.

This latest update sets out the duties and best practices for solicitors advising clients on conveyancing matters, with a particular emphasis on physical climate risks and practical responses. There is growing support for the Irish legal profession to adopt a similarly forward-looking and climate-conscious approach and the Irish Government’s commitment under the Climate Action and Low Carbon Development (Amendment) Act 2021 (to reach net zero emissions by 2050 and cut emissions by 51% by 2030) will drive significant policy, regulatory, and market changes. Changes will also be necessitated by the European Union’s Energy Performance of Buildings Directive, which promotes the improvement of the energy performance of buildings and the reduction of greenhouse gas emissions from buildings within the Union, with a view to achieving a zero-emission building stock by 2050. These changes introduce legal risks for property owners and developers, such as liability for emissions or non-compliance with new standards

KEY RESPONSIBILITIES

Climate change is affecting every sector of society, and legal professionals (particularly conveyancers) must now incorporate climate-related risks into their legal advice. The built environment, including the construction, heating, and cooling of properties, is responsible for nearly 40% of all global carbon emissions.

The risks associated with climate change fall into three principal categories:

- **Physical Risks:** These include direct threats such as flooding, coastal erosion, and subsidence. For example, if a property lies within a floodplain, solicitors must consider and communicate the implications of increased flood risk, insurance availability, and the potential impact on value and financing.
- **Transition Risks:** These arise from shifts in policy, public opinion, or market conditions in response to climate change. A change in buyer sentiment could affect asset values, or certain properties may become uninsurable or unmortgageable. A property’s Building Energy Rating (BER) will influence retrofit costs and/or mortgage decisions.
- **Liability and Legal Risks:** These stem from the consequences of physical and transition risks, including legal obligations and potential claims. For example, failing to disclose material climate risks might lead to litigation or regulatory penalties. The Law Society advises that, where relevant, solicitors should inform clients of the legal implications associated with such risks as part of their due diligence and advice.

BROADER IMPLICATIONS FOR LEGAL PRACTICE

Climate-related legal issues may not always fall within the core scope of a solicitor’s retainer, but like tax or regulatory matters, they can have a material impact. As climate change accelerates, such risks will increasingly influence legal practice.

Legal duties may therefore evolve to reflect a broader responsibility to account for climate risks. Solicitors may need to address climate issues even if they fall outside the client’s explicit instructions, particularly when acting for clients focused on sustainability, insurance coverage, or long-term asset value.

PRACTICAL GUIDANCE FOR CONVEYANCERS

The Law Society of England and Wales recommends that conveyancers explain to clients the option of commissioning a climate risk report and document the client’s decision. These reports are similar in function to traditional environmental due diligence but now encompass a broader scope, including:

- A Property’s Carbon Footprint (particularly large-scale commercial properties)
- Coastal erosion risk (e.g., cliffside properties)
- Subsidence vulnerability
- Existing and projected flood risks

Reports should provide tailored insights into how specific climate risks impact the individual property and offer practical recommendations.

Solicitors should clarify that they are not qualified to advise on the technical or financial consequences of climate risks. Instead, they should recommend that clients consult relevant professionals such as building surveyors. If a solicitor is also acting for a lender, they must seek the lender’s instructions regarding any climate risk findings.

The scope of climate-related legal advice should be clearly defined in the engagement letter and/or, addressed in the report on title to reflect findings as the transaction progresses.

CONCLUSION

While not all solicitors currently have the expertise to provide in-depth advice on climate risks, these issues are becoming increasingly material to property transactions. It is likely climate-related considerations will become intertwined with legal instructions over time as the issue becomes increasingly central to the basis upon which such decisions are made.

In that context, there is a need for increased education and awareness in the Irish legal profession to ensure climate risks are properly accessed and communicated. By taking proactive steps now, legal practitioners can better protect clients, support informed decision-making, and align with the evolving regulatory landscape.

INSURANCE

PRODUCT LIABILITY IN THE EU: Why Retailers Need to Act Now Ahead of the 2026 Directive

The European Union has adopted a sweeping reform of its product liability regime that will significantly impact any business placing products on the EU market. Directive (EU) 2024/2853, adopted in October 2024 and due to be transposed into by 9 December 2026, replaces the original 1985 Directive.



Wayne Finn,
Partner

It introduces important changes that expand the scope of liability, update definitions, and lower evidentiary thresholds for claimants. For Irish retailers and suppliers operating in the EU, early preparation is essential.

The previous framework, while progressive in its time, has struggled to keep pace with developments in artificial intelligence, digital products, and complex supply chains. The new Directive responds to these realities by applying strict liability principles to a broader range of products and supply chain actors. Retailers are advised not to wait until 2026. Risk exposure is increasing now, particularly in areas such as product sourcing, software updates, and safety compliance.

Strict liability remains the foundation of the new regime. As before, a claimant need not prove fault or negligence. They must simply show that the product was defective, that damage occurred, and that there was a causal link between them. However, the definition of "product" now expressly includes software, embedded or standalone, AI systems, digital manufacturing files, and digital health tools. This broadens the risk profile for businesses offering smart devices, wearables, and connected consumer goods.

The Directive also expands the categories of potential defendants. In addition to manufacturers, it may apply to authorised representatives, fulfilment providers, software developers, and, in some cases, distributors and online platforms. A business that substantially modifies a product post-manufacture may be treated as a producer. These changes necessitate

a thorough review of supply chain contracts and liability allocations.

Importantly, the evidentiary burden for claimants has been eased. Where it is excessively difficult to prove defectiveness or causation due to technical complexity, courts may presume both, provided the claim is sufficiently plausible. This shift will be especially relevant to high-tech and medical devices, but may also apply to everyday consumer products incorporating software or AI.

The Directive further allows courts to order disclosure of relevant evidence held by defendants. While trade secrets remain protected, this change reflects an emphasis on transparency. Retailers should maintain comprehensive records across the product lifecycle, including procurement, safety checks, product updates, and customer support.

In Ireland, enforcement activity has intensified. In 2024, the Competition and Consumer Protection Commission (CCPC) conducted over 200 inspections, issued multiple compliance notices, and prosecuted several retailers. Notably, in one of the first prosecutions under the European Union (Requirements to Indicate Product Prices) (Amendment) Regulations 2022 (S.I. No. 634/2022), Boots Retail (Ireland) Limited pleaded guilty to breaches arising from misleading prior price indications during the 2023 Black Friday sales. The Dublin District Court applied section 1(1) of the Probation of Offenders Act 1907, ordering the company to pay €4,624 in prosecution costs and a €1,000 charitable donation.

The case received widespread media coverage and serves as a reminder that civil court proceedings in Ireland are public forums and that regulatory prosecutions can carry significant reputational consequences for businesses, even where no criminal conviction is ultimately imposed. This is particularly relevant for retailers and consumer-facing brands where public trust is essential.

In another high-profile safety case, the CCPC ordered a recall in March 2025 following a report that a child required hospital treatment due to injury from a faulty product sold by Dunnes Stores. The recall received national media coverage and prompted the CCPC to urge immediate product returns. This example highlights that even low-value, everyday goods can expose retailers to significant reputational and legal risk where safety concerns arise.

It is also worth noting that the existing Directive will continue to apply to products placed on the market before 9 December 2026. However, the wider impact of the new rules should not be underestimated. Businesses should now assess their product liability risk, ensure documentation and governance processes are robust, review insurance cover, and update supplier contracts to reflect the expanded scope of liability.

Should you require advice on how these developments may affect your operations, or wish to review your compliance framework, our Product Liability and Consumer Law team would be pleased to assist.

LITIGATION AND DISPUTES, REGULATORY COMPLIANCE

Know The Enemy - Uncovering the Identity of a Wrongdoer and Norwich Pharmaceutical Relief



Hugh Meiklereid,
Solicitor

IN BRIEF

It is well established that no independent cause of action for discovery lies where no reasonable cause of action can be alleged or against a mere witness. A similar principle is one that a complainant must know against whom to bring an action in damages.

A recent Order for injunctive relief secured by Holmes in the High Court on behalf of its German commercial client highlights a seldom used yet potent remedy that seeks to identify a wrongdoer that is otherwise anonymous and compel a third party to disclose knowledge and documentation about this wrongdoer in their possession that will aid the complainant in their substantive proceedings.

The complainant, a market leader in renewable energy based in Germany, sought to bring a case in fraud, restitution of monies misappropriated and general damages against a party that defrauded them through dealings for the exchange of securities, exceeding €1 million. However, on receipt of the proceeds elicited by the fraud, the perpetrator utilised various companies registered abroad as vehicles through which to filter the proceeds, ultimately coming to rest in a British account with an online trading platform registered in Ireland.

Invoking the precedent now known as a "Norwich Pharmaceutical Order", injunctive relief was sought to compel the online trading platform, an innocent third party, to identify the holder of the trading account and disclose its records and trading history. The relief is effective, if invasive, as it allows a claimant to gather information about the ultimate wrongdoer from third parties that may not be aware of or have any hand, act or part in the fraudulent activity.

The relief espouses the court's "duty to assist" a victim of a wrong and for the attainment of justice, where otherwise the complainant would be deprived of a legitimate cause of action.

Norwich Pharmaceutical relief is discretionary, with the onus on the applicant to show a prima facie demonstration of wrongful activity by the wrongdoer. The applicant's affidavit will set

out the facts, the nature of the claim and the information the innocent party holds about the wrongdoer, the discovery of which is being compelled by the order sought.

Irish courts have displayed a willingness to expand the scope of the original precedent case with a series of landmark cases in 2022, 2023 and 2025, transforming the remedy into one which, the Chief Justice has said, is now a "valuable and mature remedy", and, when used correctly, can be the missing piece of the jigsaw in intended proceedings.

In seeking the relief, it is necessary to show that the third party possesses knowledge of the wrongdoer, that the discovery of this defined knowledge is necessary for the future claim, and, that the victim has no other means of obtaining this knowledge save and except through the relief sought.

Relying on a 2023 ruling of the High Court, the relief is expanded to the discovery of documentary evidence, which assisted our client in reviewing the balance of monies in the fraudster's online trading account, as well as the various trades that had been made, for what amounts and with whom.

While not isolated to a claim of fraud, Norwich Pharmaceutical relief has also been used successfully to assist victims of defamation, nuisance, privacy and economic torts.

The application is usually heard expeditiously, which further enables a victim to progress quickly to the main cause of action. Considering however, that the Norwich Pharmaceutical respondent is an innocent party, the applicant must be prepared to meet both the costs of their court appearance and also the cost of assembling and providing the documentation – a price usually worth bearing in high value commercial litigation.

COMMERCIAL / REGULATORY / EMPLOYMENT / DISPUTES

Holmes Continue to Support Increased Credit Union Mortgage Lending



Michael Walshe,
Partner

IN BRIEF

There has been much media coverage of late surrounding the unprecedented growth in mortgage lending by Credit Unions, providing strong competition for the pillar banks and a much-needed replacement following the departure of other banks from the Irish market.

In its report on Credit Union Lending published in December 2024, the Central Bank noted with respect to mortgage lending that “gross loans outstanding have grown from c.€187 million at September 2019 to c. €674 million at June 2024 representing overall growth of 261%”. No doubt those figures have increased further over the past twelve months.

As well as providing consumers with new options, this boom in mortgage lending in the sector is greatly alleviating a pattern of several years of member funds being under-utilised. As more and more members focused on saving rather than borrowing, excess funds were held by way of safe but low-yielding investments. Central Bank analysis shows that the recent turnaround has increased the lending ratio from a low of 27% for some to something now approaching 33%. Despite this increase, the majority of Credit Union loans are still of a personal unsecured nature and for much lower amounts. There remains much further scope therefore for more mortgage lending without running the risk of over-concentration.

Recent legislative changes have also paved the way for further growth with Credit Unions now permitted to grow their long-term lending to up to 30% of their total assets and to participate with each other in lending and to provide mortgage services to members of other Credit Unions that have not established their own specialist

lending expertise. Other novel developments include the establishment of CU Mortgage Services DAC, a collaborative venture among participating Credit Unions that will offer a standardised product supported by nationwide marketing.

For more than ten years now, Holmes have been supporting several Credit Unions that were among the first to venture into mortgage lending in what was a new departure for them. We have responded to the recent acceleration in such lending by expanding our dedicated team which now comprises eight experienced practitioners, including two former bankers.

For our part, we continue to offer an end-to-end process from loan offer issue with particular attention to special conditions; engagement with the borrowers’ solicitors; ensuring the certificate of title and assignment of life policies are in order; dealing with the closing procedures and release of funds; processing the stamping and registration of title and security; and maintaining a live tracking system that ensures the Credit Unions are kept apprised at all times. In association with the Credit Union Development Association, Holmes were delighted to present a Loan Underwriting Level 5 training event concentrating on Good Mortgage Practice and Procedure. Over 25 Credit Unions attended, and the event concluded with an informative questions and answers session, and several follow up enquiries.

The information contained in Holmes News is for general information purposes only and does not constitute legal or other professional advice.

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