

D&O and FI newsletter - Spring 2020

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There is now a “dominant purpose” test for legal advice privilege - some practical points in the corporate and D&O context



‘Litigation’ privilege has long been subject to a ‘dominant purpose’ test. For a document to be privileged, the dominant purpose for its creation must have been for use in relation to contentious proceedings (either in existence or reasonably in contemplation).

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Fiduciary duties owed by a director survive insolvency



Re System Building Services Group Limited (in liquidation) [2020] EWHC 54 (Ch)

A recent English case has considered for the first time whether and if so to what extent the general duties of a director survive a company’s entry into an insolvency process.

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Supreme Court upholds claim for Quincecare breach



Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd [2019]

In October 2017, we reported on the first instance decision of *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2017]. Almost exactly two years later, the Supreme Court has handed down judgment in which the first instance and Court of Appeal decisions have been upheld.

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Members behaving badly - the importance of D&O insurance for Clubs and Not-for-Profit organisations



Directors’ & Officers’ insurance cover is a core aspect of risk management not just for large multinationals, but also small and medium-sized enterprises (“SMEs”). Part of the SME Directors’ & Officers’ market includes bespoke policies for private member clubs, sports clubs, associations and not-for-profit organisations.

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The Court of Appeal rejects appeal in the UK's first Unexplained Wealth Order



In the first Unexplained Wealth Order (UWO) case to be challenged in the English courts, the Court of Appeal has given useful guidance on the scope of the statutory powers which underlie UWOs. The Court's decision to uphold the UWO is a significant victory for the UK's law enforcement agency, the National Crime Agency (NCA), and greater use of UWOs is expected to follow.

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VW sees largest UK class action



In 2015 news broke that Volkswagen had been manipulating emissions tests for millions of vehicles manufactured worldwide. Since then, we have seen numerous regulatory and criminal investigations culminating in substantial penalties and reputational damage for the company.

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Organisations' compliance programmes - a question of adequacy



1 July 2021 will mark the tenth anniversary of the Bribery Act 2010 (the "Act"), and despite almost ten years passing many organisations remain non-compliant with the Act.

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International D&O and FI

Cum-Ex trading scandal in Germany - rapid developments after years of investigations



Some years ago, the so-called "Cum-Ex" trading scandal at first sight appeared to be one among many other scandals in Germany involving banks and financial institutions in the wake of the global financial crisis.

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Insurability of fines and penalties in Spain



The debate about whether the Spanish legal system permits insurance cover for fines and penalties has been ongoing for some time now. Although there is no specific rule regulating the insurability of fines and penalties -at least, within civil liability insurance- the insurance market has been experiencing high demand for this type of cover in recent years.

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Ireland: the Consumer Insurance Contracts Act 2019



The long awaited Consumer Insurance Contracts Act was signed into law on 26 December 2019. The Act has yet to be enacted, but that is expected to happen in the first six months of 2020.

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Nissan's admissions and public shaming of Ghosn may have unintended insurance consequences



On New Year's Eve, news broke that former Nissan boss Carlos Ghosn had fled Japan where he was on bail awaiting trial for alleged financial misconduct. Ghosn stated he has "not fled justice" but "escaped injustice and political persecution" in Japan.

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Authors



William Allison

London - Walbrook
+44 (0) 20 7894 6440
wallison@dacbeachcroft.com



Graham Ludlam

London - Walbrook
+44 (0)20 7894 6442
gludlam@dacbeachcroft.com



Francesca Muscutt

London - Walbrook
fmuscutt@dacbeachcroft.com

