



AMERICAN
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Fraudulent Trading Claims

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Fraudulent Trading Claims Overview

- Dissection of the relevant statutory provisions
- Detailed review of recent caselaw
- Bilta and Air Arabia
- The US perspective
- Practical considerations and challenges faced by insolvency practitioners

The High Bar – proving “intent to defraud”

- Higher bar (and compare lower bar for voidable preferences and undervalue transactions)
- Liquidator-led claim where the business was carried on “with intent to defraud creditors or for any fraudulent purpose” and the defendant was “knowingly party”
- Subjective test of dishonesty
- Must show the business itself (or part of it) was carried on to defraud
- Contribution can be ordered as the Court “thinks proper”

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Liability of Third Parties – the “Bilta” Effect

- Bilta was one of several companies used in a tax fraud scheme which involved buying and selling carbon credits. The fraud left huge VAT liabilities owing to HMRC
- Tradition Financial Services Ltd (*Tradition*) acted an intermediary and Bilta (through its liquidators) sued claiming that it had dishonestly assisted the directors in breach of their fiduciary duties to Bilta (and the other companies)
- A key issue for the UK Supreme Court was whether Tradition fell within the relevant definition of “knowingly party”

Liability of Third Parties – the “Bilta” Effect

- Net widened following the UK Supreme Court’s decision in *Bilta*
- It is not just directors (or other insiders) who are potential targets
- Liability attaches to anyone who is “knowingly party” to the fraudulent trading (“blind-eye knowledge” may be enough)
- *Bilta* confirmed that “outsides” can be liable if they knowingly assisted or facilitated the fraud and includes:
 - counterparties who engaged in sham trades; and
 - banks or financial institutions that continued to provide facilities despite obvious “badges of fraud”

Extraterritorial Reach & Conway v Air Arabia

- Proceedings arose in relation to the collapse of the Abraaj group of companies
- Air Arabia filed proofs of debt in the liquidation in relation to loans it had made to Abraaj Holdings
- JOLs sued Air Arabia seeking a declaration under section 147 that it was liable to contribute to the company’s assets because it was knowingly a party to the company’s business being carried on with intent to defraud creditors and/ or for a fraudulent purpose
- Proceedings served on Air Arabia by email and courier (in the UAE) at the address details provided in the proofs of debt

Conway v Air Arabia

- The recent Grand Court decision (Hon. Justice Asif) addressed some novel points relating to section 147 claims
- The Grand Court held that section 147 has extraterritorial effect
- Submission to the jurisdiction by lodging a proof of debt was held to be effective for all purposes connected with the winding up (including section 147 claims)
- Accordingly, leave to serve out of the jurisdiction is not required for service of a claim under section 147 where a creditor has submitted a proof of debt
- “...the need for a liquidator wishing to pursue a claim under s.147 of the Act to obtain prior sanction from the Grand Court judge supervising the liquidation provides a ...safeguard” [paragraph 149 of the judgment].

Remedies

- Wide discretion
- Not strictly damages based. A contribution to the deficiency in the assets available to creditors
- Punitive element
- Defence strategies:
 - contesting “knowledge”
 - Solvency defence
- Limitation (see *Bilta*)

US perspective

- The Wagoner rule
- Circuit split?
- Choice of forum
- Consideration of recent cases (including Maddison Asset Management)
- Discovery tools available in the US

Office Holder's Approach and Challenges

- Burden of proof
- Do the records still exist?
- Swift action
- Leverage statutory powers
- Recognition of appointment in foreign jurisdictions
- Deploy experts

Funding & Building a Claim

- Use of funding at an early stage to investigate
- Often combination of funding and risk across professionals and stakeholders
- Filling information gap – disclosure orders (for e.g bankers Trust and Norwich Pharmacal orders)
- Choice of forum

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Faculty

Rahman Connelly is a partner in the New York office of Pillsbury Winthrop Shaw Pittman LLP, where his practice focuses on all aspects of bankruptcy, restructuring and bankruptcy litigation. He represents clients in bankruptcy, restructuring and bankruptcy litigation matters, and he has significant experience advising ad hoc bondholder groups, official committees of unsecured creditors, chapter 11 debtors, foreign representatives in chapter 15 cases, and various other parties in interest. Mr. Connelly has represented major constituencies in complex bankruptcies and high-stakes litigation across the country, and his work has been recognized by numerous national and international publications and organizations. Mr. Connelly was honored in ABI's 2024 class of 40 Under 40. He also was recognized as a "One to Watch" by *The Best Lawyers in America* and as a "Rising Star" by *Super Lawyers*. He is a member of the International Insolvency Institute's NextGen Leadership Program, the Turnaround Management Association's Next Generation Committee and ABI's International Committee. Mr. Connelly received his B.A. in business from Franklin and Marshall College and his J.D. *cum laude* from the University of Pennsylvania Law School.

James Eggleton is a partner in the Litigation & Insolvency and Restructuring practice groups of Harneys in George Town, Grand Cayman, Cayman Islands. He advises on all aspects of cross-border insolvency and contentious commercial matters, with a particular focus on financial services, investment funds and shareholder disputes. His practice ordinarily involves complex, high-value litigation. Prior to moving to the Cayman Islands in 2018, Mr. Eggleton worked for several years in the financial disputes practice of Dentons' London office. He has been recognized in the *100 Leading Cayman Lawyers* guide and in *Lawdragon* for 2026. Mr. Eggleton received his B.A. in 2006 from the University of Oxford, his GDL from BPP Law School in 2009 and his LPC from the University of Law in 2010.

Mehreen Siddiqui is an associate in Maples and Calder's Dispute Resolution & Insolvency team in the Maples Group's George Town, Grand Cayman, Cayman Islands office. She has experience in commercial litigation matters and in advising clients in relation to complex commercial disputes, banking and financial services, fraud and asset-tracing, professional liability and intellectual property matters. Ms. Siddiqui joined the Maples Group in 2023. Prior to that, she worked at another firm in the Cayman Islands for three years. Ms. Siddiqui trained at Slaughter and May and has worked at Allen & Overy and Pinsent Masons in London. She received her LL.B. with honors in 2012 from the London School of Economics and Political Science, her post-graduate diploma in legal practice from BPP University in 2013, and her postgraduate diploma in intellectual property law and practice in 2017 from the University of Oxford.

Owen Walker is a partner and insolvency practitioner with R&H Restructuring, Ltd. in Grand Cayman, Cayman Islands, and has been specializing in corporate restructuring, insolvency and turnaround for nearly two decades. His focus is on offshore cross-border insolvency and restructuring, and he is an appointment-taking insolvency practitioner in the Cayman Islands, British Virgin Islands, Bermuda and other Eastern Caribbean jurisdictions. As part of his practice, Mr. Walker specializes in fund wind-down services, contentious directorship appointments and contentious trusts situations.

He has experience in successfully delivering and managing a variety of assignments, including complex administrations, liquidations and receiverships in a variety of sectors, corporate simplification and rationalization, litigation support, fraud and asset-tracing in the U.K., U.S., Cayman Islands, British Virgin Islands, Ireland, the Far East, Russia and continental Europe. Mr. Walker joined the firm in 2017, was promoted to director in 2021 and appointed partner in 2025. He is a Chartered Accountant and Fellow of the Institute of Chartered Accountants of England and Wales. He also is an INSOL Fellow and an active member of RISA (INSOL's Cayman chapter) and the Association of Certified Fraud Examiners. Mr. Walker received his B.A. in history from the University of Exeter in 2004.