



How U.S. Litigants Can Seek Information Disclosure in Key English Common Law Jurisdictions

U.S. litigators will be familiar with the powerful discovery tools available in U.S. courts. Less familiar are powerful discovery tools that can provide the ever-growing need for information from multiple jurisdictions, including the Norwich Pharmacal order in English common-law jurisdictions. We explain how, if used strategically, it can offer litigants key access to information located in important jurisdictions around the world.

March 28, 2024

U.S. litigators will be familiar with the powers of U.S. courts to gather discovery, including through letters rogatory to other jurisdictions and Section 1782 applications in aid of foreign proceedings. Less well-known to U.S. practitioners are the powerful non-U.S. discovery tools that can provide the ever-growing need for information from multiple jurisdictions.

The Norwich Pharmacal order is one key example. Available in English common-law jurisdictions, including offshore business centers such as Hong Kong, Singapore, the BVI and the Cayman Islands, a Norwich Pharmacal order compels discovery from third parties who hold relevant information but are not in the crosshairs as wrongdoers themselves. If used strategically, it can offer litigants access to discovery in key jurisdictions around the world.

The Norwich Pharmacal Order

Named after the English case in which the remedy was first granted, a Norwich Pharmacal order is an equitable remedy that requires a person or company to disclose documents or information. Norwich Pharmacal relief can be sought against a person who is unlikely to be a party in any subsequent claim but who is entangled in wrongdoing, whether innocently or not.

It can be used to obtain information from banks and other financial institutions, corporate service providers, trustees, and real estate professionals, among others, who are able to shed light on a party's conduct or assets. Each of these discovery targets is likely to have done anti-money laundering due diligence (for example, identifying the ultimate beneficial owner of assets), and hold valuable know your customer (KYC) information that is otherwise not readily accessible to a plaintiff.

When Might Litigants Use Norwich Pharmacal Relief?

These applications can be made at almost any time, whether pre-action, during a pending proceeding, or after judgment. In the right case, a Norwich Pharmacal order can allow litigants to access important evidence located outside the U.S. in key jurisdictions, such as:

Pre-action discovery. Where the identity of a defendant has been concealed, a Norwich Pharmacal order can be used to identify the proper party. This is often used in fraud cases, where wrongdoers have taken steps to obscure their involvement and where a strategically sought order can reveal recoverable assets.

Ancillary to Worldwide Freezing Orders. English common-law jurisdictions can grant freezing injunctions against the litigation targets (known as Mareva orders). These can be fortified by Norwich Pharmacal orders requiring disclosure from third parties about the assets to be frozen.

An ongoing proceeding. When further information comes to light during ongoing proceedings, litigants can apply for Norwich Pharmacal relief to chase down those leads.

After a judgment. Norwich Pharmacal orders can help identify assets belonging to the defendant, helping litigants shape the enforcement of an existing – or even an anticipated – judgment.

As with U.S. discovery, there are refinements and limits to the availability of Norwich Pharmacal relief, and – being that they are granted in cost-shifting jurisdictions – financial aspects to weigh up as well. In addition, courts are increasingly scrutinizing Norwich Pharmacal applications to guard against circumvention of existing procedures. Nevertheless, deployed with strategic expertise, it should be a vital part of the cross-border litigation armory.

KOBRE & KIM

Kobre & Kim is a global law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct. The firm:

- Focuses on helping clients realize value from their claims, developing investigative, enforcement and tracing/recovery plans in the pre-dispute stage, to maximize future monetization.

- Often works with other law firms as special counsel in cases beyond their geographic reach to enforce high-value claims around the world with our integrated team of Hong Kong solicitors, UK solicitors and barristers (including King's Counsel) and offshore lawyers.

- Maintains our independence as advocates ready to litigate against virtually any institution by avoiding repeat client relationships, and the conflicts of interest that come with them.