

EXPERTISE

The Newsletter of GBRW Expert Witness

Interesting times!

For those of us involved in the financial sector, the last few months have provided plenty to consider, notably the Panama Papers disclosures in April and the Brexit decision two months later.

The Panama Papers are said to contain references to 12 current or former world leaders, more than a hundred other public officials and politicians and several hundred individuals around the world. The intensive media coverage and speculation over criminal and civil actions following the disclosures has now died down, but the volume of documents disclosed and the magnitude of the amounts involved make it likely that we will see litigation over a wide range of issues and jurisdictions.

The announcement of the Brexit decision on the morning of June 24th led to major falls in currency and

stock markets, some of which have now recovered whilst others have not. Movements of this magnitude always have the potential to trigger unexpected losses, for example through embedded derivatives contracts or through a range of other unanticipated consequences, and we have already seen our first requests for experts to address Brexit-related losses.

While it is difficult to predict what kinds of expert support will be required for disputes arising from these two events, we believe that the breadth and depth of our expert resources position us well to support law firms helping their clients deal with the fallout.

Paul Rex

Managing Director,
GBRW Expert Witness
September 2016



David Ellis joins GBRW Expert Witness

As we announced last month, Dr David Ellis has joined GBRW Expert Witness in London as a Director.

David was previously a Senior Managing Director at FTI Consulting. He is an expert in financial services and institutions, specialising in quantitative products and complex securities, and has appeared as an expert witness in Court proceedings and Arbitrations in the English and Irish High Courts and in numerous other jurisdictions in the United States, Europe, Australia, New Zealand and Singapore.

Enquiries

GBRW Expert Witness Limited
Paul Rex, Jeremy Denton-Clark,
David Croft, Tim Dowlen, David Ellis
Level 17, Dashwood House
69 Old Broad Street
London EC2M 1QS
T: +44 (0) 20 7562 8390
F: +44 (0) 20 7681 2012
E: experts@gbrowexpertwitness.com
Website: www.gbrwexpertwitness.com

Singapore office:
Martin Edwards, Director, Asia
E: martin.edwards@gbrwexpertwitness.com
T: +65 9623 1657



Areas of Expertise

BANKING & FINANCIAL

- Corporate Lending
- Personal Lending
- Risk Management
- Investment Banking
- Corporate Finance
- International Banking
- Correspondent Relationships
- Commercial Property
- Residential Mortgages
- Syndicated Lending
- Loan Workouts
- Recoveries and Realisations
- Back Office Procedures
- Trade Finance
- Letters of Credit
- Leasing
- Credit and Debit Cards
- Know Your Customer
- Anti Money Laundering
- Anti Terrorist Financing

INVESTMENT MANAGEMENT

- Investment Services
- Investment Advice
- Fund Management
- Structured Investment Funds
- Stockbroking
- Hedge Funds
- Options, Swaps, Derivatives
- Treating Customers Fairly
- Pensions

FINANCIAL MARKETS

- Money Markets
- Commodities Markets
- Securities Trading
- Financial Instruments

INSURANCE

- Broking
- Underwriting
- Property Insurance
- Professional Indemnity
- Life Assurance
- Liability/Casualty
- Financial Institutions
- Directors & Officers
- Motor
- Reinsurance
- Regulation
- Loss Adjustment
- Treating Customers Fairly

BUSINESS FINANCE

- Limited Companies
- Partnerships
- Private Companies
- Sole Traders
- Mergers & Acquisitions
- Treasury Management
- Sales of Businesses
- Property Finance
- Business Planning
- Company Valuation
- Venture Capital

OTHER AREAS

- Employment Disputes
- Loss of Earnings
- Compensation Calculations
- Arbitration and Mediation



Third party litigation funding: a game changer



Steven Friel is a solicitor commended in The Legal 500 for commercial litigation ('strong commercial grip on the relevant legal provisions and financial aspects of cases') and international arbitration ('outstanding'). He left private practice in 2015 and is Chief Investment Officer at Woodsford Litigation Funding.

There has been a huge increase over the last 10 years in the level of third party funding of high value litigation and arbitration in the UK and beyond. Based on my own experience, I estimate that some 90% of claimants in International Centre for Settlement of Investment Disputes arbitrations have considered third party funding and a large proportion of commercial litigation in leading jurisdictions such as the English High Court and the Southern District of New York is funded.

The classic access-to-justice product provides non-recourse funding for meritorious claims that might otherwise be thwarted by the costs and risks involved in litigation. A third-party funder can pay legal fees and/or disbursements, receiving a share in the proceeds of the litigation in the event of success.

Of course, funding is not only an option to be considered at the outset of a case. A third party funder can step in at any stage of litigation or arbitration. By way of example, Woodsford has recently offered funding for one international arbitration that is post-

trial but pre-judgment, and another that is post-judgment but where contentious enforcement steps need to be taken.

Nor should funding be considered only by financially distressed claimants. It is common for claimants in high value disputes to seek to hedge the risk of legal proceedings by use of third party funding.

Unlike lawyers, testifying experts are ethically restrained from acting on a conditional fee basis. Experts' fees and expenses are often one of the key elements of a litigation budget and third party funders are often called on to pay expert costs.

Experts who are not up to speed on the litigation funding market may therefore find themselves at a commercial disadvantage and I would suggest that an expert who is approached at an early stage of litigation by a financially distressed claimant should consider possibilities for litigation funding options with the claimant's lawyers.

Experts may also find that, whilst their early invoices get paid promptly, the claimant may start to suffer from 'fee fatigue' as the

litigation progresses. A build-up of unpaid invoices should prompt an expert to have a frank discussion with the claimant's lawyers about litigation funding options.

There has also been an increase in the last few years in the number of funding products available to litigants and law firms. In addition to the classic funding product, funders may offer other financing solutions for litigants and their professional teams, including portfolio funding, claims monetisation and traditional lending.

There are many businesses interested in litigation funding, but I would suggest that litigants should be careful about who they work with. A good third party funder will be staffed with qualified and experienced litigators who understand the nuances of issues such as privilege, and with finance professionals who know how to best structure complex, high value investments.

Litigants should also ensure that their funders have adequate capital and seek the reassurance offered by professional bodies. For example, founder members of the Association of Litigation Funders of England and Wales follow the Association's Code of Conduct, which is published by the Civil Justice Council – an agency of the UK's Ministry of Justice. The Code (which can be found at <http://associationoflitigationfunders.com/code-of-conduct/>) sets out clear rules governing the relationship between funder and client and provides significant benefits to both, including clarity on issues such as case control, settlement and withdrawal. The Association plays an important role in regulating the litigation funding industry in England and Wales, and undertakes a rigorous complaints procedure when alerted to potential misconduct by members.

"Experts who are not up to speed on litigation funding may find themselves at a commercial disadvantage..."

Background briefing papers

GBRW Expert Witness produces briefing papers for the topics on which we are approached most often. The series includes:

- Instructing an expert
- Commercial property lending disputes
- Insurance disputes
- Interest rate swap disputes
- Investment disputes
- Trade finance disputes

The briefing papers can be downloaded from www.gbrwexpertwitness.com/Expert-Witness/briefings

GBRW Expert Witness

Our directors and associates contracted by us are instructed as experts in banking, investment and insurance disputes. We advise on civil and criminal court proceedings, arbitrations and mediations in jurisdictions including England and Wales, Scotland, Australia, Bahamas, Cayman Islands, Hong Kong, Ireland, Jersey, New Zealand, Singapore and Sweden.