

# Top UK Trials To Look Out For In 2024

By **Joanne Faulkner**

Law360, London (January 1, 2024, 1:02 PM GMT) -- Several mega-trials are set to take over the courts in 2024, as Denmark pursues a £1.4 billion (\$1.8 billion) tax fraud claim against dozens of financial institutions, and BHP faces a claim for compensation over a mining disaster in Brazil from more than 700,000 claimants.

Lawyers will also be watching how legal action against insurers over planes stranded in Russia in the wake of the war in Ukraine plays out. And they will want to watch a case that could carve a potential route to enforcing litigation-funding agreements following a shock Supreme Court decision in 2023.

Here, Law360 looks at those and other big cases to watch in the year ahead.

## **£1.4B Danish Tax Fraud Case Begins**

Maybe the biggest case taking place next year is the Danish tax authority's **dividend fraud case** against financial institutions, including British trader Sanjay Shah and his hedge fund, who is alleged to have made fraudulent applications for tax rebates.

Denmark's tax authority, known as Skat, is seeking to recover taxes it says it inadvertently paid out to foreign investors who falsely claimed to own shares in Danish companies.

Skat alleges that between 2012 and 2015 it was the victim of a so-called cum-ex fraud, masterminded by Shah, in which shares of a company are sold or swapped just before a dividend payout, producing two refunds on one basket of stocks.

The case had been split into three trials, with the main trial set to begin in April and last for over a year. It is the first known litigation brought directly by the foreign revenue agency of a sovereign state in the English courts.

"The trial will be the first time that the English court has considered the substance of a claim to recover funds allegedly fraudulently misappropriated from a foreign state under the cum-ex dividend scheme," Dan Wyatt, a partner at Reynolds Porter Chamberlain LLP, said. "A successful outcome for Skat would be a high-profile reminder of the English court's ability to assist victims of large, complex, international fraudulent schemes more generally."

## **Insurers Face Mega-Trial Over Russia Planes**

A joint trial made up of four claims between aircraft leasing companies and a group of insurers will take place in October over contested insurance claims for aircraft stranded in Russia after sanctions were imposed following the invasion of Ukraine in 2022.

Aircraft lessees were issued with notices to return their jets in February 2022. But many Western-registered aircraft were re-registered and kept in Russia after a change of law in the country.

Insurers — including AIG, Swiss Re and Chubb, as well as the Lloyd's of London market — are trying to avoid paying out billions to leaseholders. The biggest claim is the **\$3.5 billion being sought** by Irish firm AerCap, which had 141 of its planes seized by Russia.

The claims, which total around \$10 billion, could have significant ramifications for the insurance and reinsurance industry if they succeed.

## Legal Battles Over Brazil Dam Collapse

The first stage of a £36 billion (\$45.5 billion) claim against global mining giant BHP over the collapse of a dam that led to Brazil's worst environmental disaster will take place in October.

More than 700,000 individuals, municipalities and businesses have joined the largest group action to come before the English courts in what could be a defining moment for litigation over environmental, social, and corporate governance matters and multi-jurisdictional group actions.

The case has already overcome several hurdles to reach trial, **beating claims** that the case was unmanageable in the U.K.

"The reason why this case is so important, is that it's potentially a new avenue to hold companies accountable for what they do in the world and in developing countries, and places like Latin America," Céline Barnwell, a partner at Pogust Goodhead, representing the claimants, said.

The dam was owned and operated by Samarco, a Brazilian company jointly owned by Vale and BHP Billiton Brasil, part of BHP Group PLC. BHP had its headquarters in England at the time of the dam's failure. Vale also stands to be exposed to any damages if the claim is successful.

"The defendants have been portraying the claimants as ambulance-chasing, and said the claim would be thrown out readily." Barnwell said. "But at this point in time we are progressing towards a big merits hearing and the courts in Brazil are not siding with the companies any more."

## Courts Grapple With Litigation Funding Deals

An ongoing dispute between a company and its litigation-funder could set the tone for how the courts are going to grapple with whether litigation-funding deals can be enforced in the aftermath of a landmark Supreme Court decision that rendered **many unenforceable**.

Therium Litigation Funding brought an application against Bugsby Property LLC over its **refusal to pay** the funder following an award of damages in a dispute involving London's Olympia Exhibition Centre. High Court Judge Richard Jacobs rejected Bugsby's attempt to use the ruling in Paccar Inc. v. Competition Appeal Tribunal to invalidate the litigation funding agreement it had signed up to with Therium and held that there was a serious issue to be tried.

The interim judgment is the first case to address the consequences of the Supreme Court's decision that third-party litigation funding agreements taking a percentage of the damages were caught by the regulations on damages-based agreements and that most would not be enforceable.

"The High Court took the view that, while they can't dispute the Supreme court's view because it is binding, there is a move to perhaps suggest that the DBA element of it — the pure contingency percentage — could be severed or carved out, thereby allowing the rest of the agreement to stay in place," Christian Toms, a partner at Squire Patton Boggs LLP, said.

"It will be interesting to see when Bugsby comes to trial how that is resolved finally, and whether the trial judge takes a similar view that the case law allows you to carve things out," Toms added.

## Shareholders Take On G4S

Private security firm G4S will face a six-week trial in January that will test a novel area of law in claims brought by shareholders, including Allianz Global Investors, linked to a scandal-hit prisoner tagging contract.

They allege that four former executives at a subsidiary of security company G4S knew about, or "turned a blind eye" to, the company's long-running practice of overcharging the government for electronic tagging of offenders. The company agreed to repay almost £109 million in 2014.

The **first of two trials** will deal with the right of 98 shareholders to sue G4S as well as issues such as whether the company misled investors. The claimants say they relied on public statements in G4S

annual reports that turned out to be false, and their shares lost value. The company was listed on the London Stock Exchange before a takeover in 2021.

The investors will have to show that they relied on public statements made by G4S that "persons discharging managerial responsibility" knew were wrong. The definition of such a director under section 90A of the Financial Services and Markets Act 2000 is a relatively untested area of law.

If the claimants succeed in the first trial, a second trial will determine issues of reliance, causation, quantum and limitation.

Chris Bushell, a partner at Herbert Smith Freehills LLP, representing G4S, said that the financial services act provides the statutory regime for imposing civil liability for inaccurate statements in information disclosed by listed issuers to the market.

"The question of whose knowledge is relevant for the purposes of establishing liability is an important question that will be considered at trial one," Bushell said. "The question of what claimants must prove in order to establish reliance for the purposes of section 90A — which is to be considered at trial two — is a key battleground in these claims, and will be a key determinant as to the breadth of liability imposed by the regime."

### **Minibonds On Trial**

Civil claims connected to the collapse of minibond provider London Capital & Finance will reach trial in January. More than 11,600 people had invested a total of £237 million when the firm collapsed in January 2019.

LC&F sold unregulated high-risk products which promised returns of up to 8% mainly to retail investors. The money raised from minibonds was supposed to be lent out to small and midsized enterprises, but it is alleged that that lending was not genuine and that it was just a way for the firm's directors to siphon off money to themselves.

The trial is due to run for six months, but might be cut short if defendants choose to settle.

The scandal prompted regulatory and criminal investigations and led to an independent review of the Financial Conduct Authority's supervision of the firm. The report said the FCA's "**flawed approach**" allowed LC&F to look respectable.

Marketing company Surge Financial, which helped to advertise the bonds, is also being held liable by bondholders. Will Christopher, a partner at Kingsley Napley LLP, representing Surge, said the company will argue that it is entitled to rely on professional and regulatory sign-off of LC&F by the FCA, Big Four accountants and lawyers to satisfy it that it could do business with the firm.

### **Courts To Hear \$5.6 Billion Cryptocurrency Case**

Self-proclaimed bitcoin creator Craig Wright's lawsuit against 16 bitcoin network developers, in which he is **seeking to recover** billions of dollars, should be heard in early 2024.

Tulip Trading Ltd., Wright's holding company, claims it is unable to get access to digital currency worth £4.5 billion because its private keys — source code that controls the assets — were wiped in a hack. The company launched its claim in a bid to make developers write a fix that would reunite Tulip with the assets.

The case was initially thrown out, before the Court of Appeal ruled in February that bitcoin developers may owe fiduciary duties to cryptocurrency owners. Wright will need to prove that developers even have the ability to edit the software code without undermining the system.

Toms, of Squire Patton Boggs, said the case will give an indication of whether the "technology can be controlled by certain programmers or whether, once you set the spinning top going, it then carries on all by itself.

"If the courts step in and say the way it's set up is not completely decentralized, and it can and

should be fixed to return people their money — which on one level makes logical sense — but given the whole theory of it, it could be hugely disruptive," Toms said.

The High Court will also hear in 2024 a copyright dispute over Wright's claims to be the pseudonymous inventor of Bitcoin, Satoshi Nakamoto, and the author of the 2008 white paper which marks the birth of the cryptocurrency.

--Editing by Ed Harris.