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Practice Update

Courts Approve Alternative Service Via Twitter and Blockchain in Cryptocurrency Cases

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Recent decisions permitting service of documents via social media and blockchain technology illustrate how the courts are fashioning solutions to address the unique and logistical challenges of identifying and serving anonymous crypto wallet holders and U.S. nationals living abroad.

Service Of Subpoena By Twitter

In a case of first impression, the bankruptcy court overseeing Three Arrows Capital Ltd.'s Chapter 15 case pending in the Southern District of New York authorized service via Twitter of a subpoena on one of the debtor's founders.[1] Unable to determine the whereabouts of the company's founders, the foreign representatives of Three Arrows sought bankruptcy court approval to serve their discovery subpoenas on the founders via social media and email.[2]

The court initially determined that Rule 45 only permits service on U.S. nationals and residents, like founder Kyle Livingston Davies, and does not permit service on co-founder, Shu Zhu, a foreign national and non-U.S. resident. Next, the court interpreted the methods of service set forth in Rule 45 as requiring personal service on the named person, noting that the Circuit routinely permits "alternative" service under the rule. The court held that alternative

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service was permissible even though the foreign representatives could not show any prior attempts to personally serve Davies, reasoning that prior attempts to serve Davies would have been futile. Davies had moved between various countries and concealed his locations and would not be amenable to personal service or through registered mail or counsel.

Then the court found that service through the popular social media platform, Twitter, was warranted and "reasonably calculated" to provide notice and due process to Davies because of the witness' recent use of Twitter. Acknowledging that the lack of case law for service under Rule 45 via social media and email "is curious," the court relied on Rule 4 cases permitting the alternative means of service. The court appeared to limit the ruling to the particular facts of the case, recognizing that the result was correct in the "factually rare circumstance" presented.

Service of Process By Token

A New York state court in *LCX AG v. 1.27M U.S. Dollar Coin*,[3] approved of the plaintiff's service of process by depositing a service token containing a hyperlink to a "service webpage" housing the documents served, into the blockchain and the wallet that allegedly contained the plaintiff's stolen cryptocurrency. The plaintiff alleged that the defendants are hackers who stole about $8 million worth of cryptocurrency from the plaintiff's virtual wallet and used Tornado Cash (a virtual currency mixer that was recently banned in the U.S.) to make the funds untraceable and conceal the theft. The plaintiff could not the identify the alleged thieves, named in the lawsuit as "John Doe Defendants 1–25." However, the plaintiff obtained an injunction freezing the account/wallet where the plaintiff alleged a portion of the stolen cryptocurrency was stored.

In its ruling of first impression, the court held that personal service could not be accomplished under New York's CPLR 308 because the plaintiff had no way of knowing the identity or the physical location of the John Doe defendants. However, the plaintiff established that the John Doe defendants regularly used the blockchain and would likely return to the wallet since it held over $1 million in cryptocurrency. Accordingly, the court determined that service by the service token was "reasonably calculated, under all the circumstances, to apprise the Defendant of the action" and was permissible under CPLR 308(5). [4]

To be sure, there is precious little regulation and precedent providing guidance on alternative means of service in the cryptocurrency sector that is spawning the broader economy and commercial transactions. Nevertheless, the use of social media and the blockchain for service of subpoenas and process may become commonplace as the use of such technologies likewise continues to increase and evolve.

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[1] *In re Three Arrows Capital Ltd*, Case No. 22-10920 (MG) 2022 WL 17985969, (Bankr. S.D.N.Y. Dec. 29, 2022).

[2] United States District Courts have authorized service via Twitter and social media, however, the decision by Judge Glenn is the first published decision permitting service through social media in a bankruptcy case. *See Nowak v. XAPO, INC.*, Case No. 20-cv-03643-BLF, 2020 WL 5877576, *4 (N.D. Cal. October 2, 2020) (Service of process by Facebook and Twitter appropriate alternative service after exhausting reasonable efforts to serve defendant in Indonesia.); *Birmingham v. Doe*, 593 F. Supp. 3d 1151, 1159-60 (S.D. Fla. 2022) (Alternative service by social media messaging allowed as to foreign defendants living outside Ukraine).

[3] *LCX AG v. 1.27M U.S. Dollar Coin*, Index No. 15644/2022, Doc. No. 112, (N.Y. Sup. Ct. Aug. 22, 2022).

[4] Other states have service laws similar to New York. *See*, *e.g.*, Tex. R. Civ. P. 106(b)(2) ("citation may be served by...in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.").