

Trusts & Estates Litigation Symposium

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A Complete Case-By-Case Analysis of Trust Disputes & Solutions

KEY THEMES DISCUSSED

- ✓ Creation & Capacity
Issues Affecting Trusts
- ✓ Spotlight on Fiduciaries:
 - What are the Duties?
 - What Happens When Things Go Wrong?
- ✓ Disclosure:
 - A Review Around the Globe
- ✓ Continuing Impact of Divorce on Trusts
- ✓ Using Taxes to Resolve Trust and Estate
Disputes
- ✓ Asset Protection:
 - Protecting Trusts
 - The Impact of Insolvency
- ✓ Succession Conflicts Affecting Trusts

6 CPD hours

* SRA

* Bar Council:

CHAired BY:

- Dawn Goodman, Withers LLP

YOUR PANEL OF EXPERT SPEAKERS INCLUDES:

- Chief Justice Smellie, Cayman Islands
- Patrick Talbot QC, *Lieutenant Bailiff, Royal Court of Guernsey*
- Francis Barlow QC, Ten Old Square
- Michael Furness QC, Wilberforce Chambers
- Morven McMillan, Charles Russell LLP
- Sofie Hoffman, Boodle Hatfield
- Anthony Poulton, Baker & McKenzie LLP
- Graeme Kleiner, Speechly Bircham LLP
- Josh Rubenstein, Katten Muchin Rosenman LLP
- Charles Lloyd, Macfarlanes LLP
- Patrick Hamlin, Withers LLP
- Geoffrey Shindler OBE, Lane-Smith & Shindler LLP
- Professor Jonathan Harris, Serle Court
- John Briggs, 3-4 South Square
- Frances Hughes, Hughes Fowler Carruthers
- Alison Ozanne, AO Hall
- John Fitzgerald Wilson, Mckinney, Bancroft & Hughes
- Jonathan Wild, CallenWild
- Bernard Vischer, Schellenberg Wittmer
- Fraser Robertson, Appleby
- Sara Collins, Maitland
- Robert Hunter, Allen & Overy LLP
- Anthony Robinson, Bedell Cristin

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Trusts&Estates

13th October 2009
Courthouse Hotel, London



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Trusts & Estates Litigation

13th October 2009, London

08.30 Registration and coffee

09.10 Chair's Opening Remarks

Dawn Goodman, **WITHERS LLP**

Dawn is the head of the Contentious Trust and Succession Group awarded the Contentious Trust & Estates Team of the Year - STEP Private Client Awards 2007/08 and consistently top rated in directories. Dawn has a wealth of experience in advising asset holders, trustees, protectors, personal representatives and other fiduciaries, heirs, charities and beneficiaries generally as well as creditors or other adverse claimants who are involved in a dispute or potential dispute, whether domestic or multi jurisdictional.

09.20 Keynote: The New World of Trusts & Estates Litigation

Chief Justice Smellie, **CAYMAN ISLANDS**

Chief Justice Smellie was made a Queen's Counsel in 1991, and appointed as a Grand Court Judge in February 1993. He was appointed as Chief Justice of the Cayman Islands in June 1998. His present responsibilities include being the central authority for the Cayman Islands Mutual Legal Assistance Treaty with the US. Earlier appointments held in Cayman include Solicitor General and Acting Attorney General.

09.50 Mental Health Issues of International Tax Saving

Patrick Talbot QC, Lieutenant Bailiff,
ROYAL COURT OF GUERNSEY

10.20 Creation & Capacity Issues Affecting Trusts

- *Ogden v Trustees of the RHS Griffiths 2003 Settlement*
- *Abbott v Richardson*
- *Scammell v Farmer*
- *Sharp v Adam*
- *Baker v Baker*
- *Ledger v Wootton*
- *Carr v Beaven*
- *Kostic v Chapman*

Robert Hunter, **ALLEN & OVERY**

Robert Hunter has been a partner in the Litigation section since 1991 and is head of the Trust, Asset Tracing and Fraud (TATAF) group. Robert has extensive experience in trust litigation, asset tracing and civil fraud cases ranging from claims involving bribery and secret commissions to commodities fraud and advance fee frauds. He has acted in the proceedings in all major offshore centres. He is also the Secretary of the Association of Contentious Trust and Probate Specialists.

11.00 Coffee

Due to unforeseen circumstances and updated cases going through the court the programme may change and IBC reserves the right to alter the venue and or the speakers.

Dear Fellow Professional,

The past year or so have seen a number of fascinating trust and estate cases in the trust world.

Breach of fiduciary duty, duties with regard to underlying investments, disclosure of trust documents, trustees' reaction to divorce awards and removing and appointing protectors – these are just some of the issues which have come before international courts, from the Caribbean to the Channel Islands. These decisions have important messages for all those administering trusts and estates and for handling problematic and contentious situations.

The **Trusts and Estates Litigation Symposium** will afford a broad perspective on these issues with speakers and panellists representing the judiciary, the Bar and Common and Civil law systems drawn from **8 jurisdictions** including the UK, Isle of Man, Jersey, Guernsey, Hong Kong, Cayman Islands, Bahamas and the US. It promises to be a dynamic and informative event.

I look forward to seeing you there in October!



Dawn Goodman
Withers LLP

Sponsor Background

**SCHELLENBERG
WITTMER**

Schellenberg Wittmer is one of the leading Swiss business law firms with offices in Zürich and Geneva and more than 100 lawyers. Our clients are domestic and foreign companies as well as high net worth individuals. We offer a full range of services, from focused advice to project management. The areas of advice include: Banking and Finance; Dispute Resolution and International Arbitration; IP/IT; M&A, Private Equity and Venture Capital; Private Clients, Trusts & Estates, Foundations; Real Estate; Restructuring and Insolvency; Taxation; White-Collar Crime and Compliance.

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11.20 Spotlight on Fiduciaries – What are the Duties & What Happens When Things Go Wrong?

- *The Bird Trust*
 - The power of appointing a new protector was a fiduciary power and
 - Whether the appointment of trustees outside Jersey (in reference to the anti-money laundering legislation in Jersey) amounted to a fraud on a power
- *The Circle Trust*
- *E, L, O & R Trusts*
- *M Ltd*
- *Freeman v Ansbacher (Trustee) Ltd*
 - Trustee failed to supervise the investments made by its wholly-owned subsidiary
 - The power to seek reconstitution of the trust fund for breach of trust.
 - The reflective loss principle applies in the case of a company owned by a trust
- *Gregson v HAE Trustees Limited*
- *Jones v Firkin Flood*
- *Brunei Investment Agency v Fidelis Nominees Limited*
- *Miller v Gianne and Redwood Hotel Investment Corporation*

Panellists:

Michael Furness QC, **WILBERFORCE CHAMBERS**
Charles Lloyd, **MACFARLANES**
Patrick Hamlin, **WITHERS LLP**
Geoffrey Shindler OBE, **LANE-SMITH & SHINDLER LLP**
Fraser Robertson, **APPLEBY**

12.20 Disclosure – A Review Across the Globe

- *Breakspear v Ackland*
- *Wingate v Butterfield Trust (Bermuda) Limited*
- *Bathurst v Kleinwort Benson (Channel Islands) Trustees Ltd*
- *Schmidt v Rosewood Trust*
- *Re the Avalon Trust*
- *Rabaiotti's Settlement*
- *A v A*
- *MacCleod v MacCleod*
- *P v P (Inheritance Property)*

Panellists:

Frances Barlow QC, **10 OLD SQUARE**
Sofie Hoffman, **BOODLE HATFIELD**

12.50 Lunch



The Silk Restaurant at the Courthouse Hotel, London

13.50 Continuing Impact of Divorce on Trusts

- *Mubarak v Mubarik*
- *Charman & Charman*
- *Re H Trust*
- *White v White*
- *Thomas v Thomas*
- *Hashem v Sharif*

Panellists:

Morven McMillan, **CHARLES RUSSELL**
Anthony Robinson, **BEDELL CRISTIN**
Frances Hughes,
HUGHES, FOWLER, CARRUTHERS
Jonathan Wild, **CALLENWILD**

14.40 Using Taxes to Resolve Trust & Estate Disputes

- Discover the role taxes can play in resolving trusts and estates litigations
- Review the various proceedings that can be brought for the primary purpose of reducing taxes
- Creative ways to bridge the expectation gap among warring parties (non-tax feuds):
 - how settlements can be structured
 - how taxes can be employed
- Learn how the applicable principles can be applied to the particular tax laws of the jurisdictions governing the estates and trusts in question

Josh Rubenstein,

KATTEN MUCHIN ROSENMAN LLP

15.20 Afternoon tea

15.40 Does Asset Protection Really Protect Trusts – the Impact of Insolvency?

- Reserved powers
- Fraudulent dispositions laws
- Private trust companies

Panellists:

Anthony Poulton, **BAKER & MCKENZIE**
Graeme Kleiner, **SPEECHLY BIRCHAM**
John Fitzgerald Wilson,
McKINNEY, BANCROFT & HUGHES
John Briggs, **3-4 SOUTH SQUARE**
Alison Ozanne, **AO HALL**

16.20 Succession Conflicts Affecting Trusts

- *Oakley v Osiris Trustees Limited*
- *Gomez v Gomez Monche-Vivez*

Panellists:

Bernard Vischer, **SCHELLENBERG WITTMER**
Sara Collins, **MAITLAND**
Professor Jonathan Harris, **SERLE COURT**

17.10 Chair's closing remarks

Trusts & Estates Litigation Symposium

KW5076

Tuesday 13th October 2009, Courthouse Hotel, London

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WHEN AND WHERE

KW5076
13th October 2009

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