

Trust & Estates Litigation Forum

4-6 March 2018

Hôtel Royal
Évian-les-Bains
France

Hosted by

LegalWeek

THE
AMERICAN LAWYER

POST-EVENT REPORT





SUMMIT TRUST INTERNATIONAL SA

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Summit Trust International SA is an independent trust services group headquartered in Geneva, Switzerland, founded in 1999.

Summit Trust International brings a combination of financial and management stability which enables it to provide continuity in personal relationships and the orderly passing of family wealth for high net worth individuals who require offshore trust and company management services.

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The bottom line? Expect to find familiar faces at Summit Trust International but not familiar solutions. Our people are under no pressure to sell you any particular product, just to provide you with the right service for your needs.

We are not expecting to be the biggest offshore services provider, but we are striving to be the best.



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Attendee Testimonials 2018

“ A very good conference which felt fresh.”

- Stephen Richards, Withers, UK

“ I enjoyed it tremendously.”

- Nicholas Holland, McDermott Will & Emery, UK

“ Excellent. Great organisation and a really good conference. Lovely atmosphere, really good content and great people.”

- Henrietta Mason, Penningtons Manches, UK

“ Very well run and managed, put together and executed.”

- Daniel Dochylo, Borden Ladner Gervais LLP, Canada

“ I think it is best of breed.”

- Rachael Reynolds, Ogier, Cayman Islands

“ I thought the sessions were uniformly excellent this year - stimulating and just the right level.”

- Shân Warnock-Smith QC, 5 Stone Buildings, Cayman Islands & UK

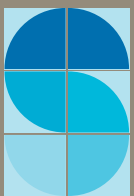




first rate from
top to bottom

‘The ‘go-to’ set for
international trusts work,

The Legal 500 2018



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“ It was a highly enjoyable opportunity for learning and networking with leading trust and estate practitioners from across the globe. ”

Matthew Watson, Cox Hallett Wilkinson Limited, Bermuda

IN CASE YOU MISSED IT... THE TRUST AND ESTATES LITIGATION FORUM 2018

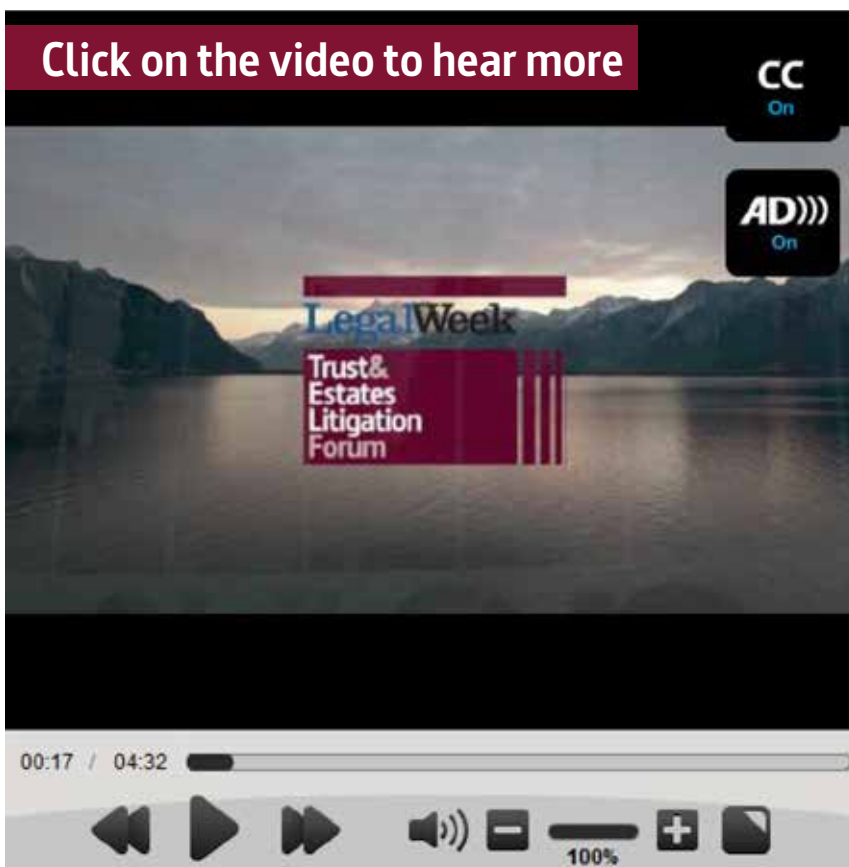


Dakis Hagen
Co-Chair, Serle Court, UK

“Nick Holland and I are so grateful to take on the chairmanship of what is quite possibly the greatest trusts and estates conference in the world. It has one of the most wonderful reputations and has lasted now for 12 years. Taking on such an established platform was something Nick and I thought about deeply: How are we going to carry on the traditions that the conference has had for years? We thought about trying to do three things: The first was to have speakers of the highest quality we could possibly find from around the world. The second was to maintain its international character with attendees from across the globe, including Hong Kong, the United States, Canada and Continental Europe, so it didn't just have an exclusively English common law or British trust focus. The last thing we wanted to do was to find a setting which was suitably beautiful and conducive to the convivial atmosphere and fun that the conference has always has a reputation for. With the Hôtel Royal, Evian we found that.”



Nicholas Holland
Co-Chair, McDermott Will and Emery, UK



THANK YOU FROM LEGAL WEEK



Amy Glover
Director of Strategic
Projects, Legal Week

On behalf of Legal Week, thank you to all of those who attended the Trusts and Estates Litigation Forum 2018.

After many years of making wonderful memories and connections at the fabulous Terre Blanche in Provence, Legal Week welcomed delegates to the breath-taking Hôtel Royal in Évian-les-Bains. We introduced both new and familiar faces to the exquisite content and activities on offer over the three days.

Speaking of new faces, Legal Week welcomed Dakis Hagen of Serle Court and Nicholas Holland of McDermott Will & Emery as Trust & Estates Litigation co-chairs in 2018.

Nick, Dakis, our Global Ambassadors (Shân Warnock-Smith and Anthony Poulton) and our Advisory Board did a fantastic job in sourcing fresh content. Session highlights included contentious disputes on firewalls and Pugachev and Meritus Trust decisions from litigators directly involved in the cases. We also had creative “My jurisdiction is better than yours” pitches and interactive breakouts, both of which received tremendous feedback. Lastly, we were extremely grateful for the rare keynote interview with Lord Neuberger of Abbotsbury, whose life story before, during and after holding the highest judicial office was insightful, entertaining and unique.

I hope you enjoy reading our Post Event Report. Do contact me personally if you are interested in attending in 2019.

**All the best,
Amy**

CONTACT INFORMATION

If you would like to receive more information about the Trust and Estates Litigation Forum 2019, please do not hesitate to contact a member of the Legal Week team.

For delegate and speaker enquiries, please contact Amy Glover: aglover@alm.com

For sponsorship enquiries, please contact James Baldwin Webb: jbaldwin-webb@alm.com



THE ADVISORY BOARD

Legal Week would like to thank the investment and dedication of our Global Ambassadors and Advisory Board, who took time out of their busy schedules to work with us on the 2018 agenda. Our advisors ensured that the specifically tailored Trust and Estates Litigation programme reflected significant developments within the industry and was full of thought-provoking content.



Shân Warnock-Smith QC

5 Stone Buildings, Cayman
Islands & UK



Anthony Poulton

Baker McKenzie, UK



Andrea Zavos

Boodle Hatfield, UK



Andrew de la Rosa

ICT Chambers, Cayman
Islands & UK



Bruce Lincoln

Mourant Ozannes, Jersey



Daniel Dochylo

Borden Ladner Gervais,
Canada



Elsbeth Talbot Rice QC

XXIV Old Buildings, UK



Fozeia Rana-Fahy

MJM Barristers & Attorneys,
Bermuda



Ian Mann

Harneys, Hong Kong

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Stella Mitchell-Voisin

Summit Trust, Switzerland



Terrence M. Franklin

Sacks Glazier Franklin &
Lodise, USA

“Brilliant... Great chairing, great care and attention from Legal Week and a really warm and collaborative atmosphere...Well done.”

Andrea Zavos, Boodle Hatfield, UK

THANK YOU TO OUR SPONSORS



“It was excellent to return to this conference which was refreshed and benefited from the input of the new co-chairs and their fresh ideas.”

Carlos de Serpa Pimentel, Appleby, Cayman Islands

TRUST AND ESTATES LITIGATION FORUM AT A GLANCE



OF NETWORKING



PANEL DISCUSSIONS



KEYNOTE



3 of Organised
LEISURE
ACTIVITIES
Hours



SPEAKERS



1
STAND UP
COMEDIAN



GALA DINNER



BREAKOUT
DISCUSSIONS



2
DRINKS
RECEPTIONS



2 EARLYBIRD
MASTER-
CLASSES

GEOGRAPHICAL ATTENDEE BREAKDOWN



CHAMBERS AND FIRMS IN ATTENDANCE INCLUDED:

39 Essex Chambers
5 Stone Buildings
Advocate John Rimmer
Advocates BVI
Appleby Global
Baker McKenzie
Boodle Hatfield
Borden Ladner Gervais
Carey Olsen Bermuda
Chambers of Lord Grabiner QC
Charles Russell Speechlys
Clifford Chance Limited Liability Partnership
Collas Crill
Conyers Dill and Pearman
Cox Hallett Wilkinson
Dickinson Gleeson
Erskine Chambers
Farrer & Co
FFP
Forsters

Gasser Partner Attorneys
Harcus Sinclair
Harneys
Hickman and Rose
Hughes Fowler Carruthers
ICT Chambers
Irwin Mitchell
Jones Day
Katten Muchin Rosenman
Kobre & Kim
Kozusko Harris Duncan
LALIVE
Macfarlanes
Maisto e Associati
Maples and Calder
McDermott Will & Emery
Meyerlustenberger Lachenal
MJM
Morrison & Foerster
Mourant Ozannes

New Square Chambers
Ogier
Osborne Clarke
Osborne, Helman, Knebel & Scott
Payne Hicks Beach
Pinsent Masons
Radcliffe Chambers
RAHMS
Serjeants' Inn Chambers
Serle Court
Signature Litigation
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TRUST AND ESTATES LITIGATION FORUM AGENDA 2018

Day 1: Sunday 4 March 2018	
19.00	Drinks reception
20.00	Welcome dinner
Day 1: Monday 5 March 2018	
08.00	<p>Early bird masterclass England versus offshore: Ramifications and liability for creditors and others</p> <ul style="list-style-type: none"> • The duties of trustees in insolvent situations • What sort of insolvency regime, if any, should apply • The exercise of fiduciary powers in insolvent situations <p>Joanne Verbiesen, Harneys, Hong Kong Bruce Lincoln, Mourant Ozannes, Jersey</p>
09.15	<p>Welcome from the chairmen Dakis Hagen QC, Serle Court, UK Nicholas Holland, McDermott Will & Emery, UK</p>
09.30	<p>Opening panel Caught in the crossfire: Trustees embroiled in divorce proceedings</p> <ul style="list-style-type: none"> • Firewall issues, including Imperial Parliament • Variations as nuptial settlements, in particular the nuptial element at company level <p>Robert Ham QC, Wilberforce, UK Graeme Kleiner, Charles Russell Speechlys, UK Alan Boyle QC, Serle Court, UK Mark Harper, Hughes Fowler Carruthers, UK Chair: Shân Warnock-Smith QC, 5 Stone Buildings, UK</p>
10.15	<p>Q&A Life stories: Up close and personal with Lord Neuberger Lord Neuberger of Abbotsbury, Former President of the Supreme Court, UK Elspeth Talbot Rice QC, XXIV Old Buildings, UK</p>
11.00	<p>First 100 Years: Celebrating women in law. A brief introduction Angela Neuberger, executive producer, First 100 Years, UK Catherine Calder, founding trustee, First 100 Years, UK</p>
11.10	Coffee break and networking
11.30	<p>Panel debate The Pugachev decision: Implications for practitioners and clients</p> <ul style="list-style-type: none"> • Illusory trusts: When is a trust not a trust? In what circumstances does a powerful protector become the sole beneficiary? <p>Toby Graham, Farrer & Co, UK Hodge Malek QC, 39 Essex Chambers, UK Christopher Lloyd, Erskine Chambers, UK</p>

TRUST AND ESTATES LITIGATION FORUM AGENDA 2018

Day 1: Monday 5 March 2018

12.15

Interactive focus groups:

A) Cybercrime and confidentiality

This breakout session looks to preparedness of cybercrime and post-breach response, with a particular focus on reputation management.

Patrick Harrison, Weber Shandwick, UK

Ryan Rubin, EY, UK

B) New trust jurisdictions in the 21st century

This interactive breakout session seeks to highlight emerging trust jurisdictions in 2018. From brand new trust jurisdictions to developing existing trusts and taxation of trusts in Italy and the US as newly desirable, this session seeks to share knowledge and understanding from across the globe.

Stanley A. Barg, Kozusko Harris Duncan, USA

Nicola Saccardo, Maisto e Associati, Italy

C) The 21st century family

- Who's the daddy? Use of genetic material pre- and post-mortem
- The other half: Divorce, remarriage, same sex marriage and cohabitation
- Meet the family: Trace and protect vulnerable family members
- Treatment: Settling disputes over medical treatment of vulnerable individuals
- Where's the body? Burial rights

Joshua Rubenstein, Katten Muchin Rosenman, NY, USA

Michael Mylonas QC, Serjeants' Inn Chambers, UK



TRUST AND ESTATES LITIGATION FORUM AGENDA 2018

Day One: Monday 5 March 2018	
13.20	Lunch
15.00	Leisure activities The Forum is not just about the content you receive in the formal sessions, but the crucial piece of information that you pick up whilst enjoying one of a range of leisure activities.
19.00	Sparkling drinks reception
20.00	Gala dinner
Day Two: Tuesday 6 March 2018	
08.30	Early bird masterclass M&A, trusts and the consequent pitfalls We have seen a huge number of mergers and acquisitions amongst trust companies, but what are the potential pitfalls from a litigation perspective, including confidentiality issues and risk? Stella Mitchell-Voisin , Summit Trust, Switzerland Jonathan Arr , Macfarlanes, UK
09.30	Chairs' opening comments Dakis Hagen QC , Serle Court Nicholas Holland , McDermott Will & Emery
09.45	Opening panel Meritus Trust Company v Butterfield Trust: Battle of the trusts across several jurisdictions Using the recent decision in Meritus Trust Company Limited v. Butterfield Trust (Bermuda) Limited, panelists discuss the contentious outcome: a former trustee has no general right of retention as against a new trustee, but only a non-possessory equitable lien. Fozeia Rana-Fahy , MJM Barristers & Attorneys, Bermuda Nicholas Le Poidevin QC , New Square Chambers, UK Chair: Giles Richardson , Serle Court, UK



TRUST AND ESTATES LITIGATION FORUM AGENDA 2018

Day Two: Tuesday 6 March 2018

10.30

Interactive Focus Groups

A) Developments in the law of estoppel: Sword and shield

This breakout will compare and contrast two recent cases in Canada with reference to leading cases in the UK on the law of estoppel:

- How far can the doctrine be extended before leading to uncertainty, if not an “explosion of liability”?
- Are there implications for challenges involving trust deeds?
- May an attack on the validity of the exercise of a resettlement power in a trust nonetheless be barred by estoppel?

Craig Shuttleworth, Jones Day, UK

Daniel Dochylo, Borden Ladner Gervais, Canada

B) Investment management liability: trusts and related structures

In this session we will discuss and facilitate debate on three main areas:

- Recurring and new themes in litigation concerning trustee liability for investment losses
- The efficacy of reserved powers, corporate structures and other duty-limiting mechanisms
- Remedies: Equitable compensation and related principles

Andrew de la Rosa, ICT Chambers, Cayman Islands & UK

Steven Elliott, One Essex Court, UK

Morven McMillan, Maples and Calder, Cayman Islands

C) Personal protection planning

Identifying the powers of the Court of Protection and the different strategies that can be deployed to safeguard HNW clients where capacity is in issue, including cases with multi-jurisdictional questions, privacy concerns and/or where there is a risk of undue influence.

Dominic Crossley, Payne Hicks Beach, UK

Sir Robert Francis QC, Serjeants' Inn Chambers, UK

Stephen Richards, Withers, UK



TRUST AND ESTATES LITIGATION FORUM AGENDA 2018

Day Two: Tuesday 6 March 2018

11.30	Networking break and coffee
11.45	<p>Interactive panel My jurisdiction is better than yours</p> <p>Each panelist has 3 minutes against the clock to say why their jurisdiction is better in one of the following areas:</p> <ol style="list-style-type: none"> 1. Rectifying mistakes made by trustees 2. Firewall <p>Chair: Rachael Reynolds, Ogier, Cayman Islands Keith Robinson, Carey Olsen, Bermuda John Rimmer, Advocate John Rimmer, Isle of Man Johannes Gasser, Gasser Partner, Liechtenstein Valerie Wu, Pinsent Masons, Singapore Christian Hay, Collas Crill, Guernsey</p>
12.15	<p>Closing panel Litigation showcase: Where were we? Where are we now? Where are we going?</p> <p>This ultimate session seeks to provide a snapshot summary of emerging concepts and juicy new cases from the past year which have featured in trust litigation.</p> <p>Andrea Zavos, Boodle Hatfield, UK Anthony Poulton, Baker McKenzie, UK Jonathan Edward Wheeler, Morrison Foerster, UK</p>
13.00	<p>Chairs' closing comments Where are we now? What have we learnt? Coming back to core topics – snap shot approaches</p>
13.15	<p>Lunch Join us for a light lunch before the transfer back to the airport.</p>



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SESSION HIGHLIGHTS

Caught in the crossfire: Trustees embroiled in divorce proceedings



Robert Ham QC, Wilberforce, UK

Graeme Kleiner, Charles Russell Speechlys, UK

Alan Boyle QC, Serle Court, UK

Mark Harper, Hughes Fowler Carruthers, UK

Chair: Shân Warnock-Smith QC, 5 Stone Buildings, UK



Whilst the case never made it to trial, this session focused on the litigants' arguments surrounding whether the English family court can pierce colonial firewalls. **Robert Ham QC**, Wilberforce argued:

The problem

In *C v C (Ancillary Relief: Nuptial Settlement)* the CA held that the power conferred by section 24(1)(c) of the Matrimonial Causes Act extends to a settlement though made in another country and according to the law of that country: that is settled law unless and until the Supreme Court decides otherwise.

If the court makes an order under section 24(1)(c) varying a settlement governed by the law of a British overseas territory with firewall legislation, will the order be effective?

Two issues

- At common law, i.e. disregarding any firewall legislation, will the court of the overseas territory recognise an order of a foreign court, for instance the English court purporting to vary a settlement governed by domestic law?
- If so, does the firewall legislation alter the position?



The Pugachev decision: Implications for practitioners and clients



Christopher Lloyd
Erskine Chambers, UK



Toby Graham
Farrer & Co, UK



Hodge Malek QC
39 Essex Chambers, UK

SESSION HIGHLIGHTS

This session focused on the infamous *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev & ors* case, with litigants to the case discussing:

- **Illusory trusts:** When is a trust not a trust and in what circumstances does a powerful protector become the sole beneficiary? Do we think this structure should work as a matter of trust law?
- **Sham:** Whose intention matters? Is “reckless indifference” enough and, if so, indifference to what?
- **Section 423 and transaction avoidance:** Intention to defeat illegitimate claims - an ‘easy option’ for creditors?



SESSION HIGHLIGHTS

Meritus Trust Company v Butterfield Trust: Battle of the trusts across several jurisdictions



Fozeia Rana-Fahy, MJM
Barristers & Attorneys,
Bermuda

This session looked into the decision in *Meritus Trust Company Limited v Butterfield Trust (Bermuda) Limited*, where a former trustee has no general right of retention as against a new trustee, but only a non-possessory equitable lien.

The decision of this case is **potentially wide-ranging both geographically and in terms of drafting considerations**. Trustees should be mindful of this decision, particularly on a change of trustees. Trustees and trust draftsmen should also consider this decision and the statutory vesting provisions (where relevant) when drafting the trust deed itself and consider including express provisions regarding rights to contractual indemnities and to retain assets as “reasonable security”.



Nicholas Le Poidevin QC,
New Square Chambers, UK



Chair: Giles Richardson,
Serle Court, UK



GALLERY



“It was a terrific hotel and the food was excellent.”

Daniel Dochylo, Borden Ladner Gervais LLP, Canada

“Excellent venue - great rooms, conference facilities, dining and food were enjoyable.”

Matthew Watson, Cox Hallett Wilkinson Limited, Bermuda

LEGAL WEEK'S PRIVATE CLIENT PORTFOLIO

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www.privateclientglobalelite.com

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Location: London, UK
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International Private Client Forum
www.privateclient-forum.com

Date: 15-17 November 2018
Location: Villa d'Este, Lake Como, Italy
Book Here



Private Client Forum Americas
www.privateclientforum-americas.com

Date: Feb 2019
Location: Mexico
Book Here



Trusts & Estates Litigation Forum
www.trustandlitigationforum.com

Date: March 2019
Location: TBC
Book Here



Private Client Forum Asia
www.privateclientforumasia.com/

Date: December 2018
Location: Singapore
Book Here



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