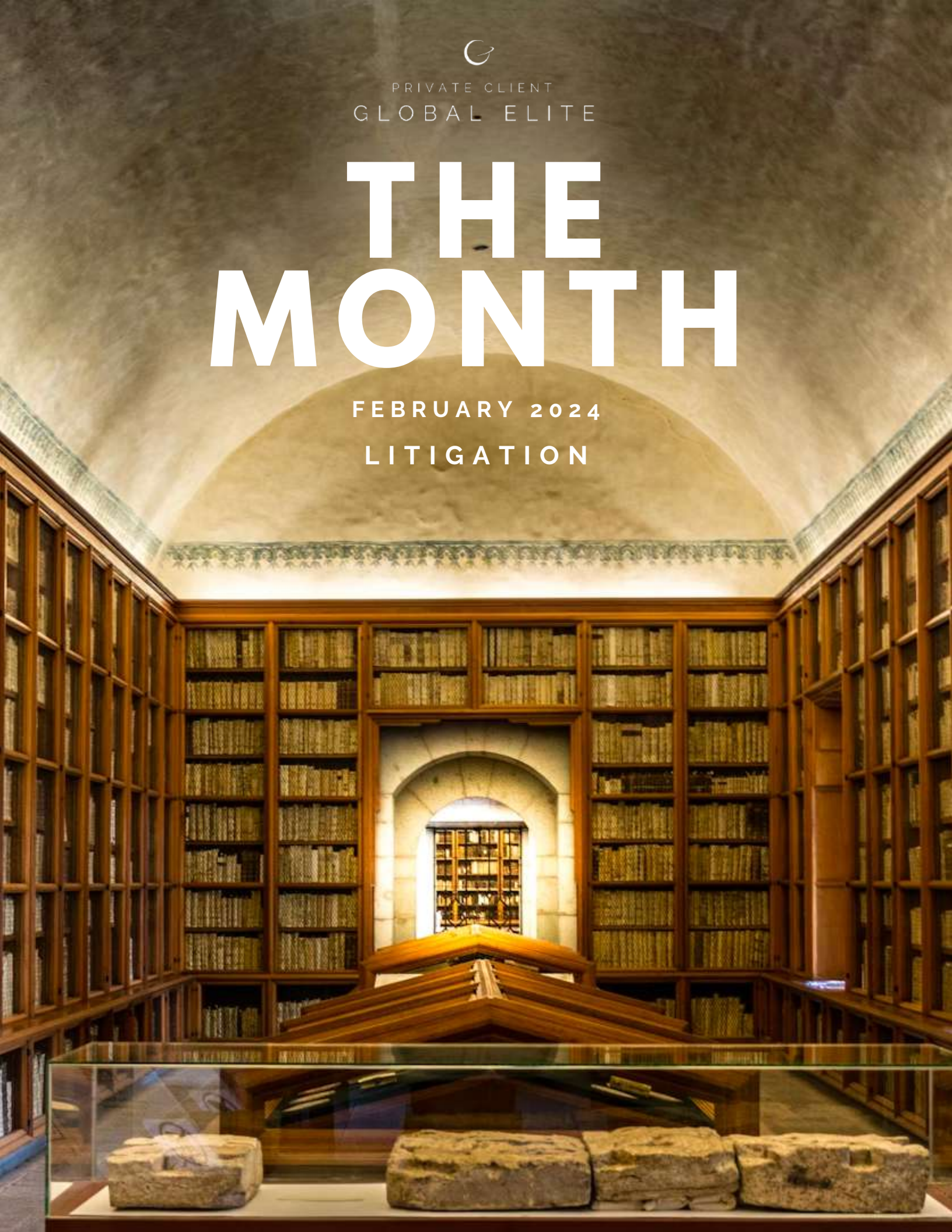
PRIVATE CLIENT
GLOBAL ELITE

THE MONTH

FEBRUARY 2024

LITIGATION



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2024 Calendar

Private Client Forum Americas
Banyan Tree Mexico, 28 February - 1 March 2024

International Women's Day Leadership Brunch
London, 7 March 2024

Private Client Exchange Switzerland
Guarda Val, Switzerland, 14-15 March 2024

Rising Leaders Leadership Brunch
London, 18 April 2024

Private Client Exchange Italy
Puglia, Italy, 21-22 April 2024

Private Client Exchange Asia
The Capella, Singapore, 16-17 May 2024

Trust & Estates Litigation Forum
La Mamounia, Marrakesh, 18-20 September 2024

Private Client Exchange France
Chateau Saint-Martin, 3-4 October 2024

Minds of the Future Exchange
Cotswolds, 23-25 October 2024

International Private Client Forum
Villa d'Este, 13-16 November 2024

Private Client Exchange UK
Cliveden House, 28-29 November 2024

Annual General Meeting
Spencer House, London, 3 December 2024

Global Strategy Forum
Gleneagles Hotel, Scotland, January 2025

This Month

Cayman Exchange

Chaired by the wonderful Shan Warnock-Smith KC, and hosted at the Ritz Grand Cayman

Trust & Estates Litigation Forum

Chaired by Dakis Hagen KC, Charles Lloyd and Tina Wüstemann, and hosted at La Mamounia

Private Client Forum Americas

Chaired by Rachael Reynolds KC and Berenice Carrasquedo and hosted at the Banyan Tree Mayakoba

With Private Client Global Elite

We have had such a busy month! We kicked off the year with our Private Client Exchange Cayman, chaired by Shan Warnock-Smith KC of ICT Chambers and 5 Stone Buildings and taking place at the Ritz Carlton in Grand Cayman. It was two days packed with fascinating content and wonderful audience collaboration.

Quick on its heels we were in Marrakesh at our Trust & Estates Litigation Forum, which took place at the iconic La Mamounia. It was our first attempt to host a conference outside! Co-chaired by the marvellous Tina Wüstemann, Dakis Hagen KC and Charles Lloyd (Bär & Karrer, Serle Court and Macfarlanes respectively), the agenda was full of wonderful argument, collaboration and lively debate. We heard from Oscar winning Gareth Ellis Unwin who taught us about the importance of storytelling, and always having a letter with you when travelling with your Oscar!

Towards the end of this month, we were in Mexico for our Private Client Forum Americas, which once again took place at the Banyan Tree Mayakoba. Co-chaired by Rachael Reynolds KC (Ogier) and Berenice Carrasquedo (BFC Asesores), it was a wonderful three days with dinners on the beach or the lagoon, networking, and some wonderful keynotes from Daniel Katz and Lakeisha Ekeigwe.

We can't wait for next month, where we will be in London with our Women's Day, and Switzerland with our Private Client Exchange Switzerland in Guarda Val.

High-net-worth litigation: the perfect strategy

Hannah Davie, Ami Sweeney and Josephine Pennicott, Grant Thornton

Gin with tonic and a slice of lemon is the perfect pairing, just like litigation with an effective enforcement strategy and innovative funding options is another. However, without all three, you are likely looking at a recipe for disaster.

HNW family disputes following the death of the patriarch or matriarch are on the rise, with The Financial Times reporting that in the UK alone, contentious probate claims issued in the High Court have increased fivefold over the last 14 years.

Add to this the increase in the value of assets, multi-layered families and the use of complex trust and corporate structures, often in a range of jurisdictions, it means these disputes are inevitably emotionally charged, complex in their nature and require a real investment of time, energy and money.

In high-stakes and high-profile litigation, it is of paramount importance that clients consider any potential enforcement issues and devise a strategy from the outset which mitigates the risks identified. It is imperative for clients, to verify the asset position of the defendants prior to commencing proceedings to ensure that there is a route to recovery and keep this under review during the life of the litigation.

For clients and their legal advisers, real value can be added by working alongside an asset recovery and/or enforcement specialist from the point of dispute, so that the asset base of the defendants can be considered and, where necessary, proactive steps can be taken to prevent the dissipation of assets. Or indeed if the assets have been dissipated or seem unrecoverable after the judgment has been obtained, a multi-jurisdictional enforcement strategy can be implemented at this stage.

However, entering into litigation can be costly for clients, not just in respect of their time and energy, but also their financial reserves. Even for UHNW individuals, they can find themselves in a position where assets they are entitled to have been hidden in complex structures, or been dissipated during the course of the litigation, so having the liquidity required to fund ongoing proceedings or enforcement actions can be debilitating.

So, what if, during the course of the dispute, and the often-prolonged period before judgment is obtained, the assets or funds that could have been used to settle the judgment have been moved out of the jurisdiction, changed hands or been dissipated and are now out of your client's reach?

Below is a whistlestop tour of the asset recovery tools that can be deployed to assist with identifying assets, protecting them and enforcing against them, as well as some potential funding options which may be available to them.

Disclosure

Before crafting an enforcement strategy, it is important to understand as much about the

potential defendant's asset position, including the details of assets held by the individual both directly and indirectly. Proactive and well-structured corporate intelligence can uncover key information that focuses disclosure applications and drives a successful recovery strategy.

Legal disclosure routes available to a client will vary depending on the jurisdiction, but commonly used tools consist of the Norwich Pharmacal Order (NPO), Bankers Trust Order (BTO) and in the US, Section 1782 applications (1782).

A NPO is used to recover information from a third party that is mixed up in wrongdoing, often innocently, and may have relevant information on a defendant's dealings. A BTO is a similar remedy, but in relation to banks. This information can confirm the ownership status of an asset and can uncover historical ownership information that may be useful later in the recovery process.

The 1782 application is similarly effective where the debtor has a nexus in the US and legal proceedings are anticipated, particularly when combined with corporate intelligence. This focuses the scope of the application to ensure that the discovery sought is as relevant as possible.

Protection

Once assets belonging to the defendant have been identified, the next question is how to preserve asset value and prevent them from further divesting their asset pool whilst litigation is undertaken.

Freezing injunctions are amongst the most powerful of these tools, provided that real risk of dissipation can be proven. A successful freezing injunction application will prevent the defendant from dissipating their assets above a determined value. This gives comfort that future enforcement actions are proportionate and commercial when compared to the asset pool available.

However, freezing injunctions carry several downsides, including the requirement to provide full and frank disclosure of the possible defences, and potential adverse costs orders if the client's claim is ultimately dismissed.

Should a freezing injunction not serve the desired purpose, court-appointed receivers can be seen as a 'super freezing injunction'. Receivers hold the ring before, during or after proceedings, and ensure that shares or assets remain available to the client in the event that they successfully obtain a judgment. A receiver's powers are defined by the court and can be extended if found to be insufficient on application of the receiver. They provide the client with security in knowing that the underlying asset pool will be protected.

If neither a freezing injunction nor receivership is possible or desirable, fast enforcement action can be just as effective. Formal insolvency appointments may also be available resulting in protectionary powers granted to an appointed insolvency practitioner (IP).

Enforcement

Ideally, the defendant will pay the judgment debt without need for further action. However, if no funds are forthcoming due to a refusal to pay, the defendant absconding, or claiming they cannot pay as a result of having no assets in their name, and there are no obvious routes for securing and recovering the sums due, the outstanding judgment debt can be used to petition for the individual's bankruptcy or liquidation in the case of a company. If the application is successful, an IP will be appointed by the court.

The IP's powers are wide-ranging in the case of both a bankruptcy and a liquidation. An IP is entitled to make enquiries of any third party, including family members, professional advisers and financial institutions, who may hold information in relation to the defendant's affairs to seek disclosure of information, with the aim of tracing monies and assets and recovering them for the benefit of the bankruptcy estate to distribute to the client (and other creditors).

If appropriate, an IP can seek recognition of their insolvency process in other jurisdictions allowing expansive further disclosure to be

collected and assets recovered. For example, in the US under Chapter 15 of the US Bankruptcy Code, an IP may use this recognition to seek disclosure of all US dollar transactions made and analyse this disclosure to trace the route of all funds transferred in US dollars and identify the "end user" of the funds, against whom they could then seek to make a claim.

The IP is also entitled to bring specific insolvency claims in relation to antecedent transactions, to claw back assets that have been transferred away to third parties. These claims are fact-specific, but are often very powerful and enable significant recoveries to be made when there is evidence assets have been dissipated.

Funding options

Securing funding can be challenging and restrictive when delivering an enforcement strategy, even for HNW individuals, and bespoke funding solutions will maximise the prospect of a recovery for the client.

Clients will need support in sourcing commercially attractive terms to suit the case using professionals with trusted relationships with major funders, who are often willing to fund litigation, enforcement actions or even an insolvency process.

In relation to the IP's own fees, if there is limited or no funding, the IP may be willing able to work on a contingent and risk-sharing basis and can in certain circumstances provide other collaborative funding solutions, including the purchase of a financial award outright to transfer the cost and the risk as well as funding the ongoing enforcement actions.

In conclusion

Enforcement issues should always be considered before litigation is commenced and recovery strategies are most effective when preceded by corporate intelligence and planning with experienced asset recovery professionals working hand-in-hand with legal advisers.

While a good strategy implementing the right tools has all the prospects to succeed, without appropriate funding, it is unlikely to get off the ground. Similarly, funding without a tailored recovery strategy can lead to higher costs and a less satisfactory outcome. However, addressing both of these matters early will ensure the 'perfect pairing' and the best possible prospects for success for the client. ■

Made in Italy, Stays in Italy – Italy's fight to defend its luxury heritage

Lesley Timms, Withers

This month, we have witnessed how lingerie has been the cause of a complex and highly charged tug-of-war between national courts. But this is not just any lingerie. It is La Perla lingerie, and it is Italian. Established in 1954 in Bologna by Ada Masotti, La Perla is the epitome of Italian luxury fashion, selling lingerie and nightwear for upwards of $300 for a single item. Over the decades, it has strived to retain its Italian heritage recognising that much of the value in, and allure of the brand comes from Italian origins. In the hands now of Lars Windhorst's Tennor group of companies, La Perla has found itself in financial distress. News has emerged of La Perla's UK holding company, La Perla Global Management UK Limited going into liquidation and selling off the business. Meanwhile, in Italy, employees and unions are teaming up to demand payment of their overdue salaries, seamstresses are protesting outside the European Parliament and the Italian government and courts are taking special measures to try to preserve its heritage, no doubt giving those in control of the UK company a bit of an unexpected headache.

Italy is the home of brands synonymous with luxury, quality craftsmanship and tradition. "Made in Italy" branding adds to the value and desirability of an item because, amongst other things, it embodies the romanticism of the country, the quality of the craftsmanship of its artisans and its long heritage. As long ago as 1945, shortly after the end of the second world war, the Italian Institute for Foreign Trade stated that "Italian craft was the country's greatest asset in providing the means to revive the Italian economy". It is perhaps no surprise, therefore, that Italian government is keen to take special measures to protect its heritage brands and encourage the introduction and growth of new-comers.

As recently as this week, a new law was passed in Italy (Law No 206 of 27 December 2023) providing "Organic provisions for the enhancement, promotion and protection of the "Made in Italy". Amongst other things, this new law seeks to provide funding and investment opportunities for innovative and sustainable Italian businesses, including in the textile and fashion industries. It also implements measures designed to further protect trademarks which are of particular national importance and value.

The Italian Government's intervention into the UK company's sale of La Perla business is the most recent example of Italy using the measures available to it to protect its heritage. Shortly after the company was placed into liquidation in the UK and the liquidators' attempting to sell the business, news emerged of an unexpected and dramatic twist: the Italian government and Courts have intervened in an attempt to stop the sale. Under huge pressure from the unions who are seeking to protect the interests of the 300+ unpaid workers, the Court of Bologna has ordered the preventative seizure of La Perla

Manufacturing Srl and the entire UK La Perla business. For the unions, their priority is to protect highly skilled and valued workers and protect the Italian heritage brand, unlike the UK liquidators whose priority it will be to maximise value for creditors with no guarantee of business continuity.

With the protection mechanisms in place, it is now understood that an amminstrazione straordinaria will shortly follow, although the Court of Bologna deferred its decision on this (which was due last Friday) for a further 10 days. Amministrazioni straordinarie are unique proceedings overseen by both the Italian courts and the Italian government and is available for large companies facing financial difficulties. They are aimed to help rescue a company by implementing a rescue plan. If the plan succeeds, the company will live on.

Most recently, seamstresses appeared outside the European Parliament on Wednesday to make their voices heard. Commenting on their plight, Mr Cherubini, the national secretary of Italian union Filcten Cgil stated "we must defend our industry if we want to defend our companies and our Made in Italy in the world". It seems the Italian government is listening.

This tussle between the UK and Italy over the La Perla brand is a novel and interesting one from a legal perspective too. Lawyers will be considering carefully the extent which the UK is obliged, post-Brexit, to recognise and respect the orders of the Italian Court. The Italian government and Courts are doing everything possible to protect Italy's heritage brand and it seems that the liquidators of the UK company are being respectful of that and patient. But ultimately, the question comes down to whether they consider themselves to be bound by the decisions of the Italian court in circumstances where they owe duties to their national courts and to creditors. ■

When A TV Show Illuminates More Than Law School

Tamasin Perkins, Charles Russell Speechlys

There appears to be a trend of the rich becoming fodder for TV dramas, whether they are costume dramas such asDownton Abbey or the US series Succession (about which the editor wrote here). The German writer and entrepreneur,Rainer Zitelmann, in his book, The Rich In Public Opinion (2020) even analysed a total of 560 films made from 1990 to2017, concluding that many of them have an anti-capitalism/wealth bias. Whatever one's view of the matter, TV dramascan offer ideas and "teachable moments" that can elude a classroom.

What do lawyers make of this? Well, to answer the question is Tamasin Perkins, partner in the private wealth disputesteam at UK law firm . The editors are pleased to give Perkins a chance to share these views and, of course, if readerswant to respond, please email tom.burroughes@wealthbriefing.com. The usual editorial disclaimers apply to views ofguest writers.

On my first day of practice as a private wealth disputes solicitor I was told that everyone has a secret life. No one is whatthey seem. If you want to learn what private-client litigation, particularly multi-party litigation (such as a dispute about awill, a trust or a family business) is actually like, you would learn more from The Traitors (a BBC series) than from lawschool. The shifting sands, the tension, the heated advocacy – it's all there.

If you haven't seen The Traitors, the format is that a group of people are randomly designated as either "Traitors" or"Faithful." The Traitors' role is then to "kill off" the Faithful (really just remove them from the game). The Faithful's role is towork out who the The Traitors are. Much intrigue ensues.

Forming alliances The Traitors is all about alliances and litigation is the same. In trust litigation there can be numerous parties: the trustees, protectors, multiple generations of beneficiaries, their spouses, representatives for minor beneficiaries and for those beneficiaries-to-be who are not yet born. This gives rise to complex group dynamics and anyone advising those parties needs to be alert to those dynamics. The alliances seen on the show eerily reflect the allegiances that can and do form in heated litigation, from the flimsy to the (almost) unbreakable.

Holy alliances The Faithful (i.e. anyone who isn't a Traitor)
In complex litigation, there are often co-parties (whether claimants or defendants) with genuinely shared interests.Typically, these might be co-beneficiaries of an earlier will challenging a later will in a legacy dispute or shareholdersbringing claims against company directors. Like the Faithful, they can be a disparate group where the only thing they havein common is a shared interest in the same outcome. Group dynamics are unique and challenging, but there is strength innumbers in litigation as at the roundtable. This can be in terms of presenting a more compelling case to the court and

by sharing in the stress and costs risk of litigation.

Acting for these individuals can be tricky. Generally, the same firm of solicitors can act, as the shared interest in the outcome means that there is technically no conflict, but things can change, and conflicts can spring up. A firm's letter of engagement should usually make it clear that there is no conflict at the date the letter is signed, but that if either the client or the solicitor were to feel there was a conflict then the retainer will end.

The Traitors demonstrates these potential rifts and the difficulties of group litigation well. How pressure can get to a client and can affect their decisions (Brian made some very odd choices and could have used some sensible legal advice), how some individuals' charisma and influence can affect the thinking of the group (so that people start to conflate likeability with trust), how herd mentality can take over and strongly held views abandoned quickly and often arbitrarily for the sake of an easy result. Parties often suffer from litigation fatigue, and this is visible in the flagging spirits of the remaining Faithful.

One way of managing this changing landscape from the outset, is to ensure that there is an agreement between the clients behind the scenes. This could address in what proportion damages will be divided up, how costs will be allocated and paid for etc. That way all co-parties are clear about where they stand, even if their emotions change. Another way is to nominate a lead client or spokesperson to co-ordinate the group (with general powers of attorney in place if helpful).Where this does happen or one party is more vocal than others, it is especially important to regularly check in with each individual to make sure that their views are known and understood.

Diane and Ross Secret alliances can happen in litigation too. When emotional ties are (or at least appear to be) stronger than that person's own financial interests. Like Diane and Ross, this can often be parents and children with potentially competing interests, siblings, or close friends. In a will challenge, two siblings might have potentially competing claims under the Inheritance (Provision for Family and Dependants) Act 1975 for reasonable provision from the same estate. As both claims come from the same financial pot it is in each of their interests for their sibling's claim to be defeated, but behind the scenes their instructions might be different – "I'd rather you had it than them." "Anything either of us gets is a win for both of us." Here there is an actual conflict, and it is likely to be inappropriate for the same solicitors to act for both parties (even with information barriers in place). Those solicitors can still co-ordinate a litigation strategy, however, using common interest privilege. This is a type of litigation privilege that allows communications between parties to be protected from other parties in certain circumstances. Such a strategy means that litigation can be managed behind the scenes so that the timing and emphasis of each claim is engineered to increase the pressure on the other side. For example, the parties might decide which claim to lead with, co-ordinate disclosure requests or adopt a 'good-cop/bad-cop' approach.

Like Diane and Ross, however, who were never completely sure that the other wasn't a Traitor deep down, the closest of bonds should be approached with caution. To make sure that love and affection are not taken for granted, it can be sensible for the solicitors involved to manage the flow of information, to establish a term of reference for dealing with one another and to document the intentions of each party behind the scenes on the outcome of the litigation.

Unholy alliances The most tenuous alliance is that between the Traitors, a group who backstab their so-called friends nightly and, when it suits them, turn on each other. In litigation, this situation can arise where there are parties with ultimately competing interests in a claim, but who might find it expedient to get along with one another on a particular issue. For example, a defendant and Part 20 defendant might work together to make a specific disclosure application against another party; or a group of warring beneficiaries may find it in themselves to co-operate to remove an unpopular protector.

These opportunities can be useful, but the solicitors involved (and the clients) should be wary. Just because another party's views might align with yours on a particular issue doesn't mean that they won't fight you twice as hard later. The best way to manage this dynamic is by revealing as little as possible about your case: keep discussions focused on the issue you agree on and document everything. There can be value in relationship-building while you are briefly united. This may help you in a trial preparation emergency if you know who to deal with and can pick up the phone to them. Information-gathering about the individuals involved is also time well spent learning how they operate, who really has the power in a particular team and what their client really cares about. You can try dropping breadcrumbs about your team's position to try to find out more about their case or their client, but remember they are probably doing the same to you.

Roundtable dynamics The roundtable is the heart of The Traitors programme. It is pure advocacy and shows that telling the truth isn't always enough, it's about how you tell it. This season the showdown between Miles and Paul was better than anything the Royal Courts of Justice have to offer. As with the courtroom, the shrewdest operators aren't always the most outspoken. Sometimes it is better to let someone else fight your battle (and take the risk of being banished) than centre yourself and become vulnerable. In litigation, sometimes the better strategy (and reduced costs risk), can be to let another party take a point you might otherwise have taken. Where you must argue, make sure you are the predator, not the prey; if you don't fight your corner then you might be easy pickings. Also, choose how you advocate carefully, charisma can take you up to a certain point but if, like Paul, you veer into grandstanding then you lose the sympathy of the Faithful or, in court, of your judge.

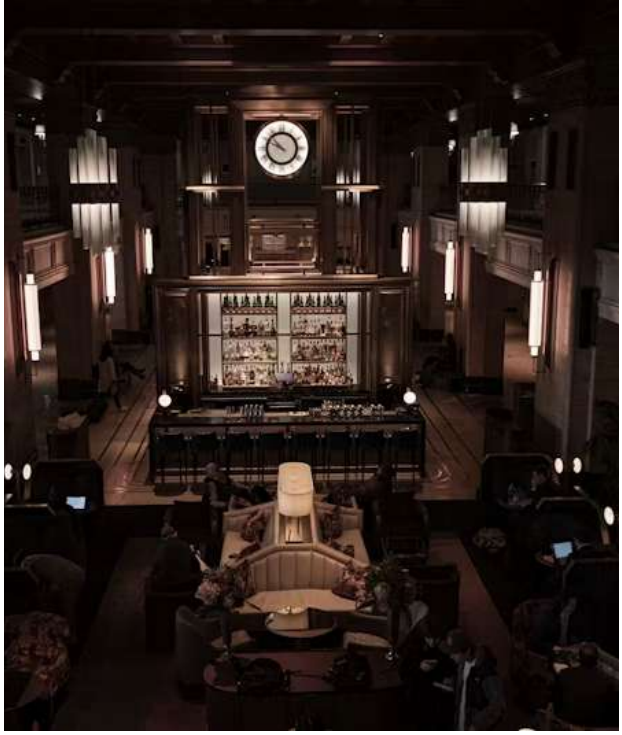
Five takeaways for litigation (and for any application to the BBC)

- Trust no one;
- Don't be charmed – there is a difference between liking someone and trusting them;
- Litigation is a changing landscape – whoever might be your allies now may not be at the next phase;
- Have a healthy dose of cynicism
- Money really does bring the worst out in everyone and even the strongest ties may not be robust enough.

First published in WealthBriefing, ■

Jurisdiction clauses in Italian trust disputes: a relevant judgment

Andrea Moja and Chiara Gandini, SLCLEX



In 1989, Italy became the second country (after the United Kingdom) to ratify the 1985 Hague Trusts Convention on Trusts.

Consequently, in Italy it is possible to establish a trust fully recognized by the Italian legal system, with the only limitation of a foreign governing law, as there is no Italian law on trusts.
This is a typical situation:

1. Trust having non-Italian governing law (i.e.: Jersey, Guernsey, England, Bermuda etc…);
2. Trustee not resident in Italy;
3. one or more Italian beneficiaries; and (eventually)
4. trust's assets located in Italy (real estate or shares in Italian companies)

In such cases it is almost always present a specific jurisdiction clause, indicating not the Italian courts, but rather a particular foreign court (often the same court as the governing law) as the forum to be used to resolve all disputes relating to the trust.

The concrete application of said clauses of waiver of Italian jurisdiction is one of the most sensitive issues that must be taken into account by a foreign trustee who has to interface with Italian trust subjects (settlor, protector or beneficiaries citizen or resident in Italy).

In fact, very often some of the (Italian) subjects of the trust attempted to start the legal action before the Italian courts, trying to challenge the (foreign) jurisdiction waiver clause in the deed of trust: for an Italian subject of a trust, it would certainly be easier and less costly to bring an action in Italy rather than before the Court in Jersey, for example. In these cases, the strategy used is to consider the Italian court to have jurisdiction because one or more parties to the trust (usually protector or beneficiaries) is Italian or otherwise resident in Italy.

Recently, the important judgment 3650/2023 of December 29, 2023, of the Milan Court of Appeal ruled precisely on this issue, noting that "disputes arising between the subjects of the trust (i.e.: settlor, trustee, protector, beneficiaries)" are governed according to the jurisdiction clauses contained into the trust deed.

Before entering into the merits of what was ruled by the Court of Appeal of Milan, it is necessary to summarize the facts of the case, concerning the application for the nullity and/or annulment of the measure, issued by the protector by which the plaintiff was revoked from the position of Trustee.

Specifically, the plaintiff, in addition to request the invalidity of the order of revocation from the role of Trustee, filed a petition for readmission to the full disposition of the assets placed in Trust. This claim was brought, in the first instance, before the Court of Monza (the Italian city where the beneficiaries and the protector were residents).

The trust was governed by the Jersey law and specifically set forth the jurisdiction of the Court of Jersey for any dispute that had arisen and that had concerned elements and/or status

attributable to the Trust.

The Court of Monza with the judgment 2298/2022 of November 15, 2022, recognized the jurisdiction of the Court of Jersey by recalling the trust deed, which provided that "any dispute relating to the establishment, validity and effects of the Trust is mandatorily and exclusively subject to the jurisdiction of the Court of Jersey as defined and regulated by the Trust Jersey Law."

This decision was taken in the light of the most recent orientation of the Italian Supreme Court ("Corte di Cassazione"), which, in multiple judgments, highlighted that the clauses derogating from jurisdiction contemplated in the deeds of establishment of a Trust bind:

1. the settlor,
2. the trustee;
3. the beneficiaries, (only in case the rights and obligations related to the Trust are raised, even if they are not signatories to the clause)

The Court of Appeal of Milan, complying with the judgment handed down by the Court of Monza, also clarified that the validity of jurisdiction waiver clauses is provided for by Law 218/1995 (private international law), where it states that "Italian jurisdiction may be conventionally waived in favour of a foreign judge or a foreign arbitrator if the waiver is proven in writing and the case concerns disposable rights."

Recalling Judgment no. 14041, dated June 20, 2014, pronounced by the Italian Supreme Court, the Court of Appeal of Milan noted that the extension of jurisdiction clause does not bind those parties who are in a position of third-party status with respect to the Trust, such as, purely by way of example, the settlor's heir if he/she assumes that his/her rights have been violated or beneficiaries that have not signed the trust deed.

Therefore, in light of the foregoing, the Court of Appeals of Milan rejected the appeal brought by the plaintiff against the judgment issued by the Court of Monza having jurisdiction at first instance, noting that: the waiver of jurisdiction clause included in the Trust deed is validly applicable and qualifies the mandatory and exclusive jurisdiction of the Courts of Jersey.

This important ruling should certainly be considered favourably by a foreign trustee facing potential disputes with Italian trust subjects for these reasons:

1. In case of a properly written (or amended) deed of trust, it will be very difficult for subjects of the trust to successfully sue in the Italian courts;
2. These individuals will be forced to go to foreign non-Italian courts, which will add to costs and various difficulties.

On the other hand:

1. In the case of a pretermitted heir, Italian jurisdiction will always be recognized by the Italian courts. In this hypothesis, the issues will regard the enforcement difficulties in the Trustee's country of residence.
2. Third parties will always be able to successfully start a litigation in Italian courts for matters not concerning "internal" relations between trust subjects (if only by the fact that some assets are in Italy or that some beneficiaries or the protector are Italian residents or citizens)

This shows how important careful scrutiny of trust deeds is when some of the parties are Italians, in order to avoid possible complex litigations. ■

Top trends in private wealth for 2024 – what they mean for our clients and for us

Russell Cohen, Farrer & Co

As we settle into 2024, this briefing identifies the key trends which are likely to impact wealthy families and those of us who work with them, in the coming year.

These trends will affect how the world views our clients and how our clients view the world. I have also (tentatively) made suggestions in this briefing as to how we as professionals can best respond to these trends in the interests both of our clients and our own organisations.

The politics of change

There is no doubt that 2024 will bring significant political changes globally.

There will be more than 70 elections in countries across the world, covering half the planet's population.

Political opinion is polarised like never before. The role of public service broadcasting and mainstream media is being replaced by social media and partisan news channels. As voters' views become increasingly entrenched, two things are happening: elections are becoming increasingly close but also the centre ground is falling away. Consequently, the results of elections are becoming increasingly unpredictable but critical. The decision of a few thousand voters in a handful of counties in a handful of swing states could determine whether Biden or Trump wins the next US election. Six months ahead of the EU elections, polls predict strong results for the two most right-leaning groups in the European Parliament.

All of this means our clients will need to respond to changes in mood in their home countries and to far-reaching new legislation. In the UK, non-domiciliaries (who currently enjoy a privileged tax status) are readying themselves for the end of the non-domicile regime if, as the polls predict, the Labour party wins a general election later this year.

Bad actors, very bad outcomes

Alongside all of this political uncertainty is an increasingly volatile geopolitical situation. 2022 brought the invasion of Ukraine, 2023 brought tumult in the Middle East. But, in a world in which the old (western) powers are waning and new alliances are being drawn around the world, it is all too likely that geopolitical "bad actors" will be responsible for further surprises and shocks in the coming year.

We all have sufficient perspective to know that the impact of these shocks on the world's wealthiest families cannot be the world's greatest concern. But we nevertheless owe a duty to the clients we work with, and to the organisations we are part of, to expect the unexpected.

Big government, big ideas

There has been a sea change this century in the perception of the role of government.

When the world economy was on the brink of collapse in 2007, governments stepped in to save it. When Covid-19 struck in 2020, governments stepped in to protect both the health and

economic welfare of its citizens. And, when energy prices spiked in 2022 and 2023, governments around the world spent billions on financial support packages. In the US, the Biden administration has intervened in the economy in a way not seen since the 1930s. In the UK, a right-wing government has overseen the government's level of debt exceeding annual national income for the first time since 1971.

So, tax rates will remain high. This obviously has immediate implications for wealthy individuals and families as governments seek to fill fiscal gaps. But will the implications be wider still?

Many clients have been embracing philanthropy for many years. But we are starting to see a shift in attitudes to tax itself. Clients who once invariably saw taxes as something to be avoided are starting to see taxes as something to be accepted with good grace and they are occasionally (but increasingly) even seeing taxes as something to be positively embraced.

Wealthy individuals who think like that are certainly becoming more outspoken. In the US and UK, groups such as "Patriotic Millionaires" and "Millionaires for Humanity" are publicly demanding higher taxes on the rich, and they are starting to influence the prevailing mood. Last year, the Patriotic Millionaires urged leaders at the Davos conference to tackle extreme wealth and tax the ultra-rich. It is perhaps no coincidence that the theme for Davos this year is "rebuilding trust".

The Great Transfer

Connected with these changes in attitudes is the "Great Wealth Transfer", the passing on of assets from the current owners of wealth (baby boomers and Gen X) to the next generations. 2024 will see an acceleration in this trend.

A report by UBS indicated that, for the first year ever, in 2023 billionaires amassed more wealth through succession than wealth creation. Research has indicated that millennials will hold five times as much wealth by 2030 as they do today, but significant wealth will also pass to Gen Z.

All of this requires careful planning for wealthy families, of course. More to the point, however, it also signals a change in mindset. Studies indicate that more than half of the 53 new inherited billionaires this year are breaking away from their family businesses in order to pursue other career ambitions.

With the succession of assets and power to the next generations, attitudes to wealth itself will inevitably change too. Galvanised by the new "science of happiness" (which is now taught in Ivy League universities), the next generation are taking a more holistic approach to the role the accumulation of wealth plays in their lives.

The Great Transfer is also happening inside our offices. Millennials are taking up senior management positions in our organisations and bringing their own values with them. If we are to engage effectively with the next generation of clients and employees, that can only be a good thing.

Not just New Money but Neurodiverse money

With the most successful wealth creators often having made their money in technology, we are seeing a new type of hyper-intelligent, hyper-ambitious and hyper-successful wealth creators.

These creators of wealth are increasingly diverse in terms of gender and race, but they are also increasingly neurodiverse. The world's richest person, Elon Musk, has been very public about having Aspergers and has been quick to link the syndrome to his success (and his leadership style). "I reinvented electric cars, and I'm sending people to Mars in a rocket ship. Did you think I was also going to be a chill, normal dude?"

If we are going to win, keep and (most importantly) do our best for these clients, we will need to accept they will not want us to provide our advice in the same way we have in the past. We are already seeing the pressure for quick verbal or text exchanges to replace long memos of advice.

And, as with the changing of the generations, if we are to best understand this new type of client, it will be increasingly important for us to make room in our workforce for neurodivergent colleagues.

Artificial Intelligence and Emotional Intelligence
You do not need me to tell you that the most significant disruptor over the next few years will be Artificial Intelligence.

Studies have indicated that the professional services sector is particularly vulnerable to the automation of work. We need to embrace AI or risk obsolescence. Exactly how we should go about doing that, and what impact it will have on the structure of our workforce, is yet to be seen.

What is clear is that we can best prepare and protect ourselves by honing our most human qualities. In a world in which the answers to our client's most technical questions will increasingly be accessible to all, what will make us stand out is our ability to identify the right questions to ask in the first place. We can only do this if we take a collaborative approach (involving other experts inside our organisations and across the wider industry) and if we devote our imaginative, intuitive and emotional skills to understanding our clients' needs. In the past, an ability to be collaborative and emotionally intelligent has distinguished the best private wealth professionals from everybody else. In the near future, we simply will not have careers if we do not display these qualities.

The Environment
As the impact of climate change becomes increasingly apparent and serious, protecting the planet will play an ever-larger part in our daily lives. The increasing controversy around private jets means that clients who are in the public eye would, in 2024, be advised to think twice before using them.

But the impact will surely be felt on the working lives of advisers too.

The private client industry is international and sociable, so travel and conferences are at heart of how we develop relationships and business. The Covid-19 period showed us that virtual meetings have their place, but that nothing beats face to face contact. But, as social and corporate attitudes change, will 2024 be the first year in which a serious conversation begins about how necessary and appropriate such travel is? ■

Meet the Team

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Sadly Rhiannon is the only one not able to make it here, but if you have any general enquiries or feedback do contact her by email or phone.

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