



New York Review

On Monday, 14th November Serle Court hosted its 5th International Trusts and Commercial Litigation Conference 2022 in New York, sponsored by Therium Capital Management. The conference spanned a full day at the iconic Rainbow Room in the Rockefeller Centre attracting lawyers and advocates, litigation funders, insolvency practitioners, and funds specialists from across the world. An esteemed group of 115 delegates arrived from within the US (Washington, Boston, Chicago and New York), and internationally from a wide range of locations including London, Guernsey and Jersey, the Cayman Islands, BVI, Bermuda, the Dominican Republic, the Turks and Caicos Islands, and Singapore.

Twenty Serle Court barristers led sessions focussing on the full range of Serle Court's areas of expertise from commercial and group litigation, fraud, insolvency and asset recovery to trusts, company law and fiduciary obligations. Serle Court adopted a paperless policy at the conference, making all the conference intelligence available via their online Virtual Hub. The conference was opened by leading Silk and Chambers and Partners Star of the Bar, [Philip Jones KC](#).

Around the World

Kicking off the panel sessions, [Richard Wilson KC](#), [Tim Collingwood KC](#), Jo Verbiesen (Bedell), David O'Hanlon (Collas Crill) and Addy Schmidt (Miller & Chevalier) discussed a number of key recent developments which are likely to have international impact on the litigation landscape. The panel session was conducted under Chatham House rules.

Cross-border enforcement of judgments: monetary recovery and committal proceedings

[John Machell KC](#) and [James Weale](#) (together with Eleanor Morgan (Mourant) and Sarah Gabriel (Peters & Peters)) took part in a lively panel discussion in which the panel and members of the audience shared their views on the challenges presented by sanctions, the outer limits of the court's jurisdiction to enforce against overseas assets and the use (and abuse) of committal proceedings.

Trusts Breakout Session: Z Trusts

[James Brightwell](#) and [Emma Hargreaves](#), together with Ziva Robertson (MWE) and Marcus

Parker (Stewarts) considered the decision of the Privy Council in the recent Equity Trust / Investec case concerning the priority of payment of debts in an insolvent trust in circumstances where there has been a series of former trustees with unpaid liabilities, and of the factors which trustees and those dealing with them will need to consider in light of the ruling.

Commercial Breakout: The Big Takeover

[Gareth Tilley](#) and [Wilson Leung](#) led a breakout session on "The Big Takeover - A problem scenario about corporate hijackings" (alongside Mary Young of Kingsley Napley and Joel Seager of Fladgate).

The panelists and delegates dissected a problem scenario – based on real case law – in which a legal team had to defend against vexatious proceedings based on corporate 'identity theft'. The participants enjoyed a lively debate and discussed a multitude of creative solutions: from strike-out applications to costs orders, from civil restraint orders to declaratory relief. Attendees engaged in cross-jurisdictional sharing, with valuable





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perspectives coming from the UK, the US, the Cayman Islands, the Bahamas, and more.

Challenging fiduciary decisions

Panel session four of the day discussed a number of aspects of fiduciary decision making. [Jonathan Adkin KC](#), Elizabeth Doherty (Macfarlanes), [Matthew Morrison](#) and Scott Pearman (Conyers) looked at circumstances in which fiduciary duties come to be owed both within and outside the trust context, including by protectors, and challenges to the exercise of fiduciary powers.

'Hidden Gems' – the most important cases you may never have heard of...

In a session chaired by [Zahler Bryan](#), Serle Court juniors discussed three 'hidden gem' judgments relating to important developments in the last 12 to 18 months. [Andrew Gurr](#) discussed the availability of injunctions to realise assets in support of the enforcement of judgment debts, and the evolution of the jurisdiction in the context of drawing down capital sums under pension policies in *Blight v Brewster*, and the recent Court of Appeal decision in *Bacci v Green*. [Dakis Hagen KC](#) raised a possible inconsistency with decisions in *Prest v Petrodel Resources Ltd*: a question which may need to be considered by the Supreme Court in due course. [Tim Benham-Mirando](#) spoke about the judgment in *Lakatamia Shipping Company v Su* [2020] EWHC 3201 (Comm); [2021] 1 WLR 1097 and [John Eldridge](#) considered the case of *Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1148.

Managing large scale and group litigation

In a panel focusing on large scale and group litigation, [David Blayney KC](#) and [Oliver Jones](#) discussed key challenges and emerging solutions with Maxine Mossman from Clifford Chance and Chris Wilkins from Therium Capital Management. The panel noted the need for effective communication between funders and the legal team, particularly to ensure that everyone understands how they will be affected in a range of settlement scenarios so that a mismatch of expectations does not present a barrier to settlement.

The panel also discussed the challenges of managing the volume of documents and complexity of issues in large scale litigation, and David explained the vision behind his solution whereby litigation teams collect evidence and develop the analysis collaboratively using the Associo platform.

Litigation in the new world order

[Dakis Hagen KC](#), [Matthew Sperry](#) (Katten), [Rachael Reynolds KC](#) (Ogier), and [Anthony Poulton](#) (Baker McKenzie) discussed the changing face of global litigation. They looked at whether there are new jurisdictions to watch out for on the horizon, the current situation in Asia, whether London will fall behind as a major litigation hub, and whether there will be new practice areas for litigation in the future.

The key takeaways from the panel discussion were the predictions that the new US trust jurisdictions such as South Dakota would become increasingly prominent places for international trust litigation and that

the SICC in Singapore will in future become one of the most prominent centres for global litigation, along with the assessments that Hong Kong should not be written off but will unquestionably now cede business to Singapore and that there is still some life in London yet as a litigation centre. The most futuristic aspect of the session concerned the role of the Metaverse and the question of whether, in relation to disputes concerning commerce and property holdings within it, each metaverse will have to develop its own legal system with its own courts.

Recordings of some of the above panel sessions will shortly be available to watch on the [Serle Court Virtual Hub](#).

We look forward to welcoming delegates again next year for what promises to be another informative and illuminating event. If you have any questions regarding Serle Court's International Trusts and Commercial Litigation Conference, please contact Business Development Manager, [Charlotte Davidson](#).



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