



## Jonathan McDonagh

Year of Call: 2011

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### Practice Overview

Jonathan is a commercial chancery junior specialising in complex and high value litigation in the fields of private client, company, civil fraud, and general commercial disputes.

In recent years, Jonathan has been instructed in some of the most high-profile pieces of litigation before the English courts, including *Pakistan v Prince Muffakham Jah* (the Hyderabad Fund dispute) and *Município de Mariana and oths v BHP Group* (the Fundão Dam disaster litigation). There is an international dimension to much of Jonathan's work and he is frequently instructed to provide advice in respect of matters proceeding overseas as well as in this jurisdiction.

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### Areas of Expertise

#### Chancery

Please see the sections below on Civil Fraud; Company; Insolvency; International and Offshore; Matrimonial Finance: Trusts and Company Law; and Private Client Trusts and Probate.

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#### Civil Fraud

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*Flywheel v Andrew, St Hill and Andrew* (2021 – ongoing) – Led by Paul Chaisty QC, Jonathan acts for the claimant company seeking various heads of relief arising from a purchase of an IT services company from the defendants, on the bases of breaches of warranty and fraudulent misrepresentation.

*Union Bank of India v Badri Kasturi and Satyan Kasturi* [2021] EWHC 979 (Comm) – Jonathan is acting for the UK branch of the Union Bank of India seeking to recover more than US\$6 million against defendants based in India in a claim (inter alia) for fraudulent misrepresentation arising from a loan for the purchase of shares in the USA.

*Taylor v Van Dutch Marine Holding Ltd* [2019] EWHC 324 (Ch) – Led by Lance Ashworth QC, Jonathan acted for the defendants alleged to have been undisclosed principals in respect of a purchase of shares, and liable for conspiracy to injure by unlawful means.

*The VW NOx Group Litigation* (2016-2019) – Led by Andrew Onslow QC, Jonathan acted for c. 90,000 affected vehicle owners seeking compensation in respect of the VW Group's 'defeat devices' fitted into vehicles to alter vehicle performance during emissions testing.

*Conapro v Republic of The Gambia* [2016] 12 WLUK 109 - Led by Elizabeth Jones QC, Jonathan acted for the Gambian government in relation to a claim involving a purported contract for the purchase of oil, and allegations of bribery relating to the same.

*Otkritie v Urumov and oths* [2014] EWHC 191 (Comm) - Jonathan acted for the Urumov and Pinaev defendants (led by Jonathan Adkin QC and Anthony Peto QC) in a banking fraud case worth more than US\$170 million. The case was the subject of considerable international media attention, and in addition to the usual issues arising from a civil fraud action, raised questions of international private law, foreign law, privilege and the doctrine of *ex turpi causa*.

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## Commercial Litigation

*Município de Mariana and oths v BHP Group Plc and BHP Group Ltd* [2021] EWCA Civ 1156 – Jonathan acts for more than 200,000 Brazilian claimants (including individuals, municipalities, businesses, utility companies, churches, and the indigenous Krenak) in proceedings brought against BHP Group following the worst environmental disaster in Brazil's history, the collapse of the Fundão Dam in November 2015. The Defendants are two public companies at the head of the corporate structure which owned and operated the dam. In the course of these proceedings, Jonathan has been led by Alan Boyle QC, Hodge Malek QC, Charles Hollander QC, Mark Cawson QC, Graham Dunning QC, Hugh Mercer QC, and Nicholas Harrison. The Defendants' jurisdiction challenge was heard in July 2020 and was successful, with judgment handed down on 9 November 2020: [2020] EWHC 2930 (TCC). Permission to appeal has been granted on fifteen grounds of appeal.

*Flywheel v Andrew, St Hill and Andrew* (2021 – ongoing) – Led by Paul Chaisty QC, Jonathan acts for the claimant company seeking various heads of relief arising from a purchase of an IT services company from the defendants, on the bases of breaches of warranty and fraudulent misrepresentation.

*Union Bank of India v Badri Kasturi and Satyan Kasturi* [2021] EWHC 979 (Comm) – Jonathan is acting for the UK branch of the Union Bank of India seeking to recover more than US\$6 million against defendants based in India in a claim (inter alia) for breach of banking facility agreements and guarantees.

*Union Bank of India v Hayre; Union Bank of India v Country Developments & Investments Limited; and others* (2021 – ongoing) – Jonathan acts for the Union Bank of India in several actions seeking to recover sums loaned under banking facility agreements, and enforcement of a range of security interests.

*Sargeant Petroleum v Thomas Miller* (2020 – ongoing) – Jonathan represents the assured owners of a vessel moored in the Port of Rio Haina, Dominican Republic, in a dispute with underwriters concerning the scope of an insurance policy to cover the impact of 2016's Hurricane Matthew.

*Re Magnolia* (2020 – ongoing) – A claim to a fund presently held in court arising from a multi-jurisdictional marine insurance dispute in the mid-1980s. Jonathan represents the successor entities to the insurers of the vessel,

“MAGNOLIA” an oil carrier attacked and struck by a missile in the Persian Gulf in 1984. The fund represents the remainder of monies that were paid into escrow during the course of a dispute between the insurers and the insured thereafter.

*Al-Mojil v Protiviti* [2016] CA 003 (23 August 2016), DIFC - (2016-2018) – Led by Jonathan Adkin QC and David Head QC, Jonathan represented the claimant seeking relief from an accountancy firm following a report it had issued to the Saudi Capital Markets Authority in respect of MMG, a Saudi oil infrastructure and engineering company. It remains one of the most substantial claims ever brought before the courts of the DIFC, and established significant case law on the *forum non conveniens* doctrine in the DIFC, before the parties reached settlement on the eve of trial.

*The VW NOx Group Litigation* (2016-2019) – Led by Andrew Onslow QC, Jonathan acted for c. 90,000 affected vehicle owners seeking compensation in respect of the VW Group’s ‘defeat devices’ fitted into vehicles in order to alter vehicle performance during emissions testing.

*Certain Underwriters at Lloyds v Syrian Arab Republic and others* (2015) – Advised in respect of a claim against the Syrian regime arising from a US judgment in the sum of US\$51 million relating to the hijacking of Egypt Air flight 648 in November 1985. The case concerned recognition of foreign awards and issues of state immunity in the context of the ongoing Syrian civil war.

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## Company

*Re KTA Group* (2020 – ongoing) – Jonathan acts for the Respondent directors and shareholder in an unfair prejudice petition concerning a family business. The dispute raises issues of separate ownership of business interests under the company identity, the passage of business interests between generations of a family, and various allegations of breach of directors’ duties.

*Município de Mariana and oths v BHP Group Plc and BHP Group Ltd* [2021] EWCA Civ 1156 – Jonathan acts for more than 200,000 Brazilian claimants (including individuals, municipalities, businesses, utility companies, churches, and the indigenous Krenak) in proceedings brought against BHP Group following the worst environmental disaster in Brazil’s history, the collapse of the Fundão Dam in November 2015. The Defendants are two public companies at the head of the corporate structure which owned and operated the dam. In the course of these proceedings, Jonathan has been led by Alan Boyle QC, Hodge Malek QC, Charles Hollander QC, Mark Cawson QC, Graham Dunning QC, Hugh Mercer QC, and Nicholas Harrison. The Defendants’ jurisdiction challenge was heard in July 2020 and was successful, with judgment handed down on 9 November 2020: [2020] EWHC 2930 (TCC). Permission to appeal has been granted on fifteen grounds of appeal.

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## Insolvency

*Union Bank of India v Hayre; Union Bank of India v Country Developments & Investments Limited; and others* (2021 – ongoing) – Jonathan acts for the Union Bank of India in several actions seeking to recover sums loaned under banking facility agreements, and enforcement of a range of security interests.

*Ullah v Ullah* (2015) – successful application under s. 423 IA 1986 reversing a transfer of a debtor’s share in his family home.

*Power v Godfrey* [2014] BPIR 484 – a successful High Court appeal against a bankruptcy order, in a case involving an allegedly fraudulent crossclaim against the petitioning creditor, on which default judgment had been

obtained.

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## International and Offshore

*Re Scherbakov* (2021 – ongoing) – Jonathan acts (led by Richard Wilson QC) for the English, BVI and Singaporean Administrators of the valuable estate of a deceased Russian businessman, in the context of proceedings concerning beneficiaries' rights to his estate, and a factual background of asset holding within corporate structures across several offshore jurisdictions.

*Al-Mojil v Protiviti* [2016] CA 003 (23 August 2016), DIFC - (2016-2018) – Led by Jonathan Adkin QC and David Head QC, Jonathan represented the claimant seeking relief from an accountancy firm following a report it had issued to the Saudi Capital Markets Authority in respect of MMG, a Saudi oil infrastructure and engineering company. It remains one of the most substantial claims ever brought before the courts of the DIFC, and established significant case law on the *forum non conveniens* doctrine in the DIFC, before the parties reached settlement on the eve of trial.

*AF v MF & oths* [2016] EWFC 65 – Jonathan acted for H's father, the settlor of an offshore foundation subject to attack from an application for ancillary relief by W. The applicant wife had sought relief in the sum of c. £20 million, but was awarded around £2 million following trial.

*Trilogy Management v YT* [2014] JRC 214. Assisted Dakis Hagen in advising a corporate trustee within a \$500m charitable trust structure on questions of restructuring and steps in ongoing litigation.

*Re Walker* (2013-2014) - Jonathan was instructed (along with Gareth Tilley and Justin Higgo, led by Elizabeth Jones QC) on behalf of a trustee defendant in the \$100+ million Jersey trust dispute arising from investment decisions made in respect of the Jack Walker settlement.

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## Matrimonial Finance: Trusts and Company law

*Re B* (2021 – ongoing) – Jonathan is advising the applicant husband in respect of an ancillary relief claim where W appears to benefit from a long-standing trust arrangement in which valuable commercial property is held.

*Hagen v Hagen* (2017) – Led by Alan Boyle QC and Nicholas Harrison, Jonathan acted for the daughter of the parties in a substantial and much publicised divorce involving the family behind Viking River Cruises, in financial remedy proceedings in the High Court.

*AF v MF & oths* [2016] EWFC 65 – Jonathan acted for H's father, the settlor of an offshore foundation subject to attack from an application for ancillary relief by W. The applicant wife had sought relief in the sum of c. £20 million, but was awarded around £2 million following trial.

*Joy v Joy-Morancho* [2015] EWHC 2507 – Led by Hodge Malek QC, assisted family counsel in advising on the trust analysis relevant to this matrimonial dispute, where issues arose as to the nuptiality of settlements, the extent of a trust as a resource, and allegations of concealment of assets.

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## Private Client Trusts and Probate

(Please also see entries under Matrimonial Finance: Trusts and Company Law)

*Re Scherbakov* (2021 – ongoing) – Jonathan acts (led by Richard Wilson QC) for the administrators of the valuable estate of a deceased Russian businessman, in the context of proceedings concerning beneficiaries' rights to his estate, and a factual background of asset holding within corporate structures across several offshore jurisdictions.

*Re Pawley* (2020 – ongoing) – Acting for the administrator of an estate being sued by the executors of the estate

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of the deceased's former (pre-deceased) wife, with issues relating to the inheritance tax treatment of an alleged interest in possession, and a counterclaim for the misappropriation of assets by the former wife during a period of Deputyship over the deceased.

*Re Magnolia* (2020 – ongoing) – A claim to beneficial ownership of a fund paid into court by trustees arising from a multi-jurisdictional marine insurance dispute in the mid-1980s. Jonathan represents the successor entities to the insurers of the vessel, "MAGNOLIA" an oil carrier attacked and struck by a missile in the Persian Gulf in 1984. The fund represents the remainder of monies that were paid into escrow during a dispute between the insurers and the insured thereafter.

*Pakistan v Prince Muffakham Jah & Oths* [2020] Ch 421 - Jonathan acted for Prince Muffakham Jah (led by Hodge Malek QC and Dakis Hagen) in the long-running Hyderabad Fund dispute. This dispute concerned several parties, including the sovereign states of Pakistan and India, claiming beneficial entitlement to the £35m resting with NatWest after monies were wrongfully paid out of the account of HEH the 7th Nizam of Hyderabad in 1948. Proceedings were first brought by the 7th Nizam in 1954, but were stayed upon Pakistan's successful invocation of sovereign immunity (*Rahimtoola v Nizam of Hyderabad* [1958] AC 379; and *Pakistan v Natwest* [2015] EWHC 55 (Ch)). At an interim stage, a series of strike out and summary judgment applications brought by Pakistan and by India were dismissed (*Pakistan v Natwest* [2016] EWHC 1465 (Ch)) and significant guidance was given relating to the interests of purported heirs vis-à-vis claims held by an estate (*Pakistan v Natwest* [2015] EWHC 3052 (Ch)). At trial, the terms of the transfer in 1948 from the Nizam to the High Commissioner of Pakistan were found to have resulted in Pakistan holding the monies on trust for the Nizam, as a trustee de son tort. The judgment also dealt with significant issues of justiciability in claims relating to sovereign states, and found an abuse of process in Pakistan's attempt to plead limitation. Following trial, Jonathan has continued to act for Prince Muffakham Jah in relation to a subsidiary issue of rights of succession to the English estate of the 7<sup>th</sup> Nizam.

*Akhtar v Arif* (2015-2017) – Acted for the successful claimant in a ToLATA dispute between family members concerning ownership of a Property purchased, developed and operated for rental as a joint venture; established the beneficial shares of the parties in the Property and consequential issues of accounting, and alleged breach of trust.

*Rezvani v Rezvani* (2015 – 2016) acting for the claimant executrix in respect of a disputed inter vivos transfer by the testator. The dispute involves issues of mental capacity, undue influence, and Iranian law.

*Trilogy Management v YT* [2014] JRC 214. Assisted Dakis Hagen in advising a corporate trustee within a \$500m charitable trust structure on questions of restructuring and steps in ongoing litigation.

*Re Walker* (2013-2014) - Jonathan was instructed (along with Gareth Tilley and Justin Higgo, led by Elizabeth Jones QC) on behalf of a trustee defendant in the \$100+ million Jersey trust dispute arising from investment decisions made in respect of the Jack Walker settlement.

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## Publications

Contributor to first edition of DIFC Courts Practice (Reed and Montagu-Smith, eds), 2020.

Evidence in trustees' applications: reading *Public Trustee v Cooper* together with *Pitt v Holt* (with Will Henderson), *Trusts & Trustees*, Vol 23, Issue 9, November 2017.

'Leaving it to the next generation: what should change in the law of wills', *New Law Journal*, 22 September 2017

'Legal advice privilege: traditional limits and modern practice', *The Law Society, Legal Compliance Bulletin*, July 2013

'Piercing the Corporate Veil in the Family Division: *Prest* – the latest from the Court of Appeal' (with Toby Graham), *Trusts & Trustees*, Vol 19, Issue 2, March 2013.

## **Education & Qualifications**

Magdalen College, Oxford: BA (Modern History and Politics), First Class; MPhil (Modern European History), Distinction

GDL (City University); BPTC (BPP)

Hardwicke, Denning and Cholmeley Scholarships, Lincoln's Inn

Former stipendiary lecturer in History, St John's College, Oxford

## **Memberships**

Commercial Bar Association

Chancery Bar Association

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