

Joshua Rubenstein, Bonnie Chmil and Ronni Davidowitz Discuss Private Wealth Litigation Trends with *Citywealth*

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Katten Partner and Global Chair of the firm's Private Wealth Department, Joshua S. Rubenstein, along with Partner Bonnie Lynn Chmil and Partner and Head of Katten's New York Private Wealth Department Ronni G. Davidowitz, were recently quoted in a *Citywealth* article examining the growing complexity of litigation in the private wealth sector, including questions of mental capacity, cross-border jurisdictional conflict and the impact of evolving tax legislation on estate planning and trust administration.

Regarding the rise in capacity disputes, Joshua highlighted their scale and complexity, particularly in a cross-border context. "Capacity contests are rampant these days, and they are the stuff of which soap operas are made. Cross border capacity contests are more challenging. Different jurisdictions have different capacity tests for the creation or amendment of wills than for trusts than for business structures. The capacity to marry, particularly late in life, varies from jurisdiction to jurisdiction," Joshua said. He added that parties are "increasingly looking for ways to resolve these issues before the matriarch or patriarch dies, in order to 'stop the damage' sooner and to avoid the inevitable free for all that would otherwise ensue after the matriarch or patriarch dies." Joshua also noted the surprising divergence between US and UK approaches to capacity, observing that "given that US law drives from UK law, you would expect their approaches to be similar, but they are surprisingly different."

Bonnie addressed a critical gap in many trust instruments concerning the capacity of trust protectors. "Trust instruments often give protectors numerous powers that are a condition precedent to the trustees' actions. While many trust instruments contain provisions addressing incapacity of a settlor or even a trustee, they frequently fail to address the capacity of the protector," Bonnie explained. She warned that "[i]f the instrument is silent, a court proceeding is inevitably required, which takes considerable time and is highly disruptive to trust administration. If the trustee cannot take action such as making distributions without the consent of the protector, the trust is effectively frozen to the

detriment of the beneficiaries." Bonnie emphasized that "[t]his situation readily can be avoided by including provisions that explicitly address protector incapacity."

Ronni discussed the significant implications of recent legislative developments for estate planning and fiduciary risk management. "One big theme is the potential implications for estate planning, trust administration, and fiduciary risk management from the proposed bills and other legislative updates across key jurisdictions," Ronni said. She noted that "the One Big Beautiful Bill Act (OBBBA) permanently extended several key provisions of the Tax Cuts and Jobs Act of 2017 that were previously set to expire at the end of 2025. In addition, the OBBBA introduced international tax reforms that can significantly impact US and foreign individuals and their estate planning strategies."

"Capacity, Conflict and Complexity: Inside Private Wealth Litigation in 2026," *Citywealth*, April 29, 2026

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