



Defensive and Counteroffensive Strategies in Delaware for Business Disputes that Turn Personal

When business disputes turn personal, ultra-high-net-worth individuals may see their own assets come under threat. However, if they have a connection to Delaware, the jurisdiction can provide them with a broad range of favorable tools to resolve disputes in their favor.

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If the UHNWI and their advisors can establish a connection between the dispute and Delaware – not unlikely, given it is one of the U.S. states of choice to incorporate companies and establish trusts – they may be able to counter the attack using the broad range of favorable tools available in the state.

Resolving Business Disputes in Delaware

Delaware has a unique and long-standing body of law that provides strategic leverage points for UHNWIs to end contentious business disputes at the root of the conflict. Litigation in the Delaware Court of Chancery (Court of Chancery) can be a launch pad for an aggressive and effective strategy that pressures the counterparty by bringing claims in a highly specialized, and often highly publicized, court.

The Court of Chancery is special for several reasons:

It's Fast. The Court of Chancery is known for its willingness to expedite high-stakes disputes—meaning that disputes can be brought to trial within months rather than years. Additionally, many statutory actions in the Court of Chancery provide for an automatic expedited schedule and reduced discovery, limiting the client's exposure to litigation that could drag on for much longer than typical litigation in other jurisdictions.

It's Hyper-Niche. Within the Court of Chancery there are no jury trials—everything is decided by a specialized judge. Many niche statutory actions can be brought on an expedited basis to quickly resolve issues of control or information, including (but not limited to) books and records for information, determinations of proper management, and declarations for ownership of shares. Plenary actions are also available for UHNWIs to resolve broad-ranging commercial disputes.

It's Closely Watched. For the UHNWI who needs to exert maximum pressure against their counterparty, the Court of Chancery can be an ideal destination for litigation. Given its levels of sophistication and specialized focus, the Court of Chancery regularly handles some of the most high-profile matters and is often closely watched by the press.

Protecting Personal Assets in Delaware

Delaware also has strong asset protection laws, offering another tool for UHNWIs seeing their personal assets under attack. For example, the state allows individuals to shield assets through a domestic asset protection trust (DAPT), in which the settlor of the trust is also the trust's beneficiary. Delaware law also contains unique provisions that curtail attempts by courts outside of Delaware to apply non-Delaware law to matters involving Delaware DAPTs.

These protections are not impenetrable, however. To further shore up their defenses, UHNWIs should also consider:

- Documenting thoroughly all management and decision-making structures, transactions, and other decisions;
- Bringing proceedings in Delaware courts to confirm the integrity of trustee decisions and trust governance; and
- Making changes to the trust deed to correct deficiencies or alter beneficiaries, as well as considering the appointment of independent professional trustees experienced with litigation.

When cross-border business disputes turn personal, UHNWIs may feel unfairly targeted and cornered by the two-front assault. However, if they can deploy the unique and powerful tools available in Delaware, UHNWIs and their advisors can effectively meet both sides of the challenge, resolving the underlying dispute while ensuring their personal assets are protected.

KOBRE & KIM

About Kobre & Kim

Kobre & Kim is a global law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

To preserve the assets, liberty and reputation of ultra-high-net-worth individuals with global business interests, our firm:

- Provides offensive and defensive cross-border litigation and crisis management strategies in court and out-of-court;

- Consists of experienced trial litigators in the Delaware Court of Chancery and U.S. District Court for the District of Delaware who focus on complex corporate, commercial, and trusts disputes;

- Takes a multidimensional approach to UHNWI-focused disputes investigations to resolve business disputes and regulatory investigations, trace and recover misappropriated funds, defend against asset attacks, as well as acquire and strategically deploy information to provide UHNWIs with a commercial advantage in their disputes and investigations.