



GREENBLUM & BERNSTEIN

PATENT, COPYRIGHT & TRADEMARK MATTERS

Brian Simms KC

Overview

Brian Simms KC is the Senior Partner of the firm and the head of its Litigation and Insolvency & Restructuring Groups. He is one of the Bahamas' leading advocates and has vast experience in the Supreme Court and the Court of Appeal, in addition to having appeared a number of times in the Privy Council.

He was made a Queen's Counsel in 2009 and is instructed in the most substantial Bahamian and international offshore cases.

Consistently ranked in Band 1 by Chambers Global and Chambers High-Net-Worth, Brian is praised for the quality of his work and expertise in commercial litigation, trust disputes, insolvency and fraud cases. He is described by clients as "***a top offshore Silk***" and "***the best litigation lawyer in the Bahamas***".

Examples of work (click to expand)

- Joint Provisional Liquidator of *FTX Digital Markets Ltd*.
- *Matteo Volpi v Delanson Services Ltd & Gabriele Volpi* – Acting for Delanson Services Ltd in a challenge to the Bahamian Court's jurisdiction and to set aside injunctions.

- Lead counsel for Judicial Trustees in relation to on going litigation and overseeing trust assets with a value of approximately 2 Billion.
- Lead counsel in *AWH v ZCM Asset Holding Company Limited* – Insolvency matter concerning the right of a Liquidator to serve proceedings out of the jurisdiction in relation to a fraudulent preference.
- *Bahamar Insolvency and Receivership* – Acted as lead counsel for the Import Export Bank of China with its disputes with the Mortgagor and developer including the successful opposing of the recognition of Chapter 11 proceedings. Also acted as lead counsel for the Receiver-Managers of the Baha Mar properties in multiple court proceedings arising from the completion and sale of the 3.5 billion dollar project.
- Lead counsel for *UBS* in a matter against *Standard Charter Bank* concerning losses arising from indirect investments in various Madoff funds.
- *Clico (Bahamas) Ltd (in liquidation)* – Counsel for the liquidator of a substantial insurance and property portfolio.
- *Rhone Trustees (Bahamas) Ltd v Beneficiaries A,B,C and D* – Acting as lead counsel for two minor beneficiaries in anti suit injunction proceedings, preemptive costs proceedings and breach of trust as well as construction proceedings.
- *Clico Enterprises Bahamas Ltd (in liquidation)* – Counsel for a liquidator of a substantial property portfolio.
- Acting for PowerSecure Ltd in termination of its relationship with Bahamas Power and Light Company Ltd. (2017)
- *BC Capital Group S.A. (in liquidation)* – acting as counsel for several shareholders in the liquidation.
- *JMF Foundation v JMF Estate* – Acting as lead counsel for the Trustees in a dispute with the estate over the ownership of assets and the validity of a declaration of Trust (2017)
- *Socimer International Bank Limited (in liquidation)* – acting for bank customers in relation to significant fee dispute with liquidator.
- Judicial management of *British-American Insurance Company Limited*. Advised the Judicial Manager of a large insolvent regional insurance company in relation to numerous issues. The matter included the implementation of a plan of arrangement across nine Caribbean jurisdictions in 2018 and included enacting special legislation in the Bahamas and other jurisdictions. Representation has included over 40 hearings since 2009.
- Acted for *Optimal Multi Advisors Limited* a Bahamian Investment Fund which was one of the largest investors in Madoff securities with respect to a claim valued at \$1,540,141,277.60
- Advised investor offshore funds as to the enforceability of the Trustees right to reclaim funds from investors paid within the preference period. (December 2008 -2022)
- *In the matters of Companies A, B and C* – advising and appearing (Lead Counsel) on behalf of the Petitioner in the winding up proceedings on the basis of oppression and just and equitable grounds despite the solvency of the companies. The assets of the companies are in excess of \$600 million.
- Bankruptcy of *Sheikh Fahad Mohammed Al-Sabah* – advising and appearing (Lead Counsel) on behalf of the major creditor being the Grupo Torras a subsidiary of the Kuwait Investment Office and subsequently the Bankruptcy Trustee.

- Liquidation of *Company A* – advising the liquidators of the Company in relation to claims arising under a failed hedge fund with investors shareholders in excess of 500 million.
- In the matter of *Caledonia Trust Company Limited*, advising and appearing (Lead Counsel) on behalf of the United States of America in relation to funds owing to the United States.
- In the matter of *New Hope Holdings Limited* – advising and appearing on behalf of the directors and shareholders in seeking to discharge the appointment of a Receiver over substantial assets of the company.
- In the matter of *Ebvail Limited Advising* and appearing (Lead Counsel) on behalf of the major creditor on the petition and subsequently the liquidator.
- *Sir Jack Hayward et al v Lady Henrietta St George et al (2006-2008)* – advised and appeared (Lead Counsel) on behalf of the Receivers of the Grand Bahama Port Authority Limited and the Port Group Limited. These companies in addition to having substantial investments acted as the local government for the city of Freeport.
- *Moore Park Fund Liquidation in Bahamas and BVI (2005-2007)* – advised directors as to director liability issues resulting from the activities of a fraudulent trader of the hedge fund's assets.
- *Class A Shareholders v Class B Shareholders (2004-2006)* – advised and appeared (First instance (Lead Counsel), Court of Appeal (Lead Counsel), and Privy Council) on behalf of class A shareholders in Oracle fund over which share class had priority in the winding up. The preference would have made a 60 million dollar loss for the Class A shareholders. The Court ruled that they ranked equally.
- *Cantrade Privatbank AG v. Fortis Fund Services (Bahamas) Ltd (2004-2007)* – advised and appeared on behalf of a UBS in relation to proceedings in the Bahamas arising from the liquidation of the Oracle Fund.
- In the matter of *Johnson Industries (2000-2003)* – appeared (Lead Counsel) on behalf of Shareholder in application to appoint a provisional liquidator pending the winding up of the company on just and equitable grounds.
- *A v B* – acting in an arbitration dispute regarding swap agreement and collateralisation obligations
- *CONCACAF* – representing CONCACAF in proceedings with Lisle Austin arising from his removal as President of CONCACAF
- *Grupo Torras Litigation (1998-2006)* – appeared in the Bahamas on behalf of Grupo Torras in a number of cases involving tracing claims, freezing orders and trust busting claims. Recoveries made in excess of \$200 million. Advised as part of the global team in relation to actions in other jurisdictions including Re Esteem settlement case in Jersey.
- In *re Trust A* – advised Trustees in relation to claims by foreign liquidator of collapsed funds to corpus of the trust.
- In *re Trust B (2004-2006)* – advised trustee in relation to claims by foreign government to the corpus of the trust. Litigation in Gibraltar and Anguilla.
- In *re Wong Trust (ITLER 2002)* – advised and appeared on behalf of JP Morgan Trust Company in a dispute as to whether increase in value of stock portfolio of the trust was income or capital. Case is

cited in Underhill and Hayton 16th Edition as the leading authority on the point.

Expert Witness Experience

- September 2017: Expert Witness in *Citibank v Lehman Brothers*, United States Bankruptcy Court Southern District of New York in relation to insolvency law of The Bahamas 2016.
- Bahamian Trust and Corporate Law in *Christina Crociani et al v Edoarda Crociani et al*, Royal Court of Jersey, September 2017
- In re: *British American Insurance Co. Ltd.*, Case Nos. 09-31881-EPK, 09-35888-EPK, United States Bankruptcy Court for the Southern District of Florida, Expert Testimony given in January 2010
- *Perenco Ecuador Ltd. v. The Republic of Ecuador*, Sealed Arbitration in The Hague, Netherlands, Expert Testimony given in November 2012

Publications Authored

- Brian C. Simms QC, *Recent Developments in Offshore Trust Litigation*, Conference paper for the New York State Bar Association (2016)
- Brian C. Simms QC and Hon. David Hayton, *Vulnerability of Offshore Trusts – Recent Developments*, published in the conference materials for the Offshore Alert Conference held in Miami, FL (May 2012)
- Brian C. Simms QC, *Attacks On Offshore Trusts*, Conference paper for the New York State Bar Association (2010)
- Brian C. Simms QC, contributing author to: *Insurance Law and Regulations*, edited by Dennis Campbell and published by Oceanic Press. Authored chapter on Bahamian law (2009)

Speaking Engagements (click to expand)

2020

- Private Client Global Elite: Trust & Estates Litigation Forum

Marrakech, Morocco - 26-28 February 2020

Brian spoke in the session: '**Conflict of laws: Exclusive jurisdiction clauses in trusts**', which took place on Friday 28 February 2020.

2019

- **INSOL & Risa: One Day Joint Seminar**

Nassau, The Bahamas - 05 December 2019

Panelist on *'Where do I go for the best chance of recovering value for stakeholders?'*

The panel discussed recent decisions relating to clawback claims and the obstacles involved in bringing such claims, addressing the powers and remedies available to officeholders in each jurisdiction.

- **OffshoreAlert Brazil 2019**

Sao Paulo, Brazil - 16-17 September 2019,

Panelist on *'Asset Recovery Latin America: Tips From The Experts'*

Leading international fraud and value recovery attorneys discussed emerging and dominant issues that impact the ability to be successful and effective in Latin America.



Practice Areas

- Litigation & Dispute Resolution
- Insolvency & Restructuring
- Trust & Foundations
- Private Client

Recommendations

Brian has been consistently ranked **Band 1** in **Chambers Global** for many years, as well as being ranked **Band 1** in **Chambers High Net Worth Guide** which focuses on the international private wealth market.

He is ranked by **The Legal 500 Caribbean, Who's Who Legal** for Litigation and Asset Recovery and is recognised in **Citywealth's list of the Top 100 Trust Litigators and Polymaths**. He was also named the exclusive winner of **Lexology's Client Choice Award 2020** for Litigation in The Bahamas.

Senior Partner Brian Simms QC is highly esteemed in the Bahamas as one of the jurisdiction's leading litigators. He draws particular acclaim for his work in the financial services sector, and has a wealth of experience handling disputes stemming from insolvency and liquidation proceedings. **(Chambers Global 2021)**

Brian Simms QC is a hugely admired practitioner in this market. One of Simms' Bahamian peers reports that **"he does some big trust litigation work and is one of the few attorneys on the island to do this to a high level."** A local fiduciary describes Simms as **"a brilliant litigator and a steady hand,"** adding that **"he has very interesting thoughts on complex matters and is good to bounce ideas off."** Simms also attracts strong praise from onshore lawyers for his work on high-value Bahamas trusts cases. One such source says that, on a recent matter, Simms was **"very focused, very efficient, highly experienced and well regarded – a pleasure to work with."** **(Chambers HNW 2020)**

"Exceptionally smart and well informed. Established career. Resilient and thoughtful". (Citywealth Leaderslist 2020)

"Brian Simms QC has established himself as a popular choice for global companies encountering disputes in the Bahamas. His wide-ranging practice covers contentious trusts, insurance liability and insolvency matters. One commentator described him as "excellent, an incredibly strong lawyer." (Chambers Global 2020)

"Brian Simms QC is recognised by peers as "one of the best lawyers in the Bahamas" in the asset recovery space, and a top choice for international offshore fraud and commercial litigation proceedings." (Who's Who Legal 2020)

Brian is recognised as a **"go-to lawyer for any serious dispute"** and **"a standout practitioner in the Bahamas"** **(The Legal 500 Caribbean, 2020)**

He is described by clients as a **"a top offshore silk,"** in Chambers Global and is one of the jurisdiction's most **"highly regarded"** litigators. **"He deals with the most substantial cases"** and is **"one of the strongest players out there".**

Clients praise his formidable **"depth of knowledge and experience"** and **"clear and robust"** style, appreciating his no nonsense approach he's noted for **"telling you straight where you are and if you are likely to win".**

Brian Simms QC is "the best litigation lawyer in the Bahamas," states one interviewee, explaining: **"He prepares well and is excellent in court."**

Another adds: "**He really understands clients' objectives, he is very familiar with the legal framework and is very good at marrying the two skills of client handling and legal expertise.**"

A legal market source comments: "**I have been very impressed by the extent of his knowledge and the thorough preparation he has put in. He get his point across well and ensures he gets to the heart of the matter.**" Peers further describe him as "**focused, tenacious, and an all-around great lawyer.**"

Who's Who Legal says: Brian Simms QC is "**a no-nonsense and pragmatic lawyer**" who sources would "**certainly recommend**" for asset recovery matters.

Background & Qualifications

- Brian attended both McGill University and Exeter University.
- He is an Honorary Fellow at the Institute of for International Legal Studies.
- Appointed Queens Counsel in 2009
- Acting Judge of the Bahamas Supreme Court 2015

Memberships & Professional Affiliations

- Member of the Bahamas Bar Association
- Previous Member of the Bahamas Bar Council
- Member of the Bahamas Constitutional Commission
- Overseas Member of the English Chancery Bar
- INSOL

News & Articles

- Contributing author to: *Insurance Law and Regulations*, edited by Dennis Campbell and published by Oceanic Press. Authored chapter on Bahamian law (2009)
- *Attacks On Offshore Trusts*, Conference paper for the New York State Bar Association (2010)
- *Vulnerability of Offshore Trusts – Recent Developments*, published in the conference materials for the Offshore Alert Conference held in Miami, FL (May 2012)
- *Recent Developments in Offshore Trust Litigation*, Conference paper for the New York State Bar Association (2016)
- *Bahamian Supreme Court identifies its jurisdictional limits to assist in trust arbitration proceedings*, Lexology

- *MV v DSL & GV: arbitration, governing law and jurisdiction clauses*, Oxford University Press (*Trusts & Trustees*, Volume 25, Issue 10, December 2019, Pages 1086–1089)