



Graeme Halkerston

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Clerks' Details

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Qualifications and Appointments

- MA (Jurisprudence), Oxford University, Martin Wronker Prize Winner (Tort)
- LL.M., University of Pennsylvania, Thouran Scholar
- Awarded Queen Mother's Scholarship by Middle Temple
- Awarded Bar Council Stage Scholarship (DG Internal Market)
- Full admission to the Cayman Islands Bar (2007-2012)

“He is the complete package as he’s very imaginative and highly focused”

Chambers and Partners, 2015

Practice Overview

Graeme has wide-ranging commercial experience with particular emphasis on commercial, banking and financial services cases with international elements. He has broad experience of litigation involving hedge funds, private equity structures and other alternative investment vehicles, including related insolvency and company law issues, and disputes involving complex financial products, including derivatives, leveraging vehicles and structured products. Another significant element of Graeme's practice involves cross-border fraud, particularly the interim orders associated with such disputes including freezing orders, disclosure orders, anti-suit injunctions and jurisdiction challenges.

He is a specialist in offshore litigation and disputes involving offshore structures and entities, having worked for several years as a partner in a leading firm in the Cayman Islands. Graeme has spoken widely on issues of offshore law associated with the global economic downturn.

He also undertakes professional liability work, both claimant and defendant, particularly in relation to claims associated with financial services, including claims against auditors, lawyers, directors, investment managers, fund administrators and other professional service providers. Recent professional liability work has included advising auditors and fund administrators on claims arising from the Madoff scandal.

Publications

- Wilberforce News Alert: *Rubin v Eurofinance* (29.10.12).
- 'Fairfield Sentry and hedge fund clawback claims: the beginning of the end or the end of the beginning?' *Corporate Rescue and Insolvency* (1.10.2012).
- Speaker, Florida State Bar International and Arbitration Conference, Miami, "Hot Topics In International Litigation" (2012).
- Speaker, American Bankruptcy Institute, International Insolvency Symposium, Dublin, 'Developments In Offshore Jurisdictions' (2011).
- Speaker, Society of Trust and Estate Practitioners, Grand Cayman, 'Dormant Accounts' (2011).
- Speaker, Florida State Bar International and Arbitration Conference, Miami, 'Your Client Is Sued In The United States, Now What?' (2011).
- American Bankruptcy Institute, 'Recent Developments In Restructuring Litigation In The Cayman Islands - 2011 In Review' (2011).



Publications continued

- The Hedge Fund Journal, 'Minority Shareholders' Litigation Remedies Under Cayman law' (2011).
- Resolution – Offshore, 'The Use of Depositions In Cayman' (2010).
- Legal Week, 'The Legal Labyrinths of Leverage' (2009).

Professional Liability

Graeme acts in professional liability cases for both claimants and defendants, including claims assisted by insurers and litigation funders. His particular emphasis has been in relation to claims involving banking and corporate finance professional services, advising in respect of the conduct of auditors, lawyers, investment managers, financial advisers, fund administrators and trustees. Graeme is recommended in *The Legal 500* for his professional liability work.

Representative work includes:

- Acting for two major international auditors in respect of professional liability claims arising from the collapse of the funds managed by Bernard Madoff. Graeme provided expert evidence in New York proceedings on the scope of an auditor's duty of care to shareholders in a hedge fund, the effect of contractual limitation clauses and the doctrine of reflective loss. Sums claimed in various actions were in excess of US \$4bn.
- Advising local and global auditors in defence of claims arising from the collapse of the Bank Velox Group, one of the largest corporate frauds in South America, with claims asserted in excess of US \$1bn. Case involved issues of illegality, third-party claims and the liability of the umbrella organisation.
- Acting for liquidators of several collapsed hedge fund groups advising on claims against professional service providers and former investors. Work has included claims involving funds based in Bermuda, the Bahamas, the BVI, Cayman, Ireland, Luxembourg, the UK and the US.
- Representing Deloitte in defence of \$300m audit negligence action following the collapse of the National Warranty Insurance Group. Assisted co-ordination of the claim with parallel litigation in the US. Cases focussed on allegations as to the auditor's understanding of the company's insurance business.
- Acting on professional liability claims against the legal adviser arising out of the acquisition and liquidation of Rangers football club.
- Advising on a broad range of product mis-selling disputes including:
 - Interest rate swap mis-selling, including cap and collar products and OTC interest rate products
 - FOREX derivative mis-selling claims including TARFS
- Advising on misrepresentation and negligent advice claims against banks, including issues of scope of duty, contractual estoppel, quantum, limitation and regulatory redress.
- Advising a major multi-national company in respect of direct claims against the UK by creditors and employees of the Brazilian subsidiary following the insolvency of the subsidiary.
- Advising beneficiaries of family trusts in claims against a trustee for breach of trust associated with an estate valued in excess of US \$200m. Case involved issues of English, Cayman, Norwegian and Swiss law. The beneficiaries successfully removed trustee and obtained judgment for losses to the trust and to beneficiaries.
- Representing bank in the defence of a claim brought by property developers alleging losses from calling in of loans to property development group and the realisation of assets by an LPA receiver.



Professional Liability continued

- Advising group of major international banks on claims following the collapse of the Parmalat Group after the discovery of a €8bn black hole in the group.
- Acting for provisional liquidators of Barings Plc on claims against auditors and directors following the collapse caused by the fraudulent activities of Nick Leeson.

Graeme has written and spoken widely on issues of cross-border professional liability and associated risk management. He has advised professional service providers on risk management matters associated with engagement letters both in general and on specific engagements. He was the winner of the Martin Wronker Tort Prize for the best tort paper at Oxford University.

Commercial

Banking & Finance

Graeme has acted in a broad range of high-profile banking and financial services matters. He has particular expertise in claims involving hedge funds and other alternative investment structures and banking litigation and regulatory disputes involving parallel litigation especially in the US and offshore jurisdictions. He has considerable experience of litigation involving derivative products and this has proved valuable in advising in respect of product mis-selling disputes. His work includes; advising on matters of litigation and regulatory redress including the use of regulatory and pre-action processes in domestic banking claims; advising on the scope of compensation under the FSCS scheme and the effect of parallel claims on dispute participants.

Representative work includes:

- Acting for a high-net worth investor in dispute with a global investment bank as to the methodology of a calculation of redemption charges in a structured note product and related misselling issues following US \$750m investment. Interim issues included court managed confidentiality regimes for proprietary information and successfully resisting anti-suit injunctions. The case centred on derivative pricing issues.
- Acting for lending syndicate enforcing a €250m loan to fund a vehicle which had invested in the German HSH banking group. The case involved parallel proceedings in the High Court, Delaware, Alberta and the Cayman Islands.
- Representing a Russian high net worth individual on effect of freezing orders, disclosure orders, third party orders and parallel relief in offshore jurisdictions following claims in High Court for damages in excess \$200m arising out of a corporate finance transaction.
- Advising a on broad range of product mis-selling disputes including:
 - Interest rate swap mis-selling, including cap and collar products and OTC interest rate products
 - FOREX derivative mis-selling claims including TARFS.
- Advising on the misrepresentation and negligent adviser claims against banks, including issues of scope of duty, contractual estoppel, quantum and limitation.
- Advising on matters of litigation and regulatory redress including the use of regulatory and pre-action processes in domestic banking claims.
- Advising on the scope of compensation under the FSCS scheme and the effect of parallel claims on dispute participants.
- Advising a hedge fund in respect of claims against prime broker for increases in margin calls which lead to significant liquidity and investor confidence problems for the fund.
- Advising a major international private bank in relation to third party claims brought in the High Court against its Luxembourg subsidiary following the discovery of a significant international corporate fraud centred on allegations in respect of the management of accounts of parties associated with the fraud.



Commercial continued

- Advising several major accountancy firms in respect of professional liability claims arising from their role in the audit of funds which in practice acted as 100% feeder funds into funds managed by Bernard Madoff and cross-border litigation management matters related to venue and choice of law issues.
- Representing liquidators of Master and Offshore Feeder Funds in hostile investor-led liquidation proceedings following the suspension of redemption in a PIPE fund and reorganisation pending a US Department of Justice investigation.
- Advising major US banks in respect of matters arising from the collapse of Parmalat, including jurisdictional issues, conflict of laws issues and issues of English corporate and banking law.
- Standing adviser to a group of funds which arranged a major restructuring after liquidity problems in specialist credit markets. Worked with corporate funds lawyers in drafting of revisions to articles and offering documentation. Assisted negotiations with investors threatening claims against the fund and the effecting of redemptions in kind. Acted to protect the fund against threats of New York litigation by an investor at a critical stage of the restructuring process through successful application for anti-suit and anti-anti suit relief.
- Acting for a partner in a Chinese real estate private equity fund in a dispute related to carry entitlements.

Commercial

Graeme has experience of acting in a wide-range of commercial disputes. He also regularly advises on obtaining and resisting injunctions, domestic and multi-jurisdiction freezing orders, disclosure orders, third-party freezing orders, anti-suit injunctions and related relief. Graeme is recommended for Chancery Commercial work in *Chambers and Partners 2014*, where he is described as "exceptionally switched-on" and "very enthusiastic".

Representative work includes:

- Acting for investor in structured note product in dispute with note provider as to the construction of the redemption terms. Case involved detailed consideration of factual matrix evidence and expert banking evidence.
- Advising a major multi-national company in respect of direct claims against the UK by creditors and employees of the Brazilian subsidiary following the insolvency of the subsidiary.
- Acting for investors in a collapsed internet company for claims in economic torts against competitor for losses caused by a hacking campaign managed by the director of the competitor.
- Representing a funded party in a claim against a litigation funder who had withdrawn funding for pending Commercial Court litigation.
- Acting for an international bank on a claim by liquidators of an oil trading company for repayment of sums in excess of US \$100m paid under letter of credit honoured while winding-up proceedings were pending.
- Representing Russian high-net-worth individual on the effect of freezing and disclosure orders and parallel relief in offshore jurisdictions following claims in the High Court for damages in excess of US \$200m arising out of a corporate finance transaction. Case required specific consideration of the scope of third-party orders in respect of bespoke offshore fund structures.
- Representing Russian conglomerate in a dispute relating to the sale of a major Russian oil company including the discharge of injunctions restraining the sale pending arbitrations.



Commercial continued

Recently acted on several disputes related to the termination of investment joint ventures and partnerships including:

- Advising a partner in a Chinese private equity fund in dispute with the fund's management as to carry entitlements.
- Advising a hedge fund as to claims following the withdrawal of seed funding from a partner bank.
- Advising a partner in a London-based hedge fund in claims against fund and remaining directors following investment disagreements at the fund.
- Advising a major international accounting firm in a dispute arising with a departing insolvency office holder.
- Advising a former director of a Kuwait-based energy fund following his exclusion from the management of the fund.
- Advising a group of major international banks on claims following the collapse of the Parmalat Group after the discovery of €8bn black hole in group.
- Acting for an international bank in the tracing and recovery of assets diverted from the bank by a fraudulent trader. Matter required emergency disclosure orders, gagging orders and co-ordination of the roll-out of simultaneous freezing orders in multiple jurisdictions.

Company

Graeme has a broad experience of company law disputes, and in particular shareholder disputes, claims involving investors in complex investment structures and joint venture disputes. Graeme is recommended for Company Law in *The Legal 500*.

His recent work has included advising on the scope of directors' duties, claims by shareholders arising from alleged corporate misconduct and minority oppression issues. He has provided expert evidence on the scope of derivative actions and directors' obligations to shareholders in several jurisdictions in the US.

Representative work includes:

- Acting for major fund manager who which was a minority investor in an investment vehicle which operated Peruvian power plant concessions following debt for equity restructuring. Assets in structuring were valued at in excess of US \$110m. Advised on parallel litigation in Peru, Cayman and New York and non-litigation options for shareholders and minority board members, including 'empty chair' strategies. The case was successful and went to expedited trial eight weeks after issue of proceedings. Continued with advisory role in liquidation of holding company resulting in a successful sale of client's interests in the investment.
- Representing the director and related companies in a dispute between joint venturers in mining and metallurgical projects following the breakdown of relations after the purchase of the Fabergé brand for commercial exploitation. Claims focused on claims for alleged diversion of corporate opportunities and the scope of derivative and doubly derivative actions in company and limited partnership structures.
- Acting for a minority Kuwait-based investor in an energy fund company following his exclusion from management and the subsequent divestment of assets from the company. Advised on cross-claims for breach of fiduciary duty and assisted co-ordination of parallel litigation in US. Provided expert evidence to Massachusetts courts on directors' duties and derivative actions.
- Advising a major multi-national company in respect of direct claims against the UK by creditors and employees of the Brazilian subsidiary following the insolvency of the subsidiary.



Commercial continued

- Advising Taiwan-based majority shareholders in defence of just and equitable winding petition of the holding company of Vietnamese trading entities which had been valued in excess of US \$750m by the Petitioner. Claim successfully struck out following rejection of *O'Neil v. Phillips* offer.

Insolvency

Graeme has particular expertise in insolvencies involving financial services organisations, particularly banks, hedge funds and insurance companies. He also has wide experience of the cross-border issues associated with the interaction of offshore entities in international insolvency, having worked for several years as a litigation partner in a leading offshore firm. He has spoken on cross-border insolvency issues at international conferences in Europe and the US.

Graeme was described in *The Legal 500* as having "**an intuition for international insolvency principles**" and "**he is experienced and calm personified**". He is recommended for insolvency law, company law and chancery commercial.

Representative work includes:

- Advising lending syndicate enforcing a €250m loan to a fund vehicle which had invested in the German HSH banking group. Case involved parallel proceedings in the High Court, Delaware, Alberta and the Cayman Islands and resulted in the hostile winding-up of the fund vehicles and appellate determination of comity issues arising from parallel *Chapter 11 proceedings in Delaware*.
- Representing liquidators of master and feeder funds in hostile liquidation proceedings following suspension of redemptions pending a US Department of Justice investigation into the fund manager's conduct. Funds' assets were valued at in excess of \$800m. Successfully applied to remove the liquidators appointed by the fund manager in the opposed application.
- Acting on professional liability litigation arising from the collapse of Rangers football club.
- Acting on the recognition and enforcement process in the English High Court in support of ongoing insolvency proceedings in Guernsey and the Cayman Islands.
- Acting for liquidators of hedge fund on 'clawback' claims against pre-liquidation redeemed investors following collapse of fund as a result of fraud. Advised on jurisdictional issues in Cayman and United Kingdom, and the scope of "clawback" claims.
- Advising an international bank on a claim by liquidators of an insolvent oil trading company for repayment of sums in excess of US \$100m paid under letter of credit honoured while winding-up proceedings were pending.
- Standing adviser to a group of funds which arranged a major restructuring after liquidity problems in its specialist credit markets. Worked with corporate funds lawyers in drafting of revisions to articles and offering documentation. Assisted negotiations with investors threatening claims against the fund and the effecting of redemptions in kind. Acted to protect the fund against threats of New York litigation by an investor at a critical stage of the restructuring process through successful application for anti-suit and anti-anti suit relief.
- Acting for major fund manager who was a minority investor in an investment vehicle which operated Peruvian power plant concessions following debt for equity restructuring. Assets in the structuring were valued at in excess of US \$110m. Co-ordinated parallel litigation options in Cayman, New York and Peru. Matter led to just and equitable winding up petition together with anti-suit injunctive relief and an expedited trial and a successful trial eight weeks after issue of proceedings.



Commercial continued

- Advising liquidators of Bermuda-based hedge fund on legal issues arising after the discovery of fraud by the investment manager, including professional liability claims, freezing orders and asset tracing and 'clawback' claims.
- Acting for a major international insolvency firm on dispute with insolvency office holder who was leaving the firm. Obtained, on an emergency basis, co-appointments on all the office holder's matters.
- Advising on the scope and effect of retention of title clauses for an industrial engine supplier following insolvency of a major customer.
- Advising regulator appointed managers of the collapsed Colonial Life insurance group. Obtained court approval of settlement of the outstanding insurance claims and investment product payments.
- Regularly acts both for claimants and defendants on professional liability claims arising out of insolvencies (see Professional Liability CV).