

Serial No. 2008/94

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CHANCERY DIVISION**

**IN THE MATTER OF THE COMPANIES ACT 1931**

**AND IN THE MATTER OF KAUPTHING SINGER & FRIEDLANDER (ISLE  
OF MAN) LIMITED**

**AND IN THE MATTER OF THE JOINT PETITION OF KAUPTHING  
SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED AND THE  
FINANCIAL SUPERVISION COMMISSION dated the 9<sup>th</sup> day of October 2008**

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**AFFIDAVIT OF GABRIEL MOSS**

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Exhibit GM1 in the affidavit of Gabriel Moss

## Gabriel Moss QC

### Contact details:

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### Education:

First Class Honours Law Degree from Oxford University: BA (Jurisprudence) (1971)  
Postgraduate Law Degree from Oxford University (BCL) (1972)

### Scholarships and awards:

Honorary Scholar at St. Catherine's College, Oxford University  
Hardwicke Scholarship, Lincoln's Inn (1971)  
Eldon Scholarship (1975, Oxford University)

### Teaching positions:

Lecturer in Law at the University of Connecticut Law School 1972-1973.  
(Formerly) Part-Time Lecturer/Tutor at Oxford University (St. Edmund Hall and St. Catherine's Colleges), London School of Economics, Council of Legal Education. Occasional university lectures: NYU (2008), Brooklyn Law School at University of Bologna (2005).

### Professional career:

Called to the English Bar: Lincoln's Inn (July 1974)

Appointed Queen's Counsel, 4th. April 1989

Appointed Department of Trade Inspector into The Bestwood Plc, 1989 (Report Published 1994)

Appointed by the Secretary of Trade and Industry as the Secretary of State's arbitrator in a commercial arbitration (1989)

(Founding) Member of the Board of the Insolvency Research Unit, King's College, London (chaired by Lord Browne-Wilkinson) (1991) - now at the University of Sussex.

Member of the Editorial Board of Insolvency Intelligence (Sweet & Maxwell) (1992-).  
Chairman (1994-)

Member of the Insolvency Law Sub-Committee of the Consumer and Commercial Law Committee of the Law Society (1991-)

Member of the Insolvency Committee of Justice, the British section of the International Commission of Jurists (1993-)

Member of the Advisory Editorial Board of The Receivers Administrators and Liquidators Quarterly (1993-)

Member of the Editorial Board of International Insolvency Review (Wiley) (2000-)

Honorary Member of the Association of Fellows and Legal Scholars of the Center for International Legal Studies, Salzburg (1994-)

Associate Member of Insol Europe (1996-2001) Full Member (2001-); Member (by invitation) of the Core Group of the Academic Wing (2003-); Member (by invitation) of the Supervisory Board of the Academic Forum (2008-)

Elected as Fellow of the Society for Advanced Legal Studies at the Institute of Advanced Legal Studies, London University (Nov. 1998)

Elected as Bencher (member of governing body) of Lincoln's Inn, one of the four Inns of Court which make up the English Bar (Nov 1998) ; member of the Education Committee (1998-); member of the Specialist Bar Association Working Group (2003-)

Full Member (by invitation) of the Insolvency Lawyers' Association (March 1999 - )

Member of the Bank of England Working Group on Property Interests in Investment Securities (2003-)

Member of the Review Panel formed by the UK Insolvency Service to assist in considering changes to English law and practice in the light of the EU Insolvency Regulation (2000-)

Member (by invitation) and of the International Insolvency Institute and Co-Chair of Committee on Inter-Court Communications in Insolvency Matters (2001-); Director (2003-); Co-Chair of EU25 committee and member of the Membership committee;

Member of the FA Premier League Disciplinary Panel (for insolvency matters) (2005-)

International Advisor to the American Law Institute/International Insolvency Institute project on Transnational Insolvency: Principles of Co-Operation (2006-)

Member of the Review Panel set up by the Insolvency Lawyers Association to consider the enactment of the UNCITRAL Model Law in Great Britain (2005-2006) and the extension of the Model Law to banks and insurers (2007-)

Member of the Financial Markets Law Committee of the Bank of England (2006-)

Member of the Bank of England Working Group on Building Society and Incorporated Friendly Society Set-Off (2007-)

Member of the Bank of England Working Group on Financial Collateral (2007-)

Lincoln's Inn representative on the Training for the Bar Committee of the Bar Council (2007-)

Authorised by the Lord Chancellor to sit as a Deputy High Court Judge (2001-). Judgments reported include *Re Windows West Ltd., Official Receiver v Zwirn*. [2002] BCC 760 (disqualification of directors); *Shepherd v Legal Services Commission* [2003] BCC 728 (bankruptcy); *Macepark v Sargeant* [2004] 3 AER 1090 (rights of way); *Nexus Communications v Lambert* Times, 3 March 2005 (doctrine of election); *Tamares v Fairpoint* (2006) [2007] 1 WLR 2148 and 2167; (2006) 41 EG 226, (2007) 14 EG 106, (2007) 7 EG 143 (CS) (rights to light, damages in lieu of injunction); *The Governors of the Peabody Trust v Reeve* Times Online Law Reports 9June 2008 (right of unilateral variation, unfair contract terms).

#### **Areas of practice:**

Practising barrister specialising in business and financial law and in particular insolvency and commercial/company matters.

#### **Major publications:**

Co-Editor of Rowlatt on Principal and Surety (4th. ed 1982, 5th. ed. 1999) Sweet and Maxwell)

Co-Editor of Lightman and Moss, Law of Administrators and Receivers of Companies, Sweet and Maxwell.

(1st ed., 1986, 2nd. Ed., 1994, 3rd ed., 2000, 4<sup>th</sup> ed 2007).

"Insolvency Administration for Foreign Companies in England" (1993) 15 Comparative Law Yearbook of International Business 3 (Center for International Legal Studies, Salzburg)

Joint Consultant Editor of Totty Moss and Segal on Insolvency (5 volume encyclopaedia of insolvency law) (1996-) Sweet & Maxwell

Joint Author of chapter 6 "Cross-Border Issues" in Insolvency of Banks (1996), ed. Odith, FT Law and Tax

Joint Author of chapter 6 "Cross-Border Security Enforcement and the Conflict of Laws" in Restitution and Banking Law (1998), ed. Rose, Mansfield Press, Oxford

Editor in Chief of, and contributor to Moss Kawaley Seife and Montgomery, Cross-Frontier Insolvency of Insurance Companies (2001), Sweet & Maxwell

Joint Editor of and contributor to Moss Fletcher and Isaacs, "The EC Regulation on Insolvency Proceedings: A commentary and Annotated Guide" (OUP 2002).

Joint Editor of and contributor to Moss and Wessels, "EU Banking and Insurance Insolvency" (OUP, 2006)

Author of chapter "The Decision in Spectrum Plus" in "Company Charges: Spectrum and Beyond" (OUP) edited by Getzler and Payne (2006)

### Some major cases:

Air Europe; Asia Pulp & Paper (Bermuda/Singapore/Indonesia/PRC); Atlantic Computers; BAIC; Barings (UK/Singapore), Baltic (Jersey/Sweden); Barlow Clowes (Gibraltar), BCCI (UK/ Cayman/ Luxemburg), Bermuda Fire & Marine (Bermuda), British and Commonwealth Plc, CA Pacific Group (Hong Kong), Carlyle Capital Corp (US/Guernsey), Carrion (Hong Kong), Cenargo (US/UK/EU), Cheyne Finance, Collins & Aikman (UK / EU), Coloroll, Courts Plc, Dan Air, Drexel, Dynegy, Elektrim (UK/Poland); Energis, Enron Directo SA (UK/Spain), Eurotunnel (UK/France); Farepak; Federal Mogul/T&N (US/UK), Equitable Life GAR scheme, Federal Mogul/T&N ("one of the largest and most complex cross-border restructuring proceedings in history" – Global Turnaround, 27 March 2008), Ferranti, Flag Group (Bermuda), Global Crossing (US/Bermuda), GPA(Ireland/UK), Guangdong Provincial Government Window Companies (largest ever corporate reorganisation in PRC/Hong Kong), HIH (US/UK/Australia), ICO Global group (US/Bermuda/Cayman), International Leisure Group, IPOC (Bermuda); Kentish Homes, Kong Wah/Akai (largest ever insolvency in Hong Kong), Leyland Daf, Lowndes Queensway, the KWELM insurance companies (US/UK/Bermuda), Maxwell /RMG/MCC/Mirror (US/UK), Metronet, Mountleigh, MG/Rover, MRM (Bermuda), Municipal Mutual/MGI, Asil Nadir/Polly Peck, NEMGIA, New Cap Re (Bermuda/Australia/UK), Northern Rock Plc; NTV (Russia/Gibraltar), Ocean Marine, Olympia & York, Orion (UK/US); Pan Electric (Singapore), Parkfield, Parmalat/Eurofood (Cayman/Ireland/Italy/US), Peregrine (Hong Kong/UK), Polestar, Powerhouse, Rafidain Bank (UK/Iraq), Railtrack Plc, Rush and Tompkins, Spectrum Plus, TXU (Europe), Stojevic (UK/Austria); Unexim Bank (Russia), WFUM Pools/Sovereign (largest pool scheme ever in London market); Yukos (Russia, US, UK).

### Regulatory Practice

Advised FSA and Treasury in the UK and financial regulators in Gibraltar, Guernsey, Hong Kong and Bermuda. Obtained the appointment of Provisional Liquidators to BCCI as lead counsel for the Bank of England and acted as leading counsel on the bank's winding up petition against BCCI.

**Pensions**

When acting as DTI Inspector in relation to The Bestwood Plc and Atlanta Fund Managers Ltd (report published by HMSO in 1994), investigated and reported on the improper use of pension funds and made recommendations on law reform to safeguard pension funds. Advised on pension problems relating to major collapses such as T&N, in parallel US Chapter 11 and UK administration. As lead counsel conducted the defence of Credit Suisse in a major trial against pension funds relating to the affairs of Robert Maxwell and his companies.

**Foreign practice:**

Admitted in relation to specific cases to foreign Bars in Bermuda, Hong Kong, Isle of Man and Gibraltar (generally admitted). Addressed (with the permission of the court) the Federal Bankruptcy Court for the Southern District of New York in the *KELM* case. Expert witness in that court in relation to English and Bermudian law in the *Hopewell* case (solvent Bermudian scheme of arrangement). Expert witness on Guernsey law of Protected Cell Companies in English Commercial Court and in an international arbitration.

Invited to speak as one of four experts at a public hearing held by the Legal Affairs Committee of the European Parliament on the draft European Insolvency Convention (April 1998), which led to the passing of the Regulation on insolvency proceedings (1346/2000). Leading Counsel for Italian special administrator in the *Eurofood* case in the European Court of Justice. Expert witness in Italian courts on English and European insolvency law in relation to various claims against Parmalat.

**Languages:**

Working Legal French; Conversational Hungarian; Basic German