H&J FOCUS

HIGGS & JOHNSON COUNSEL & ATTORNEYS-AT-LAW VOLUME 56, ISSUE 2/2012

FIRM ANNOUNCES NEW MANAGING PARTNER AND GLOBAL MANAGING DIRECTOR

IN THIS ISSUE

1 Firm Announces New Managing Partner & Global Managing Director

2 Clawbacks, Shadows & Other Curiosities - The New Insolvency Regime

4 Mortgage Possession in the Cayman Islands - Legal & Procedural Issues

6 "Winding Up Acts" Result in Net Gain

7 Attorneys' Appointments to Statutory Boards, Commissions & Committees

8 FOCUS Interviews the new Managing Partner & Global Managing Director

Higgs & Johnson is pleased to announce that Mr. Oscar N. Johnson Jr., Partner and Head of Litigation, has been appointed as the new Managing Partner and Global Managing Director of the firm effective 2 July 2012. He succeeds Mr. Philip C. Dunkley, QC who had management responsibility for the firm from 1999 – 2006 and again from 2009 – 2012. Mr. Dunkley will remain as Senior Partner of the firm.

Under Mr. Dunkley's leadership, the firm opened offices in Freeport, Grand Bahama and Lyford Cay, New Providence. A well respected commercial litigator, he has served as a member of the Judicial and Legal Services Commission, the Supreme Court Rules Committee and Disciplinary Tribunal, and as an acting Justice of the Supreme Court. Mr. Dunkley's exemplary service to the legal community was also acknowledged by his elevation to Her Majesty's Counsel.

Mr. Johnson joined the firm as an Associate in 1985 and became a partner in 1992. He practices a full range of corporate and commercial law, specialising in commercial and civil litigation, merchant shipping and admiralty law, insurance, international finance and employment law. Mr. Johnson has served as a member of The Bridge Authority, St Andrew's School Board of Directors, the Disciplinary Tribunal of the Bar Council, the Arbitration Tribunal (a precursor to the Industrial Tribunals), and as advisor to the Nassau Tourism & Development Board.

Higgs & Johnson's objective is to remain at the forefront of the legal profession, providing clients with innovative, quality and pro-active services. The firm offers a full complement of contentious and non-contentious commercial, real property and private client services. The firm is headquartered in The Bahamas at Ocean Centre on the Montagu Foreshore, Nassau with offices throughout The Bahamas and in the Cayman Islands.

For additional copies of FOCUS, please contact Antonia Burrows at ***242 502 5200*** *or at* ***aburrows@higgsjohnson.com.***

Clawbacks, Shadows & Other Curiosities - The New Insolvency Regime

Portia J. Nicholson

Companies in crisis are often tempted to sell, charge, or otherwise dispose of assets so as to put them beyond the reach of creditors. The ability to reverse actions calculated to give one creditor a preference over others at a time when the company is unable to pay its debts is known as a right to "clawback" and is an extremely important weapon in the arsenal of a liquidator.

"...under the previous regime, the period during which dispositions were subject to reversal (the "clawback period") was three months prior to the commencement of liquidation. The New Act extends the clawback period from three to six months."

The Companies (Winding Up) (Amendment) Act, 2011 (the "New Act"), which came into force on April 30, 2012, includes provisions that expand significantly the circumstances in which the right of clawback may be exercised and impose criminal liability on directors in certain circumstances. Among the dispositions that may be assailed, are those that comprise fraudulent preferences and dispositions at an undervalue, both of which will be discussed in greater detail below. In addition, the New Act makes directors (including shadow directors) criminally liable for fraudulent trading and insolvent trading.

Fraudulent Preferences

A fundamental principle of insolvency law is that unsecured creditors rank "pari passu" i.e. they have the right to equal (or pro rata) treatment. When an insolvent company acts in a way that either gives a greater right to any asset to one creditor or moves assets beyond the reach of creditors, that action may be categorized as a "fraudulent preference".

Section 241 of the New Act, which replaces section 72 of the Bankruptcy Act as the provision governing fraudulent preferences with respect to companies, is different from the former provision in two principal respects.

Firstly, under the previous regime, the period during which dispositions were subject to reversal (the "clawback period") was three months prior to the commencement of liquidation. The New Act extends the clawback period from three to six months.

Further, whereas the old regime preserved the rights of a purchaser, chargee or payee acting in good faith for valuable consideration, the New Act does not do so. This raises the possibility that a liquidator may be able to "claw back" assets that have been acquired in good faith under arms length terms by an innocent third party.

In order for a disposition to be reversed, the liquidator must prove that at the time it was made the company was unable to pay its debts. Under the provisions of the New Act, a company is unable to pay its debts if:

- a creditor serves a statutory demand for payment of a debt and such demand is not paid or secured or compounded to the creditor's satisfaction within 3 weeks; or
- execution of a judgement order or decree is returned either wholly or partially unsatisfied; or
- it is proven to the court's satisfaction that the company is unable to pay its debts.

Dispositions at an Undervalue

The other type of transaction giving rise to "claw back" rights under the Act is a "disposition at an undervalue". A disposition of property is any action resulting in the creation, transfer or extinguishment of a legal or equitable interest in property. This includes a conveyance, transfer, assignment, lease, pledge or mortgage. Where any asset of a company is disposed of either for no consideration (i.e. as a gift) or for consideration with a value that is lower than that of the asset, with the intent to defraud creditors, the disposition may be avoided (reversed) by the court on the application of the official liquidator. Proceedings for the avoidance of a disposition must be commenced within two years of the disposition complained of. If the court sets aside the disposition but is satisfied that the person to whom the property had been transferred has not acted in bad faith, such transferee will be awarded his costs incurred in defending the legal proceedings and shall have a first charge over the property for such costs.

In addition to expanding the clawback rights of a liquidator, the New Act creates criminal sanctions for certain trading activities as well as fraudulent actions taken prior to or in the course

of winding up proceedings.

Fraudulent Trading

Where a company is being wound up, the liquidator may obtain a declaration from the court for any person who knowingly participated in carrying on the business with the intent to defraud creditors or for any fraudulent purpose to contribute to the company's assets. The fraudulent trading that might result in a declaration for such a contribution may have taken place "at any time before the commencement of the winding up".

"... shadow directors (along with other accountable corporate officers) may face criminal liability where fraud or certain other types of misconduct occur within twelve months of the company being wound up."

Insolvent Trading

An order for contribution may also be made against past or present directors if the court is satisfied that before the winding up commenced such director knew or ought to have known that there was no reasonable prospect that the company would avoid being wound up by reason of insolvency. A company is insolvent if it is unable to pay its debts in the sense outlined above or if the value of its liabilities exceeds its assets.

It is a defence for a director to prove that he took every step reasonably open to him to minimize the loss to the company's creditors. What the director knew or ought to have known will be determined on both an objective and subjective basis, that is, what facts would have been known, conclusions reached or steps taken by a reasonably diligent person having the general knowledge, skill and experience that may be reasonably expected of a person carrying out the same functions as those carried out by or entrusted to the relevant director and having the general knowledge, skill and experience of that director.

Out of the Shadows

The persons who may be ordered by the court to contribute to a company's assets because of insolvent trading include a shadow director. A shadow director is not a director in the formal sense of having been appointed in that capacity in accordance with the company's governing documents. The New Act defines a shadow director as "any person in accordance with whose directions or instructions the directors of a company are accustomed to act". This does not include a person who gives advice to the board merely in a professional capacity.

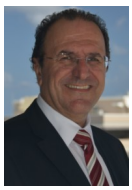
Aside from their liability to contribute to assets where they have participated in insolvent trading, shadow directors (along with other accountable corporate officers) may face criminal liability where fraud or certain types of misconduct occur within twelve months of the company being wound up.

The four areas in which shadow directors may be subject to criminal sanctions are as follows:

- Fraud in anticipation of winding up - this includes:- concealment or removal of company property valued at ten thousand dollars or more; concealment, destruction, mutilation or falsification of documents relating to the company's affairs; and the disposition of property obtained on credit and not fully paid for, in each case with intent to defraud the company's creditors or contributories.
- Transactions to defraud creditors — including any gift or transfer or charging of property or causing or conniving in the levy of execution against the company's property with intent to defraud the company's creditors or contributories.
- Misconduct in the course of winding up — includes failure to make full and accurate disclosure of the company's property, the date and manner of any disposition of property, the person/s to whom it was transferred and the consideration paid for any disposition.
- Any material omission from any statement relating to the company's affairs which is made with a view to defrauding the company's creditors or contributories.

The New Act brings the Bahamian insolvency regime in line with that of the most progressive jurisdictions and will go a long way to giving confidence to creditors that their interests will be protected in times of crisis. It is incumbent on directors to monitor the company's position and ensure that when the company becomes insolvent they take legal and financial advice before determining what their next steps should be.

Portia J. Nicholson, a Registered Senior Associate in the Ocean Centre office, is a member of a number of practice groups including:- Commercial Transactions, Litigation, Real Estate & Development, Financial Services and Intellectual Property.



Mortgage Possession in the Cayman Islands - Legal & Procedural Issues

Philip S. Boni

The economic downturn has resulted in an increase in mortgage defaults and a consequential increase in mortgage possession actions. Whether the funds were borrowed to own a "dream" home or set up and operate a business, the straitened economy has caused lenders and borrowers alike to review their commitments and search for solutions.

The lender should initially write to the borrower to remind him he is in arrears and to request that the borrower communicate with him.

In this article, we will consider the legal and procedural issues as they pertain to mortgage possession proceedings in the Cayman Islands, before focusing upon the specific issue of sale by private treaty. Before embarking on that process a brief historical note will put the subject into context.

History of the Mortgage

The law of mortgages is of some antiquity and has undergone considerable development over the years. From an English law perspective, a useful starting point would be the derivation of the word "mortgage" from the French, meaning "dead pledge" as the term was used in the Middle Ages (the concept being that once the obligation to repay the loan had been fulfilled the pledge would then "die"). The mortgage itself is not a debt; it is the lender's security for the debt.

Common law jurisdictions have seen the development of two principal forms of mortgage, namely a mortgage by demise, and a mortgage by legal charge. In the Cayman Islands, as in modern English law, there is now only one type of mortgage, namely the legal charge.

Over the course of its development the mortgage has given rise to much law and has become subject to numerous legal concepts, including the equity of redemption (and clogs thereon), foreclosure, and *novel disseisin*. Thankfully, today's mortgage is free of many of its previous complexities but there are still areas of difficulty and vagueness which inevitably give rise to disputes and court proceedings.

Mortgages in the Cayman Islands

We can now turn to mortgages in the Cayman Islands, which are governed by the Registered Land Law ("RLL"). Specifically, Division 3 of the RLL deals exclusively with legal charges.

One of the more interesting features of the mortgage possession process in the Cayman Islands, is the apparent intention of the RLL to ensure that the borrower is treated fairly. The issuance and service of proper notices of default (a concept designed to give the borrower a belated opportunity to keep his property by performing his obligations under the legal charge) appear motivated to allow the borrower a second chance. This concept is similar, at its core, to the old legal provisions preventing a lender from placing any "clogs" on the borrower's right to redeem his mortgage.

Though the emphasis on fairness to the borrower is evident, this does not, however, mean that lenders have no legal remedies when dealing with defaulting borrowers.

Lenders' Legal Remedies

So the borrower is in arrears with his mortgage payments. He imitates the action of the ostrich and sticks his head in the sand. What is the lender to do?

The lender should initially write to the borrower to remind him he is in arrears and to request that the borrower communicate with him. All too often there is no response and so the lender is forced to resort to its legal remedies under the terms of the legal charge.

The first steps in the mortgage possession process involve the proper service on the borrower of notices under RLL sections 64(2) and 72. The section 64(2) notice is in effect the "demand". Under section 72, if the borrower is in default for one month, the lender may serve on him notice in writing to pay the monies outstanding.

The timing of service of these notices was the subject of *Bank of Butterfield v E. Levy and A. Levy* in 2004. In that case the charge provided for the borrower to make repayment of the capital borrowed plus interest. The borrower made no payment. The Plaintiff bank served both section 64(2) and section 72 notices simultaneously. The Grand Court confirmed that,

as the two notices were designed to accomplish different and separate goals, in appropriate cases it was possible to serve section 64(2) and section 72 notices concurrently.

If the borrower fails to comply with the section 64(2) notice within three months of the date of service, the lender may seek a court order entitling it to appoint a receiver or sell the charged property. In most cases, this will lead to the sale of the security (i.e. the property encumbered with the charge). In some jurisdictions the process is complicated further by the extension of statutory protection to residential properties and dwelling houses (for example Florida, under the Homestead Exemption in Florida, which provides an exemption from forced sale and restrictions on demise and alienation, utilised famously by O.J. Simpson). The RLL does not make a distinction between commercial and residential property. However, sale of the property – even without this additional statutory protection - is not always a simple or straightforward process for a lender in the Cayman Islands.

The theory behind the Chief Justice's decision seems to be that sale by public auction is fair and will establish a market price.

A Current Concern - Public Auction or Private Treaty?

Section 75 of the RLL deals with the process by which the lender sells the property. The lender must act in good faith when seeking to sell the mortgaged property. An issue recently before the Cayman Grand Court was whether the lender must first seek to sell the property by public auction or whether it can proceed directly to a sale by private treaty.

Inevitably, a "forced sale" by auction will lead to a reduction in the market value of the property. Potential buyers often sniff the opportunity for a bargain. In a down market too many public auctions can also depress property values further by indicating a micro-climate of cheap available property. This would certainly seem to make the lender's job more difficult in establishing that it has acted in good faith in obtaining the best price reasonably possible.

In *Butterfield Bank v Jervis & Jackson* in 2011 the learned Chief Justice concluded that it was the settled practice of the Court that the sale must be by public auction. The order could be "varied" to sale by private treaty, but only after a "fair attempt by the Chargee to sell by public auction". The Chief Justice ordered that the opportunity for sale by public auction (at a reserve price based upon independent valuation) must occur before the Plaintiff lender could restore its application to sell by private treaty.

The Chief Justice's thinking appears to have been guided by a long settled practice of the Court, albeit one which was not identified in his Judgment, along with notions of fairness to the defaulting borrower. The theory behind the Chief Justice's decision seems to be that sale by public auction is fair and will establish a market price. However, if an unfair (i.e. extremely low price) results from the public auction then more costs would be incurred by the lender, as it would have to make another Grand Court application in circumstances where it has already waited at least 4 months (and often much longer) to be placed in a position where the security can be sold.

In refusing the lender's application in *Butterfield Bank v Jervis & Jackson*, the Chief Justice ruled (without hearing argument on behalf of NBS) that his reasons would apply to *NBS v Wellington*, which came before him on the same date.

This issue came before the Grand Court again in *Cayman National Building Society v. Cranston* in 2011. Though the facts of the case departed significantly from those of *Butterfield Bank v Jervis & Jackson,* the legal analysis of Justice Quin did not rest heavily on these differences. Justice Quin relied instead on a plethora of case law and adhered to the script set out in the RLL (rather than an unspecified "long settled practice of the Court"). In his Judgment Justice Quin cites the decision of Chief Justice Malone in *CNB v. Smith Pierson*, holding that the Court has a general discretion, under section 18 of the Grand Court Law to impose "such conditions as were just when making orders".

Based on his review of the cases and the distinguishing features of the *Butterfield* case, Justice Quin concluded that this was an appropriate case to grant National Building Society leave to sell the property by way of private treaty rather than public auction. Justice Quin was able to find in favour of making the Order for sale by private treaty since, having reviewed case law that was not

This conflict must be considered and resolved so that borrowers and lenders alike have the desired certainty regarding the mortgage possession process.

put before the Chief Justice, he was apparently persuaded that the "mischief" which concerned the Chief Justice could be avoided by not fixing a reserve price. Justice Quin cited with approval Justice Henderson's formulation (as set out in *Scotiabank (Cayman Islands) Limited v Rankine*) of how the true value of property can be ascertained, namely by having the property listed using the multiple listings service.

Notably, Justice Quin's rigorous legal analysis did not include reference to the 1986 case of *Simmons v. Moxam* in which the Court of Appeal set out guidelines for the sale of land pursuant to the Judicature Law, section 42(1). This case involved a judgment creditor Plaintiff (not a mortgagee) who applied for an order for sale of the judgment debtor's home in order to discharge a debt. It was noted by the Court of Appeal that, whilst section 42(1) of the Judicature Law provided for sale by public auction, the Court may approve sale by private treaty for special reasons. The Court of Appeal noted that there was no settled practice as to the sale of land and accordingly set out guidelines. It is not evident that these guidelines were considered in either of the more recent cases discussed above.

Conclusion

As matters stand the issue is unresolved, due to the recent conflicting decisions of Chief Justice Smellie and Justice Quin. This conflict must be considered and resolved so that borrowers and lenders alike have the desired certainty regarding the mortgage possession process. As the Cayman Islands property market continues to stagnate, a close eye will no doubt be kept on this most important aspect of mortgage possession law.

Philip S. Boni, a Partner and head of Litigation in the Cayman Island office, is a member of the Financial Services, Insurance Law and Regulation and Commercial Transactions practice groups.

"Winding Up Acts" Result in Net Gain

N. Leroy Smith

The Companies (Winding Up Amendment) Act 2011 and **the International Business Companies (Winding Up Amendment) Act 2011** (the "Winding Up Acts") have introduced statutory provisions which ensure that netting agreements will be enforceable in the event that a party to such an agreement fails and is placed in liquidation. At the same time, the Winding Up Acts have extended the scope of netting which will be permissible in the winding up context.

"Netting...is used widely in international financial markets as a means of lowering/managing the risks to which banks and other large institutions are exposed."

Netting Explained

A netting agreement is a contract whereby each party agrees to set off (i.e. 'net out') the amounts that it owes against amounts owed to it.

Netting agreements can be either bilateral, i.e. between two parties, or multilateral, involving several parties.

A basic example of a bilateral netting contract is where Party A owes B $100 and Party B owes A $50. In the absence of a netting agreement, A will pay $100 to B and B will pay A $50. However, if a netting agreement is in operation, the amounts owing will be netted off and the netted balance will be payable. In this example, A will pay B $50 and B will pay A nothing.

"Multilateral netting" arrangements involve settlement between more than two persons. For example, take the case where A owes B $100. Here, B owes C $20. C owes B $30 and A $20. Without a netting agreement, A owes $100, B owes $20 and C owes a total of $50. However, using a multilateral netting agreement, A owes $80, B owes nothing and C owes $30.

Netting allows parties to reduce their exposures and consequently reduce their risk. For this reason, it is used widely in international financial markets as a means of lowering/managing the risks to which banks and other large institutions are exposed.

Significance of the Winding Up Acts

Solvent companies are generally free to agree to any lawful terms in the course of their dealings. This is a function of the well-known concept of "freedom of contract." So long as parties to a netting agreement were both solvent, they were free to net out their obligations on any basis they

desired (including netting on a bilateral or multilateral basis).

However, in the event of winding up proceedings being brought in respect of a company, The Bahamas' insolvency regime supervenes and governs the disposal of that company's assets. Only that species of set-off specifically permitted by the insolvency legislation is allowed in the insolvency context. This is because set-off is essentially an exception to the *pari passu* rule, i.e. the fundamental principle of insolvency law which provides that in an insolvency, unsecured creditors are to rank equally and if there are not enough assets to satisfy all of the claims, they will each receive a pro rata share of the pool of funds.

"The Winding Up Acts ...serve to provide local and foreign counterparties dealing with Bahamian companies with even greater certainty as to the enforceability and inviolability of netting arrangements in this jurisdiction."

Prior to the Winding Up Acts, set-off in the winding-up context was governed by Section 266 of the Companies Act (and Section 154 of the International Business Companies Act) which caused the set-off provisions contained in Section 37 of the Bankruptcy Act to apply to companies.

The statutory set-off available under this 'old' regime was restricted to mutual dealings between the same parties and, therefore, would not apply to multilateral netting agreements.

The Winding Up Acts

Section 236 of the Companies (Winding Up Amendment) Act 2011 provides that:

- "Subject to subsection (2), the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall be distributed amongst the members according to their rights and interests in the company.
- The collection in and application of the property of the company referred to in subsection (1) is without prejudice to and after taking into and giving effect ...to any contractual rights of set-off or netting of claims between the company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the company and any person or persons) and subject to any agreement between the company and any person or persons to waive or limit the same."

Section 89 of the International Business Companies (Winding Up Amendment) Act, 2011 provides that the foregoing provisions apply *mutatis mutandis* to the winding up of companies incorporated or formed in this jurisdiction under the International Business Companies Act, 2000.

The Winding Up Acts represent a significant and welcome development. They serve to provide local and foreign counterparties dealing with Bahamian companies with even greater certainty as to the enforceability and inviolability of netting arrangements in this jurisdiction.

They also effect a change which is somewhat revolutionary to the extent that multi-lateral netting arrangements will now 'survive' the insolvency of Bahamian company counterparties.

N. Leroy Smith, a Partner in the Lyford Cay office, is a member of a number of practice groups including: Litigation, Private Client & Wealth Management, Securities & Investments, Insolvency & Corporate Restructuring, and Commercial Transactions.

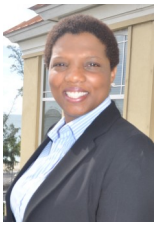
ATTORNEYS APPOINTED TO STATUTORY BOARDS, COMMISSIONS & COMMITTEES

Chris Narborough
Director of the Information & Communications Technology Authority Board

Dr. Earl A. Cash
Deputy Chairman Council of the College of The Bahamas

Christel Sands-Feaste
Deputy Chairman of the Hospitals & Health Care Facilities Licencing Board

Tara Cooper-Burnside
Bahamas Constitutional Commission



Alexandra T. Hall
National Scholarship Committee

Oscar N. Johnson, Jr.

FOCUS on Influential Figures of the Firm

Higgs & Johnson has a decidedly rich history of providing high quality legal services both locally and internationally. Its success has been accentuated by past and present accomplishments of individual attorneys within the Firm who have distinguished themselves among their peers. FOCUS is pleased to provide its readers with insight into the personalities who formed the traditions, established the culture, and who are the current custodians of the ongoing legacy of providing the finest in legal professional services. We trust that you will enjoy reading a record of the informal interviews and direct quotes designed to focus on the life and times, the character and experiences of influential Higgs & Johnson attorneys. This issue features Oscar N. Johnson, Jr., the newly appointed Managing Partner and Global Managing Director of the firm.

In my view, the underlying emphasis upon scholarship, collegiality and ethics are foremost factors which have contributed to the success of Higgs & Johnson.

Give us a brief history of events leading up to your assuming the role of Managing Partner of Higgs & Johnson.

Where did you study law?

I Studied law at the School of Oriental and African Studies of the University of London

Where did your professional career in law begin?

My professional career in law began at the law firm of Higgs & Johnson

Who were the influential lawyers during the early days of your practice?

The influential lawyers during the early days of my practice were Sir Geoffrey Johnstone, Mr. Reginald Lobosky, Mr. Philip Dunkley, Mr. Anthony Thompson and my sister, Mrs. Cathleen Hassan who was an Attorney at Higgs & Johnson at the date that I joined the firm. My development as a lawyer flowed from the tutelage, advice and guidance which I received from the persons mentioned. As a result, I am greatly indebted to them for such success as I may have achieved in the profession.

Would you tell us about particular cases or matters dealt with by you that were especially satisfying from a professional or personal perspective?

There were a few cases or matters dealt with by me that were especially satisfying from a professional or personal perspective.

One of them was a small case; *Teachers and Salaried Workers Cooperative Credit Union v. Lockhart*. What is notable about it is that it was my first appearance before a then itinerant Court of Appeal, as a lawyer called for a little over a year. As any lawyer would tell you, one's initial appearance before the Court of Appeal is always a nerve-racking experience; and that occasion was no different. A point arose which was novel in this jurisdiction and the judges sent myself and Mr. Dion Hanna away to research the point. Upon our return the judges commended me highly upon, accepted, and decided the point, based upon my research; which was very gratifying, in the circumstances, and at that point in my career. The case is reported in the Bahamas Law Reports.

Another was the *Grupo Torras* case, which was a seminal case in this jurisdiction. I acted as junior counsel in that matter. It was a multi-jurisdictional case that delved into areas of complex trust law; and as such it was fascinating to be involved in such a matter, which featured the interplay of multiple jurisdictions, numerous areas of law, and which allowed me to be exposed to distinguished attorneys from a variety of jurisdictions.

Current Times and Looking Forward

What in your view has contributed to the success of Higgs & Johnson or what would you consider to be the strengths of Higgs & Johnson?

In my view, the underlying emphasis upon scholarship, collegiality and ethics are foremost factors which have contributed to the success of Higgs & Johnson. Additionally, the structure of the firm and the methods utilized internally to provide continuing education and to groom our attorneys feature prominently in the firm's success.

I consider that the professionalism, responsiveness and legal acumen of its members are factors which, amongst others, are some of the strengths of Higgs & Johnson.

Furthermore, the excellence of our support staff and their commitment to the ideals of the firm underpin the acknowledged reputation of the firm as a leader in the field.

You are assuming responsibility for Higgs & Johnson in an unprecedented challenging global economic climate. What do you see as important for Higgs & Johnson to achieve in the short term – say within the next two years?

It is important for Higgs & Johnson to maintain those values and ideals upon which it is based and which have resulted in its continuous growth, while being sensitive and responsive to changes in the external and local environment in which we operate. As we know, the economic and regulatory landscape in which the Bahamas exists is changing rapidly, and the impact of various obligations entered into by the Bahamas, or which are being asserted by various external organizations or groupings, will require firms such as Higgs & Johnson to be nimble and proactive in order to ensure that the Bahamas remains attractive and competitive as a jurisdiction of choice.

Should there not be engendered within the Bahamian legal profession an ethos of scholarship, collegiality and erudition, then I fear that the profession will not develop in the manner required.

From your vantage point what are the issues that The Bahamas as a jurisdiction should focus on, or continue to focus on to ensure that the quality of legal services are progressively improving?

A few of the primary issues, in my view, are that the Bahamas must ensure that the judiciary and allied governmental departments and agencies are facilitated as respects the provision of the tools required to efficiently and effectively carry out their functions. In particular, the staffing complement of this branch of government, and the respective departments and agencies, must be comprised of individuals who are properly qualified in their respective fields. The efficiency which would flow from such an approach would differentiate the Bahamas from many of its competitors.

Additionally, there should be a more robust and structured requirement for continuing education on the part of attorneys.

What threats if any do you anticipate, to the healthy development of the Bahamian legal profession?

Should there not be engendered within the Bahamian legal profession an ethos of scholarship, collegiality and erudition, then I fear that the profession will not develop in the manner required. The above qualities, and certain others, are the hallmark of a well developed, functional profession in any discipline. Where these qualities are the benchmarks of a profession, the profession must surely thrive, and would necessarily contribute greatly to the development of society in every other respect.

Additionally, there are competitive concerns which will rear their heads as we go forward. However if the profession is comprised of highly capable practitioners, such concerns would not impact the members of the profession as forcefully as would otherwise be the case, and would allow the profession to adjust more readily to such changes as may take place.

I am very optimistic as regards the future of the legal profession in the Bahamas. While it may not be well known, the legal profession is a very important and valuable sector of our economy, and a strong invisible export earner. Such a valuable resource should be nurtured and encouraged to thrive, as it benefits the wider Bahamian economy substantially. Additionally, as a learned profession, the scholarship which the profession exhibits, should be harnessed by decision makers and utilized as an integral component of the necessary efforts aimed at returning Bahamian society to one in which education is clearly seen to be the primary means by which social and economic development will be achieved.