

# FOCUS

HIGGS & JOHNSON COUNSEL & ATTORNEYS-AT-LAW

FOCUS



## FOCUS VISITS WITH WENDY WARREN CEO & EXECUTIVE DIRECTOR - BAHAMAS FINANCIAL SERVICES BOARD

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*Focus is pleased to have interviewed Ms. Wendy Warren, CEO and Executive Director of the Bahamas Financial Services Board on the eve of her retirement from the Board after a stellar eleven years performance of guiding The Bahamas' financial services sector through landmark change and innovative development. We trust you will enjoy our brief visit with Ms. Warren and her shared insights into dimensions of the industry cultivated substantially by her commitment, effort, and expertise; working in partnership with government regulators and industry participants.*

### The Early Years

**Tell us a little about your academic training. Where did you receive your early education and what tertiary level institutions did you attend. Also, what was your area of emphasis?**

Well to take you back to the beginning, I attended primary school in Georgetown, Guyana with the family moving when I was three years old. Fortunately, my transition to schooling in The Bahamas was eased with my family's return to Nassau as I was scheduled to enter high school. All four children were registered to attend school at St. Anne's High School. After St. Anne's, I secured an Associates of Accountancy and Computer Science during my two-year stint at the College of The Bahamas ("COB"). I then spent three years at the University of Waterloo, Ontario, Canada. At this time, we did not benefit from the access to information by way of the world wide web; notwithstanding the limited information, I am grateful for the excellent foundation provided by COB and that I was able to choose such a highly regarded international university! I concluded my time in Canada with two years in Toronto where I began my full-time working career. During this time, I prepared and wrote the exam to qualify as a Canadian

Chartered Accountant. My pursuit of higher education was made possible by scholarships from KPMG and the Canadian Lyford Cay Association.

**When did you begin at BFSB and what was your position in the organization?**

I officially joined BFSB on February 1, 2001. I must say "officially" as my work began before February 1; your readers may remember the intense period of change in the financial services industry in the last quarter of 2000. The demands of the time prompted me to begin work before my start date. I joined as CEO and Executive Director, a position I continue to hold until December 31, 2011.

### The BFSB Experience

**What have you enjoyed most about your experience at BFSB?**

I have enjoyed the development element of the financial services sector and the many opportunities to work with dedicated and bright professionals in our sector. BFSB was established in 1998 and in many respects initially focused on its promotional mandate. In light of the major transition in 2000 along with my personal experience of working in the financial services sector, we committed at least two thirds of BFSB's limited resources to development. The scope was wide and demanding. Progress demanded that we engage and rely on professionals with the expertise and interest in each specific project. We benefited greatly from these relationships. Colleagues provided excellent input by contributing with challenging ideas, investing in time consuming research and writing, and becoming champions of these programmes. I thoroughly enjoyed each and every one of these projects and the opportunities to interact with

*The information contained in this newsletter is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This newsletter can in no way serve as a substitute in such cases.*

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colleagues, some contributing to wonderful and long-lasting friendships.

**On reflection, what if any accomplishments during your time at BFSB were particularly satisfying to you?**

The area that gave the greatest enjoyment – development of the sector – also gave the greatest satisfaction. The development mandate encompassed our cooperation with government and regulatory agencies for improved and consistent delivery of services; in particular, BFSB acted as a catalyst for improved communication of policies and procedures with stated timelines. The positive response by the agencies is transforming the way business is conducted in The Bahamas. I am particularly pleased with the launch of a government-wide E-business platform. This effort institutionalises a competitive business environment, an essential element to our survival as an international services sector. Coordinating the development of numerous market-driven legislative advancements over the past 10 years has also been especially gratifying. It began with the SMART Fund – the idea of a professional in The Bahamas - to the Bahamas Executive Entity – the idea of a leading professional outside of The Bahamas who, based on the various developments and work of BFSB, choose The Bahamas as the partner for this project. The latter was possible as The Bahamas government demonstrated a willingness to respond to industry and pass legislation that would meet the evolving needs of clients. The development agenda brought significant focus on the Bahamas Financial Services Inc. strategy, business planning and branding along with emphasis on our “people power” through the Financial Centre Focus programme.

**What would you consider to be your major challenge or major challenges throughout your tenure with BFSB?**

There were two things in particular -- challenge associated with landmark changes in the global financial services sector and the publicized attempts to close the doors of our country's sector. The changes themselves were not the most difficult challenge. It was bringing these changes to the attention of the sector in a manner that promoted a positive and proactive approach by all stakeholders, versus one that

promoted inevitable defeat. I am particularly pleased that over the last 11 years, we have seen much change from a position that can be perceived as complacent to one of monitoring, discussing and formulating responses as clients, regulatory and political relations evolve.

**Throughout your tenure with BFSB were there any significant trends in the global financial services industry that particularly impacted financial services as administered in The Bahamas?**

There are so many. Fundamentally, certain members of the global community were and are of the view that certain countries, including The Bahamas, only participate in this highly competitive and lucrative industry as a result of unfair advantages, promoting unfair competition. They perceive that we have three key unfair advantages -- specifically our regulatory regime, privacy laws, and tax regime -- that divert global capital flows and deposits. All three areas have been revolutionised by way of legislation and regulatory guidelines, the latest being the global acceptance of the OECD standard for cooperation in tax matters. The Bahamas must continue to rise to the challenge of competing in a much-levelled playing field but giving unrelenting attention to its comparative advantage.

**What if any were golden opportunities not seized by the Jurisdiction?**

Golden opportunities come to those who are actively looking for growth, rather than the status quo. We have missed opportunities due to our own levels of contentment and limited bandwidth to accommodate growth.

**What would you consider to be the key factors which contributed to the success of BFSB?**

Hands down, the willingness of sector stakeholders – government, regulators and private sector – to work together with colleagues and competitors, and put aside protocols and the many valid reasons why engagement should not be pursued. BFSB only works to the extent that all stakeholders are vested in the process. I am amazed by the persons in leadership in government ministries, government and regulatory agencies, and in business who take our phone calls and answer our emails as a matter of priority, regardless of the subject

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*I am particularly pleased with the launch of a government-wide E-business platform. This effort institutionalises a competitive business environment, an essential element to our survival as an international services sector.*

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**FOCUS Editorial Committee**

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Sharon Albury

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Antonia Burrows

matter's difficulty rating or whether it would bring about change in their own organisations.

**Tell us a bit about initiatives currently undertaken by BFSB?**

BFSB is focused on reaping the rewards of the joint government–industry vision statement, a comprehensive business plan and re-branding of the sector. Having re-launched our semi-annual publication under the brand of "Gateway", we are focused on building Gateway's presence in and outside of The Bahamas. Our web site is under redevelopment and brochures for Wealth Management, Asset Management, Doing Business and Living in the Bahamas are on tap following the passage of various pieces of legislation and the publication of all guidelines for the new Securities Industry Act.

The International Business & Finance Summit (IBFS) – the next one of which takes place in Abaco February 3rd to 5th – also has become a priority initiative for BFSB since it brings together on an annual basis industry stakeholders and international experts to strategize on issues and opportunities that impact the sector and our collective response to them.

We are looking at improving the business environment with a review of trust capital requirements, the impact of exchange control on growing Bahamian ownership in the sector and supporting efforts to secure the maximum benefits from the e-government platform.

Finally, after two intense years of travel, we hope to see continued growth in the participation of industry stakeholders in marketing the sector. In

Asia, over 10 professionals travelled with BFSB making our presence felt in three key markets. Marketing efforts must be expanded and reinforced by remaining in contact with market participants.

**The Future**

**In the best case scenario what do you see to be the future of BFSB?**

As long as there is development and promotion required for the sector, BFSB has a role to play. Not only is BFSB built on the principle of public-private partnership, it showcases the benefits of this model in such a way that other jurisdictions have copied and adapted the BFSB model to grow their sectors. As long as BFSB remains committed to its core function and is an honest, trusted contributor to the development and promotion of the sector, I see the industry and BFSB going from strength to strength.

**What do you anticipate to be the keys to the future success of the financial services industry in the Bahamas?**

Remaining engaged as members of a domestic and international business community; sensible consideration of industry and national policies, practices and procedures; being nimble and present in the market place are critical.

**If you are at liberty to do so, tell us a bit about your plans for the future.**

I plan to return to my focus before I joined BFSB, being an entrepreneur!

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*The Partners of Higgs & Johnson hosted Wendy Warren to a farewell lunch at the Ocean Centre office in Nassau. Pictured above are firm partners with Wendy.*



## Directors' Duties - Weaving Capital Fund Case

Derek N. Jones

This article is about a case which anyone who has a company, or is a director of a company should read.

Here in a nutshell is what happened...

A gentleman by the name of Magnus Peterson started a hedge fund via a Cayman company. He engaged his brother and his stepfather as the directors. On paper they seem qualified for the job but behaved like rubber stamps rather than independent directors.

The directors were appointed on a gratuitous basis and were not expert or professional directors.

As was found in due course by the court, these directors were appointed merely to fulfil the minimum legal requirements regarding the appointment of two independent directors and they were appointed more out of convenience than commercial sense.

As is common with many Cayman Islands investment funds, under the constitutional documents, the directors were afforded an indemnity which had the effect of an exculpation clause for claims brought by the fund itself except for losses arising out of the directors' own wilful neglect or default. The question was whether it was the directors' wilful default which led to the funds downfall.

For the six years following the establishment of the fund, the directors merely signed documents put in front of them at the request of the manager, and even at one stage signed fictitious minutes of two board meetings which never took place.

During its life, the fund consistently reported steady returns by investing in derivative type transactions, in particular futures and options and the fund's reported net asset value grew rapidly from US\$37.9 million in April 2005 to US\$742.7 million in October 2008.

The reality was, however, far from the rosy position which had been presented. The fund was in fact making huge losses but these were hidden by supposed but fictional gains on a series of interest rate swaps

The swaps occurred through an agreement with

a related party, Weaving Capital Fund, (WCF) which, like the investment manager, was controlled by Magnus Peterson.

WCF held few assets and was little more than a shell company. The directors claimed that they were unaware that the swap counterparty was WCF and believed that the swaps were traded with international financial institutions. This lack of understanding arose from the fact that they neither read any of the relevant documentation put before them nor made any enquiries as to the structure of the investment fund.

The reality was that no monies were ever paid by WCF to the fund under the swaps, nor was WCF ever in a position to do so. For most of the time that the fund was in existence, it relied on new subscription monies to meet redemption requests from those investors who wished to leave the fund.

To make matters even worse, the fund's investment criteria were breached for the majority of the lifetime of the fund. The fund's offering memorandum provided that no more than 20% of the fund's assets should be invested in the securities of one issuer or be subject to the solvency of one counterparty. In reality, the swaps mentioned above with WCF amounted to over 100% of the net asset value!!!!

The fund was able to operate unsupervised by the directors in the ways mentioned above until late in 2008 when the financial crisis triggered an insurmountable level of redemption requests. Not having sufficient cash to pay these requests, the fund quickly found itself in trouble and ultimately in liquidation.

The approach of the directors attracted considerable criticism. Because of the directors' dilatoriness in fulfilling their obligations, the court found the directors guilty of wilful neglect or default in the discharge of their duties, and ordered them to pay damages to the fund's liquidators in the sum of **US\$111 million**, representing the losses suffered by the fund, which were caused by their default.

The court considered the indemnities which the directors were claiming protected them. It held that such exculpatory provisions in the articles might protect directors who do their

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*To make matters even worse, the fund's investment criteria were breached for the majority of the lifetime of the fund.*

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“incompetent best” but they will not protect directors who do nothing at all.

Mr Justice Jones who tried the case stated that the independent directors of a company can only discharge their duties properly if they “apply their minds and exercise an independent judgment, in the ordinary course of business in respect of all the matters falling within the scope of their supervisory obligations”.

This case will likely serve as a wake up call for all less than active non- executive directors and also for the shareholders of companies who think their affairs are in safe independent hands, not limited to hedge fund companies I might add.

The phrase to come out of this case which is likely to be ringing in everyone’s ears is that at no point may directors “assume the posture of automatons”.

#### **The points to take away from this judgment**

There are obviously core common law and fiduciary obligations imposed on directors. These can be broadly broken down into:-

- directors must act in good faith in the best interests of the company;
- directors must use the powers conferred on them for their proper purpose; and
- directors must exercise whatever skill they possess and reasonable care when acting in the company’s interests.

To do this, directors must:-

- Ensure they have a proper understanding of the nature and scope of the company which they serve;
- Ensure they have a proper understanding of the nature and scope of the work of service providers on whom they rely and that the terms of service providers’ contracts are in the best interests of the company;
- Demonstrate a proper understanding of the financial results of the investment and trading

activity of the company;

- Continually apply their minds to the business and affairs of the company. Though they are not expected to be experts they are expected to use whatever resources are required in order to ensure that they understand how the company is performing;
- Keep on top of management accounts and financial performance;
- Conduct board meetings in a businesslike manner and arrange for accurate minutes to be kept of the meetings which have occurred. Ideally an agenda should be prepared for these meetings and provide the opportunity for critical service providers to be present (e.g. The administrator in the case of a fund) so that they can be questioned as to the performance of the organization; and
- Generally provide a high-level supervisory function in a professional and businesslike manner.

This is of course not an exhaustive list.

Although this case was about the management of a mutual fund people get asked to manage all sorts of things such as:-

- Trading companies
- Manufacturing companies
- Financial service companies
- Trust companies etc

And I daresay that common sense will apply the same kind of test as in the case of an investment fund.

So if you are a director this is a good time to make sure you are on the right side of this equation.

And if you are a shareholder or represent a shareholder it is time to make sure that your directors are doing what you expect they are supposed to be doing

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***This case will likely serve as a wake up call for all less than active non- executive directors and also for the shareholders of companies who think their affairs are in safe independent hands...***

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***Derek N. Jones is the Regional Managing Partner—Cayman Islands. He practices all aspects of law and specialises in commercial and civil litigation. He appeared for the Jamaica Defence Force in the famous Green Bay Coroner’s inquest (1978) and for Esso Petroleum in the Public Enquiry into the Montego Bay fire (1980) and in a number of significant commercial cases.***

## H&J Bahamas Office Hosts Annual Client Seminar

A) (L-R) Philip C. Dunkley QC (Senior & Global Managing Partner), Wendy Warren (CEO of BFSB) and Derek N. Jones (Regional Managing Partner—Cayman Islands



B) Attorneys with attendees from the Eugene Dupuch Law School and the College of The Bahamas Law Program.



C) Dr Earl A. Cash (center) with seminar attendees from UBS Bahamas Ltd.



D) Associates Dwana Davis-Imhoff (left) and Nadia J. Taylor (middle) with attendees from CIBC Trust.



E) Group members presented with their 'Excellence in Wealth Planning' Certificate at the end of the break out session.



HIGGS & JOHNSON hosted its annual client seminar on Wednesday 5 October 2011 under the theme 'Wealth Planning for the 21st Century'. Opening remarks were given by Wendy Warren, CEO and Executive Director of the Bahamas Financial Services Board. She gave her insights into the future of the financial services industry and emphasized that The Bahamas has much to offer its clients and needs to leverage these advantages.

The first session, 'The Securities Legislation and Existing Licensees' was presented by Christel Sands-Feaste Partner and Chair of the Securities and Investment Funds group. She provided a practical overview of the Securities Industry Act and Regulations, 2011. She also elaborated on the new provisions and indicated the steps existing licensees need to take for compliance.

Higgs & Johnson Partner, Dr. Earl A. Cash Chair of the Private Client & Wealth Management group, expanded on the proposed trust legislation that is the Trustee (Amendment) Bill, 2011 and The Rule Against Perpetuities (Abolition) Bill, 2011. He also advised on the advantages of the proposed Executive Entities Bill.

Regional Managing Partner, Derek N. Jones, of the Cayman Islands office, spoke on the recent Cayman judgment of *Weaving Macro Fixed Income Fund Limited (In Liquidation) v Peterson and Ekstrom*. He explained its significance as it pertained to Directors' duties in the context of hedge funds. He noted that it was a 'wake up call' for the less than active non executive directors and expanded on the essence of the case.

The seminar concluded with the break out session 'Case Study: To Be or Not To Be? Should You Accept (the fictitious) Mr. and Mrs. Sanches as clients, and if so, on what terms?' Attendees were split into five groups facilitated by Higgs & Johnson Partners Philip C. Dunkley, QC, Derek N. Jones, Dr. Earl A. Cash, Christel Sands-Feaste and Associate, Nadia Taylor. They had the opportunity to discuss the details of the case with other professionals, exchange ideas and brainstorm important issues, then present the group's decision at the end.

Higgs & Johnson sponsored the attendance of faculty and students of both the College of The Bahamas Law Degree program and the Eugene Dupuch Law School. Sponsors included First Bahamas Title Insurance Agency and H&J Corporate Services Ltd.



## H&J Cayman Office Hosts First Client Seminar

A) (L-R) Gabrielle Faska, Veronica Fierro and Davina Ebanks of H&J are prepared for the registration of attendees.



B) H&J staff with Truman Bodden—founder of Truman Bodden & Co and Chairman of the Cayman National Board.



C) (L-R) Partners Philip Boni and Chris Narborough prepare to give their joint presentation at the seminar.



D) (L-R) Philip Rubens and Jack Auspitz relax at the speaker table before presenting.



E) Guests enjoy the networking cocktail reception that followed the seminar sponsored by Cayman National.



HIGGS & JOHNSON hosted its first Cayman client seminar on Thursday 4 November 2011 at the Grand Cayman Marriott Beach Resort under the theme 'Directors' Duties...Who Will Be At Risk?'. Attendees were welcomed by Regional Managing Partner, Derek N. Jones, who also served as the moderator for the seminar.

The seminar investigated the change in attitude of the monetary authorities of various jurisdictions following the 2008 credit crunch. Speakers focused on how the altered approach would impact and affect the role of directors in the UK, US, Bahamas and Cayman specifically. A comparison was made between the role of directors in the Cayman Islands and their treatment by CIMA, to the duties and regulation in other jurisdictions. Also, overall consideration was given on whether or not there would be a similar change on the horizon in Cayman to accommodate past and expected future events taking place in the worldwide financial markets.

International speakers included Philip Rubens - Partner at Finers Stephen Innocent in London; Jack Auspitz - Partner at Morrison Foerster in New York; Gonzallo Zeballos - Partner at Baker Hostetler in New York; and Portia Nicholson - Associate in the Higgs & Johnson Bahamas office. Local speakers included Chris Narborough and Philip Boni- Partners at Higgs & Johnson along with Don Seymour - Managing Director at dms Management Ltd. and R J Berry - Head of Compliance at Cayman Islands Monetary Authority.

The seminar concluded with a lively and informative question and answer period. Guests were then ushered to the cocktail reception which was sponsored by Cayman National. Attendees then had the opportunity to mix and mingle with the speakers and other professionals.



# The New Acts of Parliament and You

Alexandra T. Hall

Since the last issue of Focus was published several important pieces of legislation have been passed by Parliament. Rather than provide an in depth review of only one or two of the Acts that impact business, our analysis will depart from our usual format and we will provide a brief synopsis of several of the new Acts in an effort to highlight provisions that may affect our readers, either professionally or personally.

## **Promoting Transparency – The OECD Phase I Peer Review and You!**

The Exempted Limited Partnership (Amendment) Act, 2011, the Foundations (Amendment) Act, 2011, the International Business Companies (Amendment) Act, 2011, the Partnership Limited Liability (Amendment) Act, 2011, the Purpose Trust (Amendment) Act, 2011 and the Segregated Accounts Companies (Amendment) Act, 2011 were passed by the Bahamian legislature to remedy deficiencies identified in the OECD Phase I Peer Review of The Bahamas. Upon coming into force of these Amendment Acts the principal legislation will be amended to impose an express obligation on entities operating under these Acts to maintain reliable accounting records for a minimum period of 5 years and impose a penalty for the failure to maintain such records.

These Amendment Acts will come into force on a date to be appointed by the Minister by notice published in the Gazette.

## **The Freedom of Information Act, 2011 – Your Right to Know!**

The opening paragraph of the objects and reasons section of the Freedom of Information Act, 2011 states that “this Bill seeks to reinforce and give effect to certain fundamental principles underlying the system of constitutional democracy i.e. Governmental accountability, transparency and public participation in national decision-making by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.”

Under section 6 of the Freedom of Information Act, 2011 every person has the right to obtain

access to all records other than exempted records. Section 6(2) provides that an exemption of a record or a part thereof from disclosure ceases after the record has been in existence for 20 years unless otherwise stated in the Act.

Where a person wishes to obtain access to a record an application will have to be made in writing to the public authority which holds the record. “Public authority” is defined in the Freedom of Information Act, 2011 as a ministry, department, statutory body or authority (whether incorporated or not), wholly owned public corporation or other body or organization specified in an Order made under section 3(2) of the Act.

The Freedom of Information Act, 2011 will come into force on the 1<sup>st</sup> July, 2012.

## **The Firearms (Amendment) Act, 2011 - Hunters Beware!**

The Firearms (Amendment) Bill, 2011 was introduced in the House of Assembly as part of the package of crime legislation. Among the changes to the Firearms Act, is an amendment to section 9, which outlines the penalties for failing to comply with the conditions attached to a firearms certificate.

After the coming into force of the Firearms (Amendment) Act, 2011, the penalty for not complying with a condition attached to a firearms certificate is imprisonment for a term being 10 – 15 years upon conviction on information and imprisonment for 4-7 years on summary conviction.

Where a period of six months or less has passed since the expiration of a firearms certificate, the court may impose a fine in lieu of imprisonment. The maximum fine that can be levied has been increased to \$5,000.

## **The Road Traffic (Amendment) Act, 2011 – Driver Too!**

Among the objectives of the Road Traffic (Amendment) Act, 2011 is to make insurance coverage for third party property damage and bodily injury or death of all passengers compulsory.

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***Among the changes to the Firearms Act, is an amendment to section 9, which outlines the penalties for failing to comply with the conditions attached to a firearms certificate.***

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***On summary conviction, the penalty for being in charge of a motor vehicle on the road or other public place while being unfit to drive is a fine of \$200 or imprisonment for a term of 2 months or both a fine and imprisonment.***

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Additionally, the Road Traffic (Amendment) Act, 2011 removes the requirement for a police officer to be present at the scene of every accident. Only where an accident has resulted in death, serious injury or serious damage is the presence of a police officer required.

When the presence of a police officer is not required at the scene of an accident, the driver of the motor vehicle must give his name and address, the name and address of the owner and the registration number of the motor vehicle to anyone who has reasonable grounds for requiring the same. If the driver of the motor vehicle does not provide his name and address to the person requesting the same he is required to report the accident at a police station or to a police officer as soon as reasonably practicable and, in any case, not later than 24 hours after the accident occurred.

A new section 96A will be inserted into the principal Act once the Road Traffic (Amendment) Act, 2011 comes into force that will allow a special procedure in respect of certain offences. Under this new section 96A, where a peace officer finds, or has reason to believe, that any person is committing or has committed in any place an offence prescribed under the regulations made under that section, the peace officer may serve the alleged offender a notice in writing charging him with an offence.

Where the offence is committed by reason of a vehicle obstructing the road or waiting or being left or being unloaded or loaded in a road the officer may in lieu of serving the alleged offender personally affix the prescribed notice to the vehicle.

Under section 96A the owner of the vehicle will be deemed to be the alleged offender served with the prescribed notice and liable for the offence in respect of which service is effected. Where at the hearing the owner of the vehicle

denies that he was the driver or the person in charge of the vehicle at the time the alleged offence was committed, the court may cause a summons to be served on the alleged driver or the person in charge of the vehicle and make such person a co-defendant in the proceedings.

The Road Traffic (Amendment) Act, 2011 also creates an offence relating to driving, or being in charge of, a motor vehicle while under the influence of drink or drugs. Where a person consumes so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit or consumes a drug such that it renders him unfit to drive or be in charge of a motor vehicle he commits an offence.

The prescribed limits outlined in the Road Traffic Act are:

- 35 microgrammes of alcohol in 100 millilitres of breath;
- 80 microgrammes of alcohol in 100 millilitres of blood (0.08%); and
- 107 microgrammes of alcohol in 100 millilitres of urine (0.11%)

On summary conviction, the penalty for being in charge of a motor vehicle on the road or other public place while being unfit to drive is a fine of \$200 or imprisonment for a term of 2 months or both a fine and imprisonment.

On summary conviction, the penalty for driving or attempting to drive a motor vehicle on the road or other public place while being unfit to drive is a fine of \$3,000 or imprisonment for a term of 1 year or the suspension of one's driving licence for a period not exceeding 1 year and both a fine and imprisonment.

This Road Traffic (Amendment) Act, 2011 will come into force on a date to be appointed by the Minister by notice published in the Gazette.

***Alexandra T. Hall is an Associate in the Nassau office of the Firm and is a member of the Financial Services Law & Regulation, Commercial Transactions and Securities practice groups. She specialises in various areas of commercial and company law.***

## New Additions to the Cayman Islands' Office



**Sarah Bolton—Head of  
Investment Funds**

Sarah Bolton has joined the Cayman Islands' office as Head of Funds. She has almost twenty years of commercial legal experience focusing on all aspects of the set-up, launch and restructuring of investment funds and private equity funds. She advises a wide range of clients, including investment managers, institutions and professional service providers, on fund structures using exempted companies, segregated portfolio companies, unit trusts and exempted limited partnerships. Prior to joining H&J she worked in the Cayman Islands for over ten years for Ogier (formerly Boxalls) and most recently as Counsel for Appleby, including on secondment in Jersey.



**Gaela Bailey  
Associate**

Higgs & Johnson is continuing to expand its Commercial/Funds Department in the Cayman Islands in order to meet client demand and therefore welcomes Gaela Bailey's over 10 years experience in a number of jurisdictions. She specialises in the formation, operation and restructuring of alternative investment funds and vehicles including trusts, partnerships and Cayman companies. Prior to joining the firm she served as Legal Counsel to Credit Suisse in the Cayman Islands. This experience outside of a law firm was unique, as it not only submerged the already strong commercial lawyer in the world of funds, but also gave her valuable in-house experience.

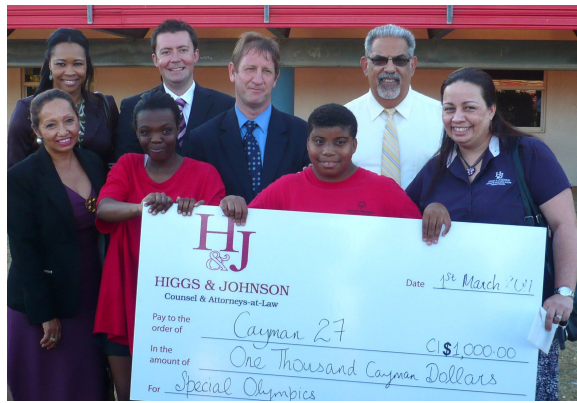
## New Corporate Manager of H&J Corporate Services (Cayman) Ltd.



**Campbell Law - Corporate  
Manager, H&J Corporate  
Services (Cayman) Ltd.**

H&J Corporate Services (Cayman) Ltd ("HJCSC") is pleased to announce that Mr. Campbell Law has joined the company as Corporate Manager. He has over 15 years of experience in providing corporate services and was most recently the Vice-President of Corporate Services for Goldman Sachs (Cayman) Trust Ltd. He has experience in company formation, limited partnership, trust management and administration, due diligence and compliance and is well versed in all Cayman Islands regulatory requirements. He will be responsible for managing all aspects of HJCSC, including the review of fund set up documentation, handling the client and funds counsel regarding all ongoing requirements, as well as attending to shut down / liquidation procedures as required. HJCSC is a fully licensed corporate manager in the Cayman Islands and he joins a staff that has in-depth experience with the corporate administration of Mutual Funds in the Cayman Islands and structured finance transactions.

## Charitable Contributions in the Cayman Islands



**Partners, Associates and staff of Higgs & Johnson present check to participants of the Special Olympics Cayman Islands.**

H&J proudly sponsored the Special Olympics Cayman Islands 2011. The Cayman Islands have been represented in the Special Olympics for over 19 years. As a corporate sponsor the firm is able to assist the organization with achieving their long term goals of providing quality training Caymanian athletes and involving more persons with intellectual disabilities. Derek Jones, Regional Managing Partner noted, 'The Special Olympics Cayman Islands' team is to be commended for their hard work, dedication and commitment to participating in the games. Higgs & Johnson is proud sponsor the team and wish them every success in Athens."



**Partners, Associates and staff present the check to the Cayman Islands Crisis Centre.**

H&J donated to the Cayman Islands Crisis Centre when they announced plans to renovate the Safe Shelter Facility (the "Centre"). While access to safe and abuse-free shelter is the Centre's main objective, they also believe that it should be comfortable, uplifting and a place for hope, inspiration and healing. With that in mind, H&J's donation will assist in the purchase of artwork for the shelter. Gina Berry, Partner at Higgs & Johnson commented, "We are pleased to support such a great cause and hope that the artwork selected will achieve the Centre's goal of providing light and optimism in the lives of Cayman's abused women and children."



**Derek Jones, Gina Berry, Chris Narborough, Teresa Owen-Foster and Philip Boni are pictured above.**

H&J continued its Bronze Sponsorship of the Junior Achievement for 2011-12. JA is recognised as being the world's largest not-for-profit educational organization offering in and after-school practical business programs. Teresa Owen-Foster, Program Director, thanked the firm for its continued support, which was especially appreciated in the 20<sup>th</sup> anniversary year of JA in the Cayman Islands. Mr. Derek Jones, Regional Managing Partner, indicated that it was the Firm's pleasure to support such a meaningful program, adding that the Firm's motto 'Honor et Integritas' (Honor & Integrity) closely mirrored the concepts being instilled in young people by Junior Achievement.



## H&J Continues Support of Breast Cancer Awareness



H&J continued its support of Breast Cancer Awareness in both The Bahamas and the Cayman Islands by relaxing its dress code at all of its offices and encouraging members of staff to participate in the various awareness and fundraising initiatives.

In The Bahamas (top photo), staff participated in the annual Lee National Denim Day, organized in conjunction with the Cancer Society of The Bahamas on 21 Oct 2011.



The Cayman staff (bottom photo) similarly participated in the Lions Club of Tropical Gardens' annual Dress Down/Dress Pink Day. T-shirts, lapel pins, bracelets and other breast cancer awareness items were purchased to support the Lions Club's various initiatives which include providing mammograms, support, education and financial assistance. The firm also donated one of the main prizes of a travel voucher to the Lions' annual 5k Walk/Run.

The Lee Denim Day and the Lions Dress Down/Dress Pink Day continue to be some of the largest single-day fundraisers for breast cancer awareness in both jurisdictions, raising well-needed funds for the fight against breast cancer and evoking nationwide support.

## Firm Awarded BFSB's FSI Development and Promotion Award, 2011

The Bahamas Financials Services Board ("BFSB") began the Financial Services Industry ("FSI") excellence awards programme in 2000. The Development and Promotion award was added later to the programme to highlight the integral part promotion of the sector plays. Presenting the award on behalf of BFSB were Wendy Warren and Attorney General John Delaney. Accepting the award were Partners Oscar Johnson and Heather Thompson (l) and Dr. Earl Cash (r).



## Leading Legal Publications Announce 2012 Rankings



*Philip C Dunkley QC*

H&J Bahamas has been ranked as a Tier 1 law firm in the Financial/Corporate category by IFLR 1000 (2012 edition), the guide to the world's leading financial law firms now in its 22<sup>nd</sup> edition. IFLR's financial law firm rankings are based on the recommendations of in-house counsel at the world's most prominent financial institutions and companies, as well as the leading lawyers, attorneys and solicitors in each legal market covered.

Partners Surinder Deal and Christel Sands-Feaste, of the Commercial and Securities practice groups, were listed yet again as leading lawyers in the upcoming 2012 edition. Surinder Deal has over 20 years of experience in Real Estate, Trust Law and Corporate and Commercial Law. Mrs. Sands-Feaste has extensive legal experience in investment funds, corporate and commercial law and international trust and company administration.



*Surinder Deal*

The firm has maintained its standing as a Tier 1 firm in The Bahamas for the past five years and is recognized globally as a leading commercial firm.

Philip C. Dunkley, Q.C., Derek N. Jones, Heather L. Thompson and Christel Sands-Feaste were listed as leading lawyers in the 2012 edition of Chambers Global. Ms. Thompson and Mrs. Sands-Feaste were recommended in General Business Law and Mr. Dunkley in General Business Law: Dispute Resolution for The Bahamas. Mr. Jones was recommended in Corporate and Finance for the Cayman Islands and in General Business Law for Jamaica.



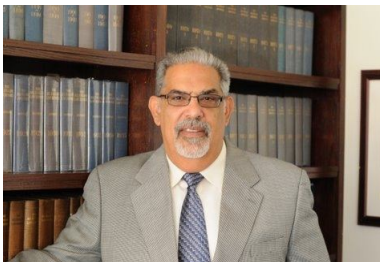
*Heather L. Thompson*

Mr. Dunkley specialises in complex commercial, civil and chancery litigation and has appeared in many of the leading commercial cases at the Bahamas Bar. Ms. Thompson has extensive experience in international trust and company administration which gives her a unique perspective in counselling individual and corporate clients on the creation of trusts and ownership structures. Mr. Jones practices all aspects of law and specialises in commercial and civil litigation. He appeared for the Jamaica Defence Force in the famous Green Bay

Coroner's inquest (1978) and for Esso Petroleum in the Public Enquiry into the Montego Bay fire (1980) and in a number of significant commercial cases.



*Christel Sands-Feaste*



*Derek N. Jones*

Chambers Global rankings are assessed on criteria that include technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment, and other qualities that the client considers relevant.

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