

In Memoriam Gabriel Moss Q.C. (1949-2019)

By Bob Wessels, Emeritus Professor, University of Leiden, The Netherlands

It was with great sadness that I heard about the unexpected death, on 15 March 2019, of my dear colleague Gabriel Moss QC, who would have turned 70 in September. Gabriel had a remarkable career as a practitioner, with a clever and unrivalled grasp of the practical as well as the academic dimensions of international insolvency law in particular.

Gabriel Moss was called to the bar in 1974 and appointed Queen's Counsel in 1989. For over 30 years, his professional home was $\frac{3}{4}$ South Square. Evidently, he had a remarkable career in England. He was a specialist in UK and European international insolvency and restructuring law, as well as companies, banking, and financial services law. He appeared in many commercial chancery cases (e.g. Nortel, Madoff, Iceland banks, Olympic Airways) as well as in major offshore litigation. He also sat part-time as a Deputy High Court Judge of the Chancery Division of the High Court of England and Wales from 2001. He was a part-time Visiting Professor in Corporate Insolvency Law at Oxford University, not to mention a member of the Editorial Board of the International Insolvency Review.

Gabriel and I met in 2001, when I was a speaker at an event in London. Many more meetings at many other events would follow. These were the early days of the coming into being of the European Insolvency Regulation. The first edition of the book edited by Gabriel Moss, Ian Fletcher and Stuart Isaacs titled a "Commentary on Council Regulation 1346/2000 on Insolvency Proceedings", first published in 2002, has been a leading book for many years. The book, published by Oxford University Press, also served as an annotated guide, with contributions from insolvency experts. It was a pleasure to display then a controversy Gabriel and I presented (with joy) at these international conferences and where we strongly discussed (and disagreed) about, the hot topic of those days: COMI. Gabriel was defending the 'mind of management' theory, while I supported the 'contact with creditors' approach. This was during the days of the Daisytek case, where a key question was whether German and French companies had their COMI in London. These spectacular brain-teaser discussions did not stop when the European Court decided the case of Eurofood in 2006, nor when we discussed my comments to the 2009 and 2017 versions of the book.

Gabriel surely was a European in his heart, being born in Hungary and taking refuge in the UK in 1956, an event caused by the Hungarian Uprising. He was keen to tell his Dutch colleague that he spoke more than just English. He was able to converse in colloquial Hungarian and French.

Gabriel was a celebrated advocate in well-known international cases heard before the UK Supreme Court (*New Cap Reinsurance v Grant; Rubin*) and the European Court of Justice (CJEU) (*Eurofood*, in which he was counsel to the Italian special administrator of the Parmalat subsidiary Eurofood). He would always continue to stress the Eurofood judgment as a controversial CJEU precedent.

His sharp, intellectual and to the point analysis in very many cases benefited his clients as well as the courts themselves. Other notable EU insolvency cases in which Gabriel appeared include one of the earliest cases under the Insolvency Regulation, i.e. *Enron Directo* (UK/Spain), but also *Elektrim v Vivendi* (UK/Poland; where I was 'on the other side'), *Daisytek* (UK/France/Germany), *Stojevic* (UK/Austria) and *Quinn* (UK/Ireland). He also provided expert

evidence for cases in in some ten European jurisdictions, including the one in Amsterdam (in which we jointly provided evidence). The European Commission appointed him to an expert group advising it on reforms to the European Insolvency Regulation between 2012 and 2015, which led to the recast version that came into force in 2017.

Gabriel and I were founding members of the International Insolvency Institute (III). We both became directors of the board of III in 2004 in the early days of this organisation when it had around 150 members. At that time, our idea grew to publish, with several other members of III, a text on what was then a groundbreaking new topic, the European rules for recovery and insolvency of banks and insurance undertakings. This led to the book that appeared in 2006, which we jointly edited titled “EU Banking and Insurance Insolvency”, also published by Oxford University Press. With another III-member, Matthias Haentjens, we were able to deliver a second edition in 2017 and Matthias led us through what we experienced as an astounding myriad of detailed rules that had been poured into the market during and after the financial crisis. Gabriel and I both became Emeriti Directors of III in 2010.

In his presentations and lectures (I remember we went to Milan, Vienna, Brooklyn Law School in New York and at the European Law Academy in Trier, Germany), he had a witty and generous teaching style and shared with students his unparalleled knowledge of substantive law. He was always open for debate and had a good eye for educating the next generation of insolvency lawyers. My Leiden Law School students can certainly acknowledge this experience.

Last year, in July 2018, we were both very sad because of the passing away of our dear friend, Professor Ian Fletcher. Gabriel and I were invited by Ian's wife, Letitia, to speak at Ian's Memorial service at Lincoln's Inn on 17 January 2019. My last contact with Gabriel was in early March 2019, when a special issue in Ian's memory appeared in *Insolvency Intelligence*. This journal, of which Gabriel was an editor since 1994, would not have the standing and reputation it has today without him.

Gabriel was a self-assured person, confident with his arguments. But he was also a gentle person, very approachable with a typical humour. Insolvency law has lost one of its leading practitioners and we will miss him dearly. I extend my deepest sympathy to his family.