

ANDREW BERSHADSKI

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Practice Overview

Andrew specialises in international group claims, personal injury, clinical negligence and employment work. He is involved in a number of business and human rights international group actions in these areas and has extensive experience of litigation involving Africa and extractive industries.

Andrew's business and human rights work includes continuing to act on behalf of the defendant in the *Kadie Kalma v African Minerals* case, a personal injury claim by 142 residents of north-eastern Sierra Leone against a large iron ore mine. Andrew appeared in both the High Court in 2018 and the Court of Appeal in 2020. The Court of Appeal's judgment is now a seminal decision in the areas of common design and duty of care for acts of third parties in tort. Andrew acted on behalf of the defendant in the *Gemfields litigation*, a human rights claim involving the operation of a ruby mine in Mozambique, and is currently instructed in *Wambura v Barrick TZ Ltd*, which involves the operation of a gold mine in Tanzania. He has acted on behalf of over 4,000 claimants in their successful professional negligence action against a firm of solicitors following the loss of compensation monies paid out under a settlement of litigation relating to the dumping of toxic waste in the Ivory Coast (*Agouman v Leigh Day* [2016] EWHC 1324 (QB)). He has also represented Nigerian litigants in an action against *Chevron Corporation* before the courts of San Francisco.

Andrew undertakes a large amount of clinical negligence and personal injury work, in which he is instructed both as sole counsel and is regularly led. He acted on behalf of the defendant at trial in a case involving alleged unnecessary and unconsented-for surgery for pancreatic cancer (*Sarah Pepper v Royal Free London NHS Foundation Trust* [2020] EWHC 310), and a number of claimants in the *JJML Pelvic Organ Prolapse vaginal mesh litigation*. His appellate work includes acting for the defendant in *Kamal Williams v Bermuda Hospitals Board* [2016] AC 888, in which he made submissions to the Board on the law of material contribution causation in the commonwealth.

Andrew is a member of the Attorney General's C Panel of Counsel and is a native Russian speaker.

Practice areas

International Group Claims /
Business and Human Rights
Clinical Negligence
Personal Injury
Employment

Qualifications

BA Law and History

Education

Sidney Sussex College, Cambridge
University



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International Group Claims / Business and Human Rights

Andrew has an extensive practice in the fast-growing field of international business and human rights cases. His work in this area includes:

- Acting for the defendants in *Wambura v Barrick TZ Ltd*, a High Court action in relation to injuries at a Tanzanian gold mine (ongoing)
- Acting for the defendants in *Gemfields*, a case brought by 273 Mozambicans alleging human rights violations around a ruby mine (case settled)
- Acting for the defendant in *Kadie Kalma v African Minerals Ltd*, a group action brought by 142 Sierra Leoneans against companies involved in an iron ore mine. Successfully represented the Defendant in the High Court ([2020] EWHC 310 (QB)) and in the Court of Appeal ([2020] EWCA Civ 144) (with Neil Moody QC and Robert Cumming). The Court of Appeal judgment is now a leading authority on common design and duty of care in negligence for the acts of third parties.
- Acting for over 4,000 successful claimants in *Agouman v Leigh Day*, an action arising from toxic waste dumping in the Ivory Coast ([2016] EWHC 1324 (QB))

Clinical Negligence

Andrew is regularly instructed in all aspects of clinical negligence work. He acts for both defendants and claimants, and has fought many trials in the High Court and the county court, including as sole counsel against a QC. He has been instructed in vaginal mesh claims on behalf of claimants and has experience of regulatory and disciplinary work.

Recent cases of note include:

- *S v Homerton University Hospital NHS Foundation Trust* [2020]: representing the defendant (led by Ben Browne QC) in a birth injury case involving cross-border issues, with the claimant residing in Canada
- *Sarah Pepper v Royal Free London NHS Foundation Trust* [2020] EWHC 310: acted as sole counsel in 5-day trial for the defendant, successfully, in a case alleging that the defendant's HPB surgeon had failed adequately to consent the claimant for a pancreaticoduodenectomy (Whipple procedure), and that the surgery had been carried out unnecessarily

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- *A & C v Leicestershire Partnership NHS Trust* [2019]: acted for the defendant in 3-day trial, successfully, where it was alleged that the defendant's decision to discharge a patient from detention under section 2 of the Mental Health Act 1983 was negligent and caused her to commit suicide
- *Jean North v Royal Free London NHS Foundation Trust* [2019]: acted for the defendant in a 2-day trial, successfully, where it was alleged that surgery was negligently not offered for a radial wrist fracture
- *JJML Pelvic Organ Prolapse litigation* [2019]: acted for the claimants in a multi-party group action claim relating to vaginal mesh products
- *Gyorgy Rakoczy* [2020]: represented, pro bono, a paediatric surgeon in a review hearing before the Medical Practitioners Tribunal Service
- *Kamal Williams v Bermuda Hospitals Board* [2016] AC 888: appeared in the Privy Council, as junior to Caroline Harrison QC, in what has now become one of the leading judgments on the doctrine of material contribution in causation.

Personal Injury

Andrew is regularly instructed as sole counsel, and led, in high-value personal injury actions. He acted both in the High Court and the Court of Appeal in the seminal case of *Kalma v African Minerals*. He has also undertaken work on a number of cases for the Government of St Helena.

Recent cases of note include:

- Acting for the defendant in *Kadie Kalma v African Minerals Ltd*, a group action brought by 142 Sierra Leoneans against companies involved in an iron ore mine. Successfully represented the Defendant in the High Court ([2020] EWHC 310 (QB)) and in the Court of Appeal ([2020] EWCA Civ 144) (with Neil Moody QC and Robert Cumming). The Court of Appeal judgment is now a leading authority on common design and duty of care in negligence for the acts of third parties.
- *BB v Attorney General of St Helena* [2020]: acting as sole counsel on behalf of the defendant in relation to a public authority's alleged failure to protect the claimant from familial sexual abuse. Andrew has appeared alone, against a junior and QC, before the Court of Appeal of St Helena (sitting in the United Kingdom).
- *Camilla Bonsor v Bio Collectors Ltd* [2020]: acting on behalf of the defendant in a catastrophic injury case where the claimant suffered an amputation following a road traffic accident in Kensington (ongoing)

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- *Burgess v Tina Hutchinson* [2020]: acting on behalf of the defendant in a catastrophic brain injury case following road traffic accident in 2017 (ongoing)

Employment

Andrew regularly appears before the employment tribunals on behalf of both claimants and respondents, and has undertaken investigations on behalf of employers.

Recent cases of note include:

- *Cubbin v College of Policing* [2020]: representing the respondent in a disability discrimination claim brought by an unsuccessful applicant for a marketing job
- *Underdown v Kent Community Health Foundation NHS Trust* [2020]: represented the respondent, successfully, in 3-day unfair constructive dismissal claim brought by a senior sexual health nurse
- *Earnshaw & Bentley v Advisory, Conciliation and Arbitration Service (ACAS)* [2019]: represented the respondent in a gender and age discrimination claim
- *Melendez v Kepler Cheuvreux* [2019]: acted for the respondent in relation to an unfair dismissal claim brought by a former banker

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