



## Kobre & Kim's Cross-Border Disputes Team

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**Ilona Groark**  
Hong Kong  
[ilona.groark@kobrekim.com](mailto:ilona.groark@kobrekim.com)



**Jef Klazen**  
New York  
[jef.klazen@kobrekim.com](mailto:jef.klazen@kobrekim.com)



**John Han**  
Hong Kong  
[john.han@kobrekim.com](mailto:john.han@kobrekim.com)



**Kamille Adair Morgan**  
BVI  
[kamille.adairmorgan@kobrekim.com](mailto:kamille.adairmorgan@kobrekim.com)



**Peter Tyers-Smith**  
Cayman Islands  
[peter.tyers-smith@kobrekim.ky](mailto:peter.tyers-smith@kobrekim.ky)



**Timothy de Swardt**  
BVI  
[timothy.deswardt@kobrekim.com](mailto:timothy.deswardt@kobrekim.com)



**Geoffrey Derrick**  
Washington DC  
[geoffrey.derrick@kobrekim.com](mailto:geoffrey.derrick@kobrekim.com)

# New York Glory Health Decision Makes Enforcement of Bonds Issued by Cayman and BVI Companies Much Easier

**A March 2024 decision coming out of the New York Supreme Court obtained by Kobre & Kim on behalf of a group of bondholders could be a game-changer for holders of bonds issued in the Cayman Islands and British Virgin Islands. In this client alert, a global team of Offshore and Onshore enforcement lawyers unpack the significance of the decision, and what it means for distressed investors around the world.**

Global distressed investors who are beneficial owners of bonds have long faced uncertainty and obstacles when enforcing their rights, including in offshore jurisdictions such as the Cayman Islands and the British Virgin Islands (BVI).

A March 2024 ruling, *Glory Health*, in the New York Supreme Court (obtained by Kobre & Kim on behalf of a group of bondholders), bears significant implications for these offshore bondholders, given New York law often applies to bonds issued in these offshore jurisdictions.

The decision allows these bondholders to pursue issuers and guarantors directly, without going through intermediaries such as bond trustees, including through winding-up proceedings, and dramatically speeds up creditor response times.

### NY Decision Empowers Beneficial Owners of Bonds

Recent decisions coming out of key courts worldwide have shown inconsistent takes on the standing of “beneficial owners” to enforce the bond terms or wind up the bond issuer. In a July 2023 BVI decision in *Cithara v Haimen Zhongnan*, for example, the court ruled that beneficial owners have standing to wind up a bond issuer directly. However, courts in the Cayman Islands and Hong Kong disagreed, holding the opposite view in decisions published, respectively, in April 2023 (*Shinsun Holdings*, Cayman) and July 2023 (*Leading Holdings Group*, Hong Kong).

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Given that the bonds in all three of these matters were governed by New York law, these three non-U.S. courts' decisions were based on predictions of how New York law would treat the standing of bondholders or "beneficial owners" of the bonds.

The Glory Health decision, in which a New York Supreme Court denied the defendants' motion to dismiss a lawsuit brought by beneficial bondholders over the company's default on US \$334 million in high-yield notes, may lead to a more consistent approach across jurisdictions.

### **Removing Key Barriers to Enforcement in Cayman, BVI**

Previously, global bondholders have been unable to enforce their claims in Cayman and Hong Kong because there has been real doubt as to whether they have "creditor" status.

The Glory Health decision improves the position of beneficial owners by removing the need in some instances to form groups to act and by allowing them to make (and quickly execute on) strategic decisions without necessarily going through a bond trustee (who may have very different views on the matter).

Bond issuers could see creditors' responses to defaults go from years to months or even weeks. Many of the collective action barriers to enforcement go away.

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There are likely to be several effects reverberating from Glory Health: A strong incentive for distressed bondholders to skip the collective process will likely make New York bonds more easily enforceable as a general matter. However, for bondholders that have long languished under the uncertainty surrounding the enforceability of their claims in Cayman, BVI, and Hong Kong, this is a sign to boldly move forward on an aggressive, multijurisdictional strategy targeting bond issuers in these offshore financial centers.

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### **About Kobre & Kim**

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct. The firm:

- Can act in jurisdictions in Cayman and BVI, as well as across North and South America, EMEA, and Asia, in cases involving closely coordinated, cross-border proceedings.
- Acts on behalf of creditors to monetize high-value bonds and loans, judgments, and arbitration awards.
- Has extensive experience handling restructuring-related disputes and issues on behalf of distressed debt purchasers in the secondary bond market.