



James Goudkamp

Call: 2014

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'A phenomenal source of knowledge and an extraordinarily meticulous, hardworking and helpful team player.'

Legal 500

Practice Profile

Timothy Brenton KC is no longer practising as a barrister.

Practice Profile

Gavin Kealey is widely acknowledged to be one of England & Wales's leading Commercial King's Counsel practising at the English Bar both as counsel and as international arbitrator. He is a Deputy High Court Judge assigned to the Commercial Court in London (where he has delivered some important judgments), Head of Chambers at 7 King's Bench Walk, and rated in Band 1 in either or both of Chambers & Partners and Legal 500 2022/3 for Insurance & Reinsurance, Aviation, International Arbitration (as counsel), International Arbitration (as arbitrator). He is the Chambers & Partners Star

Individual in Insurance. He is the 2022 Legal 500 Financial Services Silk of the Year and the 2022 Chambers & Partners Insurance and Reinsurance Silk of the Year.

Gavin specialises in all areas of commercial law with considerable expertise in contentious litigation in court (at trial and on appeal to all appellate tribunals including the Supreme Court and Privy Council) and in international arbitrations – focussing particularly on contractual disputes of all kinds: commercial litigation, insurance/reinsurance, aviation, jurisdiction and conflicts of laws, financial services and banking, oil and gas, civil fraud, professional negligence, shipping, sports law, share sales, joint venture disputes and corporate/share valuations.

Known for the quality of his advisory work, strategic case management skills, meticulous preparation, team leadership, incisive and effective examination of witnesses, Gavin is the go to silk for numerous clients and solicitors for cases involving complex legal arguments and intensive fact investigations at first instance and at all appellate levels up to the Supreme Court and the Privy Council.

Gavin also enjoys a significant practice as international arbitrator, regularly accepting appointments in all parts of the world. He is a Fellow of the Chartered Institute of Arbitrators, a fellow of the AIAC (Malaysia), member of the LCIA, and JAMS International. As a result, Gavin is particularly familiar with New York, French, Colombian and Mexican laws of contract and insurance, as well as specialist arbitrations, such as those under the Bermuda Form scheme.

His considerable experience outside England as Counsel and as Arbitrator extends far and wide to such jurisdictions as the US, France, Singapore, Dubai, Abu Dhabi, Bermuda, New Zealand, Bahamas, Cayman Islands, Holland, and Italy.

Gavin is accustomed to giving expert evidence on English law, and he has given expert evidence in both Federal and State courts of the United States by affidavit, by oral deposition and in trial, as well as in France, Norway, and Spain. He also appeared as Counsel in Federal Court (2016) in Memphis, Tennessee, to argue complex and novel issues of English law in response to the Federal Judge's invitation to the parties to field English Counsel to make the oral arguments.

Recent cases include his appearances in the two leading Covid-19 business interruption test cases (**FCA Test Case** before the UK Supreme Court [2021] UKSC 1 and the Divisional Court [2020] EWHC 2448 (Comm), and **Stonegate v Amlin** [2022] EWHC 2548 (Comm)), as well as other Court of Appeal and High Court judgments and awards on BI interruption (to date) [2020] EWHC 2710 and **Policyholders v China Taiping** [2021]); on limitation [2022] EWCA Civ 1699; and on jurisdiction [2022] EWHC 2049 (Comm).

Gavin is currently appearing for major aviation insurers in the leading billion-dollar aviation insurance test case arising out of the non-return of hundreds of aircraft out of Russia following the invasion of Ukraine (2023).

He also acted in the Court of Appeal on issues of fundamental importance in fraudulent misrepresentation, to which permission for appeal to the Supreme Court was denied [2019] EWCA Civ 596, and an important Court of Appeal case on

the scope of section 245 of the Insolvency Act, [2019] EWCA Civ 345.

Previously, he appeared in a four week hearing in the Commercial Court on aviation leasing [2018] EWHC 3315 (Comm), a share sale appeal [2018] EWCA Civ 2744, an Insolvency Act 1986 appeal, an oil & gas appeal [2018] EWCA Civ 25, and two trusts cases in the Privy Council [2017] UKPC 44, and [2017] UKPC 34.

Recently, international arbitrations (as Counsel and as Arbitrator) in the UK and Bermuda include political risk insurance in Sierra Leone, Africa (2021); clerical sexual abuse (2019/20); opioid US class actions (2019 – 2022); aviation accidents / disasters (2021) and a major South American \$800m catastrophic loss.

Other cases have involved toxic chemicals, medical malpractice, hip implants, pharmaceutical products, (2013 – 2019), medical devices (2016/7), aviation disaster (2016/7), *Ace Capital v Brit & QBE* [2016] LRIR 253, a series of arbitrations in New Zealand (2013 – 2015) on behalf of NZ insureds arising out of the Christchurch earthquakes, acting for BAT Industries in defending billion dollar claims relating to environmental pollution caused by PCBs in Missouri and Michigan (2012 – 2014), US manufacturers of toxic products claims (2013 – 2015), and punitive damages indemnity claim following a fatal aircraft disaster (2014).

Banking & Finance

Gavin Kealey's well-known skills of analysis and his experience have made him a sought after leader in difficult and substantial financial litigation. Banking and Finance work forms a small but significant part of his considerable practice.

Selected cases:

- Case regarding \$25 million loan for procurement of equipment, in which there was no repayment, guarantor dormant, involving liquidation issues, acting as sole Arbitrator.
- *Deslauriers v GAM* (Trinidad appeal to the Privy Council) [2017] UKPC 34.
- Sole (LCIA) Arbitrator in arbitration involving alleged fraud, breach of trust, breach of duty in connection with financial investments (2017/8).
- Representing *Calyon* in \$1.65 billion claim in the Commercial Court against IKB: derivatives, swaps, claim of fraud (2009/10).
- Representing private investors in bank fraud trial against *HSBC* in the Commercial Court (2006).
- *Alexiou v Campbell* [2007] UKPC 11. Share sale dispute before the Privy Council in its inaugural sittings in Nassau, The Bahamas (2006/7),
- Acting for Pictet Bank (Geneva and Nassau) in two month trial in the Bahamas (2005) in Trust/Banking litigation.

- **National Westminster Bank PLC v Bilgin** [2004] EWHC 2372. Piercing corporate veil, nominees & resulting trusts – Deputy High Court Judge.
- **Renault v Volvo**. International arbitration sitting in Paris/Amsterdam concerning company/share acquisitions (2003).
- **Den Danske Bank A/S, Nomura Bank, Bank of Tokyo v Skipton Building Society, Economic Ins. Co. Ltd. and Kleinwort Benson Ltd.** (Commercial Court, Thomas J.) judgment December 1997: Leading for defendants against all other parties in 2 month trial in the Commercial Court: loan portfolio transfers, construction of lending criteria, bank Broking Deeds and assignments, application of insurance terms, breaches of contract.
- **Sumitomo Bank, Sanwa Bank, Arab Bank v Banque Bruxelles Lambert** [1997] 1 Lloyd’s Rep. 487. Leading for syndicate of Banks in trial against Agent Bank: Duties of care owed by agent bank to syndicate of banks, misrepresentation and duties in the context of commercial property lending and mortgage indemnity insurance policies, the syndication of credit risks, the construction of Loan Agreements.

Insurance & Reinsurance

Gavin Kealey is and has been for many years one of the best-known and most highly regarded insurance and reinsurance practitioners in England. In the last two years, in which the insurance industry has been dominated by the pandemic, Gavin acted in the **FCA Test Case** litigation, the insurance industry’s most significant case of 2020/1, and also acted in important related litigation regarding business interruption claims, while maintaining his interest in ongoing litigation from 2019 – 2021, ranging from cases involving political risks in Africa, allegations of church sex abuse (USA), opioid abuse (USA), construction all risks (Malaysia), and the failings of industrial concrete for one of London’s gateway ports.

He is also an acknowledged expert on the Bermuda Form and is regularly appointed as Arbitrator in international insurance arbitrations. In 2005, he was the first recipient of the Chambers and Partners Insurance Silk of the Year Award, being in the very top rank of insurance and reinsurance silks in that directory and others ever since this area of practice was recognised.

Selected cases:

- **FCA Test Case** litigation before the UK Supreme Court [2021] UKSC 1 and the Divisional Court [2020] EWHC 2448 (Comm). A unique case, both in terms of test case litigation, and market significance, worth billions of pounds.
- **TKC v Allianz** [2020] EWHC 2710 (Comm). One of the earliest decisions to test the way in which business interruption insurance policies respond to the consequences of the COVID-19 pandemic.
- **Policyholders v China Taiping** (2021) non-confidential arbitration on COVID-19 before Lord Mance as sole arbitrator.
- Political risk insurance arbitration in Africa (2020/1).

- Acting as Counsel on indemnity insurance aspects of sexual abused-related court settlements (2019/20).
- Acting as Counsel on insurance issues arising from opioid-related US class actions (2019-ongoing).
- Major US, UK, and Bermudan insurance arbitration regarding a South American \$800m catastrophic loss event, as Counsel (2019-2021).
- Aviation disaster (2019) as sole Arbitrator.
- Arbitrator and Counsel in numerous arbitrations involving Bermuda Form or modified Bermuda Form policies (2017-2021).
- ***Ace Capital v Brit & QBE*** [2016] LRIR 253.
- International arbitrations (as Counsel) in the UK and Bermuda involving casualty insurances relating to toxic chemical claims (2017), medical malpractice claims (2016/7), pharmaceutical products claims, (2013-2017).
- US litigation (Tennessee) as Counsel on behalf of **Smith & Nephew** (policyholder), and international arbitrations (Bermuda and London) involving medical devices (2016/7) and hip replacements (2019/20): Case No. 04-CV-3027 – STA.
- International aviation insurance arbitration as sole Arbitrator (2016-2018)
- Lithuanian oil refinery claim against international brokers in negligence claims exceeding \$100 million: Commercial Court trial October/November 2014.
- Acting as Counsel for aviation insurers in defending punitive damages indemnity claim arising out of an aircraft disaster in the US: International Arbitration (2014).
- Acting as Counsel for Bermuda Form insurers in mass tort toxic chemical casualty claim (2014).
- Acting as Counsel for Bermuda Form insurers in claims concerning landfill collapses and river pollution in U.S. (2012/13).
- Acting as Counsel for Bermuda Form insurers in claims concerning brokers' bid-rigging in N.Y. and U.S. (2012/13).
- Acting as Counsel for Bermuda Form insurers in claims concerning hormone replacement therapy: multi-district litigation in U.S. (2012).
- Representing Indonesian insurers in Singaporean arbitration against Indonesian mining insureds in relation to misrepresentation and non-disclosures arising in connection with mine collapses and landslides in Indonesia (2011/12).
- Representing mutual energy insurers in long running international arbitration hearing governed by New York law

concerning North Sea oil platform collapse (2011).

- Representing New Zealand mutual insurers in claims against the international reinsurance market arising out of the 2010/11 Christchurch earthquakes. Two arbitrations in Auckland in 2014, March and November/December (2013/14): claims in the 100s of millions of dollars.
- Representing Bermudian insurer in international arbitration concerning medical equipment claims exceeding \$100 million under the Bermuda Form (2011).
- Representing UK Bank in domestic arbitration claim against UK insurers concerning UK and US Bankers Blanket Bond Policies (2011).
- **NFU v HSBC** [2010] EWHC 771 as a Deputy High Court Judge: double insurance.
- **Balli and PK Air Finance v Chartis & Others**. Representing 18 major aviation insurers in an action brought against them in the Commercial Court for \$150 million in connection with the theft and removal of three Boeing 747 aircraft to Iran (2009/10).
- Advising the **Law Society** in relation to claims against and coverage for solicitors in respect of professional indemnity (2010).
- Advising leading football club in relation to disablement claims arising from injuries sustained by former Captain on the football field (2010).
- Representing Excess Insurers in international arbitration on the **Bermuda Form** in resisting claim for \$75 million in connection with medical malpractice liabilities in the U.S. (2009/10).
- Representing insurers in resisting claims exceeding \$50 million by U.S. hospital company in an international arbitration on an amended **Bermuda Form** (2009/10).
- Representing one of the major international insurance brokers in resisting claims of \$500 million in the Commercial Court for alleged fraud in relation to PA LMX and Permanent Health covers (2008/9).
- Representing insurers in international arbitration on the **Bermuda Form** in resisting \$50 million claim by a major U.S. pharmaceutical company in respect of an internationally marketed and allegedly harmful drug (2008/9).
- Representing one of the major international pharmaceutical companies in a Bermudian arbitration on the **Bermuda Form** in obtaining recovery from liability insurers in respect of mass tort third party claims in the U.S.
- **Bedfordshire Police Authority v Syndicate 386** [2009] LRIR 607 (Commercial Court and Court of Appeal). Leading for public liability insurers in claim concerning Riot Damage Act liabilities.

- ***HLB Kidsons v Lloyd's*** [2009] 1 Lloyd's Rep 8; [2008] LRIR 237; [2008] 3 Costs LR 427 (Court of Appeal & Commercial Court). 2 month trial leading for Professional Indemnity Underwriters.
- ***Limit (No 2) v AXA*** [2009] LRIR 396 (Court of Appeal). Leading for reinsured against avoiding reinsurers: continuing representations.
- Representing Mexican insurers in defending a claim by U.S. aircraft lessors for excess of \$150 million in international arbitration governed by Mexican and English law in respect of the theft of a fleet of ageing aircraft (2007-2010).
- Acting for Colombian insurers in ICC arbitration: recovery from international reinsurers in claim arising from mortgage and savings liabilities of Banco de la Republica in Bogota (2006-2008).
- Acting for Bermudian insurers in an international arbitration in Bermuda on the Bermuda Form in resisting a \$50 million claim by a major U.S. motor manufacturer in respect of casualties in the U.S. (2006/7).
- ***Talbot v Nausch Hogan & Murray Inc*** [2006] 2 Lloyd's Rep 195 (Commercial Court). Undisclosed principals in insurance contracts.
- ***Travelers v Sun Life*** [2007] LRIR 619; [2006] EWHC 2885 (Commercial Court) Leading for insureds in claim under professional indemnity insurance.
- ***Grecoair v Tilling*** [2005] Lloyd's Rep. IR 151. Acting for reinsurers in successfully resisting the attempt by U.S. insured to cut through insurance provided by Angolan insurers to claim direct against reinsurers.
- ***Lumbermens v Bovis*** [2005] LRIR 74 (Commercial Court). Impact and enforceability of global settlements in liability insurance and reinsurance.
- Commercial Court trial (2 months) leading for international reinsurers (Swiss Re affiliate) insurance of a manufacturer's historical asbestos exposure in £166.6 million claim vs insurers and brokers (2005).
- Arbitration for insurers on World Trade Center coverage dispute (2005).
- ***Tonicstar v American Home*** [2005] LRIR 32 (Commercial Court) Anti-suit and anti-anti-suit injunctions and conflicts of laws in context of insurance.
- ***Travelers Casualty v Sun Life*** [2004] LRIR 846 (Commercial Court) Jurisdiction, conflict of laws.
- ***Sun Life Assurance Co. of Canada v CX Reinsurance Co. Ltd*** [2004] LRIR 58 (Court of Appeal). Formation of contract, incorporation of terms, existence of arbitration agreement in context of reinsurance.
- ***Wise v Grupo Nacional Provincial*** [2004] 1 All ER (Comm) 49. Affirmation/waiver.

- Acting for **Warner Chappell in Warner Chappell v Michael Bolton** (Commercial Court) Infringement of copyright by U.S. singer/songwriter and rights of subrogation between co-assureds (2004).
- **Assicurazioni Generali v CGU** [2003] LRIR 725. Deputy High Court Judge: leading case on follow settlements clauses – affirmed by the Court of Appeal.
- 3 week arbitration on the Bermuda Form (leading for U.S. insured) concerning mass tort silicone gel breast implant claims in the U.S. (2003).
- 5 week reinsurance/brokers’ negligence trial concerning energy insurance in the Commercial Court leading for reinsured (2002).
- 4 week international arbitration leading for US/Indonesian insureds against English/Continental insurers (2002).
- Film finance insurance trial (leading for insurers) in Commercial Court, London.
- **Gold Medal v Hopewell** 3 month insurance/reinsurance arbitration in Bermuda (leading for reinsurers) concerning illegal applications of pesticides in the USA on edible products (2001 – 2003).

General Commercial Disputes

Gavin Kealey’s expertise in Commercial Law and as an advocate is well known. He is also particularly well known for his preparation, analytical skills, team-work, and cross-examination which put him in high demand from domestic and international clients, lay and legal.

The diversity of his General Commercial work at all levels (see below, most recently in the Privy Council, Court of Appeal and Commercial Court) reflects his wide-ranging and acknowledged skills.

Alongside his disputes practice, he is regularly involved in advising on, and appearing in, complex fraud cases, where his forensic skills are in particular demand.

Selected cases:

- **Consulting Concepts International Inc v Consumer Protection Association (Saudi Arabia)** [2022] EWHC 461 (Comm) and **Consulting Concepts Int’l Inc. v Kingdom of Saudi Arabia** Case 1:19-cv-11787-AKH (New York).
- International arbitration (6 weeks in 2021) concerning alleged African frauds.
- **BV Nederlandse v Rembrandt Enterprises** [2019] EWCA Civ 596.
- **Crumpler v Candey** [2019] EWCA Civ 345.

- **APFL v Alitalia** [2018] EWHC 3315 (Comm).
- **Towergate** [2018] EWCA Civ 2744.
- **Monde Petroleum v WesternZagros** (Kurdistan oil & gas dispute) [2018] EWCA Civ 25.
- **Deslauriers v GAM** (Trinidad appeal to the Privy Council) [2017] UKPC 34.
- **Whitlock v Moree** (Bahamas appeal to the Privy Council) [2017] UKPC 44.
- International arbitrations in the UK and Bermuda involving toxic chemical claims (2017), medical malpractice claims (2016/7), pharmaceutical products claims, (2013-2017).
- US litigation (Tennessee) on behalf of **Smith & Nephew** (Counsel in Federal Court).
- International arbitrations (Bermuda and London) involving medical devices (2016/7).
- International aviation insurance arbitration (2016-2018).
- Representing New Zealand mutual insurers in claims against the international reinsurance market arising out of the 2010/11 Christchurch earthquakes. Two arbitrations in Auckland in 2014.
- Representing Lithuanian oil refinery insureds against international brokers in claims for negligence exceeding \$100 million: Commercial Court trial October/November 2014.
- Representing charterers in defending multi-million dollar claim arising out of a 5 year contract of affreightment (2014).
- Representing a first tier City firm against claims of negligence brought against them by clients in previous shipping arbitration (2014).
- Representing Bermudian insurers in Bermuda Form insurance dispute with US insureds: mass tort toxic chemical casualty claim: Arbitration in London (2014).
- **BAT Industries Plc v Windward Prospects Ltd & Appleton Papers Inc** [2013] EWHC 4087 (Comm). Multi-million dollar claim for indemnity against potential liabilities arising from toxic environmental pollution caused by PCBs.
- **General Construction Limited v Chue Wing** [2013] UKPC 30 (Privy Council). Force majeure under Mauritian and French Law. Appeal from Mauritius.
- **Proton Energy v Orlen** [2013] EWHC 334 (sitting as a Deputy High Court Judge). Oil sale contract dispute between Swiss sellers and Lithuanian buyers.
- **Thinc Group Ltd v Armstrong** [2012] EWCA Civ 1227 (Court of Appeal). Contractual construction concerning contract

between principal and agent.

- **Masri v Consolidated Contractors International** [2011] EWHC 1024 (Comm); [2011] EWCA Civ 898; [2011] WLR (D) 258. 4 week contempt hearing and appeals in one of the longest-running Commercial Court disputes involving breaches of court orders, contempt of receivership orders, civil contempt (2011).
- **Buyuk v Progress** [2010] EWHC 442. Challenges to arbitration award for irregularity and permission to appeal - Deputy High Court Judge.
- Retained by Force India to act for Formula One racing engineer/employee in resisting attempt by/on behalf of **Virgin Racing/Wirth Engineering** to enforce a non-compete provision in employment contract (2010).
- Representing **Calyon** in \$1.65 billion claim in the Commercial Court against **IKB**: derivatives, swaps, claim of fraud (2009/10).
- Acting for **International Motorsport** in claim against **Welsh Ministers** in respect of the cancellation of the Welsh world motor rally (2009).
- **Datasat v Swindon Town Football Club** [2009] EWHC 859. Loans, investments, share sale referred to at [2011] EWCA Civ. 84 Acting as a deputy High Court Judge.
- **Verizon v Swiftnet** [2008] EWHC 551. Deputy High Court Judge - telecommunications network dispute and forgeries.
- **Alexiou v Campbell** [2007] UKPC 11. Representing successful shareholders in share sale dispute before the Privy Council in its inaugural sittings in Nassau, The Bahamas (2006/7).
- Representing the **Rugby Football Union** in its dispute with the Premiership clubs in the QBD in London (2005/6).
- Representing private investors in bank fraud trial against **HSBC** in the Commercial Court (2006).
- Representing **EDF** in the High Court in its employment contract dispute with its former CEO (Sept 2005).
- Acting for **Pictet Bank** (Geneva and Nassau) in two month trial in the Bahamas (2005) in Trust/Banking litigation.
- Representing BAR in **BAR v Jenson Button and Williams Racing** to retain the services of Jenson Button for 2005 in Formula One - arbitration before the Formula One Contract Recognition Board in Paris, Milan and Geneva.
- Acting for Warner Chappell in **Warner Chappell v Michael Bolton** (Commercial Court) Infringement of copyright by U.S. singer/songwriter and rights of subrogation between co-assureds.
- **Renault v Volvo** International arbitration sitting in Paris/Amsterdam concerning company/share acquisitions.

- **Tonicstar v American Home** [2005] LRIR 32 (Commercial Court) anti-suit and anti-anti-suit injunctions and conflicts of laws.
- **National Westminster Bank PLC v Bilgin** [2004] EWHC 2372. Deputy High Court Judge – piercing corporate veil, nominees & resulting trusts.

Entertainment & Sport

Gavin Kealey has a relatively small but nonetheless well-developed practice in Sports Law, deriving principally from his acknowledged reputation and skills in contractual analysis, cross-examination and legal presentation. This is an area of practice he particularly enjoys.

Selected cases:

- Acting for **Premiership Football Club** in respect of disablement claims arising from injuries sustained by former Captain on the football field (2010).
- Retained by **Force India** to act for Formula One racing engineer/employee in resisting the attempt by/on behalf of Virgin Racing/Wirth Engineering to enforce a non-compete provision in employment contract (2010).
- Acting for **International Motorsport** in claim against Welsh Ministers in respect of the cancellation of the Welsh world motor rally (2009).
- **Datasat v Swindon Town Football Club** [2009] EWHC 859. Loans, investments, share sale in connection with Football Club referred to at [2011] EWCA Civ. 84 – acting as a deputy High Court Judge.
- Representing the **Rugby Football Union** in its dispute with the Premiership clubs in the QBD in London (2005/6).
- Representing **BAR in BAR v Jenson Button and Williams Racing** to retain the services of Jenson Button for 2005 in Formula One – arbitration before the Formula One Contract Recognition Board in Paris, Milan and Geneva.
- Acting for **Warner Chappell in Warner Chappell v Michael Bolton** Commercial Court concerning the infringement of copyright by U.S. singer/songwriter and rights of subrogation between co-assureds.

Aerospace & Aviation

Gavin Kealey's main involvement in aviation concerns aviation insurance in relation to which he is an acknowledged expert. His work spans London market instructions to cases further afield, including the Middle East.

Selected cases:

- Significant aviation claim (2020/1) involving sovereign wealth fund in Abu Dhabi Global Market Courts.

- US-related aviation engineering claim with parallel proceedings in Federal Courts including the US Supreme Court (as arbitrator) (2021).
- Aviation disaster (2019) as sole Arbitrator in 5 week arbitration.
- **APFL v Alitalia** [2018] EWHC 3315 (Comm).
- International aviation insurance arbitration involving aircraft loss (2016 – 2018).
- Acting for Aviation insurers defending claim for punitive damages indemnity arising out of an aircraft disaster in the US: International Arbitration (2014).
- Representing insurers in dispute over recoverability of US punitive damages award against US aviation company (2011).
- Acting for insurers in the Commercial Court in an action for the loss by theft of three 747 aircraft valued at \$150 million and their retention in Iran (2009/10). **PK Airfinance, and Balli, v Insurers.**
- Acting for Mexican insurers defending claims by U.S. aircraft lessors for excess of \$150 million in international arbitration in respect of the theft of a fleet of ageing aircraft (2008–2010): after a 2 month arbitration before two Mexican Arbitrators and one English Arbitrator, the U.S. lessors’ application for permission to appeal the award against them was finally dismissed with costs.
- **Grecoair v Tilling** [2005] Lloyd’s Rep. IR 151. Acting for reinsurers in successfully resisting the attempt by U.S. insured to cut through insurance provided by Angolan insurers to claim direct against reinsurers.

Professional Negligence

Gavin Kealey began his professional negligence practice when he first joined chambers. His practice has evolved from representing one of the big four accounting firms in much of its early litigation in the U.K. and in The Bahamas, to dealing with and managing substantial cases involving a variety of classes of professional most notably insurance brokers, solicitors and valuers.

Selected cases:

- Representing Lithuanian oil refinery insureds against international brokers in claims for negligence exceeding \$100 million: Commercial Court trial October/November 2014.
- Representing a first tier City firm against claims of negligence brought against them by clients in previous shipping arbitration (2014).
- Advising the **Law Society** (2010/11) in relation to claims against (and coverage for) solicitors in respect of professional indemnity.

- Representing one of the major international insurance brokers in resisting claims of \$500 million in the Commercial Court for alleged fraud and negligence in relation to PA LMX and permanent health insurance (2008/9).
- **HLB Kidsons v Lloyd's** [2009] 1 Lloyd's Rep 8; [2008] LRIR 237; [2008] 3 Costs LR 427 (Court of Appeal & Commercial Court). 2 month trial leading for Professional Indemnity Underwriters. Claims by accountants against their insurance brokers, insurance advisers, claims managers and solicitors.
- **Talbot v Nausch Hogan & Murray Inc** [2006] 2 Lloyd's Rep 195. Undisclosed principals of insurance brokers in insurance contracts.
- Commercial Court trial (2 months) leading for international reinsurers (**Swiss Re** affiliate) in case concerning the insurance of a manufacturer's historical asbestos exposure in £166.6 million claim vs insurers and brokers: (2005).

International Arbitration

Gavin Kealey is known for his considerable expertise in domestic and international arbitrations. He is regularly instructed as Counsel on substantial commercial cases where his skills as a legal and factual analyst, as a cross-examiner, and as an advocate highly respected by the international markets, are in high demand.

He is also regularly appointed in significant arbitrations as an Arbitrator. His arbitrations cannot be described with any particularity in view of the confidentiality of the process.

However, he has a tremendous reputation and is particularly known for presiding fairly and efficiently, with a light and relatively informal touch, over arbitrations where he is a party-appointed Arbitrator, or the sole Arbitrator, and increasingly, as the president of eminent tribunals.

He also makes it a point of writing and delivering his awards swiftly following the conclusion of any hearings.

Selected Cases:

- Political risk insurance arbitration in Africa (as Counsel) (2020).
- Acting as Counsel on liability insurance claims arising out of Church sex abuse cases in the US (2019-2021).
- Acting as Counsel on insurance issues arising from opioid-related US class actions (2019-ongoing).
- Significant shipping arbitration involving one of the world's largest shipbuilders, as presiding Arbitrator (fellow Arbitrators from UK).
- Aviation disaster (2019) as sole Arbitrator in complex case involving extensive technical and expert evidence, as well as difficult legal issues.

- US-related aviation engineering claim with parallel proceedings in Federal Courts, as presiding Arbitrator, (fellow arbitrators from UK).
- Arbitration concerning rare and precious metals, in which he is the presiding Arbitrator (fellow arbitrators both former High Court judges).
- Very complex Directors' & Officers' liability claim in arbitration in which he sat with distinguished arbitrators known to the London market.
- US insurance arbitration in which he sat as presiding Arbitrator with two American arbitrators of high standing.
- Major US, UK, and Bermudian insurance arbitration regarding a South American \$800m catastrophic loss event, as Counsel (2019-2021).
- Kuala Lumpur insurance arbitration (2018-2021) as presiding Arbitrator (fellow arbitrators from UK and Australia).
- International arbitrations in the UK and Bermuda (Counsel) involving toxic chemical contamination claims (2017/8), pharmaceutical products claims (2013-2018), medical devices (2018).
- Bermuda arbitration (Arbitrator) involving medical malpractice claims (2016-2018).
- Arbitrator in London arbitration involving copyright (2017/8).
- Sole Arbitrator in London arbitration concerning US financial services (2017/8).
- Sole Arbitrator in London arbitration concerning aviation (aircraft) loss (2016-2018).
- Counsel in natural disaster arbitrations (New York, London) (2017/8).
- Sole Arbitrator in Bermudian arbitration concerning \$1 billion marine casualties (2015).
- Arbitrator in London and Geneva concerning oil and gas development and production contracts in Iraq (2014).
- Arbitration (Counsel) concerning claim governed by Pennsylvania law (2014).
- Sole Arbitrator in arbitration between UK and Romanian companies as to proper construction of written agreements and liabilities for damages: 2005-2014.
- Final hearings (Counsel) in (a) international pharmaceutical arbitration involving Israeli and European companies (sitting in New York) (2012/13); (b) international arbitrations concerning shipbuilding and oil/gas licensing disputes (2012/13); (c) international arbitration with juridical seat in Paris (sitting in Paris, French law, French and English languages) (2013).

- Arbitration (Arbitrator) concerning impact of Icelandic volcanic ash cloud on insurance and reinsurance policies (2012).
- Dubai arbitration (Counsel) involving hotel management contract (2015).
- Counsel for New Zealand mutual insurers in claims against the international reinsurance market arising out of the 2010/11 Christchurch earthquakes. Two arbitrations in Auckland in 2014, March and November/December (2013/14): claims in the 100s of millions of dollars.
- Punitive damages indemnity arbitration (Counsel) arising out of aircraft disaster in the US: International Arbitration (2014).
- Arbitration (Counsel) concerning landfill collapses and river pollution in U.S. (2012/13).
- Arbitration (Counsel) concerning brokers' bid-rigging in N.Y. and U.S. (2012/13).
- Arbitration (Counsel) concerning hormone replacement therapy: multi-district litigation in U.S. (2012).
- International (Greece/China) arbitration: shipbuilding/sale dispute, as Counsel (2012).
- International arbitration hearing (Counsel) governed by New York law concerning oil platform collapse (2011).
- Representing UK Bank in domestic arbitration claim against UK insurers concerning UK and US Bankers Blanket Bond Policies (2011).
- Representing Indonesian insurers in Singaporean arbitration against Indonesian mining insureds (2011/12).
- **Buyuk v Progress** [2010] EWHC 442. Challenges to maritime arbitration award for irregularity and permission to appeal – Deputy High Court Judge.
- Arbitration concerning US hospital company claim (2009/10).
- S. pharmaceutical company claim in an international arbitration in respect of an internationally marketed drug (2008/9).
- Representing Mexican insurers in defending a claim by U.S. aircraft lessors for excess of \$150 million in international arbitration in respect of the theft of a fleet of ageing aircraft (2008–2010).
- Acting for Bermudian insurers in resisting a \$50 million claim by a major U.S. motor manufacturer in an international arbitration in Bermuda in respect of casualties in the U.S. (2006/7).
- Acting for Colombian insurers in ICC arbitration: seeking recovery from international reinsurers in claim arising out of mortgage and savings liabilities of Banco de La Republica in Bogota (2006–2008).
- Acting for Formula 1 motor racing team to retain the services of their no. 1 driver for 2005 in Formula One – arbitration

before the Formula One Contract Recognition Board in Paris, Milan and Geneva.

- International arbitration sitting in Paris/Amsterdam concerning company/share acquisitions under aegis of Dutch Arbitration Court.
- International arbitration held bilingually in French and English concerning share sales and company valuations.
- Arbitration for insurers on World Trade Center coverage dispute.
- 3 week arbitration concerning mass tort silicone gel breast implant claims in the U.S.

Pharmaceutical / Medical

Gavin Kealey has considerable experience of international arbitrations for and against U.S. pharmaceutical and medical companies (mostly, the largest in the world).

Selected cases:

- Acting as Counsel on insurance issues arising from opioid-related US class actions (2020–ongoing).
- Highly complicated arbitration involving US federal law and regulation on hip replacements.
- As Counsel in Federal Court in Memphis, Tennessee, to argue complex and novel issues of English law in response to the Federal Judge’s invitation to the parties to field English Counsel to make the oral arguments: Case No. 04-CV-3027 – STA.
- International arbitrations in the UK and Bermuda involving casualty insurances relating to toxic chemical claims (2017), medical malpractice claims (2016/7), pharmaceutical products claims, (2013–2017).
- International arbitrations (Bermuda and London) involving medical devices (2016/7).
- Acting as expert for US insureds in relation to a Federal Court claim against international insurers concerning prosthetic implants 2011 – 2015 and continuing.
- Representing Bermudian insurers in Bermuda Form insurance dispute with US insureds: mass tort toxic chemical casualty claim: first stage International Arbitration (2014).
- Representing Bermudian insurer in international arbitration concerning hormone replacement therapy: multi-district litigation in U.S. (2012).
- Representing Bermudian insurer in international arbitration concerning medical equipment claims exceeding \$100 million under the Bermuda Form (2011).

- Representing insurers in resisting claim exceeding \$50 million by a U.S. hospital company in an international medical malpractice arbitration (2009 – 2010)
- Representing insurers under the Bermuda Form scheme in resisting claim for \$75 million in connection with medical malpractice liabilities in the U.S. (2009 – 2010).
- Representing insurers in an international arbitration in resisting \$50 million claim by a US pharmaceutical company in respect of an internationally marketed and allegedly harmful drug (2008/9).
- Representing major international pharmaceutical company in obtaining recovery from liability insurers in a Bermudian arbitration in respect of mass tort third party claims in the U.S. arising out of on and off label marketing/sales of medical drugs (2008).
- 3 week arbitration on the Bermuda Form (leading for U.S. insured) concerning mass tort silicone gel breast implant claims in the U.S. (2003).
- 3 month insurance/reinsurance arbitration in Bermuda (leading for reinsurers) concerning illegal applications of pesticides in the USA on edible products (2001 – 2003). ***Gold Medal v Hopewell.***

Jurisdiction / Conflicts of Laws

Given the international and commercial nature of his practice, Gavin Kealey often advises on issues of private international law: on issues of governing law, jurisdiction, anti-suit injunctions. He is constantly involved in the important strategic and tactical decisions that need to be made on these issues which often directly or indirectly affect the outcome of any dispute.

Selected cases:

- ***Consulting Concepts International Inc. v Kingdom of Saudi Arabia*** Case 1:19-cv-11787-AKH (2021) (2nd Circuit Federal Court): jurisdiction, governing law.
- ***Masri v Consolidated Contractors International Company SAL*** [2011] All ER (D) 142 (Commercial Court), jurisdiction, stay, Articles 27 and 28 Council Regulation (EC) 44/2001.
- ***Tonicstar v American Home*** [2005] LRIR 32 (Commercial Court) anti-suit and anti-anti-suit injunctions and conflicts of laws in context of insurance.
- ***Travelers Casualty v Sun Life*** [2004] LRIR 846 (Commercial Court) jurisdiction, conflict of laws.
- ***DR Insurance v Central National Ins.*** [1996] 1 Lloyd's Rep. 74. Leading on issues of Private International law, Jurisdiction, Proper law, illegality.

Product Liability

Gavin Kealey has an established product liability practice with a focus on the insurance aspects of pharmaceutical and aviation industries.

Selected cases:

- Highly complicated arbitration involving US federal law and regulation on metal in metal hip replacements (2017-2019).
- As Counsel in Federal Court in Memphis, Tennessee: Case No. 04-CV-3027 - STA.
- International arbitrations in the UK and Bermuda involving casualty insurances relating to toxic chemical claims (2018), medical malpractice claims (2016/7), pharmaceutical products claims, (2013-2017).
- International arbitrations (Bermuda and London) involving medical devices (2016/7).
- Representing Bermudian insurers in Bermuda Form insurance dispute with US insureds: mass tort toxic chemical casualty claim: first stage International Arbitration (2014).
- Insurance arbitration concerning a substantial claim by German insureds against international insurers under liability insurance governed by Pennsylvania law (2014).
- Representing Aviation insurers in defence of claim for punitive damages indemnity arising out of an aircraft disaster in the US caused by a defective engine and blades: International Arbitration (2014).
- ***BAT Industries Plc v Windward Prospects Ltd & Appleton Papers Inc*** [2013] EWHC 4087 (Comm). Multi-million dollar claim for indemnity against potential liabilities arising from toxic environmental pollution caused by PCBs.

Energy & Natural Resources

Gavin Kealey has been instructed in several major energy disputes in recent years, especially in offshore energy claims, but also in insurance-related disputes. With a long-running interest in litigation and arbitration in the energy sector, he remains instructed by leading law firms in this sector on a regular basis, both as advocate and as an Arbitrator.

Selected cases:

- Arbitration involving offshore oil and gas drilling contractor to the energy industry (2020).
- ***Monde Petroleum v WesternZagros*** (Kurdistan oil & gas dispute) [2018] EWCA Civ 25.
- Representing subrogated insurers in claim involving polypropylene dehydration technology in Saudi Arabia against US and UK companies (2017).

- Representing Lithuanian oil refinery in claims exceeding \$100 million in respect of refinery explosion: Commercial Court trial October/November 2014.
- International arbitration in London and Geneva concerning oil and gas development and production contracts in Iraq, the allocation of working interests, the value of working interests, revenues and costs associated with onshore exploration and production fields (2014).
- Arbitrator in international arbitration governed by Bermudan law concerning North Sea oil platform casualty resulting in property damage and liability losses exceeding \$1 billion (2014/15).
- Representing Lithuanian oil refinery insureds against international brokers in claims for negligence: Commercial Court trial October/November 2014.
- ***BAT Industries Plc v Windward Prospects Ltd & Appleton Papers Inc*** [2013] EWHC 4087 (Comm). Multi-million dollar claim for indemnity against potential liabilities arising from toxic environmental pollution of land and air caused by PCBs.
- Representing US Energy Company against a \$50 million claim following the collapse of a major coal ash facility (2013).
- ***Proton Energy v Orlen*** [2013] EWHC 334 (sitting as a Deputy High Court Judge). Oil sale contract dispute between Swiss sellers and Lithuanian buyers.
- Representing Indonesian Insurers in insurance claim brought by Indonesian insureds concerning mine disaster and collapse of land: arbitration in Singapore (2011/12).
- Representing energy mutual in claim concerning oil platform collapse: arbitration in London governed by New York Law (2011).
- Representing international insurers in connection with proceedings in Australia concerning mining flood disaster (2011/12).

Property Damage

Thanks in part to Gavin's experience in the insurance aspects of this field, and from his acknowledged reputation and skills in assessing expert evidence, cross-examination and legal presentation, he has a stellar reputation in this area of the law.

Selected cases:

- Arbitration involving a "hyper-structure" (a globally high profile building) with two distinguished construction arbitrators (2020).
- Arbitration involving property damage to a very large container port project, in which he acted as Counsel (2019/20).

- Long-running series of arbitrations, relating to a catastrophic property collapse (2018 – 2021).
- Representing Bermudian insurers in Bermuda Form insurance dispute with the insureds: mass tort toxic chemical casualty claim: Arbitrations in London (2014 – 2017).
- Representing New Zealand mutual insurers in claims against the international reinsurance market arising out of the 2010/11 Christchurch earthquakes. Two arbitrations in Auckland in 2014, March and November/December (2013/14): claims in the several hundreds of millions of dollars.
- ***BAT Industries Plc v Windward Prospects Ltd & Appleton Papers Inc*** [2013] EWHC 4087 (Comm). Multi-million dollar claim for indemnity against potential liabilities arising from toxic environmental pollution.

Shipping & Transport

Gavin Kealey's practice in Shipping has developed from a thriving junior's specialism into a leading silk's practice in which his experience and expertise are very much in demand in substantial cases both as Counsel and also as an Arbitrator. For many years he has been instructed in many of the shipbuilding disputes from major maritime centres on claims which are in excess of \$100 million.

Selected cases:

- Significant shipping arbitration involving one of the world's largest shipbuilders, as presiding Arbitrator (fellow Arbitrators from UK) (2020).
- Arbitration held in Rio de Janeiro, subject to Brazilian law, involving Brazilian, US and French firms with Gavin Kealey as sole UK Counsel (2019).
- Party-appointed Arbitrator in LCIA arbitration regarding oil rig owning company (2018)
- Arbitrator in shipping and shipbuilding disputes (2015/6).
- Representing a first tier City firm against claims of negligence brought against them by clients in previous shipping arbitration (2014).
- Arbitrator in international arbitration governed by Bermudian law concerning two substantial marine casualties resulting in property damage and liability losses exceeding \$1 billion (2014/15).
- Representing charterers in defending a multi-million dollar claim arising out of a 5 year contract of affreightment (2014).
- International arbitration (LMAA) for highly complex contractual shipbuilding dispute (2014).
- International (Greece/China) arbitration: shipbuilding/sale dispute, as Counsel (2012).

- Arbitrator in international arbitration concerning shipbuilding contracts (2012).
- **Buyuk v Progress** [2010] EWHC 442. Challenges to maritime arbitration award – Deputy High Court Judge.
- Acting as Arbitrator in charterparty disputes (2005 – present).
- Representing a variety of shipowners in relation to shipbuilding disputes and charterparty disputes in arbitration – cancellation of contracts, instalments, repudiation (2008/9).
- **Golden Fleece Maritime v St Shipping** [2008] 2 Lloyd’s Rep 119 (Court of Appeal). Leading for shipowners against time charterers. Effect of change of International Regulations on Shipowners’ obligations.
- **Petroleum Oil & Gas Corp. of South Africa v FR8** [2009] 1 Lloyd’s Rep 107 (Commercial Court, Steel J.). Leading for Shipowners in claim under Shelltime 4 form.
- Representing Norwegian oil rig owners in 2 month arbitration against rig builders (2005).

Practice Profile

Principal areas of practice: shipping contracts, insurance contracts (marine and non-marine), shipbuilding and sale contract disputes, and jurisdiction and injunction disputes.

Tim has extensive experience as an advocate in the UK and overseas courts, and before arbitration tribunals. He has been recognised as a leading practitioner in editions of *Chambers and Partners*, the *Legal 500*, *Who’s Who Legal* and *Legal Experts*.

His practice has mainly comprised of shipping, shipbuilding, sale contract and insurance contract disputes; and jurisdiction

and injunction disputes. With extensive knowledge of the fine art market, he also acts in art sale disputes.

Shipping, Sale, and Shipbuilding Contracts

Selected cases

- (2018) LMAA oil rig building contract arbitration, instructed by Buyer against a Chinese shipyard in a contract termination dispute.
- (2016-2018) Court action concerning the sale of an Old Master painting between two leading fine art dealers involving allegations of misrepresentation; acting for the defendant seller in (ongoing) Court and mediation proceedings.
- (2015-2017) 3 x LMAA shipbuilding arbitrations. Acting in each for a Korean shipyard/the Builder/Seller in arbitrations 1 and 2. Successfully defended the Buyer's claims that the vessels had failed their respective sea trials and/or were undeliverable, this leading to the successful compromise of arbitration 3.
- (2012-2014) LMAA coal sale arbitration, acting for leading Swiss commodities trader/Buyer. Successfully sustained Buyer's defence that the Colombian coal supplied was off spec and not as represented.
- (2010-2013) LMAA shipbuilding contract arbitration acting for Italian Buyers. Successfully defended the claim of a Turkish shipyard for the wrongful rejection of a newly built OBO vessel and sustained Buyer's case that it was undeliverable.
- ***Ocean Victory*** [2013] EWHC 2199 Acted for intermediate disponent owners in the Commercial Court in this leading unsafe port dispute.
- (2012-2013) LMAA shipping contract arbitration concerning a dispute between a leading European container group and a shipping company concerning a contract to export Australian wheat.
- ***Highland Crusader Offshore Partners v Deutsche Bank AG*** [2010] 1 WLR 1023 (CA) Acting for the appellant Texan companies in successfully reversing the Commercial Court's anti-suit injunction made against them in a sale/misrepresentation dispute. A leading CA authority on the effect of non-exclusive jurisdiction clauses.
- ***The Gaul***: Re-Opened Public Enquiry into the Loss of the Trawler "GAUL" (2005-2006). A major maritime disaster Enquiry which re-opened the 1974 Enquiry into the 1974 loss of this trawler in the Barents Sea; acted as Counsel for the Families of the Crew.
- ***The David Agmashabeli*** (2001-2002) [2002] All ER 806 (Comm) Carriage of Goods by Sea Act 1971; damage to cargo. A leading case on the Master's duties as to the clausing of bills of lading.
- ***Derby Resources A.G. v Blue Corinth Marine Co - The Athenian Harmony*** [1998] 2 Lloyd's Rep 410 Principles for

assessing compensation for loss of or damage to goods; and 425 principles for assessing interest where delay in prosecuting proceedings.

- **Marc Rich v Portman** [1996] 1 Lloyd's 430 (Comm Ct); [1997] 1 Lloyd's Rep 225 (CA) Acted for insurers defending claim for demurrage losses under Charterer's liability insurance. A leading case successfully defended claim on grounds of non-disclosure.
- **The Rewia** [1991] 1 Lloyd's Rep 69; [1991] 2 Lloyd's Rep 325 C.A Carriage by sea – issues of forum conveniens and the carrier's – principal place of business and whether to stay. TSQC successful before Com. Court but unsuccessful on appeal.
- **Hyundai v Papadopoulos** [1980] 2 Lloyd's Rep 1 (H.L.) Successfully acting for Builder/creditor in this leading authority concerning the guarantee of shipbuilding contracts.
- **Jade v Robert Nicholas** [1978] Q.B. 917 (C.A.) Successfully acting for the goods' seller in this leading authority on bills of exchange law.

General Commercial Contract Litigation

Selected cases:

- **Commerzbank AG v PLD Telecom** (2000) Litigation over option to purchase shares in Russian telecommunications company, contractual injunction in support of arbitration; confidentiality issues.
- **BCCI v Gokal litigation** (1999) Acting for one of the 3 Gokal brothers in litigation resisting claims to enforce guarantees.
- **Sierra Leone Telecommunications Co v Barclays Bank plc** [1998] 2 All ER 821 Where obtained declaration on behalf of the Government of Sierra Leone in exile that the military junta which had usurped power was not the government of Sierra Leone whether de facto or de jure and had no right to seize or operate the national telecommunications system.
- **The Balkanbank Litigation** [1995] 1 WLR 1057 (C.A.) (No. 1) and [1995] 1 WLR 1067 (C.A.) (No.2) Jurisdiction disputes: a leading CA authority on grant of worldwide asset-freezing relief in aid of foreign proceedings.

Jurisdiction and Injunction Disputes

Many of the below sample cases in which TSKC has acted are leading ones in their fields:

- **Highland Crusader Offshore Partners v Deutsche Bank AG** [2009] EWCA Civ 725 T Acting for the successful appellants in this leading authority on the effect of non-exclusive jurisdiction clauses in parallel proceedings disputes.

- ***Svenska Petroleum v Government of Lithuania*** [2005] Proceedings to enforce ICC arbitration award against Lithuania.
- ***Joanna V*** [2003] App. L. Rev. 07/10 (Comm. Court) Enforcing arbitral award when it conflicted with an earlier Chinese Court judgment.
- ***Sabah Shipyards v Islamic Republic of Pakistan*** [2003] 2 Lloyd's Rep. 503 (C.A.) Where a claim by Pakistan to state immunity from TSQC's shipyard clients' English Court proceedings and from the latter's proceedings to injunct Pakistan from proceeding in its own courts were rejected by the Commercial Court and on appeal.
- ***Balkanbank v Taher*** [1995] 1 WLR 1057 (C.A.) (No. 1) A leading CA authority on grant of asset-freezing injunctions in aid of foreign proceedings; and (No. 2) [1995] 1 WLR 1067 (C.A.) on the undertaking in damages.
- ***Re The Embassy of Iraq and Rafidain Bank*** [1992] BCLC 301 Non-immunity of Iraqi Embassy bank accounts in winding-up.
- ***Fal Bunkering v Grecale*** [1990] 1 Lloyd's Rep 360 Whether LMAA terms effectively incorporated; whether tribunal had the right to order security for costs.
- ***A v B*** [1984] 1 All ER 265 (Leggatt J) Whether HFW solicitors' lien on client documents was waived and lost by their arrest of their client's ship. TSQC's arguments failed, but with his advocate's tenacity being described by the Court as being "in the highest traditions of the English Bar".
- ***Alcom v Republic of Colombia*** [1984] A.C. 580; H.L. Immunity of Republic of Colombia's Embassy bank account from garnishee proceedings.
- ***I Congreso Del Partido*** [1983] A.C. 244; H.L. Disputing ship arrests on state immunity grounds, in Comm. Ct., CA and HL.
- ***Emmanuel Colocotronis*** [1982] 1 WLR 1096 Incorporation of arbitration clause into a bill of lading contract.
- ***The Saudi Prince No. 1*** [1982] 2 Lloyd's Rep. 255 Disputed ship arrest, veil-piercing.
- ***The Aventicum*** [1978] 2 Lloyd's Rep. 184. Disputed ship arrest/Admiralty jurisdiction.

Insurance

In this field, too, many of the cases below in which Mr Saloman has acted are leading ones in the relevant field:

- ***Beursgracht*** [2002] 1 Lloyd's Rep 574 (CA) An important case on the insurer's and assured's rights and obligations under marine open cover insurance.

- ***Marc Rich (renamed Glencore) v Portman*** [1996] 1 Lloyd's Rep. 430 (Longmore J.) and [1997] 1 Lloyd's Rep 225 (C.A) A leading case on the requirements of materiality and inducement in the field of liability insurance.
- ***Yona International v La Reunion Francaise*** (1995-1996): Expropriation of a Liberian timber concession, claims under a Lloyd's C.E.N.D. policy, Commercial Court.
- ***Owners of vessel Zeus v Bimeh Iran Insurance Co. Ltd*** (1996) Marine insurance case arising from missile damage, Commercial Court.
- ***Pan Atlantic Insurance Co. Ltd v Pine Top Insurance Co. Ltd*** [1992] Lloyd's Rep 101; [1993] 1 Lloyd's Rep . 496, C.A.; [1995] 1 A.C. 501 (H.L.) The leading modern English case on non-disclosure and misrepresentation inducing insurance contracts.
- ***Bucks Printing Press v Prudential Assurance*** [1994] 3 Re.L.R. 219 Non-disclosure, and the differentiating fraudulent and reckless statements.
- ***Harbour Assurance Co (UK) v Kansa General International Ins.Co.*** [1993] QB 701 Concerning an arbitrator's jurisdiction to decide illegality issues, a leading case on the severability of arbitration clauses.

Practice Profile

What the directories say

Jonathan Gaisman KC was named a Star at the Bar by Chambers and Partners up until 2023 as he had been for many years before. Between 2015 and 2023, he was a star individual in the Commercial Dispute Resolution section of Chambers and Partners 2023. He was Chambers' Commercial Litigation Silk of the Year in 2009 and 2014, and shortlisted again in 2016.

He was Chambers' Insurance Silk of the Year in 2006.

He was shortlisted for the Chambers' Professional Negligence Silk of the Year in 2014 and 2015. He was shortlisted for the 2015 Legal 500 Commercial Litigation Silk of the year; the 2015, 2017 and 2018 Legal 500 Shipping Silk of the year; and the 2017 Legal 500 International Arbitration Silk of the year.

He was The Lawyer Magazine's Barrister of the Week in June 2020. He was short-listed for the 2009 Barrister of the Year award by The Lawyer Magazine and was included in its "Hot 100" in 2006.

Extracts from the 2025 directories include the following.

- "A superb advocate – the best of the best. The case was exceptionally difficult, but his presentation skills were exceptional." Banking and Finance, Legal 500 2025
- "Jonathan continues to be at the top of his game. His views are always right and his leadership strength can be a superpower." Commercial Litigation, Legal 500 2025
- "Undoubtedly one of the leading commercial silks at the Bar today. His attention to detail is second to none, as is his legal analysis." Commercial Dispute Resolution, Professional Negligence, Chambers UK Bar 2025
- "Jonathan is a fiercely intelligent and persuasive advocate." Insurance, Chambers UK Bar 2025
- "Jonathan Gaisman is a force to be reckoned with. He will make sure he understands everything in a case and will give a Rolls-Royce service." International Arbitration: General Commercial and Insurance, Chambers UK Bar 2025
- "Jonathan is such a smooth advocate. His presentational skills are absolutely fabulous." Civil Fraud, Energy and Natural Resources, Chambers UK Bar 2025
- "When he takes on a case he obliterates the opposition." Professional Negligence, Chambers UK Bar 2025
- "Jonathan has a fierce reputation in litigation and he has the ear of the court." Shipping and Commodities, Chambers UK Bar 2025
- "Jonathan is of course highly intellectual and his advocacy is clear and determined. He is a superb leader in a complex dispute and his advocacy is always well prepared and focused." Insurance and Reinsurance, Legal 500 2025

Extracts from the 2024 directories include the following.

- "He is a superb advocate and a pleasure to watch in action." Insurance, Chambers UK Bar 2024
- "He was brilliant, so incisive and clear. Gaisman is also a fabulous cross-examiner." Professional Negligence, Chambers

UK Bar 2024

- “He provides unbelievably strong legal knowledge and very sound commercial advice.” Shipping & Commodities, Chambers UK Bar 2024
- “Jonathan is a barrister operating at the top of the market. He offers fantastic strategic advice and is able to spot the heart of the matter.” Shipping, Legal 500 2024
- “One of the best, if not the best, advocate at the Bar. Always supremely well-prepared for trial.” Banking and Finance, Professional Negligence Legal 500 2024
- “Jonathan Gaisman displays an unbelievable grasp of detail and willingness to absorb amounts of detail.” Commercial Dispute Resolution (UK Bar), Chambers Global 2024

Chambers & Partners 2023 states: “Jonathan stands out; he is authoritative and very clear. He has an enormous grasp of detail and is very respected by clients ... probably the most formidable advocate at the Bar; he is just brilliant. He doesn’t over-trade so he is properly prepared on each case ... Magisterial”.

The Legal 500 2022 guide reports: “Jonathan was a fabulous leader for our team in what was a torrid and challenging matter. He is intellectually fearless, determined and completely rigorous. He does not leave things to junior members of the team but is always entirely top of the detail. Approachable and available, even in times of great challenge, it was a real privilege to work with him.”

Chambers & Partners 2020 described him as “heavily engaged in every detail, he pushes himself and his team hard and invariably delivers phenomenal results. Wonderful to listen to, unbelievably witty and someone who is in total command of the court.”

Other editions of Chambers & Partners described him as “One of the outstanding advocates of his generation. He has enormous courtroom presence ...The best advocacy I have ever seen.”. A previous Legal 500 directory said that he was “quite simply the best advocate in London by a country mile”. He has also been rated as “unquestionably the best advocate at the Commercial Bar”, a “truly stunning” and “incredibly charismatic” advocate; “a Commercial advocate of consummate ability... the difference between winning and losing”; “utterly superb and brilliantly clever”, “an accomplished and polished advocate who is urbane, funny and devastating in the courtroom”; “a terrifying opponent ... whose fearsome intellect is matched with devastatingly brutal cross-examination skills”; “an utterly fantastic lawyer; an enormously impressive guy with a really supreme mind”; “a tenacious, disciplined and rigorous advocate, who is great fun to deal with” and as having “phenomenal intelligence, amazing forensic skills and a good sense of humour”.

About Jonathan's practice

Jonathan Gaisman practises primarily as an advocate. He specialises in all areas of commercial litigation and arbitration and is happy to expand his practice into any field where his skills as an advocate may be of use. He is equally experienced in short cases before first instance or appellate tribunals arguing points of law, and lengthy commercial trials and arbitrations, demanding in terms of long-term preparation, tactical planning, cross-examination of factual and expert witnesses and detailed mastery of complex facts – or any case falling in between these extremes. He believes that commercial advocates owe a duty to their client to concentrate absolutely on the case in hand; he avoids making professional commitments which conflict with the fulfilment of that duty.

Jonathan Gaisman's practice involves a significant advisory component. He places emphasis on the client's need for realistic, down to earth advice in a commercial context.

Jonathan Gaisman also accepts appointments as arbitrator in a wide range of commercial and international disputes, including ICC arbitrations.

He has appeared in some of the largest and most high-profile trials of recent years. Starting with the **Gooda Walker** action, the first and most successful of the Lloyd's Names actions, he subsequently acted for auditors Deloitte & Touche in the claim against them brought by the liquidators of **Barings**, and for Ernst & Young in **Equitable Life's** attempt to hold its directors and auditors liable for its misfortunes. In neither case did the claimant make any recovery from the auditors. In 2008, Jonathan Gaisman acted for the lead claimants in the **Buncefield** explosion litigation, against whom the principal defendant, Total, ultimately conceded most issues and failed on the rest. In the Court of Appeal he appeared in the **Kriti Palm**, a leading recent authority on the definition of fraud. In 2013 Jonathan Gaisman acted for **Gulf Keystone** in its successful defence of **Excalibur's** claims to a share of oil concessions in Iraqi Kurdistan. Among other long cases in which Jonathan Gaisman has been involved are the 80 day **NRG** claim against its actuaries, accountants and advising bank arising out of a company take-over, and a 66 day hearing (and a 10 day appeal) in disciplinary proceedings against **Ernst & Young** before the JDS. Going back further in the reports, Jonathan Gaisman appeared in well-known authorities such as **Banque Keyser Ullmann v Skandia** – the Gemstones litigation, and **Henderson v Merrett**, both of which went to the House of Lords.

Clients have included the **Royal Bank of Scotland** and four of its ex-directors, in defence of the claims brought against them by shareholders relating to the bank's 2008 rights issue; and **Cattles plc** and its subsidiaries, in relation to claims against PwC for negligent auditing.

In 2019, he acted for the Lloyd's marine insurance market in a total loss case in which wilful misconduct was found against the owners of the "**Brillante Virtuoso**", who had arranged a fake pirate attack near Somalia, in an attempt to defraud underwriters. He has acted for the Russian Federation, in connection with enforcement proceedings brought against it by

shareholders in **Yukos Oil** arising out of a \$50bn award promulgated in the Hague.

He acted for **Petrosaudi Oil** in a dispute with PDVSA concerning a Venezuelan drilling contract, persuading the Court of Appeal to overturn a decision of the Commercial Court, which had enjoined Petrosaudi from claiming under a standby letter of credit on the grounds of fraud. He appeared in the Court of Appeal in the **Fiona Trust** litigation in relation to the Commercial Court's award of \$60m damages on a cross-undertaking in damages. He appeared for KPMG in relation to their successful resistance to an application by the liquidators of **Carillion plc** for pre-action disclosure of audit working papers.

He acted at first instance and in the Supreme Court for Hiscox in the FCA test case concerning the impact of **COVID-19** on business interruption insurance policies. He has recently concluded a lengthy trial acting for all-risks insurers in relation to the **detention of commercial aircraft by Russia** in the aftermath of its invasion of Ukraine.

Banking and Finance

In the banking and financial sector, Jonathan Gaisman has acted for the **Royal Bank of Scotland** and four former directors (including Fred Goodwin) in defence of the claims brought against them by shareholders who subscribed to the 2008 rights issue. He also advised shareholders of **Northern Rock**, in relation to their rights against HM Government arising out of the nationalisation of the bank under the Banking (Special Provisions) Act 2008. He was retained in 2009 to appear in the Supreme Court in **Deutsche Bank v Highland**, a (subsequently compromised) dispute concerning the sale and subsequent decline in value of US real estate collateralised debt obligations. He acted in a Commercial Court trial acting for **Calyon Bank** against a Polish aircraft manufacturer in relation to a dispute over FX derivatives. Jonathan Gaisman acted in **Luxe v Midland**, a case which concerned a disappointed buyer's right to seek proprietary remedies in an international context against the proceeds of sale of a Ukrainian steel group, where it was alleged that the seller had wrongfully sold to a subsequent buyer at a higher price. He acted for the majority shareholders of **First Investment Bank of Bulgaria** in the expedited trial of a dispute between shareholders in relation to an IPO of the bank's shares. Among many other investors' claims, he acted for **ANZ Bank** in relation to common law and FSMA claims against it by investors arising out of loss in value of Russian investments. His role in the massive **Barings** trial involved a detailed analysis and critique of the bank's management, operational systems and conduct of derivatives trading. He has also acted in relation to the collapsed **Millennium** hedge fund and has advised **Hermitage Capital Management**.

Entertainment & Sport

In the entertainment field, Jonathan Gaisman acted for **BBC Worldwide** in a claim brought by it in relation to the exploitation of its archive of rock music. He represented **Chris Blackwell** in defending a claim brought by **Steve Winwood** for a shareholding in **Island Records**. The **Disney group** is another recent client. He advised **Peter Lim** in relation to his bid to acquire **Liverpool Football Club**. He was appointed ICC arbitrator in relation to a dispute about the broadcasting of Premier League football in Africa.

Energy & Natural Resources

Jonathan Gaisman acted for **Gulf Keystone** in successfully defending the claims brought against it by **Excalibur**, in relation to oil concessions in Kurdistan. The four-month trial involved the construction of a collaboration agreement, issues of oil exploration practice and finance, and a host of exotic facts in dispute. Thereafter, he acted for a major European utility company in an arbitration about the consequence of breach of a confidentiality agreement in relation to Kurdish Gas Concessions. In both cases, the policies of the Kurdish Regional Government were to the fore. Jonathan Gaisman acted for **Petrosaudi Oil** in a dispute with PDVSA concerning a Venezuelan drilling contract and persuaded the Court of Appeal to overturn a decision of the Commercial Court, which had enjoined Petrosaudi from claiming under a standby letter of credit on the grounds of fraud. Jonathan Gaisman has acted in numerous disputes concerning North Sea oil fields.

General Commercial Disputes

Jonathan Gaisman acted for the **Royal Bank of Scotland** and four former directors (including Fred Goodwin) in defence of the claims brought against them by shareholders who subscribed to the 2008 rights issue. He acted for **Gulf Keystone** in the Commercial Court claim brought against it by Excalibur Ventures, in relation to Kurdistan oil blocks. He also recently acted in another Kurdistan energy dispute, this time a major arbitration relating to the consequences of breach of confidentiality agreements concluded in respect of two large gas fields. He also acted for the corporate trustee of the **IBM (UK)** pension fund in its successful claim in the Chancery Division against IBM to rectify the terms of a 1983 pension trust deed (and later deeds), establishing the right of active members to retire before 63 without actuarial reduction and without employer consent. The **Buncefield** explosion case, in which he acted for the successful lead claimants, is among other things, the leading modern authority on public nuisance. Jonathan Gaisman assisted **Axiom Mining** in its dispute with Sumitomo over nickel prospecting rights, in the Courts of the Solomon Islands. Other clients have included **Peter Munk**, the directors of **Northern Rock** and (in relation to their Russian investments) **Hermitage Capital Management** and **Bill Browder**. He has been involved in litigation arising out of the Chancery Lane tube crash; he has acted for **Total** in relation to a Turkish pipeline dispute; he has appeared in the Administrative Court on an application for judicial review, seeking to prevent the disclosure of a confidential document to the FSA.

Insurance & Reinsurance

Insurance and reinsurance have always been a core area of Jonathan Gaisman's practice.

He has just finished a lengthy trial in connection with the insurance consequences of the detention by Russia of large numbers of commercial aircraft in the aftermath of its invasion of **Ukraine**.

He acted for Hiscox in the FCA test case concerning the impact of **COVID-19** on business interruption insurance policies, heard in the Supreme Court in November 2020. He also acted in a total loss case in which wilful misconduct was found against the owners of the **"Brillante Virtuoso"**, who faked a Somali pirate attack on the vessel in order to defraud insurers.

The many other insurance cases in which Jonathan Gaisman has appeared include **Kuwait Airways'** claim arising out of the theft of its aircraft after the Iraqi invasion, which succeeded in the House of Lords, **Bonner v Cox**, the Aon 77 energy cover litigation, which established, among other things, that general duties of careful underwriting are not to be implied into excess of loss reinsurance contracts, the **Glencore v Metro litigation, Decorum v Atkin**, where he acted on a successful yacht insurance claim brought by a Russian oligarch, as well as countless other appearances for insureds, insurers and brokers.

Jonathan Gaisman has appeared in a large number of Bermuda Form arbitrations under New York law, covering matters as diverse as Ford sports utility vehicles, malfunctioning weed-killer, Prozac and the Savings & Loans debacle. He regularly appears in English law-governed insurance and reinsurance arbitrations on topics such as the **PA LMX** spiral, the collapses of **Arthur Andersen** and **Worldcom, KPMG** US's tax shelter vehicles, the operation of the Cuban sugar market, the damage caused by Californian forest fires, Indonesian coal exports, as well as more technical reinsurance issues.

He has acted in a number of political risks disputes. Cases include a dispute with the **ECGD** in relation to the Venezuelan oil industry, and advising in relation to the insurance aspects of disputes involving the **Tchenguiz** brothers and the **Madoff** Ponzi scheme.

International Arbitration

As well as sitting as an arbitrator, Jonathan Gaisman is a very experienced advocate in all forms of arbitration, and litigation connected with arbitration. He acted for the Russian Federation in relation to attempts by **Yukos** to enforce arbitration awards made in the Hague. He acted for a major European utility company concerning the consequences of breach of confidentiality agreements in relation to gas concessions in Kurdistan. He was Counsel in **Westacre v Jugimport**, a Court of Appeal authority on the effect of bribery and fraud on the enforceability of an international arbitration award. He has appeared in a large number of Bermuda Form arbitrations under New York law, covering matters such as Ford sports utility vehicles, malfunctioning weed-killer, Prozac and the Savings & Loans debacle. He has regularly appeared in English law-governed insurance and reinsurance arbitrations on topics such as the **PA LMX** spiral, the collapses of **Arthur Andersen** and **Worldcom, KPMG** US's tax shelter vehicles, the operation of the Cuban sugar market, the damage caused by Californian forest fires, Indonesian coal exports, as well as political risks disputes and more technical reinsurance issues. He successfully argued in the Commercial Court the case of **B v S**, which decided that the Scott v Avery provision in the FOSFA 54 arbitration clause prevents a claimant in arbitration from applying to the Court for a freezing injunction.

Jurisdiction/Conflicts of Laws

Conflicts of laws and jurisdiction disputes have always been a speciality. In the last few years, he acted in a 3-day jurisdiction dispute, appearing for **VTB** against Sberbank. Jonathan Gaisman was brought in to appear in the Supreme Court in **Deutsche Bank v Highland**, a dispute (subsequently compromised) concerning the interaction of anti-suit

injunctions and non-exclusive jurisdiction clauses. He has argued issues of renvoi in the **“WD Fairway”** trial, and points on articles 22 and 23 of the Brussels I Regulation in **Calyon v PZL**. He has long experience of jurisdiction disputes, such as the **“Bergen”**, the **“Rewia”**, **Youell v Kara Mara** (an anti-suit injunction case), **Source v TUV Rheinland** (a case involving the application of the Brussels Convention to a dispute concerning the provision of toys from China), **IP Metal v Ruote Oz**, (a metal traders’ dispute) and the **“Nile Rhapsody”** (a case where the Judge managed to find an oral exclusive jurisdiction agreement).

Professional Negligence

Jonathan Gaisman acted for the successful auditors in two of the largest audit negligence trials, **Barings** and **Equitable Life**. Barings raised wide-ranging issues of audit negligence, corporate governance and technical banking and derivatives practice; the decision established auditors’ rights to rely on management fault not just as contributory negligence, but as altogether breaking the chain of causation between audit fault and loss to the company; the case also established the right of auditors as company officers to rely on what was then section 727 of the Companies Act 1985 to relieve them of liability. Jonathan Gaisman has appeared in disciplinary proceedings before the JDS. He recently acted for **Ernst & Young** who succeeded on appeal in overturning findings of want of objectivity and independence that had been made by the first instance JDS tribunal. He acted for **Swiss Bank Corporation** in the lengthy (and unsuccessful) action by NRG against its actuaries, accountants and advising bank arising out of a company take-over. He acted for the Names in the **Gooda Walker** action, in which Lloyd’s underwriters were found liable for negligent underwriting. He acted for the lead claimants in the **Buncefield** litigation in which negligence in the operation of Total’s Hemel Hempstead petrol tank farm and resulting foreseeable damage were alleged and ultimately admitted. He acted for **Cattles Plc** in its claims against PwC for audit negligence, alleging misstatement of impaired loans in its financial statements. He was retained by **KPMG** in relation to a dispute with the AADB over the powers of the latter to call for documents, under the disciplinary scheme, from accountants acting in the capacity of insolvency practitioners. He appeared for KPMG in relation to their successful resistance to an application by the liquidators of **Carillion plc** for pre-action disclosure of audit working papers.

Shipping & Transport

From the early 1980s, with the **“New York Star”** and the **“El Amria”** as well-known early appellate cases, shipping has been a core area of Jonathan Gaisman’s practice. He acted in a total loss case in which wilful misconduct was found against the owners of the **“Brillante Virtuoso”**, who faked a Somali pirate attack on the vessel in order to defraud insurers. He acted in the Court of Appeal for **Fiona Trust** in relation to the Commercial Court’s award of \$60m damages on a cross-undertaking in damages. In 2009, he argued two expedited trials in the Commercial Court concerning the Boskalis vessel **“WD Fairway”**, a case which raised questions of abandonment and subrogation in the context of a CTL, as well as issues under section 423 of the Insolvency Act 1986. A third trial in 2010, involving the same vessel, raising questions in relation to an assured’s entitlement to interest on the CTL, was settled during final speeches. Jonathan Gaisman argued the **“Kriti Palm”**, a case in which he persuaded the Court of Appeal to overturn a finding of deceit against Caleb Brett made by the trial judge, and which raised wide issues on the duties of international cargo inspectors and the

status of their certificates. Jonathan Gaisman argued the “*Berge Sisar*” in the House of Lords, which is the leading authority on the Carriage of Goods by Sea Act 1992. Other House of Lords shipping cases in which he has appeared are the “*Boucraa*” (on the retrospective power of the power of arbitrators to dismiss claims for want of prosecution, under the Courts and Legal Services Act 1990) and the “*Antonis P Lemos*” (on the application of the Admiralty jurisdiction to claims in tort). Jonathan Gaisman has frequently advised on both sides of P&I Clubs’ disputes with members.

Practice Profile

Alistair Schaff KC practises both as a barrister and as an arbitrator specialising in international commercial law. He is a leading commercial Silk, particularly in the fields of international arbitration, insurance and reinsurance, and shipping/international trade. In 2018, Alistair was named the Chambers Bar Awards Shipping Silk of the Year (in 2015 he was named the Legal 500 Awards Shipping Silk of the Year). In 2009, Alistair was named the Chambers Bar Awards Insurance Silk of the Year and has been frequently short-listed ever since. He is ranked in band 1 as an International Arbitrator (London Bar) by Chambers & Partners.

As Counsel, he is heavily involved in the insurance and reinsurance treatment of COVID 19 Business Interruption losses and in the very large claims concerning the continued detention of commercial aircraft in Russia. He has recently concluded an appeal to the Supreme Court (which settled) concerning the allocation of mesothelioma losses at the reinsurance level, issues which the Court of Appeal resolved by an extended application of implied contractual principles of good faith. He acted for Ukrnafta in a major enforcement battle concerning a Stockholm arbitration award. He led for the insurance market in the recently settled billion dollar SBM/ MOPUstor Commercial Court action involving sub-sea and topsides damage to a North Sea platform; and he led for the shipowners in the “*B Atlantic*” an appeal to the Supreme Court in a war risks insurance claim concerning the total loss of a vessel which was detained by the Venezuelan authorities after a large consignment of cocaine had been found strapped to the hull; the decision is a leading one on war risks perils

and exclusions. Other recent cases include acting for super-yacht underwriters in an over-valuation case; for a financial services firm, establishing the principle that '*res judicata*' principles preclude complainants from accepting a FOS award in their favour and then suing for additional compensation over and above the limits of the FOS monetary jurisdiction in respect of the same cause of action; for insurers in litigation surrounding Standard Life's Sterling Pension Fund and its claim under its professional liability policy; and for insurance brokers in litigation involving the alleged loss of gold bullion in Turkey and its disputed insurance coverage. He acted in the long-running jurisdictional contest known as the Masri litigation and the even more long-running jurisdictional and substantive contest known as the Metro litigation. And he also appeared in the Privy Council, on appeal from the Guernsey Court of Appeal, in a very significant case involving the discount rate to be applied to lump sum awards for personal injuries. Although outside his normal area of practice, this latter case exemplifies both the range of his abilities and his refusal to limit his work to discrete areas of specialisation. Landmark successes included the seminal decisions of the House of Lords in ***Wasa v Lexington*** [2009] UKHL 40 and of the Commercial Court in ***Equitas v R&Q*** [2009] EWHC 2787 (Comm).

As an advocate, he has argued cases before the European Court of Justice, the Supreme Court, the House of Lords, the Privy Council and the Court of Appeal and makes frequent appearances in the Commercial Court and in commercial arbitrations, both in London and overseas, and whether in long complex trials or arbitrations involving lengthy cross-examination of factual witnesses or experts or in short interlocutory hearings involving difficult points of law. At the pre-trial stage, he operates a very '*hands-on*' approach to his cases. He believes that being an advocate is not just about presenting a case in court or in arbitration but is also about being involved in, and being on top of, a case from an early stage and about helping to shape its eventual outcome through the necessary tactical, procedural and evidential decisions on the way. He is both accessible and '*user-friendly*.'

He has also acted as an expert on English law for use in foreign proceedings and has appeared as counsel before the Court of Final Appeal in Hong Kong and the Supreme Court of Gibraltar.

As an arbitrator, he is regularly appointed in all manner of international commercial arbitrations, both institutional (ICC, UNCITRAL and LCIA) and otherwise, and as sole or party-appointed arbitrator or chair. He has considerable experience as an arbitrator not merely in insurance and shipping matters but in commercial disputes more generally. Recent appointments as arbitrator include disputes relating to alleged banking fraud, bribery in relation to large commercial contracts, product liability, gas pricing, oil pollution and the transfer of shares, as well as insurance and shipping disputes by the dozen. As Chambers recites: "*he's thorough, incredibly well prepared and has everything at his fingertips.*" "*He is enormously inventive and reliable and he writes beautifully.*"

Insurance & Reinsurance

Alistair Schaff KC has a pre-eminent insurance and reinsurance practice. In 2009, he was named the Chambers Bar Awards Insurance Silk of the Year. He has been frequently short-listed ever since.

Alistair Schaff KC is currently heavily involved in very large claims concerning COVID business interruption losses and commercial aircraft detained in Russia

Alistair Schaff KC appeared in the recent case of *Equitas v MMI* [2019] EWCA (Civ) 718, one of the latest cases involving mesothelioma liabilities within the 'Fairchild enclave,' this time at the reinsurance level. The Court of Appeal set aside the award of the judge arbitrator, Flaux LJ, and held that allocation at the reinsurance level was governed by implied contractual principles of good faith. An appeal to the Supreme Court was compromised in mid 2020.

In *Atlas Navios v Navigators (the "B Atlantic")* [2018] UKSC 26, the Supreme Court dismissed Owners' appeal in relation to a claim for a total loss of a vessel which had been detained (and ultimately confiscated) by the Venezuelan authorities prior to sailing after a large consignment of cocaine had been found professionally strapped to the underwater hull. Owners, represented by Alistair Schaff KC, had claimed on their war risk policy, for a total loss by perils insured, and insurers relied on the standard 'customs infringement' exclusion. Although Flaux J rejected Owners' case that there had been wrongful political interference in the judicial process, the Judge upheld the claim on the policy on the grounds that (1) as was common ground at trial and on appeal, the affixing of the drugs which had caused the detainment recklessly subjected the vessel to the risk of detainment and accordingly amounted to 'malicious acts' by persons unknown within the cover and (2) as a matter of construction, the standard policy exclusion did not apply where the relevant customs 'infringement' was no more than the manifestation of those insured 'malicious acts'. The decision was reversed on appeal, as a matter of construction: [2106] EWCA Civ 808. However, the Supreme Court permitted insurers to withdraw its previous concession that the relevant acts amounted to 'malicious acts' and has now held that the 'malicious acts' cover was not engaged at all, the acts of the drugs smugglers (albeit reckless) lacking the necessary spite or ill will towards the vessel to qualify as 'malicious acts'. The decision has significantly narrowed the scope of the malicious acts cover although the exclusion was also upheld on alternative construction grounds.

Alistair Schaff KC has recently been and continues to be involved in a string of high value and complicated liability insurance or reinsurance claims which are the subject of London arbitration and in which he has acted for insurers or reinsurers. Frequently governed by New York law, and often on the Bermuda Form, these arbitrations have ranged from pharmaceutical liabilities, liabilities for patent infringement, liabilities for personal injury (mesothelioma) and maritime pollution.

In *Involnert v Aprilgrange (the "Galatea")* [2015] EWHC 2225 (Comm), a superyacht had been inadvertently insured for 13m euros when it was known by its owners and managers to be worth no more than 8m euros. Leggatt J. upheld the defence of Insurers, represented by Alistair Schaff KC, that the policy had been avoided for material non-disclosure.

Standard Life v Ace [2012] EWHC 104 (Comm) involved a claim for £100m on Standard Life's professional liability policy in respect of a cash injection made to top up the value of the Pension Sterling Fund as a result of falls in value in the Fund. Alistair Schaff KC acted for the insurance market. The litigation raised significant issues of fact and law, including the scope of Mitigation Costs coverage in a professional liability policy and novel and difficult questions of apportionment

where mitigation costs are alleged to have been incurred for both insured and uninsured purposes. The Court of Appeal dismissed Insurers' appeal from the first instance judgment in Standard Life's favour: [2012] EWCA Civ 1713. **Aioi v Heraldglen** [2013] EWHC 154 (Comm) involved an appeal from an arbitration award in which the tribunal had held that the losses arising from the attacks on the World Trade Center arose from two events, rather than one event. Alistair Schaff KC acted for the Respondent who successfully upheld the award before Field J.

Two landmark victories were for the successful reinsurers in the leading case of **Wasa v Lexington** [2009] UKHL 40 in which the House of Lords considered the nature of a 'back to back' facultative reinsurance contract and held that reinsurers were not liable to indemnify the reassured in respect of an underlying liability for property damage which had occurred outside the policy period (see [2010] J.B.L. page 9 for an article which he has written on this case); and in **Equitas v R&Q** [2009] EWHC 2787 (Comm) in which Gross J. upheld the use of actuarial models as a means of kick-starting the LMX spiral in the aftermath of the incorrect aggregation and/or settlement of KAC / BA and Exxon Valdez losses.

Other selected cases:

- **Orient Express Hotels v Generali** [2010] EWHC 1186 (Comm) which involved business interruption claims arising out of Hurricanes Katrina and Rita, the 'other circumstances' clause and the vexed question of wider 'vicinity' damage (this controversial decision was appealed to the Court of Appeal but settled; it has since been overturned by the Supreme Court in the FCA test case concerning COVID BI losses: [2021] UKSC 1).
- **Mopani Copper Mines v Millennium** [2009] Lloyd's Rep IR 158, which involved principles of construction concerning the admissibility of deleted words.
- **Enterprise v Strand** [2006] 1 LLR 500 in which he acted for the successful reinsurers in litigation involving the liability section of an energy policy.
- **CGU v Astrazeneca** [2006] Lloyd's Rep. IR 409 which involved the scope of a 'back to back' reinsurance.
- **GE Re v New Hampshire / Willis** [2004] Lloyd's Rep. IR 404, a film finance case in which he acted for the successful Claimant whose declining of liability on grounds of breach of warranty was upheld.
- **Super Chem Products Ltd v American Life & General Insurance Co. Ltd** [2004] Lloyd's Rep. IR 446, in which he acted for the successful insurers on an appeal from the Court of Appeal of Trinidad and Tobago to the Privy Council in a case which upheld the insurers' right to rely on timebar and claims co-operation conditions to deny liability for a claim on fire policies.
- **Jan de Nul v Royale Belge** [2002] 1 LLR 583 (CA) in which he acted for the successful insured who claimed under a third party liability policy in respect of liabilities for negligence and nuisance.

- **Kingscroft v Nissan** [1999] Lloyd's Rep. IR 603, in which he acted for the successful Weavers stamp companies in their claim against their quota share reinsurers in a case which raised important issues as to how underwriting pools operated.
- **Royal Boskalis Westminster v Mountain** [1997] 2 All ER 929 (CA) in which he acted for the successful insurers in a claim involving illegality and duress arising out of the first Gulf War.
- **The State of the Netherlands v Youell** [1998] 1 LLR 236 (paint damage to submarines and issues of sue and labour).
- **Fraser v Colton** [1997] 1 LLR 586 (marine insurance – total loss)

Commercial Litigation

Alistair Schaff KC is currently involved in significant Commercial Court litigation involving claims for COVID BI losses.

In *Carpatsky v Ukrnafta* [2020] EWHC 769 (Comm), Alistair Schaff KC was involved in a major Commercial Court action concerning the enforcement of a Stockholm arbitration award.

Alistair Schaff KC was involved in the major Commercial Court action involving damage to a North Sea platform (the YME MOPUstor) which was fixed for 12 weeks in October 2018 and in which the claim was allegedly worth about \$1bn. The claim involved highly complex factual and expert issues concerning causation of loss and the quantum of repair and settled in September 2018.

More generally, and although a personal injury action would not normally be regarded as a 'commercial dispute,' he was instructed by the insurance market in what was a landmark ruling on the discount rate in relation to the award of lump sum damages. In **Helmut v Simon**, the Guernsey Court of Appeal had assessed damages by reference to an unprecedented negative discount rate which had the effect of increasing the multiplier to unprecedented levels. The Privy Council dismissed insurers' appeal: [2012] UKPC 5.

He also acted in a major dispute involving Forward Freight Agreements. An important issue arose as to whether a settlement agreement could be construed in the light of statements allegedly made in the course of 'without prejudice' negotiations. The Supreme Court has held that they can be relied on for that purpose, reversing the Court of Appeal who had ruled to the contrary. **Oceanbulk v TMT** [2010] 3 WLR 1424 is an important authority on the (reduced) scope of the 'without prejudice' rule.

More historically, in **Great North Eastern Railway v Railcare**, he acted for the successful claimant in its claim for substantial damages for negligence against a supplier of rail parts arising out of a derailment, vindicating a very substantial claim of approximately £3m in the face of an unsuccessful plea of contributory negligence.

International Arbitration (Counsel)

Alistair Schaff KC has a major international arbitration practice. He has acted as Counsel in commercial arbitrations for over 30 years, both in London and overseas, including in the Far East and in the Caribbean. His arbitration practice covers all aspects of international commercial disputes, both of a general commercial nature and involving insurance or maritime-related disputes. He is currently involved in arbitration concerning the recovery of COVID BI losses. He recently appeared as Counsel in a significant case on enforcement of a Swedish arbitration award in *Carpatsky v Ukrnafta* [2020] EWHC 769 (Comm). He has recently been involved as Counsel in a number of significant New York law and Bermuda Form arbitrations concerning liability insurance involving a wide range of subjects such as pharmaceutical products, patent infringement and maritime pollution, as well as an English law arbitration involving liability for mesothelioma at the reinsurance level which went to the Court of Appeal: *Equitas v MMI* [2018] EWCA (Civ) 991 and settled shortly before an appeal to the Supreme Court.

Selected cases as Counsel:

- On behalf of reinsureds seeking recovery of COVID BI losses.
- On behalf of a Ukrainian oil and gas company seeking to resist enforcement of a multi-million dollar SCC arbitration award.
- On behalf of a UK insurer and reinsured in connection with the allocation of mesothelioma losses.
- On behalf of various insurers concerning multi-million dollar claims in respect of third party liabilities in respect of the distribution of various pharmaceutical drugs and products, in respect of patent infringement and in respect of maritime pollution.
- On behalf of Far Eastern hotel resorts in Singapore and Bangkok arbitrations arising out of business interruption losses consequent on the tsunami.
- On behalf of personal accident reinsurers in a London reinsurance arbitration concerning the personal accident spiral.
- On behalf of London market insurers concerning hurricane damage in the Caribbean.
- On behalf of shipping interests concerning the commissioning and operation of a new port facility in Latin America
- On behalf of political risk underwriters in an LCIA arbitration concerning energy business in Argentina.
- On behalf of a Middle East government in a major ICC arbitration involving the successful defence of a two billion dollar dispute concerning an oil production sharing agreement with oil majors.

International Arbitration (Arbitrator)

Alistair Schaff KC regularly sits as a commercial arbitrator in ICC, LCIA, UNCITRAL, LMAA and other arbitrations, as sole

or party-appointed arbitrator or chair, dealing with a very broad range of international commercial disputes, both general and of an insurance or maritime nature.

Selected cases as Arbitrator:

Commercial disputes

- Contractual dispute involving valuation of Russian business (LCIA, chair).
- Procurement of large Far Eastern shipbuilding contract by bribes and secret commissions (co-arbitrator)
- Commodities contracts involving secret commissions (ICC, co-arbitrator).
- Application of gas pricing formula in long term agreement (co-arbitrator).
- Disputed transfer of shares in overseas company (LCIA, party appointed).
- Fraudulent signature of banking documents (co-arbitrator).
- Claim for wrongful termination of Chinese distribution agreement (LCIA, sole).

Insurance and reinsurance disputes

- US products liability insurance claim for building products (chair).
- US products liability insurance claim for ground water contamination (co-arbitrator).
- Aggregation of 9/11 World Trade Center losses (sole).
- P&I Club cover in respect of maritime pollution on French and Spanish littoral (reported on appeal as ***London Steamship v Spain and France, The “Prestige”*** [2015] EWCA Civ 333) (sole).
- Loss of hire reinsurance dispute concerning reinstatement and aggregation (sole).

Maritime disputes

- No right of withdrawal for non payment of previous instalments of hire (upheld on appeal as ***The “Caravos Liberty”*** [2019] EHC 3171 (Comm) (party-appointed).
- Cost of compliance with 2020 low sulphur fuel oil regulations (co-arbitrator).
- Switching of hull numbers of new shipbuildings in two separate but related arbitrations (co-arbitrator; chair).

- Delayed demobilisation of drilling rig (ICC, sole).
- Charterparty repudiation, freight/lien/damages issues (chair, LMAA).
- West African off-sea drilling dispute (LMAA, co-arbitrator).

Jurisdiction/Conflicts of Laws

Alistair Schaff KC has always enjoyed and is experienced in handling difficult jurisdictional issues. In 2011, he acted in the long-running Masri litigation in connection with difficult issues concerning the scope and application of Articles 27 and 28 of the Brussels 1 Regulation: **Masri v CCI** [2011] EWHC 1780 (Comm).

Selected cases:

- **ICSOP v Equitas** [2013] EWHC 3713 (Comm)
- **Equitas v Allstate** [2009] Lloyd's Rep. IR 227.
- **Metro litigation** (see, by way of example, [1999] 2 LLR 724)
- **The "Tatry" / "Maciej Rataj"** [1999] 2 WLR 181, in which he represented cargo interests before the European Court of Justice in the leading case involving Articles 21 and 22 of the Brussels Convention.
- **Surzur v Koros** [1999] 2 LLR 611 (a Court of Appeal decision on conspiracy by unlawful means) arose in a jurisdictional context, as did:
- **Ocarina v Marcard Stein** [1994] 2 LLR 524, the latter then proceeding into a major trial between the bank and its customer which was only concluded on appeal in 1999.

Professional Negligence

Professional negligence experience involves claims against financial service providers, solicitors, accountants/auditors and insurance brokers. In **Clarks v In Focus** [2014] EWCA Civ 118, Alistair Schaff KC led on a very important appeal to the Court of Appeal concerning claims for professional negligence against a financial adviser which had been previously been referred to and determined in the complainants' favour by the Financial Ombudsman Service (FOS). The Court of Appeal reversed Cranston J. and accepted the submission that the application of res judicata and merger principles prevent a complainant from bringing subsequent court proceedings for claims in excess of the maximum amount awardable under the FOS jurisdiction, in circumstances where the complainant has previously accepted a FOS determination for the maximum sum awardable and thereby rendered it final and binding under the Financial Services Act. He has acted for insurance brokers in relation to significant commercial litigation, first involving the insurance against product liability risks and secondly concerning the alleged loss of over \$400m worth of gold in Turkey and the disputed insurance

arrangements surrounding that gold. He is currently acting for liability insurers in relation to a number of mis-selling claims against financial advisers, concerning the question of aggregation.

Selected cases:

- ***Environcom v Miles Smith*** [2011] EWCA Civ 1152. The brokers had been found not liable on grounds of causation. The appeal was dismissed, essentially because the pleadings did not support the case sought to be argued.
- ***Dunlop Haywards (DHL) Ltd v Barbon Insurance Group Ltd*** [2010] Lloyd's Rep. IR 149. Acting for Nationwide Building Society in a professional negligence action against insurance brokers in a case raising issues as to the extent of brokers' duties, contributory negligence and causation of loss.

Shipping & Transport

In the shipping context, Alistair Schaff KC has over 30 years of experience in litigation and arbitration, beginning with demurrage disputes and culminating in several of the leading cases on shipping law. He was the Chambers Bar Awards Shipping Silk of the Year for 2018 (and he was also named Legal 500 Awards Shipping Silk of the Year for 2015). He sits regularly in maritime arbitrations, both party appointed, sole arbitrator and chair.

Alistair Schaff KC has acted for insurers in a number of complex total loss case. He acted for the shipowners in ***Atlas Navios v Navigators (the "B Atlantic")*** [2014] EHC 4133 (Comm); [2016] EWCA Civ 808; [2018] UKSC 26, in which the Owners claim for a total loss on their war risk insurance in circumstances where cocaine had been found strapped to the vessel's hull and the Venezuelan authorities had consequently detained the vessel was ultimately dismissed. He acted for the successful super-yacht insurers in ***Involnert v Aprilgrange (the "Galatea")*** [2015] EWHC 2225 (Comm), where the policy was avoided for non-disclosure of the fact that the yacht had been over-valued. He acted for shipowners in a major piece of Commercial Court litigation involving microbially induced corrosion and whether such corrosion amounted to or arose from 'perils of the seas' or ordinary wear and tear or poor maintenance.

In other cases, he has also acted for shipping interests in relation to the commissioning and operation of new port facilities in Latin America and for ship purchasers in a Singapore arbitration concerning alleged illegality in the form of alleged non-compliance with IACS shipbuilding regulations. He acted for shipowners in the latest recent case on Letters of Indemnity in ***The "Songa Winds"*** [2018] EWHC 397 (Comm) and in a case on COGSA 1992 in ***The "Baltic Strait"***.

Other Selected cases:

- ***MacWilliam v Mediterranean Shipping Company (The "Rafaella S")*** - He successfully represented the cargo claimants in what is now the leading case on the status of 'straight' bills of lading made out to a named consignee without the addition of the words 'to order.' Overturning the first instance judge (who, in turn, had upheld the decision of the arbitrators), the Court of Appeal held in [2004] QB 702 that 'straight' bills of lading are nonetheless 'bills of

lading’ for the purposes of the Hague-Visby Rules. The House of Lords upheld the Court of Appeal’s decision: [2005] 2 AC 423.

- **Carewins v Bright Fortune** (FACV no 13 of 2008) – He successfully represented the cargo claimants before the Court of Final Appeal in Hong Kong in a decision which not only reaffirms the presentation rule for ‘straight’ bills of lading but holds that an exceptions clause which excludes liability for the consequences of ‘misdelivery’ is not to be construed as protecting the carrier for breaching the presentation rule.
- **Effort Shipping v Linden** [1998] AC 605 – In this shipping case which went to the House of Lords, he acted for the successful shipowners in what is the leading case on dangerous cargoes.

Practice Profile

Stephen Hofmeyr KC is a leading commercial barrister with a wide-ranging international commercial law practice. He is also a part-time judge in the Commercial Court in London (Deputy High Court Judge) and a seasoned international arbitrator.

He is described in the leading legal directories as *“one of the commercial Bar’s best all round counsel”* with a *“keen eye for detail”*, *“a heavyweight in this field”* widely regarded as *“one of the nicest insurance silks at the Bar”* and one who *“fights his corner very hard”*. He is very much a *“team player”*, operates an informal *“hands-on”* approach and is very accessible. In 2021, Stephen won Shipping Silk of the Year at the Chambers Bar Awards.

His relatively unique combination of legal and accounting qualifications has equipped him to specialise in all aspects of commercial law and make him particularly suited to complex disputes.

With a strong sectoral focus across a wide range of practice areas, Stephen’s expertise in commercial law ranges from

complex commercial contract disputes, to related company law claims, both for individuals and corporate clients, in particular, shareholder disputes and claims against directors.

Stephen Hofmeyr KC's substantial diet of work includes international arbitration, energy and natural resources, insurance and reinsurance and professional negligence disputes. His transport sector experience encompasses aviation, rail, shipping and related commodities claims. His off-shore and on-shore construction experience includes complex, long-running, substantial and technical on-shore and off-shore energy, rig, FPSO and shipbuilding litigation and arbitration, with the subject matter covering power stations, pipelines (sub-sea and land based), ships, rigs, FPSOs, facilities and equipment, through all stages from construction to decommissioning, involving expert evidence, in highly complex and time-consuming cases, with heavy factual and expert evidence.

He recently completed two hearings in the Supreme Court – one dealing with issues of State Immunity arising out of a claim for the salvage of silver bullion from the wreck of the SS TILAWA which was sunk by torpedo in WW2 (***Argentum Exploration Ltd (Respondent) v Republic of South Africa (Appellant) [2024] UKSC 16***); and the other dealing with contractual and insurance issues arising out of piracy and ransom in the Gulf of Aden (***Herculito Maritime Ltd and others (Respondents) v Gunvor International BV and others (Appellants) [2024] UKSC 2***). He is currently involved in dealing with, amongst other matters, more than 80 aviation insurance claims arising out of the invasion of Ukraine by Russia, various M&A insurance claims, a Singapore based arbitration concerning the construction of a jack-up rig, a London based arbitration concerning the safety of a container terminal and a fire on board a ship in a European port. He also continues to advise on on-going Business Interruption and M&A insurance claims.

Whilst his Ukrainian oligarch fraud dispute has concluded, his practice dealing with fraud claims continues apace following his remarkable success in securing the unprecedented step of an appellate order for complete re-trial before a different Commercial Court Judge – undoubtedly a unique and trailblazing success, and justifying the warm praise he has received in the legal directories.

The primary focus of Stephen's practice is advocacy, but he is equally adept, and skilled, in his advisory practice, which is significant. With strong experience in the direction and conduct of long commercial trials and international arbitrations, he has proven his ability to assimilate and distil complex facts, and shows a mastery of difficult technical issues, lengthy examination of witnesses, tactical skill, and detailed and meticulous planning and preparation.

No less crucially, he is expert in interlocutory hearings and short appearances before first instance or appellate courts (which generally demand careful legal analysis, tactical appreciation and common sense).

He appears most frequently in the Commercial Court in London, in international arbitrations (SCMA, ICC, ICSID, LMAA, LCIA and other arbitration courts) and on appeal from these tribunals to the Court of Appeal, the Supreme Court and the Privy Council.

Stephen also continues to sit as international arbitrator in arbitrations seated in London and jurisdictions abroad. He has received approaching 400 appointments in recent years and has hearings (here and abroad) in more than 10 arbitrations in 2024 alone.

He has also acted as an expert on English law in proceedings in various States of the USA and in the Netherlands, Germany, Switzerland and Singapore; and in international arbitrations.

He has also appeared in the Supreme Court of the Commonwealth of the Bahamas, in the Court of Appeal of the Eastern Caribbean Supreme Court and in the Privy Council sitting in the Bahamas.

Energy & Natural Resources

Stephen Hofmeyr KC has considerable expertise in oil and gas trading disputes, exploration and exploitation disputes and disputes arising from the shipment and carriage of oil and gas cargoes.

He handles cases relating to the sale, construction, financing, operation and insurance of onshore and offshore structures. These include pipelines (subsea and land based), cables, terminals and refineries, petrochemical plants, power stations (including nuclear and hydro-electric), drill ships, sub-sea drilling centres and rigs.

Stephen has wide-ranging experience of both on-shore and off-shore energy disputes: under-sea gas pipelines (Shell Gannet, CATS pipe-line system), under-sea cables (Jersey electricity, St Lawrence River), on-shore pipelines (Occidental Petroleum), refineries and petrochemical plants (Toulouse), power stations (Medway, Saudi Arabia) and rigs (P36, Goodwyn A Platform). He also has extensive experience of gas supply contracts.

He is vastly experienced at dealing with international Energy & Natural Resource disputes. During recent years, he has been involved in a number of very significant cases. In one example, Stephen led a large team in a gas pipeline ICC arbitration relating to the now abandoned **South Stream pipeline** which it was proposed should run from Russia, through the Black Sea to Bulgaria. This was a highly time-consuming and technical case involving issues of continuous casting, metallurgy, pipe manufacture, fracture mechanics, submarine pipeline systems, pipe laying, systems testing and quality control. The project was cancelled by Russia in December 2014 following obstacles from Bulgaria and the EU, the 2014 Crimean crisis, and the imposition of European sanctions on Russia. Other examples include the CATS pipeline, take & pay gas contracts and FPSOs.

Selected cases:

- **Centrica PLC v Medway Power Limited** – Stephen was leading counsel in this £10 million dispute between a supplier of gas and the operator of a local power station under a long term agreement for the supply of gas. The dispute settled shortly before a two month trial was due to be heard. The supplier, Centrica, alleged that the operator failed to take and pay for a specified minimum quantity of gas. The operator, a company in the Scottish & Southern Energy, alleged that its

take of gas was interrupted by a number of force majeure events for which it was not responsible.

Insurance & Reinsurance

For the past 33 years Stephen Hofmeyr KC has been involved in a plethora of disputes arising from most of the major problems which have given rise to large-scale claims in the world-wide insurance and reinsurance markets, including the internecine disputes in the Lloyd's market in the early 1990s, pensions miss-selling, oil spills, the invasion of Kuwait, the collapse of financial institutions in the East, the collapse of the Soviet Union, the PA LMX spirals, political risks losses in Sierra Leone, Argentina, Thailand, Colombia, Turkey and Israel, Film Finance, the 9/11 US Terrorist attacks, piracy and ransom off the coast of Africa and the world-wide financial crisis following the collapse of Lehman Brothers in 2008. Reported cases are identified on the attached page.

He is currently advising more than 80 owners of aircraft trapped in Russia following the invasion of Ukraine and a major insurer in relation to COVID-19 related business interruption insurance issues. More recently, his practice has encompassed a £400 million warranty and indemnity insurance claim; a claim involving the interaction between war risks insurance and cargo risks insurance, which involves the reconciliation of precedents set by the UK's court of final appeal; complex and sensitive issues involving the aggregation of insurance recoveries following the 9/11 attacks; and complex areas of maritime insurance, which as can be seen below, he is an industry leader; and claims involving total loss under war risks, hull and machinery and all risks insurance.

Stephen has extensive experience in all areas of marine insurance law. His exposure to hull & machinery total loss claims is perhaps unparalleled at the Bar: beginning with **Archangelos**, in his first year of practice, the claims include **The Italia Express, Kastora, Centaurus, Karin Vatis, Mineral Star, North Star, Starsea, Oceanos, Silimna, Kastor Too, Elli** and a number of SRB claims (none of which have yet been litigated).

He also has extensive experience dealing with claims under most other varieties of policy: Constructors' All Risks (Shell Gannet field, Felixstowe Harbour), War Risks (Dutch Dredgers, Piracy off Somalia and in the Nigerian delta e.g. **Golden Lucy, Eagle** and **Motivator**, war in Lebanon, **Greek Fighter**), Charterers' liability, P&I and cargo.

He also has extensive experience dealing with wide-ranging reinsurance disputes. Most recently, he has acted for a market leader bringing claims for more than US\$ 350 million under whole account excess of loss reinsurance protections spanning 7 years; for political risks insurers facing US\$100m plus and US\$25m plus expropriation claims; for the insurer of a football finance transaction; for a reinsurer of the South African Road Accident Fund; and reinsurance claims arising out of the Tioxide litigation.

He is regularly instructed in relation to coverage issues, allegations of non-disclosure and misrepresentation, "follow settlement" clauses, claims notification clauses, claims co-operation clauses, aggregation, subrogation, double insurance and reinstatement.

During recent years Stephen's diet of general insurance has been as varied as ever: a US\$50 million political risks insurance arbitration involving an insolvent telecommunications provider; a Constructors' All Risks claim involving a land slip at a harbour development; material damage and business interruption claims arising out of mill failures at a South American mine; material damage and business interruption claims arising out of a warehouse fire; potential multi-million dollar claims arising out of Eskom power failures; an international bank's potential public liability claim arising out of incidents of terrorism in Israel; the exposure of a drug company to an Israeli class action; and various professional indemnity and personal health claims. In addition, he regularly advises insurance companies on regulatory issues concerning proposed new insurance products.

Stephen also has wide-ranging experience of both on-shore and off-shore energy insurance risks: under-sea pipelines (Shell Gannett), under-sea cables (Jersey electricity, St Lawrence River electricity), on-shore pipelines (Occidental Petroleum), refineries and petrochemical plants (Toulouse), power stations (Saudi Arabia) and rigs (P36).

He has also litigated and advised in connection with aviation insurance hull and liability claims (Paris Concorde, Cessna, Milan/SAS), ground and airport risks (Birmingham City Airport) and personal accident claims.

He has also acted for assureds and insurers in Bermuda Form arbitration.

Selected cases:

- **Aircraft insurance claims** *re: the Operator Policies on aircraft leased to Russian airlines prior to the start of the Ukraine war which is due to go to court in 2025 following jurisdiction challenges in early 2024. Current estimates put the claims at north of US\$16 billion.*
- **Business Interruption test case** - *intervention on behalf of international insurer.*
- **Tonicstar Ltd v Allianz Insurance PLC and Sirius International Insurance Corporation** [2018 EWCA Civ 434]
Stephen Hofmeyr QC appeared on behalf of the appellants in this matter on an appeal removing an arbitrator pursuant to Sec 24 of the arbitration Act 1996 on the ground that he was not qualified to act.
- **Elli** - Mortgagees Interest Insurance claim.
- **Al Habtoor Motors Co (LLC) v Dubai National Insurance & Reinsurance Co Psc** (settled before trial) which involved a claim for an indemnity under an all risks storage insurance arising out of damage sustained by an entire fleet of new motorcars in the UAE during a hail-storm.
- Acting for an assured claiming an indemnity from its property all risks and business interruption underwriters in respect of losses incurred following a fire at an oil refinery in Latvia owned and operated by the assured.
- **Axa Corporate Solutions SA v National Westminster Bank Plc and Marsh Limited (Part 20 Defendant)** [2010]

EWHC 1915 (Comm) which concerned the existence of a terrorism exclusion in an employers, public and products liability policy. The question arose against the backdrop of claims in US proceedings against a bank alleged to have funded charities with terrorist links for damages arising out of deaths and personal injury sustained in terrorist attacks in Israel.

- ***Clare Horwood and Others v Land of Leather (In administration), Zurich Insurance PLC and others*** [2010] EWHC 546 (Comm) which concerned the insurance issues under the Third Parties (Rights against Insurers) Act 1930 which arose in the Sofa Group Litigation after Land of Leather had gone into administration. The Court had to construe an important policy condition and resolve the scope of the implied obligation owed by the insured to its insurer in connection with the insured's rights against third parties.
- Acting for underwriters resisting a claim under a war risks insurance following the seizure of a vessel by an Angolan port authority.
- Acting for underwriters resisting a claim by hull underwriters for a contribution from war risks underwriters in respect of the loss of a tanker to pirates in Nigeria.
- ***Cavell USA Inc and another v Seaton Insurance Company and another*** [2009] EWCA Civ 1363 and [2008] EWHC 3043 (Comm) decisions on the true construction of a jurisdiction clause and the meaning of the word "fraud" in a contract bringing to an end a series of insurance run-off agency agreements. The allegations of fraud come to trial in 2012.
- ***Hiscox Underwriting Ltd v Dickson Manchester & Co Ltd***. [2004] 2 Lloyd's Rep 438 in which Stephen obtained an injunction in support of pending arbitration proceedings enforcing a right of inspection under a binding authority between Underwriters and a Lloyd's broker. The Commercial Court had to give consideration to its jurisdiction to order compliance with an inspection clause pending commencement of the arbitration and involved construing sections 1, 37 and 44 of the Arbitration Act 1996.
- ***Assicurazioni Generali SpA v CGU International Insurance Plc*** [2004] Lloyd's Rep IR 457 and [2003] Lloyd's Rep IR 725, seminal decisions in which guidance was given as to the scope of a clause in a contract of reinsurance requiring reinsurers to "follow the settlements" of the reinsured in circumstances in which the insurance and reinsurance (of work for the installation and maintenance of undersea cables) were drafted on a back-to-back basis.
- ***Kiriacoulis Lines SA v CAMAT ("The Demetra K")*** [2002] 2 Lloyd's Rep 581 (CA) an appeal from the refusal by the trial Judge to rectify a marine insurance contract to include a clause excluding cover for vandalism, sabotage or malicious mischief. The vessel had been destroyed by fire whilst laid up awaiting sale.
- ***Seashore Marine SA v The Phoenix Assurance Plc*** [2001] 2 Lloyd's Rep 698 where Stephen was successful on a claim under a contract of marine insurance in respect of contributions to salvage incurred by a ship's owners after the

ship had developed a 23 degree list to starboard and the crew abandoned ship. The question which the court had to consider was whether the salvage liabilities had been incurred in connection with the avoidance of a loss of the vessel by insured perils i.e. perils of the seas or crew negligence.

- ***Manifest Shipping v Uni-Polaris ("The Star Sea")*** [2003] 1 AC 469 (HL). This is another seminal decision in which the House of Lords considered the scope of the obligation imposed by section 17 of the Marine Insurance Act 1906 on both parties to a contract of marine insurance at the claims stage to observe utmost good faith. The House of Lords also considered the scope and effect of section 39(5) of the Marine Insurance Act 1906 and the exclusion from liability under a marine insurance contract of liability attributable to unseaworthiness where, with the privity of the assured, the ship is sent to sea in an unseaworthy state.
- ***Glencore International v Ryan*** [2001] 2 Lloyd's Rep 602 a case in which the assured sought to recover against his underwriter under an open cover insuring against charterers' liability in respect of vessels chartered by the assured. The underwriters had declined to pay on the ground that no timely declaration had been made in respect of vessel. The court found that the contract of liability insurance came into effect when the vessel began to perform services under charter, not when a declaration was made.
- ***Shell UK Ltd v CLM Engineering Ltd*** [2000] 1 Lloyd's Rep 612. This was a case in which marine insurance had been provided in respect of the Gannet Project, which included a web of undersea pipelines. The insulation to the pipelines began to fail and had to be replaced. The issue was whether the cost of replacing the insulation, which was pure economic loss, was covered under the contract of insurance.
- ***Royal Boskalis Westminster v Mountain*** [1999] QB 674 (CA). This is a famous case arising out of a contract of marine insurance in respect of a fleet of dredgers and dredging equipment operating at an Iraqi port which were seized by the Iraqi authorities following the invasion of Kuwait. In order to secure the return of the insured property and the release of the assured's personnel, the assured agreed to waive claims under the dredging contract. Issues arose as whether the waived claims were recoverable as sue and labour expenses, whether the agreement by which the claims had been waived was ineffective because it was procured by duress and whether the insurance was unenforceable for illegality because the agreement by which the claims had been waived had been made in contravention of international sanctions.
- ***Brown v KMR*** [1995] 2 Lloyd's Rep 513 (CA) Lloyd's litigation. Stephen acted for the Mr Brown in the first of the raft of cases which came to be known as the "Lloyd's Litigation". It was a portfolio selection case brought by Mr Brown against his Members' Agent. A number of "high risk" syndicates had been included in his portfolio and issues arose as to whether he should have been specifically warned against joining such syndicates, whether even if he had been warned, he would still have allocated part of premium income to high risk syndicates, whether the Members' Agent could claim set-off and whether recoverable damages should be limited to such losses as would reasonably be foreseen.
- ***L'Alsacienne v Unistorebrand and another*** [1995] LRLR 333. Kansa agreed with Storebrand to take over a portfolio

of reinsurance written by a failed Norwegian insurance company. Kansa subsequently avoided the agreement for material non-disclosure and misrepresentation. It also purported to terminate the agreement on the ground that Storebrand had repudiated the agreement by refusing to co-operate in securing the benefit of the common account reinsurances. It also alleged that the portfolio had been written without authorisation and that all the cessions were therefore illegal and void. Kansa were found not to have been entitled to avoid or repudiate the agreement, but the portfolio was found to have been written illegally.

Shipping & Transport

Shipping & Transport

For the past 33 years Stephen Hofmeyr KC has been involved in a very broad range of shipping disputes, appearing in substantial Commercial Court trials as well as countless London maritime arbitrations. The subject matter of these disputes has ranged widely.

Many have been fact-specific, often with an emphasis on technical and expert issues: the construction of ships (including bulk carriers, tankers, chemical and product carriers, LPG carriers, pipe-lay ships) the operation of a particular vessel and its machinery, hull and machinery failures, the proper carriage of dangerous cargoes (such as DRI) and the safety of particular ports or berths. Other cases have raised complex questions of law, often arising out of bill of lading, charter or other carriage disputes. All have demanded a perceptive understanding of the commercial realities of international trade and shipping.

He is currently advising shipowners on Nox and CO₂ emission limits, and mitigating steps.

Events in the world financial markets since 2008 have caused something of a resurgence of Stephen's historic shipping practice. He has appeared in court and arbitration in a number of high-value shipbuilding disputes (involving chemical carriers, oil tankers and bulk carriers), MOA disputes (involving bulk carriers and oil tankers), bill of lading claims (involving a cargo which caught fire in the Bosphorus, a DRI cargo, a rice cargo) charterparty disputes ("clausings" of bills, cancellation and termination), cargo and cargo finance claims and ship conversion and repair disputes (involving chemical carriers, pipe-laying vessels, a 96-berth passenger yacht and repairs carried out at shipyards in a number of different jurisdictions).

Stephen also has unique experience dealing with disputes involving the world's largest mega-yachts, e.g. **Lady Moura**, **Darius**, **Mayan Queen IV**, **Project Nato**, **Serene**, **Sapphire** and the largest true sailing yacht in service, **Royal Clipper**.

Selected cases:

- **Herculito Maritime Ltd and others (Respondents) v Gunvor International BV and others (Appellants)** [2024] UKSC 2) - The case arose out of acts of piracy and gave rise to unresolved issues arising out of the decisions of the

Supreme Court in **The Evia No. 2** and **The Ocean Victory** and the incorporation of a charter “insurance code” into bills of lading.

- **Argentum Exploration Ltd (Respondent) v Republic of South Africa (Appellant) [2024] UKSC 16** – The case concerned whether the RSA, as owner of 2,365 bars of silver, was immune from the adjudicative jurisdiction of the English court in respect of a claim by the salvors of silver for salvage reward. The silver was salvaged from the wreck of the SS TILAWA which was sunk in the Indian Ocean in 1942. Case considered the State Immunity Act 1978, the restrictive theory of state immunity in public international law and claims to state immunity in the context of Admiralty proceedings in rem.
- **Teekay Tankers v STX O&S** [2017] EWHC 253 (Comm) Instructed on behalf of Korean shipbuilders, STX Offshore & Shipbuilding Co. in the Commercial Court in a US\$120 million dispute with Teekay Tankers Limited in connection with an option agreement for the construction and delivery of, in Teekay’s option, twelve 113,000 DWT crude/product ready oil tankers. The main issues for decision included whether the option agreement was void for uncertainty, as being or containing an “agreement to agree”, and whether the option agreement was repudiated or renounced. Issues of confidentiality in relation to, and issue estoppel arising out of, an arbitration Award also arose
- Various on-going MOA and charter party disputes (in arbitration).
- The “Nat Rothschild Super Yacht Dispute”, **Swallowfalls Ltd v Monaco Yachting & Technologies and another** [2012] EWHC 2057 (Comm), [2012] EWHC 3616 (Comm) and [2013] EWHC 236 (Comm) and a related arbitration concerning the financing and construction of Nat Rothschild’s superyacht, Project Nato.
- Acted as Counsel for a shipyard in a series of three arbitrations raising legal and highly technical issues concerning the construction of nine 16,500 dwt product oil/chemical IMO II tankers.
- Acted as Counsel for a shipyard in three successive arbitrations concerning the termination by the shipyard of six shipbuilding contracts for the construction of 57,700 dwt single hull bulk carriers.
- He represented a shipyard in four related arbitrations regarding the legal effect of the non-provision of refund guarantees under four shipbuilding contracts. The shipbuilding contracts specified the provision of refund guarantees by one of three South Korean banks. In the context of the financial difficulties experienced by South Korean shipyards following the global financial crisis, the banks were unwilling to provide refund guarantees
- Acted as Counsel for various shipyards enforcing performance guarantees against buyers of new-buildings (in arbitration).
- **BCEN-Eurobank v Vostokrybporm Company Limited and Others**. Appeared for a French bank in the Appeal Court of the Eastern Caribbean Supreme Court on an appeal against a decision of the High Court of Saint Vincent and the Grenadines concerning ownership in and registration of the MV Phoenix.

- ***Stellar Shipping Co LLP v Cosco (Dalian) Shipyard Co Ltd*** [2011] EWHC 1278 (Comm). Stephen succeeded in setting aside an injunction restraining Cosco from selling to a party other than Stellar Shipping a 79,000 dwt bulk carrier the subject-matter of a shipbuilding contract between the parties which Cosco had cancelled for non-payment of the purchase price.
- ***Trophy Navigation v STX Offshore and Shipbuilding Co Ltd*** Successful application under section 57 of the Arbitration Act 1996.
- ***Boris Berezovsky and another v Edmiston & Company and another*** [2010] EWHC 1883 (Comm) in which Stephen succeeded in establishing an entitlement on the part of his broker client to a commission on the sale of the mega-yacht, Darius.
- Acted as Counsel for a shipyard in an expedited London arbitration in relation to an unpaid instalment due under a shipbuilding contract and subsequently in an arbitration against the guarantors.
- ***Vitol SA v Capri Marine Limited and others (No. 2)*** [2010] EWHC 458 in which the issues arose as to whether the owner of a ship could restrain the charterer from pursuing enforcement proceedings in a US court on the ground that they were in breach of a widely-drawn English jurisdiction clause in the charterparty and whether the court should permit the charterer to use in the US proceedings documents disclosed by the owner pursuant to orders made in the English court.
- Acted as Counsel in London arbitration for the sellers of a storage tanker in a dispute with recalcitrant buyers.
- Acted for a shipyard in an expedited arbitration in which the issue was whether four newly built Panamax product/crude oil tankers were in a deliverable condition – in particular, whether the boiler systems were capable of operating on low sulphur fuel.
- ***Farenco Shipping Co Ltd v Daebo Shipping Co Ltd (The “Bremen Max”)*** [2009] 1 Lloyd’s Rep 81 a case which concerned the construction of Letters of Indemnity provided in return for the agreement of time chartered owners to permit discharge of a cargo without production of bills of lading. Initially it involved Stephen, at the height of the credit crisis, obtaining a series of injunctions requiring others in the chain of charterers to provide security.
- Acted as Counsel for time chartered owners bringing a claim in London arbitration for damage caused to a ship as a consequence of proceeding under charterer’s orders to an ice-bound port.
- Acted for various shipowners and charterers claiming and facing claims of repudiatory breach in the aftermath of the unprecedented drop in freight rates in 2008.
- Acted for various buyers and sellers claiming and facing claims under Forward Freight Agreements.

- Advising various shipowners on tonnage limitation issues; in particular, the historic distinction between the substantive right to limit liability, on the one hand, and the procedural right to avoid enforcement beyond the limitation figure, on the other hand, and the consequences of the distinction.
- Acted as Counsel for the owners of a bulk carrier, *Otello Manship*, in London arbitration successfully resisting a claim by the buyer for failure to deliver under an MOA agreement.
- ***Sea Success Maritime Inc v African Maritime Carriers Ltd*** [2005] 2 Lloyd's Rep 692, a case in which a provision in a time charterparty required the master to reject "any cargo that is subject to clausings of bills of lading". The shippers tendered damaged cargo which the master rejected on basis that it was "subject to clausings of bills of lading" and the question for the court was whether the Master was entitled to refuse to load the cargo.
- ***Thyssen Canada Ltd v Mariana Maritime SA*** [2005] 1 Lloyd's Rep 640. This was a fascinating case involving a cargo which caught fire on a vessel passing through the Bosphorus. Arbitrators had found in favour of the shipowners (represented by Stephen) on the basis that the fire had started accidentally and the shipowners had exercised due diligence. The cargo owners challenged the award out of time and relied on fresh evidence to allege that the crew had given false evidence and that fire had been started deliberately. The issues were whether the award should be set aside or remitted as being obtained by fraud or procured contrary to public policy, whether the cargo owners had lost right to object, whether the time for bringing the application should be extended, whether the application was an abuse of process and what is the proper approach to admission of fresh evidence. The court had to consider the true meaning and effect of sections 68(2)(g), 70(3) and 73 of the Arbitration Act 1996.
- ***Kastor Navigation Co Ltd and another v AGF MAT and others*** [2003] 1 Lloyd's Rep 296. This was a hull total loss case in which there were issues as to whether the vessel was an actual or a constructive total loss. A fire had been discovered at purifier level in engine room. This led to explosions. Subsequently, the vessel sank. Stephen persuaded the court that the vessel had become a constructive total loss by fire.
- ***Bergen Industries Holding Company v Dalmoreporduct*** [2001] EWHC 482. This case concerned the termination for non-payment of hire of a demise charterparty of a fleet of 14 Russian Super-trawlers. The court ordered delivery up of the trawlers and the payment of outstanding hire. Allegations of forbearance, misrepresentation and conspiracy to defraud were dismissed. The court also ordered payment under a Facility Agreement of accelerated debt and declared that First Preferred Ship Mortgages over the trawlers were valid and binding.
- ***Petrotrade Inc v Smith*** [2000] 1 Lloyd's Rep 486 in which it was alleged by the claimant that a port agency, in return for its appointment as agent for vessels nominated by the claimant, paid secret commissions to Mr Smith, the operations manager of the claimant. The primary issue in the case was whether the port agency was vicariously liable for the activities of its employees in agreeing to and making these secret payments.
- ***International Fina Services AG v Katrina Shipping Ltd*** [1995] 2 Lloyd's Rep 254 (CA) was an appeal from the

decision of the Commercial Court allowing an appeal by the shipowners against an arbitration award in which the arbitrator had held (upholding Stephen's arguments) that the charterers were entitled to be indemnified by the owners for breach of the owners duty to maintain the vessel. The decision turned on the true construction of clause 3(ii) of the Shelltime 4 standard form time charterparty.

- ***Hanjin Shipping Co Ltd v Zenith Chartering Corp*** [1995] 2 Lloyd's Rep 559 where the defendants' vessel was rendered a total loss before she was delivered under a time charterparty which had been "fixed in good faith" having regard to the facts that she had been damaged but that the extent of the damage was unknown. The court found that there was a contract, but declined to construe the words "fixed in good faith", leaving this issue to be decided in arbitration pursuant to the arbitration agreement in the fixture.

International Arbitration

Stephen Hofmeyr has always had an extensive international arbitration practice, appearing regularly as Counsel in arbitrations in London and abroad (in European countries, the Caribbean and the Far East). In addition, he appears regularly in important cases dealing with the substantive law of arbitration. Stephen also sits regularly as a commercial arbitrator in international arbitrations under the jurisdiction of the ICC, LCIA, LMAA and others. See **Arbitral Appointments**.

In addition to the shipping cases seen above, Stephen's recent arbitral experience has shown him to be active in cases of both size and significance, whether regarding a US\$ 600 million claim seen as fundamental to the industry from which it stems, to claims raising issues of non-performance, which involved a detailed analysis of the proper construction and application of contractual nomination and force majeure provisions, as well as energy sector work regarding a long-term supply contract. The claim is worth in excess of US\$ 50 million. Whether in pure insurance, maritime insurance, energy law or complex contractual matters, he remains a silk of standing in this area, and well instructed.

Selected cases:

- See, further, under **Shipping**.
- ***Tonicstar Ltd v Allianz Insurance PLC and Sirius International Insurance Corporation*** [2018 EWCA Civ 434]
Stephen Hofmeyr QC appeared on behalf of the appellants in this matter on an appeal removing an arbitrator pursuant to Sec 24 of the arbitration Act 1996 on the ground that he was not qualified to act.
- Acted as Counsel for a shipyard in an expedited London arbitration in relation to an unpaid instalment due under a shipbuilding contract. Now also acting in an arbitration against the guarantors.
- Acted for a shipyard in an expedited arbitration in which the issue was whether four newly built Panamax product/crude oil tankers were in a deliverable condition - in particular, whether the boiler systems were capable of operating on low sulphur fuel.

- Acted as Counsel in London arbitration for the sellers of a storage tanker in a dispute with recalcitrant buyers.
- Acted as Counsel in London arbitration for a major mining house enforcing a multi-million dollar washout of a long-term contract of affreightment. The arbitration raised questions as to the authority of agents and employees to negotiate and conclude a “washout agreement”, a form of agreement which suddenly became commonplace in the days and months following the precipitate drop in freight rates in the autumn of 2008.
- Acted as Counsel for time chartered owners bringing a claim in London arbitration for damage caused to a ship as a consequence of proceeding under charterer’s orders to an ice-bound port.
- Acted as Counsel in London arbitration for the disponent owners of the Pasha Bulker which famously ran aground at Nobbys Beach in Newcastle, Australia, during a major storm on 8 June 2007.
- ***Zhoushan Zhongchang Shipping Co Ltd and Another v Handybulk Shipping Ltd and Another*** [2008] EWHC (Comm) where Stephen resisted an application to remove an arbitrator and to set aside an award on the basis of an alleged “serious irregularity”. The decision also involved the court deciding whether “substantial injustice” had been caused and construing sections 24, 33 and 68 of the Arbitration Act 1996.
- ***Thyssen Canada Ltd v Mariana Maritime SA*** [2005] 1 Lloyd’s Rep 640. This was a fascinating case involving a cargo which caught fire on a vessel passing through the Bosphorus. Arbitrators had found in favour of the shipowners (represented by Stephen) on the basis that the fire had started accidentally and the shipowners had exercised due diligence. The cargo owners challenged the award out of time and relied on fresh evidence to allege that the crew had given false evidence and that fire had been started deliberately. The issues were whether the award should be set aside or remitted as being obtained by fraud or procured contrary to public policy, whether the cargo owners had lost right to object, whether the time for bringing the application should be extended, whether the application was an abuse of process and what is the proper approach to admission of fresh evidence. The court had to consider the true meaning and effect of sections 68(2)(g), 70(3) and 73 of the Arbitration Act 1996.
- ***Hiscox Underwriting Ltd v Dickson Manchester & Co Ltd.*** [2004] 2 Lloyd’s Rep in which Stephen obtained an injunction in support of pending arbitration proceedings enforcing a right of inspection under a binding authority between Underwriters and a Lloyd’s broker. The Commercial Court had to give consideration to its jurisdiction to order compliance with an inspection clause pending commencement of the arbitration and involved construing sections 1, 37 and 44 of the Arbitration Act 1996.
- ***International Fina Services AG v Katrina Shipping Ltd*** [1995] 2 Lloyd’s Rep 254 (CA) was an appeal from the decision of the Commercial Court allowing an appeal by the shipowners against an arbitration award in which the arbitrator had held (upholding Stephen’s arguments) that the charterers were entitled to be indemnified by the owners for breach of the owners duty to maintain the vessel. The decision turned on the true construction of clause 3(ii) of the Shelltime 4 standard form time charterparty.

- ***Hanjin Shipping Co Ltd v Zenith Chartering Corp*** [1995] 2 Lloyd's Rep 559 where the defendants' vessel was rendered a total loss before she was delivered under a time charterparty which had been "fixed in good faith" having regard to the facts that she had been damaged but that the extent of the damage was unknown. The court found that there was a contract, but declined to construe the words "fixed in good faith", leaving this issue to be decided in arbitration pursuant to the arbitration agreement in the fixture.

Banking & Finance

Stephen has litigated and advised in relation to disputes concerning letters of credit (for use in international transactions), derivatives, currency swaps transactions and various aspects of FSA regulation.

Selected cases:

- ***Simetra Global Assets Limited v Ikon Finance Limited*** [2019] EWCA Civ 1413 Stephen was successful in persuading the Court of Appeal to order a retrial of civil fraud claim.
- ***Farenco Shipping Co Ltd v Daebo Shipping Co Ltd (The "Bremen Max")*** [2009] 1 Lloyd's Rep 81 a case which concerned the construction of Letters of Indemnity provided by financial institutions in return for the agreement of time chartered owners to permit discharge of a cargo without production of bills of lading.
- ***Raiffeisen Zentralbank Österreich AG v Crosseas Shipping*** [2000] 1 WLR 1135 (CA) involved a consideration of the ancient rule in *Pigot's case* (1614) 11 Co. Rep. 26b. Stephen persuaded both the Commercial Court and the Court of Appeal that an unauthorised insertion of company's name and address as service agent in a guarantee did not render the guarantee void because it was not a material alteration.
- ***Glencore International AG v Bank of China*** [1996] 1 Lloyd's Rep 135 (Rix J) (Stephen was unavailable for the appeal). This case concerned letters of credit opened by the Bank of China in favour of Glencore on behalf of the buyers of a quantity of aluminium ingots. The bank rejected the documents on various grounds and the issue for decision was whether they were entitled to do so. This involved deciding whether the commercial invoice described the goods accurately, whether the packing list failed to describe or to identify the goods and whether the certificate provided by Glencore was an original document.
- ***Z Bank v D1 and others*** [1994] 1 Lloyd's Rep 656 where the primary issue was whether a bank which had continued to operate a bank account in contravention of the terms of a freezing order but under a misapprehension as to its meaning and effect had acted in contempt of court and, if so, whether the contempt was seriously culpable.

Company and Partnership

Company and Partnership

Stephen Hofmeyr appeared before the Supreme Court of the Commonwealth of the Bahamas on behalf of the Official

Liquidator of a US\$500m plus International Hedge Fund in a case which raised many important and some novel issues of banking, regulatory, mutual fund management and company law.

More recently, he represented the majority shareholder in a share sale dispute with a minority shareholder before the Privy Council in its inaugural sittings in Nassau. The case concerned the interpretation of a shareholder agreement embodied in a Consent Order and the valuation of the company's interests in subsidiary companies. He has also appeared in a number of arbitrations and valuations in unfair prejudice cases where the shares in private companies have been the subject of valuation.

Stephen has also acted for Rangers Football Club in disputes with original and replica kit suppliers

Selected cases

- ***Galantis (Respondent) v Alexiou and another (Appellants) (Bahamas)*** [2019] UKPC 15 Stephen Hofmeyr QC and Anna Gotts appeared for the successful Appellants in this appeal to the Privy Council. This decision brings welcome clarity to the scope of the oppression remedy, confirming *inter alia* that its application is limited to cases in which a company is still functioning.
- ***SDI Retail Services Limited v The Rangers Football Club Limited*** [2018] EWHC 2772 (Comm) which concerned the true construction of a kit supply contract.
- ***M J Select Global Limited (in compulsory liquidation) v Oceanic Bank & Trust Limited and others***, Supreme Court of the Commonwealth of the Bahamas, Common Law & Equity Division, Case No. 180/2005. In this lengthy trial, Stephen represented the Official Liquidator of M J Select Global Limited, a hedge fund marketed as being market neutral which was placed in compulsory liquidation, in proceedings brought against the funds' managers and directors. The array of issues included directors' duties, shadow directors, managers' duties and fiduciary duties.
- ***Emanuel Alexiou and Another v James A Campbell*** [2007] UKPC 11 (Privy Council). This was an appeal to the Privy Council from the Court of Appeal in the Commonwealth of the Bahamas and concerned the true meaning of a shareholder agreement embodied in a Consent Order.

Professional Negligence

Stephen is regularly retained to act both for and against professionals, especially – given his qualifications and experience – accountants, insurance brokers and solicitors.

Selected cases:

- Acting for an international firm of solicitors in professional negligence proceedings brought against their UAE office arising out of the conduct of multi-million dollar claims against a shipyard concerning four ships.

- ***3M United Kingdom Plc and another v Linklaters & Paines (a firm)*** [2005] All ER (D) 2 and 45 (Ch) where the issue was whether a claim of admitted negligence was time barred under section 14A of the Limitation Act 1980 by reason of the knowledge of the claimant.
- ***Brown v KMR*** [1995] 2 Lloyd's Rep 513 (CA) Lloyd's litigation. Stephen acted for the Mr Brown in the first of the raft of cases which came to be known as the "Lloyd's Litigation". It was a portfolio selection case brought by Mr Brown against his Members' Agent. A number of "high risk" syndicates had been included in his portfolio and issues arose as to whether he should have been specifically warned against joining such syndicates, whether even if he had been warned, he would still have allocated part of premium income to high risk syndicates, whether the Members' Agent could claim set-off and whether recoverable damages should be limited to such losses as would reasonably be foreseen.

Aviation

Stephen has litigated and advised in connection with aviation hull and liability claims (Paris Concorde, Cessna, Milan/SAS), ground and airport risks (Birmingham City Airport) and aviation personal accident claims. He is currently retained by more than 80 aircraft owners bringing claims against insurers arising from aircraft being trapped in Russia following the invasion of Ukraine.

Injunctions & Arrests

Stephen has extensive experience obtaining, resisting and dealing with injunctions and the arrest of ships. 2019 saw him obtain from the Commercial Court a series of freezing orders in favour of his ship-owning clients against the charterers of the ships and has resisted repeated attempts to have the injunctions set aside, in cases where very serious delays – and costs – had ensued – leading to a number of reported judgments: such instructions are typical of his practice.

Selected cases:

- ***Delta Kanaris Special Maritime Enterprise v Elemento Ltd*** [2019] EWHC (Comm) in which Stephen resisted repeated attempts to have freezing injunctions set aside
- ***Vitol SA v Capri Marine Limited and others*** [2010] EWHC 458 in which issues arose as to whether the owner of a ship could restrain the charterer from pursuing enforcement proceedings in a US court on the ground that they were in breach of the English jurisdiction clause in the charterparty and whether the court should permit the charterer to use in the US proceedings documents disclosed by the owner pursuant to orders made in the English court.
- ***Farenco Shipping Co Ltd v Daebo Shipping Co Ltd (The "Bremen Max")*** [2009] 1 Lloyd's Rep 81 a case which ultimately concerned the construction of Letters of Indemnity provided in return for the agreement of time chartered owners to permit discharge of a cargo without production of bills of lading. Initially it involved Stephen, at the height of the credit crisis, obtaining a series of injunctions requiring others in the chain of charterers to provide security.

- ***Hiscox Underwriting Ltd v Dickson Manchester & Co Ltd***. [2004] 2 Lloyd's Rep 438 in which Stephen obtained an injunction in support of pending arbitration proceedings enforcing a right of inspection under a binding authority between Underwriters and a Lloyd's broker. The Commercial Court had to give consideration to its jurisdiction to order compliance with an inspection clause pending commencement of the arbitration and involved construing sections 1, 37 and 44 of the Arbitration Act 1996.

Jurisdiction/Conflict of Laws

As the Commercial Court in London is used by commercial people from around the world as their preferred centre for resolving disputes arising out of international trading and commercial relations, conflicts of laws issues arise almost daily. It is therefore unsurprising that conflicts of laws and jurisdictional issues have been a regular part of Stephen's diet. In two recent matters Stephen has dealt with jurisdiction challenges sitting as arbitrator. In both cases he published awards which were not appealed.

Selected cases:

- ***Cavell USA Inc and Another v Seaton Insurance Company and Another*** [2009] EWCA Civ 1363 and [2008] EWHC 3043 (Comm) decisions on the true construction of a jurisdiction clause in a contract bringing to an end a series of insurance run-off agency agreements. The substantive issues come to trial in 2012.
- ***Glencore International AG v Metro Trading International Inc*** [2001] 1 Lloyd's Rep 284. Stephen was the architect of the Metro litigation. It was he who started the proceedings when he applied to the Commercial Court to appoint a Receiver over large quantities of oil in storage in Fujairah in which diverse parties were claiming title. It was a novel but well founded claim and produced a plethora of disputes between those claiming an interest in the oil. Complicated conflicts of law issues arose concerning the system or systems of law which governed title to the remaining oil.

Other

Ecclesiastical Stephen has also done some limited Ecclesiastical law work. He successfully represented a clergyman on an appeal to the Archbishop of Canterbury against a decision of the Bishop of Southwark to remove the clergyman's licence. He has also represented more than half a dozen clergy in Clergy Discipline Measure proceedings and has advised Bishops on various issues.

Disciplinary proceedings He has represented an individual insurance broker in disciplinary proceedings and has advised the Managing Director of a Managing Agent in connection with disciplinary proceedings proposed by the Council of Lloyds.

Practice Profile

Nature of practice

Adam acts as an advocate in Court and Arbitration work in the following core areas of practice: Insurance (non-marine and marine), Reinsurance, Professional Negligence, Shipping and Sale of Goods.

Recent directory recommendations

Adam is recommended in the current main directories. Under Insurance and Reinsurance in Chambers and Partners he is known for his *“enormous attention to detail”, “is an excellent lawyer, who is very thoughtful and able to assist with the early resolution of matters”, “a very practical person and commercially minded”* and *“assured and user-friendly particularly on difficult insurance disputes”,* and in the same category in the Legal 500 *“A very strong insurance barrister with good expertise in professional negligence”*.

Recent practice

In the past four to five years, the focus of his work has remained his ongoing insurance and reinsurance practice and his prominence in that field is reflected in his involvement in the major cases of the last three or four years. He appeared in the COVID-19 test case ***FCA v. Arch Insurance***, which was heard in the Divisional Court [2020] EWHC Comm 2448 and then the Supreme Court [2021] UKSC 1 on an expedited basis. He acted for Hiscox, instructed by Allen & Overy. He then appeared in a further COVID-19 test case ***Stonegate v. MS Amlin*** [2022] EWHC 2549 acting for insurers, instructed by DACB. He is currently acting for All Risk Insurers in the ***Russian Aircraft*** litigation, concerning insurance claims for western leased aircraft remaining in Russia, due to be heard as a 12-week trial in the Commercial Court in October 2024.

Other recent cases include acting for Enterprise cars in a Commercial Court insurance claim which settled close to trial in 2021, acting in a large professional negligence matter in relation to shipbuilding in the Commercial Court which settled in 2022, various aggregation matters including in relation to COVID-19 and the collapse of a large listed entity, a number of large commercial property insurance claims, a large liability insurance arbitration involving a major listed company, liability/CAR insurance disputes in relation to a major building project, liability insurance issues in relation to OFCOM, OAR insurance in relation to OFGEM rulings, products liability and cargo insurance in relation to a large damage to goods claim, and D&O claims and insurance issues arising out of the Madoff claims.

In addition to acting in and advising in relation to disputed matters, he is involved from time-to-time in advising on the contents and drafting of insurance policies and has acted for a number of both insurers and blue chip companies in this respect in recent years. As regards blue chip assureds he was instructed (with a junior) in an across-the-board review (property, motor, D&O, products liability, crime, media amongst others) of a FTSE 100 company's insurance coverage.

In addition to insurance and reinsurance he deals with other matters. He has been involved in a series of major shipbuilding arbitrations and in the Cattles case, the biggest claim ever to be brought against an accountant, which settled shortly after the start of trial in the Commercial Court in October 2015.

Arbitration and mediation

Adam also sits as an arbitrator in his core areas of practice and is a CEDR accredited mediator. Current arbitration cases include maritime and international sale of goods and shipbuilding cases, as well as insurance matters. Adam has recently mediated sale of goods, maritime and insurance matters.

Insurance & Reinsurance

Selected cases:

- Russian Aircraft claims, acting for All Risk Insurers.
- **FCA v. Arch** [2021] UKSC 1 where Adam acted for Hiscox in both the Divisional Court and Supreme Court.
- **Stonegate v. MS Amlin** [2022] EWHC 2549
- Various arbitration references involving aggregation.
- **Enterprise Cars v. DLIS** (Commercial Court)
- Professional negligence case involving solicitors alleged negligence in relation to shipbuilding contracts in the Commercial Court.
- Major liability insurance arbitration.

- The **Cattles** litigation
- He acted in a BVI professional negligence case.
- Has been involved in numerous D&O cases, acting particularly for insurers on coverage and aggregation issues.
- **DHL v. Barbon** [2010] Lloyd's Rep IR 149 Leading Counsel for Barbon in this major five-week High Court trial involving claims in relation to an Excess Insurance Contract fighting each of the three other parties and effectively fighting three cases in one. Also acted for DHL in relation to the application to join Insurers : [2009] Lloyd's Rep. IR 464
- Acted for successful insurers in relation to insurance of solicitors which resulted in an Award in favour of aggregation and thus the very substantial restriction of insurer's liability and led to the termination of the major High Court action against the solicitors. The arbitration concerned a point of considerable legal and market importance in relation to the basis of aggregation of claims where no dishonesty.
- Acted for successful Insurers in High Court action; action against Insurers was struck out just prior to trial.
- Acted for Encia in relation to appeal to the Court of Appeal from the judgment of Mr. Justice Cresswell (**Encia Remediations v. Canopus** [2008] Lloyd's Rep IR 79) which settled on the eve of the Appeal. Raised a number of significant insurance points.
- Acted for Lincoln (Swiss Re) in a four-week major arbitration.
- **Scott v. Copenhagen Re** (Com Ct. Langley J and Court of Appeal [2003] EWCA Civ 885
XL market test case about aggregation of losses of KAC aircraft and spares and BA aircraft which occurred during the invasion of Kuwait/Gulf War. The case is a leading case on aggregation and when loss occurs in non-marine insurance.
- **Feasey v. Phoenix & Sun Alliance** (Com. Ct Langley J and Court of Appeal [2003] EWCA Civ 688 Dispute about insurable interest, misrepresentation and authority of underwriting agent. I acted for Phoenix on an issue worth US\$ 16 million dollars relating to authority and also provided some assistance and appeared for a day for Sun in the Court of Appeal.
- **Imperio v. C.E. Heath** (Com Ct) 1999 Lloyds IR 571; [2001] 1 W.L.R. 268
The leading authority on limitation in relation to breach of fiduciary duty, in the context of reinsurance brokers.
- **ABT Rasha** (CA) [2000] 2 Lloyds Rep. 575. Successful claim against insurers for balance of general average liability.
- **Kirkaldy v. Adrian Walker** (Com Ct.) [1999] Lloyds IR 410. Successful defence of claim against underwriters in respect of sinking of a floating dry dock.
- **North Atlantic v. Bishopsgate** (Com Ct.) [1998] 1 Lloyds Rep. 459. Accrual of cause of action under variable excess

reinsurance.

- **Aiken -v- Wrightson** [1995] 1 W.L.R. 1281 (Insurance – duty of Lloyd’s managing agent)
- **Grace -v- Leslie & Godwin** [1995] C.L.C. 801 (Insurance – brokers’ negligence)

Professional Negligence

Selected cases:

- **Cattles** – Represented the Claimants in a major action for professional negligence against PwC, the amount claimed being more than £ 1 billion. The case settled a week into trial in October 2015.
- **Hollywood Litigation**: Represented Ince & Co, instructed by Reynolds Porter Chamberlain, for alleged negligence in relation to film finance insurance and reinsurance, where the claim was for U.S. \$ 180,000,000.
- **Shinhan v. Sea Containers** (Com Ct.) [2000] 2 Lloyds Rep 406
- Successful claim against Sea Containers for fraud and negligence in relation to the issue of banking documentation.
- **Grace -v- Leslie & Godwin** [1995] C.L.C. 801 (Insurance – brokers’ negligence)

Sale of Goods

Selected cases:

- **SCT v. Trafigura** [2005] 1 Lloyd’s Rep. 128 Sale of Goods case involving sale of oil and repudiation of contract.

Shipping & Transport

Selected cases:

- Recently involved in a series of major shipbuilding arbitrations acting for Chinese yards.
- **The “Surf City”** [1995] 2 Lloyd’s Rep. 242 (Shipping/insurance – waiver of subrogation)
- **The “Product Star”** [1993] 1 Lloyd’s Rep. 397 (Shipping – unsafe ports in Gulf)
- **The “Simona”** [1989] A.C. 788 (Shipping)

Other

Adam has recently acted in numerous confidential arbitrations and actions which did not come to trial, as well his advisory practice.

Practice Profile

Stephen Kenny KC acts as an advocate in commercial litigation and arbitration, and advises on all stages of the conduct of such proceedings. He also has a significant advisory practice, particularly in relation to insurance matters. He is ranked as a leading silk for Shipping and Commodities by Chambers and Partners; and for Commodities, Insurance and Reinsurance; and Shipping by The Legal 500.

Stephen's practice covers many areas within Chambers' general expertise.

From the outset of his career he has acted in all manner of shipping and marine insurance matters. He has appeared in numerous shipping arbitrations and court hearings. He has particular experience of "scuttling" cases, having represented insurers in *The Captain Panagos DP*, *The Ikarian Reefer*, and *The Brillante Virtuoso*. He has acquired a rare understanding of the law of general average, acting for owners in *The Maersk Neuchatel*; and recently leading for owners in their successful appeal to the Supreme Court in *The Longchamp*.

He also has long practice in non-marine insurance and reinsurance cases, including claims against brokers and other professional advisers. He has acted for the Corporation of Lloyd's, both in civil disputes and in relation to disciplinary proceedings.

More recently, he has extended his experience to aviation insurance; acted in credit-hire cases; advised in relation to a long-term gas supply contract, appeared in ship-building-related arbitrations, and acted for English buyers of Cypriot holiday homes bought "off-plan". He has advised in relation to an insurance of the risk of losing an appeal; on the insurance aspects of an internet lottery; on whether invoice discounters were subject to insurance regulation; and on various aspects of trade credit insurance and travel insurance cover.

He has particular experience of acting in large-scale and multi-jurisdictional disputes (and thus has a detailed understanding of conflicts of law issues). He is a team player who enjoys and has wide experience of working with technical experts, with foreign lawyers and with foreign clients.

Shipping and Transport

Over the years, Stephen has advised and acted in a very large number of arbitrations and court hearings concerning shipping and carriage of goods by sea. A small selection of these cases are mentioned below.

Selected cases:

- In 2019 Stephen acted in arbitration for disponent owners, resisting allegations of on-board contamination of a cargo of fuel oil. The case was settled shortly before the hearing.
- In 2018 Stephen led for cargo claimants in the case of ***"The Alhani"*** [2018] EWHC 1495 (Comm); [2018] 2 Lloyd's Rep. 563, in which the issues were whether a claim for wrongful delivery (without surrender of a bill of lading) was subject to the one year time bar in the original Hague Rules; and if so, whether the claim had been preserved by promptly arresting and proceeding against the vessel in Tunisia, which (as had later emerged) was a non-contractual forum. The judge (David Foxton QC) answered these questions "yes" and "no"; but unhesitatingly gave permission to appeal, adding that *"[h]earing advocacy of this quality, on points of this interest, has been a privilege"*. To the regret of lawyers, the case was settled shortly before the appeal was due to be heard in April 2020.
- In 2017 Stephen led for the owners in their successful appeal to the Supreme Court in ***The "Longchamp"*** [2017] UKSC 68. The case concerned the admission in general average, under Rule F of the York-Antwerp Rules 1974, of vessel operating expenses incurred during the period while a pirate ransom was being negotiated. It was argued that those expenses were incurred in place of other allowable expense, namely a higher ransom than that ultimately agreed. The Supreme Court, reversing the Court of Appeal, accepted that argument. This was the first case in the appellate courts in more than 20 years to consider the basic principles of general average. Instructed by Stephenson Harwood.
- Also in 2017 Stephen led for the owners in ***The "Jia Li Hai"*** [2017] EWHC 2509; an application to strike out, or grant summary judgment on, cargo interests' defence to a claim for general average, following a collision between two Chinese cargo vessels. Cargo asserted that owners' vessel was unseaworthy in having inadequate systems in place to prevent collisions, but could not particularise the inadequacies, nor how they had caused the collision. The application was successful.
- In 2014 Stephen led for the owners in ***The "Maersk Neuchatel"*** [2014] EWHC 1643 (Comm); [2014] 2 Lloyd's Rep. 377, persuading the Court that a charterers' Letter of Undertaking to pay general average *"ascertained to be due from the Cargo ... under an Adjustment prepared by the appointed Average Adjusters"* was in the nature of a demand guarantee. Pleas of rectification and estoppel were also rejected. Instructions from Holman Fenwick & Willan.

- In 2013/14, Stephen acted for the final charterer of a LNG carrier – let under a chain of three time-charters – who was claiming substantial damages resulting from a critical SIRE report on the vessel’s safety and maintenance (which report had led to the premature termination of the charters). Disputes under all three charters were referred to concurrent arbitrations. The case settled in early 2015. Instructions from MFB Solicitors.
- Also in 2013, Stephen successfully represented in arbitration the disponent owners of a bulk carrier, whose Master had refused to load a cargo of steel coils on the basis that the point/ patch loading generated would exceed the design strength of the tank-tops.
- In 2011 and 2012 Stephen appeared twice on behalf of the claimant charterer in ***Hyundai Merchant Marine Company Limited v Trafigura Beheer B.V., The “Gaz Energy”***, a case concerning speed and consumption guarantees in a chain of charters based on the Shelltime 3 form. Two sets of preliminary issues were determined. In the first judgment ([2011] EWHC 3108 (Comm), [2012] 1 Lloyd’s Rep. 211) Flaux J found that “good weather” language in the contractually incorporated description of the vessel (Gas Form C) could not displace the “all weathers” terminology in the standard Shelltime 3 form. The guarantees were therefore “all weather” guarantees. In the second judgment ([2012] EWHC 1686 (Comm)), Teare J determined the meaning of “over-performance” when the promised consumption was qualified by the word “about”. Instructions were from MFB Solicitors.
- In 2010 Stephen represented Chinese charterers (on the instructions of Winter Scott) in the arbitration of a claim for repudiation of a charter of a vessel to be built. The dispute raised difficult and novel questions of force majeure, frustration, and the date of quantification of loss – but was settled before an award could be made.
- Between 2007 and 2010 Stephen acted for Danish clients in two long-running arbitrations relating to the operation and termination of time-charters of a bulk carrier (instructed by Mills & Co.).
- In 2008 Stephen acted for Mexican charterers in an arbitration concerning the hire of off-shore support vessels for use in oil exploration (instructed by Thomas Cooper.)
- Also in 2008 Stephen acted for Chinese owners in an arbitration reference concerning the shipment of an insect-infested cargo of rice (instructed by Thomas Cooper).
- ***CMA-CGM SA v Beteiligungs-Kommanditgesellschaft MS “Northern Pioneer” Schiffahrts-gesellschaft M.B.H & Co*** [2002] EWCA Civ 1878, [2003] 1 WLR 1015 . Stephen was instructed by Holman Fenwick & Willan for the Respondent owners, who successfully resisted an application for leave to appeal from an arbitration award. The arbitrators had concluded that German participation in the NATO air operations over Serbia and Kosovo did not constitute “involvement in war”, and the charterers had not been entitled to cancel under the war clauses in four long-term time charters. This was the first case in which the Court of Appeal considered the principles by which leave to appeal may be granted under s. 69 of the Arbitration Act 1996 (cf. the *Nema* Guidelines).

- ***Borealis v Stargas, The “Berge Sisar”*** [2002] AC 205 (HL): instructed (with Jonathan Gaisman QC) by Richards Butler for Saudi Aramco. This case is the leading authority on Section 3 of the Carriage of Goods by Sea Act 1992. Saudi Aramco resisted joinder to an action, contending that it could not be liable under bills of lading pursuant to Section 3 of the Act unless it was also entitled to sue on the bills under Section 2. Since they were no longer lawful holders of the bills, they were neither entitled, nor liable. The House of Lords accepted this submission.
- However, in a related case, ***Petroleo Brasileiro S.A. and others v Mellitus Shipping Inc and others, The “Baltic Flame”*** [2001] 2 Lloyd’s Rep. 203 (CA) Saudi Aramco’s argument that it should not be joined to proceedings as a potential contributor because (a) this would outflank arbitration and jurisdiction agreements with those with whom it had contracted; and (b) a claim in contribution was unknown in its country of domicile, failed.
- ***The “Sun” and the “Riza”*** [1997] 2 Lloyd’s Rep. 314 (Timothy Walker J): led by Jonathan Gaisman QC for the plaintiff charterers. These charterparty actions turned on whether the defendant, Captain John Vatis, had contracted personally or not. Held, that he had chartered on behalf of a Panamanian company (Kronos Maritime Agencies S.A) and was not therefore personally liable.
- ***The “Breydon Merchant”*** [1992] 1 Lloyd’s Rep. 373 (Sheen J). Under the 1976 Convention on Limitation of Liability for Maritime Claims, shipowners were entitled to limit their liability to cargo owners in respect of cargo’s share of a salvage award; although they could not limit their own liability to salvors.

Commodities and Sale of Goods

The sale of goods is a staple of commercial practice, and Stephen has been involved in various cases concerning the sale of goods, often in a specialized context. For example, he has acted for the buyer of a brand-new private jet; advised a major gas trader in relation to quality disputes arising from its long-term “take-or-pay” gas supply contract; acted for a leading bunker supplier in its claim alleging delivery of contaminated fuel oil to its mother ships off the West Coast of Africa; and has also acted or advised in relation to a number of ship sale or ship-building disputes.

Selected cases:

- In 2013/14, Stephen acted for the Defendant in ***Glencore Energy UK Ltd v Cirrus Oil Services Limited*** [2014] EWHC 87 (Comm); [2014] 2 Lloyd’s Rep. 1. Issues of contract formation, the identity of the negotiating parties, and assessment of the market value of a crude oil from a young Nigerian oilfield – the Ebok field, on which publicly-available trading data was non-existent – arose for decision. Instructions from Osborne Clarke.
- In 2012 Stephen represented the dissatisfied buyer of a new private jet in ***Air Transworld v Bombardier*** [2012] EWHC 243 (Comm) [2012] 1 Lloyd’s Rep. 349. The buyer claimed to have rejected the aircraft for breach of the conditions implied by the Sale of Goods Act 1979, but Cooke J held that, despite the absence of any reference to “conditions”, the purchase agreement had successfully excluded those terms. Cf *The Mercini Lady* [2011] 1 Lloyd’s Rep. 442. (He also

held that the Unfair Contract Terms Act 1977 was not applicable.) The Court of Appeal gave leave to appeal, and the case then settled. Instructed by Stockler Brunton.

- In 2009 Stephen acted as leading counsel in several ship-building arbitrations for Korean clients (instructed by Clyde & Co).
- **OW Supply v Trafigura**; instructed by MFB Solicitors to act for a bunker supplier claiming delivery of contaminated fuel oil to its mother ships off the West Coast of Africa. The case was settled following mediation in 2009.
- **Zegluga Polska v T R Shipping (No. 2)** [1998] 2 Lloyd's Rep. 341 (C.A.): a ship sale case for the plaintiff sellers. The Court of Appeal held, in the plaintiffs' favour and overruling *The Aktion* [1987] 1 Lloyd's Rep 283, that the "Notice of Readiness" required by Clause 3 of the Norwegian Saleform meant notice of actual readiness, not of prospective readiness.
- **Axel Johnson Petroleum v M.G. Mineral Group** [1992] 1 W.L.R. 270. A leading case on the scope of legal set-off. This case established that, for the purposes of legal set-off, "mutual debts" refers to all liquidated claims, such that a cross-claim for short payment of the price on an earlier contract could be set off against a claim under a later contract for demurrage (liquidated damages). The claim and cross-claim need not arise from connected transactions
- **Vitol v Esso Australia** [1989] 1 Lloyd's Rep. 451 (C.A.). At first instance the judge (Leggatt J) held that buyers could reject a cargo of oil sold under a "cif delivered" contract on grounds of short-shipment. The Court of Appeal, reversing, held that the buyers were precluded from relying on this point by a "without prejudice" agreement, which it construed as representing that the point would not be taken.

Insurance & Reinsurance

Since the outset of his career Stephen has been instructed in a number of significant marine insurance cases. He has also been involved, over the years, in numerous insurance and reinsurance arbitrations.

Selected cases:

Marine Insurance

- **The "Brillante Virtuoso"** ([2016] EWHC 1085 (Comm)). In this substantial marine insurance claim (c. US\$100m) the owner claimed that its vessel was set on fire by pirates who had tricked their way on board while the vessel was waiting off Aden. Underwriters alleged that the vessel was deliberately destroyed by fire with the privity or connivance of her owner. Stephen was heavily engaged on this case, as part of a team of Counsel representing underwriters instructed by Norton Rose Fulbright, from January 2015 to September 2016. In May 2016, they succeeded in having the owner's claims dismissed, following failures to comply with disclosure obligations: see the judgment cited above. The Court

described the owner's explanation for the failures as "*a complete invention*". (The claim of a mortgagee bank, as co-assured, continues. Trial is scheduled for April 2018.)

- ***Thor Navigation v Ingosstrakh Insurance*** [2005] EWHC 19, [2005] 1 Lloyd's Rep. 547 (Gloster J): for the claimant shipowners, whose hull and machinery policy on their trading vessel "*Thor II*" was found by the Court to be an unvalued policy. A claim to rectify the policy failed.
- ***Seashore Marine S.A. v Phoenix Assurance Plc And Others (The "Vergina")*** [2001] Lloyd's Rep. 698, 719, [2002] 2 Lloyd's Rep. 238 (Aikens J): for the claimant shipowners, who recovered their salvage payments from hull and machinery underwriters. The judge also awarded enhanced interest and indemnity costs under CPR Part 36.
- ***The "Sagheera"*** [1997] 1 Lloyd's Rep. 160 (Rix J), for the defendant hull and machinery underwriters. This case concerned the assertion of legal professional privilege in relation to documents created in the course of a joint investigation conducted by the owners of this vessel and its war risks insurers, following an explosion which caused her total loss. Held, those documents were privileged from disclosure to others (e.g. hull and machinery underwriters). The judgment also deals with privilege claimed for documents disseminating legal advice "internally", partly privileged documents, and common interest privilege.
- ***The "Ikarian Reefer"*** [1993] 2 Lloyd's Rep. 68 (Cresswell J); [1995] 1 Lloyd's Rep. 455 (C.A.), for the defendant underwriters. This well-known case concerned a claim on a policy of marine insurance, which the underwriters met by alleging scuttling and fraud. The Court of Appeal (after one of the longest appeals in English legal history) reversed the trial judge, finding that the vessel had indeed been scuttled with the privity or connivance of her owners. The case is primarily of interest for its facts, although it also contains valuable dicta about the role of expert witnesses.
- ***Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd., The "Good Luck"*** [1992] 1 A.C. 233 (HL). This was, until the Insurance Act 2015, the leading case on the effect of a breach of an insurance warranty. The insurer is discharged from liability automatically, from the moment of breach. Here the insurers were found liable to the bank, for failing (in breach of an undertaking) to inform the bank that cover had ceased, as soon as they were aware of the breach of warranty.
- ***Bank of America National Trust and Savings Association v Taylor*** [1992] 1 Lloyd's Rep. 484 (Waller J). It was proper for an underwriter subscribing to a policy of insurance to be sued as a representative of the other subscribers, even in the absence of a "leading underwriter" clause, or other cost-sharing arrangement.
- ***The "Captain Panagos DP"*** [1989] 2 Lloyd's Rep. 33 (CA). This scuttling case concerned the inferences to be drawn from the fact (unchallenged in the Court of Appeal) that a vessel had been deliberately cast away. The beneficial owner of the vessel had died between the date of the loss of his ship and the date of trial. Held, it was to be inferred that the casting away had been done with his connivance. "*Ships are not cast away out of lightness of heart or sheer animal spirits*" (per Lord Sumner in *The Arnus* [1924] AC 850).

Non-marine Insurance and Reinsurance

- In 2017 Stephen was instructed by Cubism Law to represent the claimant on an application for summary judgment on his claim against travel insurers. The claimant sought cover for emergency medical expenses incurred in the US. The insurers resisted on the basis that they/ their medical advisors had not agreed to those expenses in advance. The case raised issues under the Consumer Rights Act 2015; but was settled on the eve of the hearing.
- In 2010, Stephen was instructed by Clyde & Co in ***PK Airfinance US Inc v Chartis Insurance UK Limited and others***, an aviation insurance case in which he acted for insurers resisting claims by the owners and mortgagees of three Boeing 747 aircraft. It was claimed that the aircraft were lost when misappropriated by an Iranian airline: see, by way of background, ***Blue Sky One Limited and others v Mahan Air and others*** [2009] EWHC 3314(Comm) and [2010] EWHC 631 (Comm). The case settled in September 2010, following a mediation.
- In ***CNA Insurance Co. Ltd v Willis Ltd*** Stephen acted for Willis (instructed, together with Gavin Kealey QC, by Slaughter and May) in a US\$300 million Commercial Court action arising out of the reinsurance of occupational accident risks. The case settled in September 2009.
- In ***CGU International v Astrazeneca*** [2005] EWHC 2755 (Comm), [2006] Lloyd's Rep. IR 409 (Cresswell J), Stephen acted (with Christopher Butcher QC, instructed by Lovells) for the claimant reinsurers, who succeeded in overturning an arbitration award. Held, that a US service of suit clause in the underlying policy, which obliged the insurer to submit to and abide by the outcome of US proceedings, did not affect the scope of coverage afforded by the insurance or the reinsurance, both of which were governed by English law. Leave for a further appeal to the Court of Appeal was refused. (An application for permission to appeal against that refusal raised interesting arguments about the Court of Appeal's power under the Human Rights Act 1998 to review "unappealable" decisions – see [2006] EWCA Civ 1340, [2007] 1 Lloyd's Rep. 142 (C.A.) – but was also ultimately refused.)
- ***European International Reinsurance Company v Curzon***. Stephen was instructed by Freshfields for the claimants (an associated company of Swiss Re) in a claim to avoid an asbestos liability reinsurance cover of some £166m. After almost three months of trial in the Commercial Court, where he was led by Gavin Kealey QC, the case settled (early 2004)
- In 2003 Stephen represented a European retrocessionaire contesting in arbitration its liability to "indemnify" its retrocedant for payments made under a commutation agreement. Instructions were from Barlow Lyde & Gilbert.
- In 1999 Stephen acted in a Bermuda form insurance arbitration, principally concerned with determination of the year in which a claim for directors' and officers' (D. & O.) excess liability coverage had been (or was deemed to have been) "made and reported". Subsidiary issues included the scope of an "insured v insured" exclusion; and the attachment point of cover. The governing law was New York law. Instructed by D J Freeman.

- ***Excess Insurance v Mander*** [1997] 2 Lloyd's Rep. 119 (Colman J), for the claimant reinsureds. This is a leading case on the incorporation of arbitration clauses into retrocession agreements by reference to the underlying reinsurance contract. Held, that general words of incorporation were ineffective to achieve this.
- ***Merrett v Capital Indemnity Corporation*** [1991] 1 Lloyd's Rep. 169 (Steyn J). Reinsureds were not precluded from recovering from reinsurers by the reason of the fact that brokers had already gratuitously "funded" the claims.

Civil Fraud/Corruption

Although fraud and corruption are present as a sub-text in many cases, in the following cases in which Stephen acted, allegations of fraud or corruption were central to the case:

- ***The "Brillante Virtuoso"*** ([2016] EWHC 1085 (Comm)). In this substantial marine insurance claim (c. US\$100m) the owner claimed that its vessel was set on fire by pirates who had tricked their way on board while the vessel was waiting off Aden. Underwriters alleged that the vessel was deliberately destroyed by fire with the privity or connivance of her owner. Stephen was heavily engaged on this case, as part of a team of Counsel representing underwriters instructed by Norton Rose Fulbright, from January 2015 to September 2016. In May 2016, they succeeded in having the owner's claims dismissed, following failures to comply with disclosure obligations: see the judgment cited above. The Court described the owner's explanation for the failures as "*a complete invention*". (The claim of a mortgagee bank, as co-assured, continues. Trial is scheduled for April 2018.)
- ***Westacre Investments Inc. v Jugoimport SDPR Holding Company Ltd and others*** [2000] QB 288 (C.A.); acting for the Defendants (the former Yugoslav military sales and procurement agency) on the instructions of Holman Fenwick & Willan. This arms trading case raised the issue of whether enforcement of a Swiss arbitration award would be contrary to English public policy (Arbitration Act 1975, Section 5(3)). The Defendants maintained that the underlying contract was to procure influence over, or to pay bribes to, Kuwaiti government officials. The Court of Appeal (by a majority) held that even if this was so, and even if the award had been obtained by fraud, it would still be enforced where the Defendants had had an opportunity of putting these matters before the Swiss arbitral tribunal. A petition for leave to appeal to the House of Lords was rejected: [1999] 1 WLR 1999.
- ***Surzur Overseas Ltd v Koros*** [1999] 2 Lloyd's Rep. 611 (CA). Stephen acted for the plaintiff, Surzur (a subsidiary of Société Generale). The saga began with an application for a world-wide *Mareva* injunction (for c. US\$54 million) over the assets of the Blue Flag Navigation Group and of its principal, Mr Nicholas Koros, to secure outstanding loans. The reported decision arose from a second action, alleging a conspiracy to defraud the plaintiff by (among other things) misleading the English High Court into varying that injunction using forged documents and false and perjured affidavits. The Court of Appeal held that this claim did not infringe the rules of "witness immunity". A defendants' Petition to the House of Lords was refused after an oral hearing. The "conspiracy" case settled shortly before trial (2001).
- ***The "Ikarian Reefer"*** [1993] 2 Lloyd's Rep. 68 (Cresswell J); [1995] 1 Lloyd's Rep. 455 (C.A.), for the defendant

underwriters. This well-known case concerned a claim on a policy of marine insurance, which the underwriters met by alleging scuttling and fraud. The Court of Appeal (after one of the longest appeals in English legal history) reversed the trial judge, finding that the vessel had indeed been scuttled with the privity or connivance of her owners. The case is primarily of interest for its facts, although it also contains valuable dicta about the role of expert witnesses.

- ***The “Captain Panagos DP”*** [1989] 2 Lloyd’s Rep. 33 (CA). This scuttling case concerned the inferences to be drawn from the fact (unchallenged in the Court of Appeal) that a vessel had been deliberately cast away. The beneficial owner of the vessel had died between the date of the loss of his ship and the date of trial. Held, it was to be inferred that the casting away had been done with his connivance. *“Ships are not cast away out of lightness of heart or sheer animal spirits”* (per Lord Sumner in *The Arnus*[1924] AC 850).

Energy & Natural Resources

Stephen has been involved in a number of cases concerning energy and natural resources, often in a specialized context. For example, he has recently advised a major gas trader in relation to quality disputes arising from its long-term “take-or-pay” gas supply contract; and acted for a leading bunker supplier in its claim alleging delivery of contaminated fuel oil to its mother ships off the West Coast of Africa.

Selected cases:

- In 2013/14, Stephen acted for the Defendant in ***Glencore Energy UK Ltd v Cirrus Oil Services Limited***[2014] EWHC 87 (Comm); [2014] 2 Lloyd’s Rep. 1. Issues of contract formation, the identity of the negotiating parties, and assessment of the market value of a crude oil from a young Nigerian oilfield – Ebok crude, on which publicly-available trading data was non-existent – arose for decision. Instructions from Osborne Clarke.
- ***OW Supply v Trafigura***; instructed by MFB Solicitors to act for a bunker supplier claiming delivery of contaminated fuel oil to its mother ships off the West Coast of Africa. The case was settled following mediation in 2009
- ***Axel Johnson Petroleum v M.G. Mineral Group*** [1992] 1 W.L.R. 270 (CA). A leading case on the scope of legal set-off. This case established that, for the purposes of legal set-off, “mutual debts” refers to all liquidated claims, such that a cross-claim for short payment of the price on an earlier contract could be set off against a claim under a later contract for demurrage (liquidated damages). The claim and cross-claim need not arise from connected transactions.
- ***Vitol v Esso Australia*** [1989] 1 Lloyd’s Rep. 451 (CA). At first instance the judge (Leggatt J) held that buyers could reject a cargo of oil sold under a “cif delivered” contract on grounds of short-shipment. The Court of Appeal, reversing, held that the buyers were precluded from relying on this point by a “without prejudice” agreement, which it construed as representing that the point would not be taken.

Professional Negligence

Stephen has advised in many cases and in various contexts on the liability of professionals; but particularly in relation to the business of insurance at Lloyd's. He has advised the Corporation of Lloyds, Lloyd's syndicates, integrated Lloyd's vehicles and individual liquidators concerning the potential liability of accountants, actuaries, managing agents and brokers.

Selected cases:

- ***Emulex Consultores v Swiss Re Europe SA and others***. Stephen represented Marsh Brokers Ltd, on the instructions of Sidley Austin, in this three-way fight arising out of the insurance of Pritchards Stockbrokers. The case settled in mid-2012
- ***CNA Insurance Co. Ltd v Willis Ltd***: acted for Willis (instructed, together with Gavin Kealey QC, by Slaughter and May) in a US\$300 million Commercial Court action arising out of the reinsurance of occupational accident risks. The case settled in September 2009.
- ***Allied Dunbar v The Underwriter Insurance Company and Willis Ltd***. In 2010 Stephen again acted for Willis (this time as leading counsel, instructed by Lovells). The disputes were resolved in mediation.

Banking & Finance

Asset financing and the financial arrangements underpinning international trade form the background to many commercial disputes, although only rarely are they the direct subject of litigation. Stephen acted in the following cases where they were:

Selected cases:

- ***Surzur Overseas Ltd v Koros*** [1999] 2 Lloyd's Rep. 611 (CA), for the plaintiff, Surzur (a subsidiary of Société Generale). The saga began with an application for a world-wide Mareva injunction (for c. US\$54 million) over the assets of the Blue Flag Navigation Group and of its principal, Mr Nicholas Koros, to secure outstanding loans. (The reported decision arose from a second action, alleging a conspiracy to defraud the plaintiff by (among other things) misleading the English High Court into varying that injunction using forged documents and false and perjured affidavits.)
- ***Kredietbank v Midland Bank; Karaganda Ltd v Midland Bank*** [1999] Lloyd's Rep. Bank 219 (CA), for the plaintiff, Karaganda Ltd. This letter of credit case concerned the requirement under UCP 500 for tender of original documents. The Court of Appeal held (notwithstanding the terms of Art. 20(b) of UCP 500) that a document created on a word-processor, printed on a laser-printer, but not "marked as original" was nevertheless an original (cf *Glencore v Bank of China* [1996] 1 Lloyd's Rep. 135). A Petition to the House of Lords was refused.

Commercial Litigation

The following cases do not fall easily into any of the more specialized areas of practice referred to above; and might therefore be considered as general “commercial litigation”:

- Since 2013 Stephen has been acting, on the instructions of Highgate Hill Solicitors, for large numbers of English buyers of holiday homes, promised to be built in Cyprus. Allegations of mis-selling are made against various defendants, including the lending banks. The English buyers claim to be “consumers” for jurisdictional (and other) purposes. In the lead case, **Ackerley v Alpha Panareti**, a significant jurisdiction hearing was scheduled for June 2014; but the parties obtained an adjournment to allow settlement discussions to take place.
- **Poseidon Freight Forwarding Co. Ltd. v Davies Turner Southern Ltd.** [1996] 2 Lloyd’s Rep. 388 (C.A.). The Court of Appeal held that reasonable notice of trading conditions had been given, albeit that the terms, referred to on the face of documents as printed on the reverse, were not transmitted by fax.

International Arbitration

Much of Stephen’s practice is concerned with arbitrations, and he is therefore familiar with the law relating to arbitration, including the mechanisms for challenging jurisdiction and the procedures for challenging, and resisting challenges to, arbitration awards.

Selected cases:

- **CMA-CGM S.A. v. Beteiligungs-Kommanditgesellschaft MS “Northern Pioneer” Schiffahrts-gesellschaft M.B.H & Co** [2002] EWCA Civ 1878 [2003] 1 WLR 1015 (CA). Stephen was instructed by Holman Fenwick & Willan for the Respondent owners, who successfully resisted an application for leave to appeal from an arbitration award. The arbitrators had concluded that German participation in the NATO air operations over Serbia and Kosovo did not constitute “involvement in war”, and the charterers had not been entitled to cancel under the war clauses in four long-term time charters. This was the first case in which the Court of Appeal considered the principles by which leave to appeal may be granted under s. 69 of the Arbitration Act 1996 (cf. the *Nema* Guidelines).
- **Westacre Investments Inc. v Jugoimport SDPR Holding Company Ltd and others** [2000] QB 288 (C.A.); acting for the Defendants (the former Yugoslav military sales and procurement agency) on the instructions of Holman Fenwick & Willan. This arms trading case raised the issue of whether enforcement of a Swiss arbitration award would be contrary to English public policy (Arbitration Act 1975, Section 5(3)). The Defendants maintained that the underlying contract was to procure influence over, or to pay bribes to, Kuwaiti government officials. The Court of Appeal (by a majority) held that even if this was so, and even if the award had been obtained by fraud, it would still be enforced where the Defendants had had an opportunity of putting these matters before the Swiss arbitral tribunal. A Petition for leave to appeal to the House of Lords was rejected: [1999] 1 WLR 1999.
- **Excess Insurance v Mander** [1997] 2 Lloyd’s Rep. 119 (Colman J), for the claimant reinsureds. This is a leading case

on the incorporation of arbitration clauses into retrocession agreements by reference to the underlying reinsurance contract. Held, that general words of incorporation were ineffective to achieve this.

- ***Pan Atlantic Group Inc. v Hassneh Insurance Co. of Israel*** [1992] 2 Lloyd's Rep. 120 (C.A.). An arbitration agreement required the arbitrators to be executive officials in insurance or reinsurance companies. Mr John Butler was appointed, but then retired and became a consultant to a firm of solicitors. Held, he was still eligible to act, since he had been qualified when appointed.

Jurisdiction/Conflict of Laws

This is an area of notorious difficulty and complexity. Stephen has acted in a number of cases involving the interaction of the jurisdiction rules in the Jurisdiction Regulation (EC) 44/2001, the Lugano Convention, the Brussels Convention, and the CMR, as well as the common law rules.

Selected cases:

- Since 2013 Stephen has been acting, on the instructions of Highgate Hill Solicitors, for large numbers of English buyers of holiday homes, promised to be built in Cyprus. Allegations of mis-selling are made against various defendants, including the lending banks. The English buyers claim to be "consumers" for jurisdictional (and other) purposes. In the lead case, ***Ackerley v Alpha Panareti***, a significant jurisdiction hearing was scheduled for June 2014; but the parties obtained an adjournment to allow settlement discussions to take place.
- ***Royal and Sun Alliance and another v MK Digital and others*** [2006] EWCA Civ 629, [2006] 2 Lloyd's Rep. 110 (CA) acting (ultimately unsuccessfully) for claimants seeking to sustain English jurisdiction in relation to a claim of non-liability by a French road transport operator.
- ***Mora Shipping v Axa*** [2005] EWCA Civ 1069, [2005] 2 Lloyd's 769 (CA); acting for claimants asserting that a claim under a general average guarantee given by European insurers was subject to English jurisdiction.
- ***Standard Steamship Owners Protection & Indemnity Association v GIE Vision Bail*** [2004] EWHC 2457 (Comm), [2005] Lloyds' Rep. IR 407 (Cooke J); for Louis Duty Free Shops, an operator of shopping concessions on Festival Cruise Lines vessels. Cover for its employees had been placed by Festival's brokers with a P&I Club, which (on Festival's default) claimed against Louis Duty Free Shops for all unpaid calls. The jurisdictional dispute centred on whether an exclusive jurisdiction clause in the Club's Rules expressed as binding on "Members" was also binding on Louis Duty Free Shops as "Joint Entrant".
- ***Siboti K/S v BP France*** [2003] EWHC 1278 (Comm); [2003] 2 Lloyd's Rep. 364 (Gross J): instructed by Clyde & Co. for the Defendant, BP France, which successfully asserted its right to be sued in its country of domicile (France). The case turned on English and European law on the incorporation of a charterparty jurisdiction clause into a bill of lading.

Other (Miscellaneous)

Selected cases:

- ***In re Medicaments*** (2000): Stephen was instructed by Cameron McKenna for the respondent pharmaceutical associations, in this, the last case in the Restrictive Practices Court. The Director-General of Fair Trading challenged the practice of resale price maintenance (RPM) on branded “over-the-counter” medicines (a practice which had been adjudged to operate in the public interest in 1970). The first trial had to be abandoned after it became apparent that there was a real risk that one of the lay members of the Court might be biased: see [2001] 1 WLR 700 (C.A.). (At the second trial the pharmaceutical associations withdrew their opposition to the Director-General’s challenge.)
- ***Steedman v Scofield*** [1992] 2 Lloyd’s Rep. 163 (Sheen J). This personal injury case resulted from a collision between a speedboat and a jet-ski. Held that a jet-ski was not a “vessel used in navigation”, so that the two-year limitation period under the Maritime Conventions Act 1911 was not applicable.

Arbitration and Mediation

Stephen accepts appointment as an arbitrator. Please refer to his clerks.

Practice Profile

Richard Southern specialises in commercial litigation and arbitration, including shipping, energy, commodities and international trade, as well as professional negligence, marine and non-marine insurance, and reinsurance.

As a silk, ‘Richard’s work has included a wide range of litigation and arbitration. Recently Richard has been involved in several significant cases including one about counterfeit crude oil, a claim for investments misappropriated by their

custodian. He represented Classic Maritime in a series of heavily contested cases no less than sixteen times both at trial and on appeal. He recently won a landmark shipbuilding arbitration before a panel of three retired Commercial Court judges and he represents the London reinsurance market in proceedings arising out of the Chapeconese air disaster.

He is ranked by Chambers UK as a leading silk in shipping & commodities and energy & natural resources (“*He is extremely good. He is very thorough, always delivers on time and has a very good instinct for where a case is going to go*”) and by the Legal 500 as a leading silk in commodities, insurance and reinsurance, and shipping (“*an excellent advocate who picks the right points*”). His work is principally advocacy and advisory. Richard sits regularly as an arbitrator in LMAA, LCIA and SIAC disputes, and is an IMI Qualified Mediator.

Insurance & Reinsurance

Richard is currently involved in a claim several (unrelated) fire claims, for the insured and for the insurers, a large material damage and business interruption claim involving a blast furnace, and a number of disputes between insureds and their Errors and Omissions insurers.

Selected cases:

- **2021-2022:** *Counsel for the reinsurers obtaining an anti-suit injunction restraining pursuit of claims in Florida by the families of the victims of the Chapecoense air disaster.*
- **2022:** *Counsel for Insurers in a Buyer’s Warranty Insurance Policy insuring against breach of warranty in a share purchase agreement for the share capital in a global corporation.*
- **2020-2022:** **Counsel for an insurance broker sued in the Commercial Court for alleged breach of duty in placing a policy. The case raises the question whether and when an insured must disclose that in a previous policy year, there had been an incorrect presentation of the facts to the insurer.**
- **2022:** **Counsel for an insurance broker in a business interruption claim arising out of a fire at a waste recycling centre involving complex legal, insurance, and factual issues.**
- **2021:** **advised in high-value claim against E&O insurers concerning alleged secret profits.**
- **2020:** **Advised in coverage dispute concerning historical allegations of abuse at schools.**
- ***XL Insurance Company S.E. v Peter Little*: [2019] EWHC 1284 (Comm) (Popplewell J.).** Appeared as leading counsel in a case arising out of the LIBOR rigging scandal, involving a final anti-suit injunction to restrain a U.S. resident from pursuing U.S. proceedings where an insurance policy required parties to resolve disputes via LCIA arbitration.
- ***Synergy Healthcare (U.K.) Ltd v C.G.U. and others*.** [2010] EWHC 2583 (Comm) (Flaux J.) Appeared as leading

counsel for the Fifth Defendant broker, against whom the Claimant sought damages for breach of duty if its primary claim for an indemnity under a MD/BI insurance policy – which the defendant insurers had sought to avoid on the grounds of non-disclosure and misrepresentation – failed.

- ***EAIC v Axa*** [2007] Lloyd’s Rep IR 359 and [2007] EWCA Civ 1178. Counsel for the claimant reinsured in a successful summary judgment application.
- ***ABB Brown Boveri v Hiscox Dedicated*** [2007] EWHC 1150 (Comm). Counsel for the claimant in a claim against insurers and brokers on a programme of contract frustration indemnity insurance.
- ***Aneco Reinsurance Underwriting Ltd v Johnson & Higgins*** [2002] 1 Lloyd’s Rep 157 (House of Lords – professional negligence, insurance broking, quantification of damages)
- ***Lincoln National Life Insurance Co v Employers Reinsurance Corp*** [2002] Lloyd’s Rep I&R 852 (Reinsurance, personal accident carve out cover, jurisdiction).
- ***Glencore International v Exter Shipping Ltd*** [2002] EWCA Civ 524 (Court of Appeal; shipping, misdelivery of oil cargoes, jurisdiction of English court to order anti-suit injunction restraining proceedings in Georgia).
- ***Glencore International v Metro Trading*** [2001] 1 Lloyd’s Rep 284 (Conflict of laws, application of lex situs to property in moveable goods, proprietary effect of bailee blending stored oil)

Lloyd v Popely [2000] 1 BCLC 19 and C.A. unreported (Court of Appeal); fraud, dispute between promoters over ownership of shares in Hever golf club, and legality of sale agreement under Financial Services Act.

Shipping & Transport

Richard has previously represented an Owner in a string of Contracts of Affreightment (C.O.A). related disputes and a Charterer in a different string of C.O.A. related disputes. Other recent cases involve a substantial dispute over the condition of a vessel after a long bareboat charter, a dispute concerning a coal handling contract, numerous time charter and voyage charter disputes

Selected cases:

- **2022: Counsel for the owners and insurers of a vessel in a “putting-by” case causing the moorings of a moored vessel to part.**
- **2022: Counsel for the Buyers in a shipbuilding arbitration where the dispute was whether the Vessel was ready for delivery when delivery was tendered.**
- **2021: Counsel for the respondent in a Time Charterparty dispute as to whether vessel lawfully withdrawn**

from service under the Charterparty, for underpayment of hire, raising questions as to lawfulness and damages.

- ***Classic Maritime v Limbungan Makmur Sdn Bhd***: [2020] EWHC 619 (Comm) (Butcher J.): Final stage of a long-running dispute in this Contract of Affreightment case marking the successful culmination of extensive litigation.
- **2019: Counsel for** the buyers of a tanker in an arbitration concerning under construction involving inspection of the vessel and evidence filed with the Classification Society.
- ***Classic Maritime v Limbungan Makmur Sdn Bhd***: [2019] EWCA Civ 1102; [2018] EWHC 2389 (Comm): An important authority on the proper construction of force majeure clauses in a claim for non-performance of a contract of affreightment and the correct measure of damages for breach of contract.
- ***S.T. Shipping and Transport Pte Ltd v Space Shipping Ltd & Anor*** [2018] EWHC 156 (Comm): Counsel for S.T. Shipping, Glencore International and Glencore plc in stakeholder proceedings before Teare J, raising difficult issues concerning “competing claims” entitling a party to pursue stakeholder proceedings, as well as their relationship with third party debt orders.
- **2018**: Significant force majeure arbitration involving questions as to how substitute employment for ships is brought into account by way of mitigation of the shipowner’s loss.
- **2018**: Significant dispute about force majeure events affecting a complex coal handling contract.
- ***OMV Petrom v Glencore International AG***: [2017] 1 WLR 3465 (CA); [2016] 2 Lloyd’s Rep 432 (CA); [2015] EWHC 666 (Comm) Flaux J: Counsel for Glencore in long-running dispute over 32 cargoes of counterfeit crude oil.
- **2015**: Counsel for the Sub-Buyers or a new building bulk carrier in a dispute over hatch covers.
- **2015**: Counsel for the Owners in a claim for non-performance of a C.O.A.
- ***Ipartner Pte Shipping v Panacore Resources*** [2014] EWHC 3608 (Comm) Counsel for the applicants in committal proceedings.
- **2013**: Counsel for Owners in a dispute concerning the redelivery of a vessel after a long bareboat charter.
- ***Dolphin Tanker Srl v Westport Petroleum Inc*** [2010] EWHC 2617 (Comm). Counsel for Charterers in a dispute arising from an “oil majors” clause in a time charterparty.
- **2010**: Counsel for the sub charterers in an arbitration claim over the exercise of a lien on sub-hires.

- ***Classic Maritime v Lion Diversified Holdings*** [2010] 1 Lloyd's Rep 59. Counsel for Classic Maritime in a claim under a contract of affreightment, which was alleged to have been frustrated by reason of the worldwide downturn in international trade.
- ***"Aktor" - PT Berlian Laju Tanker v Nuse Shipping*** [2008] 2 Lloyd's Rep 246. – Counsel for the buyers of the vessel in an M.O.A. dispute.
- ***"Torm Gertrud"*** in collision with the ***"New Flame"*** which sank off Gibraltar. Counsel for the Owners of the "Torm Gertrud".
- ***Glencore International v Exter Shipping Ltd*** EWCA Civ 524 (Court of Appeal; shipping, misdelivery of oil cargoes, the jurisdiction of English court to order anti-suit injunction restraining proceedings in Georgia).

Energy & Natural Resources

Richard has acted in several cases for an international oil trader. He is familiar with most aspects of oil trading (including hedging), shipment of oil cargoes, contamination of products, and the U.K. gas market. He is familiar with cases involving force majeure issues and claims arising in emerging and established energy markets globally. He acts as both an advocate and arbitrator in this area.

Selected cases:

- **2022: Acting as arbitrator concerning the construction of a crude oil pipeline in Eurasia involving complex factual and legal issues involving nationally flagged pipe laying and support barges prohibited from certain waters.**
- **2022: Significant arbitration concerning the correct measure of damages if a bulk carrier becomes unacceptable to shippers due to poor port state control records, raising wider issues about global iron ore markets.**
- **2021: Arbitration concerning an intended sale of a crude oil affected by the collapse in demand for crude oil due to Covid-19.**
- **2020: Arbitration concerning a contaminated cargo of jet fuel.**
- **2020: Arbitration over the rejection of a coal cargo said to have been off-specification involving detailed expert evidence about the sampling and analysis of coal.**
- **2020: Arbitration under LCIA rules arising out of contracts for the construction of subsea oil pipelines and associated riser platforms involving issues of wrongful termination, damages for prevention and related claims and counterclaims for the delay.**

- ***Classic Maritime v Limbungan Makmur Sdn Bhd***: [2019] EWCA Civ 1102; [2018] EWHC 2389 (Comm): Significant case on “but for” causation under force majeure clauses typical of many sale and purchase contracts of natural resources. The case is an important authority on the proper construction of such force majeure clauses and the correct measure of damages for breach of contract.
- **2018**: Case concerning a contract of the sale of gasoil involving allegations of doping and whether the cargo had been off-specification when shipped, or not. An example of Richard’s written work with his advocacy being dealt with by written submissions in a technically complex case
- **2017**: Counsel for the claimant in an arbitration claim for damages for wrongful failure to ship cargoes of iron ore from Sierra Leone during the Ebola epidemic involving difficult issues of force majeure
- ***S.T. Shipping and Transport Pte Ltd v Space Shipping Ltd*** [2017] EWHC 2808 (Comm): Appeal against an arbitration award in a case concerning an attempted theft of a cargo of Venezuelan crude oil, raising issues on the correct analysis of causation, and provisional damages under the charterparty
- **2016**: Arbitration concerning oil rig drilling services and security for payment of invoices involving complex legal issues regarding civil fraud and false representations.
- ***OMV Petrom v Glencore*** [2017] 1 WLR 3465 (CA), [2016] EWCA Civ. 778, [2015] EWHC 666 (Comm) and [2014] EWHC 242 (Comm). Counsel for Glencore in substantial fraud claim arising out of delivery of multiple cargoes of crude oil.
- **2015**: Counsel for the operators or a drillship in an international arbitration against a state oil company.
- **2013**: Counsel in a multi-million-dollar contractual dispute concerning export of alumina from Jamaica.
- ***Macquarie v Glencore*** [2009] EWHC 2267 (Comm) and [2010] EWCA Civ 697. Counsel for Glencore as defendant in a breach of warranty claim arising out of a share sale and purchase agreement for the sale of a .K.U.K. gas retail business; the claim against Glencore was successfully defended both at first instance and in the Court of Appeal.
- ***Glencore Energy v Transworld Oil*** [2010] EWHC 141 (Comm). Counsel for Glencore in an oil trading dispute arising out of the repudiation of an F.O.B. contract for the sale of West African crude oil; the claim was pursued to a successful judgment handed down by Blair J.
- **2010**: Counsel for an international oil trader in an arbitration concerning the delivery of multiple cargoes of crude oil.
- **2009**: Counsel for the buyers in a breach of warranty claim arising out of the sale of a Russian oil company; the claim was successfully pursued to an award in the London Court of International Arbitration in 2009.
- **2008**: Counsel for an international oil trader in an arbitration claim arising out of crude oil swaps contracts.

Glencore International v Metro Trading [2001] 1 Lloyd's Rep 284 (Conflict of laws, application of lex situs to property in moveable goods, proprietary effect of bailee blending stored oil).

General Commercial Disputes

Richard has represented parties in a wide variety of commercial claims, with particular emphasis over the years on commercial fraud, oil related disputes, and mergers and acquisitions disputes.

Selected cases:

- ***Net Insurance SpA v Torzi and others***: [2021] EWHC 26 (Comm) (Daniel Toledano QC sitting as a Deputy Judge of the High Court): Further proceedings regarding this long-running litigation.
- ***Net Insurance SpA v Torzi and others*** (2020) A case raising complex issues of asset tracing, in which leading counsel for the claimant obtained a worldwide freezing order (granted by Teare J.) against several companies and individuals as a result of which the assets were successfully recovered.
- ***Classic v Limbungan*** [2019] EWCA Civ 1102; [2018] EWHC 2389 (Comm): A leading appellate case on the correct measure of damages for breach of contract, marking the fifteenth case in which he has represented that client, across all proceedings and tribunals.
- ***S.T. Shipping And Transport Pte Ltd v Space Shipping Ltd* [2017] EWHC 2808 (Comm): Appeal against an arbitration award in a case concerning an attempted theft of a cargo of Venezuelan crude oil, raising issues on the correct analysis of causation, and provisional damages under the charterparty**
- ***2016: Arbitration concerning oil rig drilling services and security for payment of invoices involving complex legal issues regarding civil fraud and false representations.***
- ***OMV Petrom v Glencore*** [2017] EWCA Civ 195 [2015] EWHC 666 (Comm) and [2014] EWHC 242 (Comm). Counsel for Glencore in substantial fraud claim arising out of delivery of multiple cargoes of crude oil, and latterly important appeal concerning costs under C.P.R. Part 36, where the claimant has beaten its own Part 36 offer.
- ***Ipartner Pte Shipping v Panacore Resources*** [2014] EWHC 3608 (Comm) Counsel for the applicants in committal proceedings
- ***Dolphin Tanker Srl v Westport Petroleum Inc*** [2010] EWHC 2617 (Comm). Counsel for Charterers in a dispute arising out of an "oil majors" clause in a time charterparty.
- ***Synergy Health (U.K.) Ltd v C.G.U. Insurance*** [2010] EWHC 2583 (Comm) Counsel for defendant insurance brokers in a large fire claim.

- **Macquarie v Glencore** [2009] EWHC 2267 (Comm) and [2010] EWCA Civ 697. Counsel for Glencore as defendant in a breach of warranty claim arising out of a share sale and purchase agreement for the sale of a U.K. gas retail business; the claim against Glencore was successfully defended both at first instance and in the Court of Appeal.
- **Glencore Energy v Transworld Oil** [2010] EWHC 141 (Comm). Counsel for Glencore in an oil trading dispute arising out of the repudiation of an F.O.B. contract for the sale of West African crude oil; the claim was pursued to a successful judgment handed down by Blair J.
- **2010**: Counsel for an international oil trader in an arbitration concerning the delivery of multiple cargoes of crude oil.
- **2009**: Counsel for the buyers in a breach of warranty claim arising out of the sale of a Russian oil company; the claim was successfully pursued to an award in the London Court of International Arbitration in 2009.
- **2008**: Counsel for an international oil trader in an arbitration claim arising out of crude oil swaps contracts.
- **Lloyd v Popely** [2000] 1 BCLC 19 and .A.C.A. unreported (Court of Appeal); fraud, dispute between promoters over ownership of shares in Hever golf club, and legality of sale agreement under Financial Services Act.

International Arbitration

About half of Richard's practice involves confidential arbitrations, some before LMAA or GAFTA arbitrators, others in the LCIA or on UNCITRAL terms, and many on the basis of ad hoc agreements. All are confidential. Richard also accepts appointments as arbitrator.

Selected cases:

- **2022: Counsel for the buyers of a tanker in an arbitration concerning the quality of the steel which suffered corrosion during construction, and eligibility for an unqualified Cargo Ship Safety Construction Certificate.**
- **2022: Counsel for Insurers in a Buyer's Warranty Insurance Policy insuring against breach of warranty in a share purchase agreement for the share capital in a global corporation.**
- **2021**: Counsel in an arbitration involving issues as to the scope of a special exclusion clause for consequences of calling at Port Sudan.
- **2020-2022: sitting as arbitrator in a long-running dispute under LCIA rules about the laying of sub-sea pipelines; several Partial Final Awards were published.**
- **2018 - 2020: sitting as sole arbitrator in a dispute concerning a bank-issued repayment guarantee associated with an oil rig building contract.**
- **2019: Counsel for the claimant in an arbitration raising novel issues about notification of third-party Cargo**

Claims under the InterClub Agreement in the NYPE charter form.

- **2018: Counsel for the respondents in an appeal to the GAFTA Board of Appeal in a claim concerning a shipment of rice, raising important questions concerning recovery of legal and other expenses in GAFTA arbitrations**
- **2017:** Counsel in various cases concerning the shipment of crude oil, petroleum products, iron ore and ore pellets, as well as a shipbuilding dispute, numerous charterparty disputes.
- **2015:** Counsel for the operators of a drillship in an international UNCITRAL arbitration against a state oil company.
- **2015:** counsel for the Sub-Buyers of a newbuilding bulk carrier in an expedited dispute over hatch covers.
- **2014:** counsel for the owners in a series of arbitrations to recover claims for non-performance of contracts of affreightment.
- **2013:** Counsel for Owners in a dispute concerning the condition on redelivery of a vessel after a long bareboat charter
- **2013:** Counsel in a multi-million-dollar contractual dispute concerning export of alumina from Jamaica
- **2010:** Counsel for the Charterers in an expedited arbitration concerning tanker vetting and oil major approvals.
- **2010:** Counsel for the sub charterers in an arbitration claim over the exercise of a lien on sub hires.
- **2010:** Counsel for an international oil trader in an arbitration concerning the delivery of multiple cargoes of crude oil.
- **2009:** Counsel for the Owners of a ballastable barge in a bareboat charterparty arbitration.
- **2009:** Counsel for the buyers in a breach of warranty claim arising out of the sale of a Russian oil company; the claim was successfully pursued to an award in the London Court of International Arbitration in 2009.
- **2008:** Counsel for an international oil trader in an arbitration claim arising out of crude oil swaps contracts.

Professional Negligence

Richard is currently involved in several 'brokers' negligence actions as well coverage claims in respect of construction and other claims.

Selected cases:

- **2021: Counsel for professional indemnity insurers following claims arising out of allegations of receipt of secret commissions.**

- **2022: Counsel for insurance brokers sued for professional negligence on basis that the policyholder was inadequately insured for business interruption losses due to negligent advice by broker.**
- **2020-2022: Counsel for an insurance broker sued in the Commercial Court for alleged breach of duty in placing a policy. The case raises the question whether and when an insured must disclose that in a previous policy year, there had been an incorrect presentation of the facts to the insurer.**
- **2022: Counsel for an insurance broker in a claim arising out of a fire at a self-storage warehouse.**
- **2017: Counsel for an insurance broker in a case of alleged non-disclosure or previous financial and insurance history.**
- **2015:** Counsel for insurance brokers in a claim arising out a fire at a waste recycling plant.
- **2014:** Counsel for placing brokers in a contribution claim by the producing broker.
- **2012:** Instructed by the Bar Mutual in a claim against a commercial barrister.
- **2012:** Advised the owners of a damaged pier in connection with claims against various professionals.
- **2011:** Counsel for a bank in a claim against the employers of a corrupt surveyor.
- ***Synergy Healthcare (U.K.) Ltd v .G.U. C.G.U. and others.*** [2010] EWHC 2583 (Comm) Appeared as leading counsel for the Fifth Defendant broker, against whom the Claimant sought damages for breach of duty if its primary claim for an indemnity under a MD/BI insurance policy – which the defendant insurers had sought to avoid on the grounds of non-disclosure and misrepresentation – failed.
- ***Ramco v Weller Russell & Laws*** [2009] Lloyd’s Rep IR 27. Counsel for the claimant, a bailee of goods, against its insurance broker; the claim was pursued to a successful judgment.
- Counsel for Glencore in a claim against insurance brokers JLT in connection with the Metro litigation.
- ***Aneco Reinsurance Underwriting Ltd v Johnson & Higgins*** [2002] 1 Lloyd’s Rep 157 (House of Lords – professional negligence, insurance broking, quantification of damages).

Injunctions & Arrests

Selected cases:

- **2021-2022:** Counsel for the reinsurers obtaining an anti-suit injunction restraining pursuit of claims in the Florida by the families of the victims of the Chapeconese air disaster.
- ***Harvest Shipping v Fatimafert Ltd*** [2020]: Successful application in the Commercial Court for an anti-suit injunction

restraining the arrest of a vessel and substantive proceedings in the High Court of Sindh at Karachi.

- **XL Insurance Company v Peter Little** [2019] EWHC 1284 (Comm) (Popplewell J.): final anti-suit injunction restraining proceedings in New York in connection with alleged manipulation of forex markets.
- **Glencore International v Exter Shipping Ltd** [2002] EWCA Civ 524 (Court of Appeal; shipping, misdelivery of oil cargoes, jurisdiction of English court to order anti-suit injunction restraining proceedings in Georgia).

Banking & Finance

Banking and Finance is part of many international trade disputes. Richard is familiar with letter of credit issues, ship financing arrangements and mortgages, pre-finance arrangements and the like.

Selected cases:

- **Net Insurance S.p.A. v Torzi** [2021] EWHC 26 (Comm): Claim to recover misappropriated Italian Treasury Bonds.
- **2018 - 2020: sitting as sole arbitrator in a dispute concerning a bank-issued repayment guarantee associated with an oil rig building contract.**
- **2018: Expert evidence in a Grain and Feed Trade Association (GAFTA) dispute as to the proper effect of an agreement to amend a letter of credit;**
- **OMV Petrom SA v Glencore International** [2015] EWHC 666 (Comm); [2016] EWCA Civ. 778: Counsel for Glencore in substantial fraud claim arising out of delivery of multiple cargoes of crude oil involving letters of credit. A leading case concerning the measure of damages for deceit.
- **2015:** Advised lenders in connection with defaults under two bareboat charters of the semisubmersible drilling platforms
- Advised manufacturing company in connection with losses under a fake president fraud.
- **Macquarie v Glencore** [2009] EWHC 2267 (Comm) and [2010] EWCA Civ 697. Counsel for Glencore as defendant in a breach of warranty claim arising out of a share sale and purchase agreement for the sale of a K.U.K. gas retail business, and whether the Accounts were “true and fair” or “misleading”; the claim against Glencore was successfully defended both at first instance and in the Court of Appeal.
- **Lloyd v Popely** [2000] 1 BCLC 19 and CA (Unreported) (Court of Appeal); fraud, dispute between promoters over ownership of shares in Hever golf club, and legality of sale agreement under the Financial Services Act.

Practice Profile

David Bailey KC is one of the country's leading commercial silks. He specialises in all aspects of commercial law including shipping, superyachts, insurance and reinsurance, aviation, banking, energy and professional negligence. David has a particular expertise in relation to jurisdictional disputes and is regularly retained as an expert on English law in foreign litigation. High-profile cases in which David has recently appeared include leading for the appellants in *Enka v Chubb* and *The Alexandros T* in the UK Supreme Court, acting for insurers and reinsurers in the *Russian Aircraft Litigation* and for NIOC in its dispute with Crescent Petroleum in the Commercial Court and the Court of Appeal. He has also been engaged in several high-value Covid business interruption insurance cases, including *Parkdean v Axis*, one of the first cases to be issued outside of the FCA Test Case, which settled before trial. Major shipping cases in which David has appeared include *The Atlantik Confidence*, the *SBM/MPOUstor*, the *MSC Flaminia* and the *West Tankers* litigation.

Much of David's practice is in arbitration, where he is currently instructed on a US\$100 million shipping dispute and a significant superyacht case, alongside other cases, including one claim where aggregate losses from a casualty totalled over US\$260 million. He has also handled cases involving the alleged seizure of vessels by governments following the imposition of sanctions and dealt with marine insurance claims relating to the alleged total loss of vessels in Yemen and Venezuela. David is also regularly instructed in disputes involving mortgagee's interest insurance.

David has been nominated for The Legal 500 Shipping Silk of the Year award and was named AIA Insurance and Reinsurance Silk of the Year in 2014. He regularly lectures on insurance, reinsurance and jurisdictional issues.

David appears at mediations and accepts appointments as an arbitrator in commercial cases. David has also been appointed a Deputy High Court Judge and he sits in both the King's Bench and Chancery Divisions.

Agency

Selected cases:

- ***Scan Shipping v APL*** [2008] EWHC 634 (agency - injunction - arbitration)

Banking & Finance

Selected cases:

- ***Citigroup Global Markets Ltd v Amatra*** [2018] - (US\$400m derivatives mis-selling dispute, settled pre-trial)
- ***Alpha Bank v Bank of Communications*** [2018] - (Acting for Claimant Bank in successful claim for declaratory relief relating to allegations of fraud in relation to refund guarantees)
- ***Bominflot v Macquarie*** [2018] - (US\$80m claim for unauthorised futures trading cleared by Australian bank)
- ***Conlon v Black Horse*** [2014] Bus LR 553 (Banking - PPI)
- ***Bank of Scotland v Euclidian*** [2008] Lloyd's Rep. IR 182 (Banking - claim on insurance)
- ***Dornoch v Mauritius Union*** [2006] 2 Lloyd's Rep. 475 (Banking - fidelity insurance)
- ***Barings Futures v Coopers & Lybrand*** [2003] Lloyd's Rep IR 566 (Audit negligence - collapse of Barings - derivatives trading - causation - contributory negligence - misrepresentation - relief under Companies Act, section 727)
- ***Barings Futures v Coopers & Lybrand*** [2002] Lloyd's Rep PN 395 (Deceit - recklessness - causation - circuit of action)
- ***Barings Plc v Coopers & Lybrand*** [2002] Lloyd's Rep PN 127 (Reflective loss - scope of duty - strike out of shareholder's claim)
- ***Barings Plc v Coopers & Lybrand*** [2001] Lloyd's Rep 379 (Banking - admissibility of expert evidence)
- ***Den Danske Bank et al v Skipton Building Society*** [1998] 1 EGLR 155 (Mortgage Indemnity Insurance -mortgage portfolio securitisation)

European Law

David has acted in three cases that resulted in references to the European Court of Justice and in numerous jurisdiction disputes concerning reinsurance placed in the London market.

Selected cases:

- ***The Alexandros T*** [2013] UKSC 70

- **Toepfer v Cargill** [1998] 1 Lloyd's Rep. 379 – breach of arbitration agreement – anti-suit injunction.
- **The Front Comor** [2008] 2 Lloyd's Rep. 661 – anti-suit injunction against subrogated insurers – proper law of arbitration agreement.
- The “**Tatry**” on Articles 21 and 22

Injunctions & Arrests

Selected cases:

- **West Tankers v Allianz** [2012] 2 Lloyd's Rep. 103 (Anti-suit injunctions – equitable damages)
- **Oceanconnect v Angara** [2011] 1 Lloyd's Rep. 399 (Injunction – arrest – maritime lien – letter of undertaking)
- **Unicargo v Flotec, The Cienvik** [1996] 2 Lloyd's Rep 395 (injunction – jurisdiction to serve out of the jurisdiction)
- **Toepfer v Cargill** [1998] 1 Lloyd's Rep. 379 (breach of arbitration agreement – anti-suit injunction)
- **The “Front Comor”** [2008] 2 Lloyd's Rep. 661 (anti-suit injunction in aid of arbitration)
- **Scan Shipping v APL** [2008] EWHC 634 (agency – injunction – arbitration)
- **Gidrixlme Shipping v Tantomar Transportes** [1995] 1 W.L.R. 299 (Freezing injunction – scope – jurisdiction in relation to disclosure order)

Insurance & Reinsurance

Selected cases:

- **The Russian Aircraft Litigation** [2024] (ongoing Commercial Court litigation concerning aircraft alleged to have been detained in Russia following the invasion of Ukraine)
- **Aegean Baltic Bank v AXA** [2022] (claim relating to alleged total loss of a vessel in Yemen)
- **Parkdean v Axis** [2021] (acting for claimant in business interruption insurance claim arising from COVID-19 pandemic)
- **Enka v Chubb** [2020] UKSC 38 (leading for insurers US\$400m dispute arising out of a fire at a Russian power plant)
- **SBM Offshore - YME MopuSTOR** [2018] (US\$1 billion insurance dispute; settled pre-trial)
- **Starlight Shipping v Allianz** [2015] Lloyd's Rep IR 49 and 54, [2014] Lloyd's Rep IR 327 (Marine Insurance – jurisdiction)

- **Conlon v Black Horse** [2014] Bus LR 553 (PPI)
- **Starlight Shipping v Allianz** [2012] Lloyd's Rep. Plus 2 (Marine Insurance – jurisdiction)
- **AC Ward v Catlin** [2010] Lloyd's Rep IR 301 (construction of warranty – reverse summary judgment test)
- **Pratt v Aigaion** [2009] Lloyd's Rep IR Plus 2 (Insurance – construction of warranty)
- **Bank of Scotland v Euclidian** [2008] Lloyd's Rep IR 182 (ATE insurance)
- **Dornoch v MUA** [2006] Lloyd's Rep IR 127 (Reinsurance – jurisdiction)
- **Goshawk v Bank of Scotland** [2006] 2 All ER 610 (ATE insurance)
- **GE Frankona v CMM Trust** [2006] Lloyd's Rep IR 704 (Insurance – breach of warranty)
- **Equitas v Wave** [2006] Lloyd's Rep. IR 646 (Reinsurance- negative declaratory relief – Jurisdiction)
- **Munich Re v Commonwealth** [2005] Lloyd's Rep IR 99 (Reinsurance – jurisdiction – significance of English law – related claim against the brokers – *forum non conveniens*)
- **Martini Investments v McGinn** [2001] Lloyd's Rep IR 374 (Insurance – explosion – proximate cause – whether property damage caused by tephra – indemnity costs)
- **Universities Superannuation Scheme v Royal Insurance** [2000] Lloyd's Rep IR 524 (Fidelity Insurance – discovery of fraudulent acts and limitation)

International Arbitration

Selected cases:

- **Multiple arbitrations** (LMAA, ICC, LCIA and *ad hoc*). Recent and current examples include:
 - U\$100 million superyacht dispute
 - U\$200 million dangerous claim against charterers and shippers arising from an explosion aboard a vessel
 - US\$50 million claim for one of the world's largest container shipping companies
 - Very substantial multi-million-euro dispute concerning a superyacht
 - US\$70 million claim following deliberate scuttling of a vessel
 - Acting for a shipyard in a dispute over the sale and delivery of a series of bulk carriers

- Acting for owners in a dispute over a ferry service
- **National Iranian Oil Company v Crescent Petroleum** [2023] (challenge to US\$2.4 billion arbitration award: in High Court [2023] Bus LR 235 and Court of Appeal [2024] 1 WLR 71)
- **DPW v MSC** [2021] (lead counsel for MSC in a dispute arising from a volume and rebate agreement)
- **Enka v Chubb** [2020] UKSC 38 (leading case on proper law of arbitration agreements)
- **Goodwood Investments Holdings Inc v Thyssenkrupp Industrial Solutions AG** [2018] EWHC 1056 (alleged settlement – section 45 of Arbitration Act)
- **West Tankers v Allianz** [2012] Bus LR 1701 and [2012] 2 Lloyd's Rep 103 (enforcement of declaratory award)
- **The Front Comor** [2008] 2 Lloyd's Rep. 661 (anti-suit injunction in aid of arbitration)
- **Scan Shipping v APL** [2008] EWHC 634 (scope of section 44 of the Arbitration Act)
- **The Athena (No 2)** [2007] 1 Lloyd's Rep 280 (incorporation of arbitration agreement)
- **West Tankers v RAS & Generali** [2007] EWHC 2184 (power to appoint an arbitrator)
- **The Athena** [2006] 2 Lloyd's Rep. 147 (costs – the power to publish additional award)
- **Toepfer v Cargill** [1998] 1 Lloyd's Rep. 379 (breach of an arbitration agreement – anti-suit injunction)

Jurisdiction/Conflicts of Laws

Selected cases:

- **Enka vs Chubb** [2020] UKSC 38 (leading case concerning the governing law of arbitration agreements in the context of anti-suit injunctions)
- **Crescendo v Bank of Communications** [2016] Lloyd's Rep 414 (anti-suit injunction)
- **Starlight Shipping v Allianz** [2015] Lloyd's Rep IR 49 and 54, [2014] Lloyd's Rep IR 327 (Brussels Regulation and joinder of non-parties)
- **West Tankers v Allianz** [2012] 2 Lloyd's Rep. 103 (Anti-suit injunctions – equitable damages)
- **Oceanconnect v Angara** [2011] 1 Lloyd's Rep. 399 (Injunction – arrest – maritime lien – letter of undertaking)
- **The Cienvik** [1996] 2 Lloyd's Rep 395 (injunction – jurisdiction to serve out of the jurisdiction)

- ***The “Front Comor”*** [2008] 2 Lloyd’s Rep. 661 (anti-suit injunction and Brussels Convention)
- ***Scan Shipping v APL*** [2008] EWHC 634 (agency – injunction – arbitration)
- ***Dornoch v MUA*** [2006] 2 Lloyd’s Rep. 475 (Reinsurance – jurisdiction agreement)
- ***Equitas v Wave*** [2005] EWHC 923 (Article 5 of Jurisdiction Regulation – Negative declaratory relief)
- ***Munich Re v Commonwealth*** [2005] Lloyd’s Rep IR 99 (Reinsurance – *forum non conveniens*.)

Professional Negligence

Selected cases:

- ***Tanfield v Ward Hadaway*** [2022] (acting for solicitors in professional negligence claim)
- ***Starlight Shipping v Allianz*** [2015] Lloyd’s Rep IR 49 and 54, [2014] Lloyd’s Rep IR 327 (total loss of ship – claim against solicitors – jurisdiction)
- ***Barings Futures v Coopers & Lybrand*** [2003] Lloyd’s Rep IR 566 (Audit negligence – collapse of Barings – derivatives trading – causation – contributory negligence – misrepresentation – relief under Companies Act, section 727)
- ***Barings Futures v Coopers & Lybrand*** [2002] Lloyd’s Rep PN 395 (Deceit – recklessness – causation – circuit of action) *Barings Plc v Coopers & Lybrand* [2002] Lloyd’s Rep PN 127 (Reflective loss – scope of duty – strike out of shareholder’s claim)
- ***Barings Plc v Coopers & Lybrand*** [2002] Lloyd’s Rep PN 127 (Reflective loss – scope of duty – strike out of shareholder’s claim)
- ***Barings Plc v Coopers & Lybrand*** [2001] Lloyd’s Rep 379 (Banking – admissibility of expert evidence)

Shipping & Transport

Selected cases:

- **Multiple arbitrations** (LMAA, ICC and ad hoc) Recent examples include:
 - \$100 million superyacht dispute (LMAA)
 - £200 million claim against charterers and shippers arising from an explosion aboard vessel
 - £50 million claim for one of the world’s largest shipping companies
 - Very substantial multi-million-euro dispute concerning a superyacht

- US\$70 million case following deliberate scuttling of a vessel
 - Acting for a shipyard in a dispute over the sale and delivery of a series of bulk carriers
 - 12-million-dollar LMAA arbitration concerning charter and contracts for a ferry service.
- ***Aegean Baltic Bank v AXA*** [2022] (claim relating to the alleged total loss of a vessel in Yemen)
 - ***MSC Flaminia*** [2021] (dangerous goods)
 - ***Atlantik Confidence*** [2019] (total loss of cargo and vessel)
 - ***DPW v MSC*** [2021] (lead counsel for MSC in a dispute arising from a volume and rebate agreement)
 - ***The Palladium*** [2018] 1 Lloyd's Rep. Plus 78 (superyacht dispute)
 - ***Starlight Shipping v Allianz*** [2015] Lloyd's Rep IR 49 and 54, [2014] Lloyd's Rep IR 327 (Marine insurance – total loss – jurisdiction)
 - ***Firodi Shipping Ltd v Griffon Shipping LLC*** [2014] 1 Lloyd's Rep 471 (Sale and Purchase – deposit)
 - ***West Tankers v Allianz*** [2012] Bus LR 1701 and [2012] 2 Lloyd's Rep 103 (charterparty – arbitration – enforcement of declaratory relief)
 - ***Osmium Shipping Corp v Cargill International SA*** [2012] 2 Lloyd's Rep. 46 (Charterparty – piracy)
 - ***Starlight Shipping v Allianz*** [2012] Lloyd's Rep. Plus 2 (Marine insurance – total loss – jurisdiction)
 - ***West Tankers v Allianz*** [2012] EWCA Civ 27 (charterparty – arbitration – enforcement of declaratory relief)
 - ***Pace Shipping v Churchgate*** [2011] 1 Lloyd's Rep. 537 (title to sue – bills of lading)
 - ***Oceanconnect v Angara*** [2011] 1 Lloyd's Rep. 399 (maritime liens – injunction)
 - ***The Reborn*** [2008] 2 Lloyd's Rep. 628 (voyage charter – safe berth – implied warranty)
 - ***Scan Shipping v APL*** [2008] EWHC 634 (agency – injunction – arbitration)
 - ***Sea Trade v Hellenic*** [2007] 1 Lloyd's Rep. 280 (Arbitration – total loss)
 - ***Caribbean Petroleum v Cristal Limited*** [2004] 1 Lloyd's Rep. 48 (Oil pollution – construction of the Cristal contract)
 - ***Gefco v Mason*** (No 2) [2000] 2 Lloyd's Rep. 555 (carriage of goods – exclusion of damages for delay)

- **The Solon** [2000] 1 Lloyd's Rep. 292 (strike clause – proper approach to the construction of charterparty)
 - **Rank Enterprises v Gerard** [2000] 1 Lloyd's Rep. 403, [1999] 2 Lloyd's Rep 666 (Sale of ship – construction of MOA – claims against the ship – aggregate financial limits)
 - **The "Sea Maas"** [1999] 2 Lloyd's Rep. 281 (Admiralty practice – the arrest of vessel – unseaworthiness – jurisdiction)
 - **The Bay Ridge** [1999] 2 Lloyd's Rep. 227 (Sale of ship – whether negotiations resulted in binding contract of sale)
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Education

- Master of Arts (by resolution), University of Oxford (2012).
- Doctor of Philosophy, Magdalen College, University of Oxford (2011).
- Master of Philosophy in Law (Distinction), Magdalen College, University of Oxford (2008).
- Bachelor of Civil Law (Distinction), Magdalen College, University of Oxford (2006).
- Graduate Diploma in Legal Practice, University of Wollongong (2005).
- Bachelor of Science (Distinction) and Bachelor of Laws (Hons), University of Wollongong (2003).

Prizes and Awards

- Clarendon Scholar, University of Oxford.
- Joint Runner-up for the Society of Legal Scholars' Peter Birks' Prize for Outstanding Legal Scholarship (2014) for the book *Tort Law Defences* (2013).
- Recipient of numerous prizes throughout both undergraduate and postgraduate studies, including the Clifford Chance Prize in Civil Procedure for placing first in the subject 'Principles of Civil Procedure' in the Bachelor of Civil Law, University of Oxford.
- Recipient of the University Medal in Law (2003) in undergraduate studies for ranking outright first in graduating class.

General Information

- Member of the American Law Institute (elected 2020).
- Academic Benchler of the Honourable Society of the Inner Temple (elected 2019).
- Professor of the Law of Obligations, University of Oxford (appointed 2017).
- Holds or has held visiting positions at several universities, including Harvard Law School.
- Advisor to the American Law Institute, *Restatement (Third) of Torts* (2015 -).
- Judicial Assistant to the Hon Justice Michael Kirby AC CMG, High Court of Australia (2005 – 2006).

Languages

Brazilian Portuguese (intermediate).

Publications

James has published extensively in the law of obligations. He regularly speaks at conferences and seminars across the world and for law firms in London. Selected publications include the following.

Selected books

- James Goudkamp and Donal Nolan, *Contributory Negligence* (2nd ed, Oxford University Press, Oxford, 2023).
- James Goudkamp and Donal Nolan, *Winfield & Jolowicz on Tort Law* (20th ed, London, Sweet & Maxwell, 2020).
- James Goudkamp and Donal Nolan, *Contributory Negligence in the Twenty-First Century* (Oxford, Oxford University Press, 2019).
- James Goudkamp, *Tort Law Defences* (Oxford, Hart Publishing, 2013) (Runner-up for the Society of Legal Scholars' Birks Prize for Outstanding Legal Scholarship 2014 (cited in *White v Johnston* [2015] NSWCA 18 at [104], [110], [124]; *AHQ v Attorney General* [2015] SGCA 32; [2015] 5 LHR 542 at [27]; *Rholata v Hecht Metals Products Ltd* (District Court in Jerusalem, 17 September 2015) at [26]; *Good v Angland* [2017] NSWCA 311 at [185]; *Fede v Gray* [2018] NSWCA 316 at [175], [182] – [184]).

Selected edited books

- James Goudkamp and Eleni Katsampouka (eds), *Landmark Cases in the Law of Punitive Damages* (Oxford, Hart Publishing, 2023).
- Elise Bant, Wayne Courtney James Goudkamp and Jeannie Marie Paterson (eds), *Punishment and Private Law* (Oxford, Hart Publishing, 2021).
- Paul Davies, Simon Douglas and James Goudkamp (eds), *Defences in Equity* (Oxford, Hart Publishing, 2018).
- Andrew Dyson, James Goudkamp and Frederick Wilmot-Smith (eds), *Defences in Contract* (Oxford, Hart Publishing, 2017).
- Simone Degeling, James Edelman and James Goudkamp (eds), *Contract in Commercial Law* (Sydney, Thomson Reuters, 2016).
- Andrew Dyson, James Goudkamp and Frederick Wilmot-Smith (eds), *Defences in Unjust Enrichment* (Oxford, Hart Publishing, 2016).
- Andrew Dyson, James Goudkamp and Frederick Wilmot-Smith (eds), *Defences in Tort* (Oxford, Hart Publishing, 2015).
- Simone Degeling, James Edelman and James Goudkamp (eds), *Torts in Commercial Law* (Sydney, Thomson Reuters, 2011).

Selected articles

- James Goudkamp, 'Rethinking Strict Liability and Fault Liability in the Law of Torts' (2023) 139 *Law Quarterly Review* 269.
- James Goudkamp, 'Henderson v Dorset Healthcare University NHS Foundation Trust' (2021) 37 *Journal of Professional Negligence* pp.171-180.
- James Goudkamp and Eleni Katsampouka, 'Punitive Damages and the Place of Punishment in Private Law' (2021) 84 *Modern Law Review* pp.1257-1293.
- James Goudkamp, 'United Kingdom' (2018) 20 *Pharmaceuticals Policy and Law* pp.115 - 129.
- James Goudkamp and Eleni Katsampouka, 'An Empirical Study of Punitive Damages' (2018) 38 *Oxford Journal of Legal Studies* pp.90 - 122.
- James Goudkamp, 'The Birth of a Tort: A Practical Perspective on the Tort of Malicious Prosecution of Civil Proceedings' (2017) (July) *New Law Journal* pp. 11 -12.

- James Goudkamp and Donal Nolan, 'Contributory Negligence on Appeal' (2017) (April) *New Law Journal* pp.18 – 19.
- James Goudkamp, 'The Contributory Negligence Doctrine: Four Commercial Law Problems' [2017] *Lloyd's Maritime and Commercial Law Quarterly* pp.213 – 237.
- James Goudkamp and Donal Nolan, 'Contributory Negligence in the Court of Appeal: An Empirical Study' (2017) *37 Legal Studies* pp.437- 467.
- James Goudkamp and Donal Nolan, 'Contributory Negligence in Practice' (2016) 166(July) *New Law Journal* pp.11 – 13.
- James Goudkamp and Donal Nolan, 'Contributory Negligence in the Twenty-First Century: An Empirical Study of First Instance Decisions' (2016) 79 *Modern Law Review* pp. 575 – 622.
- James Goudkamp and Lewis Klar, 'Apportionment of Damages for Contributory Negligence: The Causal Potency Criterion' (2016) 53 *Alberta Law Review* pp.1 – 14 (cited in *Canadian Natural Resources Ltd v Wood Group Mustang (Canada) Inc* [2018] ABCA 305 at [40]).
- James Goudkamp and Melody Ihuoma, 'A Tour of the Tort of Negligence' (2016) 32 *Journal of Professional Negligence* pp.137 – 152.
- James Goudkamp, 'Apportionment of Damages for Contributory Negligence: A Fixed or Discretionary Approach?' (2015) 35 *Legal Studies* pp.621 – 647.
- James Edelman, James Goudkamp and Simone Degeling, 'Contemporary Problems in the Law of Contract' (2015) 40 *Australian Bar Review* pp.174 – 184.
- James Goudkamp, 'The Doctrine of Illegality: A Private Law Hydra' (2015) 6 *United Kingdom Supreme Court Yearbook* pp.254 – 277.
- James Goudkamp, 'The Defence of Joint Illegal Enterprise' (2010) 34 *Melbourne University Law Review* pp.425 – 451.
- James Goudkamp, 'A Revival of the Doctrine of Attainder? The Statutory Illegality Defences to Liability in Tort' (2007) 29 *Sydney Law Review* pp.445 – 493 (cited in *Miller v Miller* [2011] HCA 9 at [97]).
- James Goudkamp, 'The Rule against Bias and the Doctrine of Waiver' (2007) 26 *Civil Justice Quarterly* pp.310 – 327 (cited in *Good Concrete v CRH Plc* [2015] IESC 70 at [59]).
- James Goudkamp, 'Is there a Future for Advocates' Immunity?' (2002) 10 *Tort Law Review* pp.188 – 206.

Selected book chapters

- James Goudkamp, 'Elements of Torts' in James Goudkamp, Mark Lunney and Leighton McDonald (eds), *Taking Law*

Seriously: Essays in Honour of Peter Cane (Oxford, Hart Publishing, 2022).

- James Goudkamp, 'Exemplary Damages' in Graham Virgo and Sarah Worthington (eds), *Commercial Remedies: Resolving Controversies* (Cambridge, Cambridge University Press 2017).
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