



## Jessica Sutherland

Call: 2003

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**"A strong advocate, who is both bright and tenacious"**

Legal 500

## Practice Profile

Jessica has a wide-ranging commercial practice including shipping (particularly shipbuilding disputes), international trade, insurance and reinsurance, professional negligence, professional regulatory work (auditors), and private international law.

She regularly appears in Court and in International Arbitration proceedings (LCIA, LMAA, and Bermuda Form) and has been appointed as a sole arbitrator by the LCIA.

Jessica is frequently involved in high profile, complex cases. Recent work includes a 7 year dispute in international arbitration regarding a €400 million superyacht, a series of LMAA arbitrations concerning the construction of three bulk carriers (each worth US\$ 50 million), various ship sale and purchase disputes, coverage issues arising out of the 'Forex Scandal' (manipulation of foreign exchange rates by currency traders at 15 global banks), the purported cancellation of cargo cover following the attacks on shipping in the Persian Gulf and Strait of Hormuz, and a Bermuda Form arbitration involving a US\$350 million dollar high-rise condominium, in San Francisco.

Jessica is recommended in Legal 500, Who's Who Legal and Chambers and Partners as a leading junior in multiple commercial fields. She is particularly recommended for her advocacy. Recent comments include:

- *"Jessica Sutherland is meticulous, thorough, easy to work with and clearly very bright."* **Chambers & Partners 2020**
- *"She's very smart and good on the written stuff. She turns things around quickly."* **Chambers & Partners 2020**
- *"Very smart, completely reliable, sharp and efficient - you know she has played devil's advocate in respect of every single angle."* **Legal 500 2020**

### Admiralty

Jessica has experience in matters of salvage, general average, and other aspects of admiralty law. Cases include:

- ***St Maximus Shipping Co Ltd v AP Moller-Maersk A/S*** [2014] 2 Lloyd's Rep. 377: Jessica appeared with Stephen Kenny QC for the Claimant in its claim to enforce the terms of a Letter of Undertaking provided to it by the Defendant ("Maersk") by way of security for the potential liability in general average of cargo interests.
- Two arbitral references one governed by English law and one governed by Chilean law. Jessica acted for the claimant Cargo Interests against the owners of the vessel in respect of losses suffered as a result of the grounding of the vessel in Chile.
- Two arbitral references in respect of losses suffered due to a grounding off the coast of Iceland.

## Commodities

Jessica is ranked as a "Tier 1" Leading Junior in the Legal 500 for Commodities work. Cases include:

- Acting for Europe's largest sugar provider in a claim for unpaid invoices and short fall claims.
- A dispute concerning the transportation of 2 'supercars'.
- An LCIA Arbitration concerning the sale and purchase of coal.
- Acting for the seller in a claim for damages under a sale and purchase contract for "copper concentrate".
- ***Great Elephant Corporation v Trafigura Beheer BV (The "Crudesky")*** [2014] 1 Lloyd's Rep. 1 A two day appeal acting for the appellant charterers (Trafigura) in their appeal from the decision of Teare J. The case concerned the law on the Sale of Goods Act, implied terms of right to sell and quiet possession, and the law on force majeure.

## General Commercial Disputes

Jessica appears in court on a regular basis both conducting trials and handling interlocutory matters in a wide variety of general commercial disputes. Jessica has particular experience of large-scale, complex commercial disputes. Cases include:

- ***Hardy Exploration and Production (India) Inc v Government of India*** [2019] Q.B. 544. Together with Dominic Kendrick QC Jessica acted for the claimant who had obtained a third party debt order. The court considered how to determine the situs of a debt, and how to establish whether a debt was "due or accruing due" for the purposes of CPR r.72.2.
- ***Excalibur Ventures LLC v Texas Keystone and others***: Jessica acted (with Simon Picken QC, Timothy Kenefick and Keir Howie) for the Claimant (Excalibur) in a billion pound claim concerning the granting of oil concessions in Iraqi Kurdistan. The trial commenced in October 2012 and finished in February 2013.

- ***Macquarie Internationale Investments Ltd v Glencore UK Ltd*** [2009] EWHC 2267 (Comm) (Andrew Smith J). Together with Richard Southern QC, Jessica acted for the Defendant in a breach of warranty claim arising out of a share sale and purchase agreement for the sale of a UK gas retail business; the claim was successfully defended. The case considers the concept of “true and fair” in the context of financial statements and warranties in a mergers and acquisitions case.

## Injunctions & Arrests

Jessica has successfully obtained freezing injunctions and anti-suit injunctions from the High Court. Cases include:

- ***XL Insurance Co SE v Little*** [2019] EWHC 1284 (Comm) (Philips J, Butcher J, Popplewell J). Jessica successfully obtained an interim, and then final, anti suit injunction restraining a US resident from pursuing proceedings in the US in breach of an English arbitration clause.
- Jessica has assisted South African Counsel with issues arising from a ship arrest and associated judicial sale.
- Jessica assisted Hong Kong counsel in obtaining a worldwide freezing injunction over the personal assets of three of the former directors of Parakou Shipping.
- ***Steamship Mutual Underwriting Association (Bermuda) Limited v Sulpicio Lines*** [2008] EWHC 914 (Comm) (Walker J): Jessica acted for the Claimant, successfully obtaining a final anti suit injunction in support of English arbitration proceedings.

## Insurance & Reinsurance

Jessica is recommended as a leading junior in this area where she is described as ‘*Very bright, responsive and effective on her feet.*’ Jessica has wide ranging experience including experience of Bermuda Form arbitration.

Jessica has acted as a sole arbitrator (determination on paper) and is a member of Lloyd’s Arbitration Scheme Arbitrators Panel – tiers 1 & 2 and ARIAS.

Cases include:

- Advice on coverage issues arising out of the Grenfell Tower fire disaster and the public inquiry.
- Advising a leading bank on coverage issues arising out of the ‘Forex Scandal’.
- Advising a global insurance company on purported cancellation of cargo reinsurance cover following the attacks on shipping in the Persian Gulf and Strait of Hormuz.
- Advising a global energy company on a coverage dispute under a bespoke “Judicial Review Insurance Policy”.

- A Bermuda Form arbitration involving a US\$140 million claim by a US telecommunications company against its D&O insurers arising out of securities litigation in the United States.
- A Bermuda Form arbitration involving a US\$350 million dollar high-rise condominium, in San Francisco.
- A Bermuda Form arbitration involving a US\$700 million insurance claim by US drugs company arising out of a class action brought by users of its hormone replacement drugs.
- An arbitration concerning a quota share reinsurance between a Bermudan Reinsurer and a Lloyd's Syndicate. Jessica acted for the respondent reinsurers who agreed to reinsure the Lloyd's Syndicate in respect of the Syndicates' own reinsurance of underlying regulated and unregulated Japanese Kyosai business.
- An ARIAS Arbitration involving the effect of subjectivities in a slip.
- ***Beazley Underwriting Limited v The Travelers Companies Incorporated*** [2012] Lloyd's Rep. IR 78 (An insurance dispute arising out of the judgment in ***Standard Life Assurance Ltd v Oak Dedicated Ltd and Others*** [2008] EWHC 222 (Comm), [2008] Lloyd's L.R. 552. The case concerned issues of policy construction, and the effect of subjectivities on a slip.)

## International Arbitration

Jessica regularly appears International Arbitration proceedings including ship building arbitrations and Bermuda Form disputes. Cases include:

- A high value shipping building dispute concerning a multimillion EURO build project for a super yacht.
- Two arbitral references, one governed by English law, and one governed by Chilean law. Jessica acted for the claimant Cargo Interests against the owners of the vessel in respect of losses suffered as a result of the grounding of the vessel in Chile.
- A Bermuda Form arbitration involving a US\$140 million claim by a US telecommunications company against its D&O insurers arising out of securities litigation in the United States.
- A Bermuda Form arbitration involving a US\$350 million dollar high-rise condominium, in San Francisco.
- A Bermuda Form arbitration involving a US\$700 million insurance claim by US drugs company arising out of a class action brought by users of its hormone replacement drugs.

## Jurisdiction/Conflict of Laws

Cases include:

- ***ED & F Man Sugar Ltd v Lendoudis*** [2007] 2 Lloyd's Rep 579 (Clarke J): Jessica acted for the Defendant. The case concerned the enforcement of a Greek Judgment which was said to have recognised an English Arbitration Award. Issues covered included: the scope of the Judgments Regulation and Brussels Convention, enforcement at common law, service out of the jurisdiction and whether permission ought to be granted to amend a claim form after the expiry of the limitation period.

## Professional Negligence

Jessica has particular expertise in disputes concerning insurance brokers and solicitors. Cases include:

- ***Allied Dunbar v TUIC and Willis***: Jessica acted for an insurance broker in relation to a dispute arising out of the PIA/FSA review of FSAVC and endowment products in early 2000.
- ***CNA Insurance Company Limited and others v Willis Limited***: Jessica acted for the Defendant in respect of substantial claims arising out of the PA LMX and Occupational Accident reinsurance markets in the 1990s.
- ***The Law Society of England and Wales and others v Margaret Jean Compton and others***: Jessica acted in multi-party litigation involving subrogated claims against the former partners of various solicitors firms pursuant to the Solicitors Act 1974.
- ***Newline Corporate Name Limited v Morgan Cole (a firm)*** (2007) EWHC 1628 (Comm) (Simon J): together with Christopher Butcher QC Jessica acted for the Claimants in a claim against their former solicitors.

## Shipping & Transport

Jessica has particular expertise in disputes concerning contracts for the carriage of goods by sea, sale of goods, contracts of insurance (both marine and non-marine) and shipbuilding. Cases include:

- A high value shipping building dispute (warranty dispute and damages claims) concerning a €400 million build project for a 100 metre super yacht. The case concerned complex technical issues regarding the build process and paint work.
- A series of arbitrations concerning the construction and delivery of three bulk carriers (each worth US\$ 50 million). Issues included the fatigue life of the vessels' propulsion shafts and associated coupling bolts, and whether the builder could rely on the prevention principle.
- Two arbitrations (heard concurrently) concerning the construction and delivery of two fully fitted offshore platform supply vessels. The cases were concerned with whether the contractual Delivery Date had been extended.
- An arbitration concerning the construction and delivery of four Product Oil/Chemical tankers. The dispute concerned whether the buyer was entitled to cancel the shipbuilding contracts.

- Jessica assisted South African Counsel with issues arising from a ship arrest
- ***Goodwood Investments Holdings Inc v Thyssenkrupp Industrial Solutions Ag*** [2018] EWHC 1056 (Comm) A case under section 45 of the Arbitration Act 1996 – the court determined a point of law in support of international arbitration (underlying shipbuilding dispute). The question of law was whether an arbitration claim under a shipbuilding contract had been settled in without prejudice correspondence between the parties’ solicitors. The case considered the effect of the terms “Subject to Contract” and “Subject to Board Approval”.
- ***Carboex SA v Louis Dreyfus Commodities*** [2012] 2 Lloyd’s Rep. 379. A two day hearing before the Court of Appeal concerning the proper construction of the ‘strikes’ exception in the AMWELSH Voyage Charter. The case is one the leading authorities on exceptions to laytime and demurrage.
- ***Churchgate Nigeria Ltd v Pace Shipping Co Ltd*** [2008] EWHC 1619 (Comm). Jessica acted for the Claimant in its successful appeal from a partial arbitration award pursuant to section 69 of the Arbitration Act 1996. The appeal concerned the interpretation of sections 2(2) and 2(4) of the Carriage of Goods by Sea Act 1992 and issues of contractual and proprietary title to sue.
- ***Pace Shipping Co Ltd (Malta) v Churchgate Nigeria Ltd (Nigeria)*** [2010] 1 Lloyd’s Rep 183: Jessica successfully defended applications made by the Claimant pursuant to sections 68, 69 and 70 of the Arbitration Act 1996. The appeal concerned the construction of section 2(2)(a) of the Carriage of Goods by Sea Act 1992 (CoGSA 92). The case is one of the few authorities on the interpretation of this section.

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## Education

- Downing College, Cambridge: MA in law, first class (2001)
- Downing College, Cambridge: LLM, first class (2002)
- Norton Rose prize for best performance in Commercial Law, University of Cambridge.
- Middle Temple/Inns of Court School of Law, London (2002)

Jessica was awarded a Queen Mother Scholarship and Harmsworth Entrance Exhibition by Middle Temple.

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## Appointments

Jessica accepts arbitration appointments in relation to disputes falling within her areas of expertise, in particular insurance and reinsurance, shipping, international trade and commodities, conflicts of law and professional negligence.

She has been appointed as sole arbitrator in both insurance disputes and shipping disputes (appointed by the LCIA).

Jessica is a member of Lloyd's Arbitration Scheme Arbitrators Panel - tiers 1 & 2, ARIAS (UK), the LCIA, and a supporting member of the LMAA.

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## Directories

- "A very good and collaborative junior." "She is excellent. She clearly knows her stuff and she's great to work with." Chambers & Partners 2021
- "Jessica Sutherland is meticulous in her attention to detail and very quick to respond." Chambers & Partners 2021
- "Jessica Sutherland is meticulous, thorough, easy to work with and clearly very bright." "She's very smart and good on the written stuff. She turns things around quickly." Chambers Global 2021
- 'Provides swift comprehensive advice. Very much the junior you want to work with if you possibly can.' Legal 500 2021
- 'Masters the detail rapidly, and provides clear, comprehensive, and pragmatic advice. She is very approachable, avoids jargon, and responds rapidly with authority.' Legal 500 2021
- 'I have never come across such a thorough barrister. You know when you walk into trial that she has considered every single angle.' Legal 500 2021
- "Very capable." "Hard-working." Chambers & Partners 2020
- "Jessica Sutherland is meticulous, thorough, easy to work with and clearly very bright." "She's very smart and good on the written stuff. She turns things around quickly." Chambers & Partners 2020
- 'Very smart, completely reliable, sharp and efficient - you know she has played devil's advocate in respect of every single angle.' Legal 500 2020
- 'She is legally on point and very efficient.' Legal 500 2020
- 'She is completely reliable, sharp and efficient.' Legal 500 2020
- "Very bright and very assured." Chambers and Partners 2019
- "Very impressive. She has the ability to really get down into the details and understand what solicitors need." Chambers and Partners 2019
- 'Very thorough and approachable.' Legal 500 2018
- 'Thorough, approachable and straightforward.' Legal 500 2018

- 'A range of experience in the insurance sector but a particular knowledge of Bermuda Form.' Legal 500 2018
- "She is very responsive, has a perfect memory for every detail in a case and grasps concepts very quickly." Chambers and Partners 2018
- "She's a good senior junior. There isn't a word in a document that she won't know." "She is very responsive, has a perfect memory for every detail in a case and grasps concepts very quickly." Chambers and Partners 2018
- First-rate. Legal 500 2017
- A strong advocate, who is both bright and tenacious. Legal 500 2017
- A promising junior with a track record in insurance and reinsurance. Legal 500 2017
- "An exceptionally clever and able junior." "She's on top of the detail and willing to muck in." Chambers and Partners 2017
- "She is client friendly, ready to assist and someone who provides prompt advice." "She is very easy to work with." Chambers and Partners 2017
- An excellent advocate with intelligence and the will to fight hard. Legal 500 2016
- Very astute. Legal 500 2016
- "She is very strong technically, very focused and user-friendly. She thinks creatively about the issues." Chambers and Partners 2016
- "She is very diligent and easy to work with." Chambers and Partners 2016
- A fantastic advocate - urbane, bright and willing to work hard Legal 500 2015
- Very bright, responsive and effective on her feet. Legal 500 2015
- Excellent to have on your side Legal 500 2015
- "She is capable and a pleasure to deal with." Chambers and Partners 2015
- "She has excellent attention to detail for both the law and the practical side of matters." Chambers and Partners 2015
- "She is unflappable and very sound in her advice." Chambers and Partners 2015
- "Skilled in insurance and reinsurance disputes, especially those relating to property damage and business interruption due to natural catastrophes. Expertise: "Outstanding. She's a junior you can absolutely depend upon."" Chambers and Partners 2014
- Jessica is recommended in Legal 500 as a leading junior for Insurance and Reinsurance Legal 500 2014
- Jessica is recommended in Legal 500 as a leading junior for Commodities ("a safe pair of hands") Legal 500 2014
- Jessica Sutherland maintains her reputation as one of the best juniors on the insurance scene. She recently acted for owners of an ammonia plant in Trinidad and Tobago who made claims for property damage and business interruption following damage to the plant's machinery. Chambers UK 2013
- Jessica Sutherland joins the rankings as a junior to watch. Displaying a "promising youthful zip and great intelligence," she has recently been defending reinsurers in claims for losses suffered after the 2007 California brush fires. Chambers UK 2012