



Jonathan Gaisman QC

Silk: 1995 | Call: 1979

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"The best advocate at the Bar"

Legal 500 2020

Practice Profile

Jonathan Gaisman QC is named by Chambers and Partners 2021 as a Star at the Bar. He is one of only five star individuals in the Commercial Dispute Resolution section of Chambers and Partners 2021, a position he has occupied since 2015. 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.

The 2021 edition of Chambers & Partners describes him as *"One of the outstanding advocates of his generation. He has enormous courtroom presence ...The best advocacy I have ever seen."* According to a recent Legal 500 directory, he is *"quite simply the best advocate in London by a country mile"*. He has also been recently 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"*.

Chambers and 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.”

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.

Most recently, 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 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.

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 is acting for **Petrosaudi Oil** in a dispute with PDVSA concerning a Venezuelan drilling contract, and he recently persuaded the Court of Appeal to over turn a decision of the Commercial Court, which had injuncted Petrosaudi from claiming under a standby letter of credit on the grounds of fraud. 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 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. 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. The **Buncefield** explosion case, in which he acted for the lead claimants, is among other things, the leading modern authority on public nuisance.

Insurance & Reinsurance

Insurance and reinsurance have always been a core area of Jonathan Gaisman's practice. 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 has also recently acted in a total loss case in which wilful misconduct has been found against the owners of the "**Brillante Virtuoso**", who faked a Somali pirate attack on the vessel in order to defraud insurers. The many 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 went to 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

Jonathan Gaisman is a very experienced advocate in all forms of arbitration, and litigation connected with arbitration. He has been retained by the Russian Federation in relation to attempts by **Yukos** to enforce arbitration awards made in the Hague. He spent much of 2014 engaged in LCIA arbitration, acting 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 Jugoimport**, 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. He has recently appeared in a 3 day jurisdiction dispute, acting 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 soft 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. Most recently, 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 has recently acted in a total loss case in which wilful misconduct has been 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 its long running dispute with Yuri Nikitin, 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 the Court of Appeal was persuaded 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 1924. 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.

Directories

The following extracts are taken from recent editions of Chambers & Partners, Legal 500 and The Lawyer.

- “One of the outstanding advocates of his generation. He has enormous courtroom presence.” “The best advocacy I have ever seen. He blew the other side away.”
- “A formidable advocate who is very experienced in insurance.” “For any very large and difficult commercial dispute he is one you would immediately think of.” “A very effective and brutal advocate.”
- “He is so utterly focused and meticulous. He has an excellent brain: you will always get a Rolls-Royce service from him.”
- “Gaisman is a real super silk with a formidable intellect.” “The best advocacy I have ever seen, he blew the other side away.” “He out-prepares everyone.”
- “He is the very best, a true star of the Bar.” “He combines being very clever with being great at cross-examination. A formidable opponent.”
- “He is an absolutely superb cross-examiner and a persuasive advocate.” “He is fearsomely bright and one of the top players in the commercial field.” “He is a stunning advocate.”
- “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.”
- “Seriously good.”
- ‘Supremely able and always strikes the right tone with the judge and opponents.’
- ‘A superb advocate - his trial preparation is second to none.’
- “Extremely impressive and always comes out of the traps running fast in a case.” “An incredible advocate.”
- “He commands respect from judges.” “A stupendously clever barrister.”
- “Phenomenally good, the scariest opponent I have ever had.” “He is uncompromising and very effective.”
- “A powerful advocate who can be trusted with very complex cases.”
- “An absolute phenomenon; he’s fantastically clever and he immerses himself in the details.” “He’s incredibly thorough and a very good cross-examiner.”
- ‘A razor-sharp intellect and true to the demands of the dispute.’ ‘Excellent track record.’
- ‘An excellent cross-examiner.’ ‘The best advocate I’ve ever seen.’
- ‘An unbelievably good advocate and I haven’t seen his match.’
- ‘Fiercely intelligent and a fantastic advocate.’
- “Quite simply the best advocate in London by a country mile.”
- “A fantastic commercial barrister; a truly stunning advocate; I pity the barrister who is against him”.

- “An incredibly charismatic advocate; someone you would want on your side”.
- “Tremendously bright, energetic and hard-working”. “Terrifyingly clever. He’s an utterly fantastic lawyer; an enormously impressive guy with a really supreme mind.” “He is completely on top of the detail and has a style which is robust and gets to the heart of the issue.”
- “He has phenomenal intelligence, amazing forensic skills and a good sense of humour.”
- “Top commercial silk” Jonathan Gaisman QC has a tremendous brain and is “one of the most compelling advocates at the Bar.” His talent and intellect are such that his practice extends across the full range of complex commercial disputes.
- “Utterly superb and brilliantly clever”; with an “unparalleled breadth and depth of knowledge” in commercial international arbitration. Sources particularly highlight his prowess as an “accomplished and polished advocate” and a “spectacular cross-examiner.”
- “He’s the difference between winning and losing on a big, complex case as he’s a phenomenal advocate.”
- “An incredibly charismatic and powerful advocate – someone you want on your side.” “Very experienced, competent and measured.”
- “At the head of his field when it comes to understanding and analysing complex legal issues ... an accomplished and polished advocate who is urbane, funny and devastating in the courtroom.”
- “Extremely good in conference ... an excellent court manner and ... having the respect of the court ... A terrific silk ... to hear him speak is to hear greatness ... a very impressive advocate.”
- “A terrifying opponent” ... “a dying breed, whose fearsome intellect is matched with devastatingly brutal cross-examination skills”
- “A tenacious, disciplined and rigorous advocate, who is great fun to deal with.”
- “His analytical ability is breathtaking – he distils chaos and disorder into logical points.”
- “Just startling” – one impassioned observer went as far as proclaiming Jonathan Gaisman “the finest advocate in the commercial sphere.”
- “Unbelievable intelligence” combining with “tremendous court craft”, he is famed for “demolishing witnesses in cross-examination.”
- “Amazingly committed and down to earth...ferociously organized, incredibly clear and thoroughly attentive to the finer points.”
- “A tower of intellectual strength”, Jonathan Gaisman “calls it right from the first moment.”
- “A sharp, devastating arguer”, he “says exactly what he thinks, but never steps in without mastering the detail.”
- “Able to hold the tribunal’s interest whilst handling the most labyrinthine of cases...he just keeps getting better and better.”
- “An incredibly well-regarded senior silk” he “operates within the highest echelons of the market”
- “A barrister other barristers fear to be against.”
- “One of the Commercial Bar’s leading lights, he offers high-calibre advocacy and has deep expertise across a range of commercial matters. He is regularly instructed on the most challenging of briefs.”
- “He’s extremely bright and has a fluent and persuasive manner in court that is absolutely top notch.”
- “Thorough and with a very good grasp of detail. Incredibly ferocious ...an excellent Court manner that makes the judges sit up and listen.”

- “Brilliant all round, and instructing him is like having a team of barristers rolled into one ... superbly analytical.”
- “A seriously hard-hitting silk, who is robust and effective.”
- “He is intelligent, articulate and has a wonderful turn of phrase.”
- Jonathan Gaisman “knows insurance inside out.”
- “Assured and always up to date on the law,” he is “a must for accountancy cases.”
- “Is this the most cultured barrister in London?”