



Josephine Higgs

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**“She's absolutely phenomenal -
incredibly hard-working and very
efficient in driving things forward”**

Chambers & Partners 2021

Practice Profile

Jo's practice encompasses all areas of commercial law with a particular emphasis on insurance and reinsurance, professional negligence, civil fraud, conflict of laws and jurisdiction, international arbitration, and energy and natural resources.

She is recommended in Chambers & Partners and Who's Who Legal as a leading junior for insurance, and in Legal 500 as a leading junior for commercial litigation, insurance and reinsurance and professional negligence, and has been described as *“absolutely brilliant”*, *“very focused”* and *“ferociously hard-working”*. She has been instructed in a broad spectrum of cases of different types and sizes in the Court of Appeal, Commercial Court, and in domestic and international arbitrations (including ICC, LCIA, ARIAS and Bermuda Form arbitrations). She regularly advises and acts in cases with an international flavour, often involving conflicts of laws and jurisdictional issues and matters of international commerce. Jo has extensive experience of large-scale, long-running, complex commercial disputes acting as part of a team of counsel and working closely with solicitors, clients, witnesses and experts. Her ability to work well with others is often cited by clients and solicitors as one of her particular strengths. At the other end of the scale, she has frequently appeared on her own in numerous smaller cases in the High Court and in arbitration, and in particular enjoys the advocacy opportunities such work offers. Before joining chambers in 2004, Jo worked for 2 years as an employed barrister during which time she gained invaluable experience of life at a leading solicitors' firm. As a result, she is particularly well-placed to recognise and meet her professional and lay clients' commercial needs.

Commercial Litigation

Commercial disputes of all varieties, including multi-jurisdictional matters, form the backbone of Jo's practice. She has been involved in a wide range of very high value commercial disputes, as illustrated by the selection below. She has recent experience of obtaining urgent relief from the Courts, including anti-suit injunctions and freezing injunctions.

Selected cases:

- ***In the matter of Ardon Maroon Asia Master Fund, 20 May 2020, Cayman Islands Court of Appeal.*** Jo acted for the successful defendants at first instance and on appeal in a high value dispute between shareholders in a master fund regarding the validity of a share redemption request. Led (at first instance) by Jonathan Gaisman QC, and (on appeal) by Simon Salzedo QC.
- ***Simetra Global Assets Limited v Ikon Finance Limited* [2019] 4 WLR 112** Jo acted at first instance and on appeal on behalf of the successful appellants in this very high value civil fraud claim, in which the Court of Appeal took the unusual step of ordering a retrial. Led (at first instance) by Clive Freedman QC, and (on appeal) by Stephen Hofmeyr QC.
- ***Harcus Sinclair LLP v Your Lawyers Ltd* [2019] 4 WLR 81** Jo acted at first instance and on appeal on behalf of the successful appellants in a claim regarding the meaning and effect of an undertaking in a NDA. The Court of Appeal allowed the appeal on the basis that the undertaking was in unreasonable restraint of trade. *Jo is also instructed in the forthcoming appeal to the Supreme Court.* Led by Christopher Butcher QC (at first instance), David Foxtton QC (in the appeal to the Court of Appeal), and by Jonathan Crow QC (in the appeal to the Supreme Court) and Jawdat Khursid QC.
- Jo is currently acting in numerous high value insurance disputes (see details in Insurance and Reinsurance), for both insured and insurers in litigation and arbitration.
- ***Isaacs v Gala Coral Group Ltd & Ors*** Jo recently acted for the defendant gambling company in a substantial claim which raised novel questions about the extent of the duty of care owed by gambling service providers (following ***Calvert v William Hill***).
- ***Cattles Limited and Welcome Financial Services Limited v PwC LLP.*** Between 2011 and 2015 Jo acted on behalf of Cattles and WFSL, sub-prime lenders, in their very substantial commercial court claim for professional negligence claim against their former auditors, PwC, which settled at the start of a 16 week trial.
- ***Rathbone Bros Limited v Novae Corporate Underwriting Limited and Others* [2015] Lloyd's Rep IR 095.** Jo appeared in the Court of Appeal (led by Peter MacDonald-Eggers QC) in an appeal concerning a claim for c. £100m under professional liability insurance and rights of subrogation against a co-insured.
- ***Standard Life Assurance Limited v Ace European Group* [2012] Lloyd's Rep IR 655.** Claim for £100m under a professional indemnity policy. Led by Alistair Schaff QC and Andrew Wales.
- ***Beazley Underwriting Limited v The Travelers Companies Incorporated* [2012] Lloyd's Rep IR 78.** Jo acted on behalf of insurers in this high value case which decided issues of policy construction, and the effect of subjectivities on a slip. Led by Dominic Kendrick QC.
- ***Synergy Health (UK) Ltd v CGU Insurance Plc and Others* [2011] 1 Lloyd's Rep IR 500.** Instructed before trial (led

by Richard Southern QC) on behalf of brokers in a Commercial Court fire insurance claim and a contingent claim for alleged brokers' negligence (unavailable for trial).

- **B v S** [2011] 2 Lloyd's Rep 18. 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. Led by Andrew Wales.
- **Sos Corporacion Alimentaria SA v Mataluni Spa** [2010] 2 Lloyd's Rep 345. Application under section 12 of the Arbitration Act 1969 and an appeal under section 69 in relation to a FOSFA arbitration. Led by Simon Picken QC.
- **Loon Energy Inc v Integra Mining (B) Sendirian Berhad** [2008] 1 Lloyd's Rep Plus 1. A claim for declaratory relief as to the parties' rights in an oil field in Brunei. The case also raised jurisdictional issues and an application for a stay under section 9 of the Arbitration Act 1996. Led by Simon Picken QC.
- **Braspetro Oil Services Co v FSO Construction Inc** [2007] 2 All ER (Comm) 924: between 2005 and 2007, Jo acted for the state oil company of Brazil in very substantial commercial litigation involving claims of several hundred million dollars and concerning oil rig construction and financing. Led by Simon Picken QC and John Bignall.
- Sole counsel in a 5 day High Court trial acting for an agent in a substantial claim for commission (case settled during closings).
- Junior counsel in a 5 week arbitration concerning the construction of a superyacht. Led by Simon Picken QC.
- Advised Japanese clients in a major and very high value dispute regarding the malfunction of a satellite.
- Numerous other construction, energy and rail disputes, sale and supply of goods claims, and various banking and trust disputes including: cases involving breach of mandate, letters of credit and consumer credit; and a variety of disputes surrounding the validity and enforceability of mortgages, guarantees and other forms of security.

Civil Fraud

Jo has extensive experience of civil fraud including, in particular, claims against company directors and trustees for breach of trust, breach of fiduciary, tortious and statutory duties, and accessory liability claims against those who have assisted or benefited from fraud, including banks and other financial institutions.

- **Simetra Global Assets Limited v Ikon Finance Limited** [2019] 4 WLR 112 Jo acted at first instance and on appeal on behalf of the successful appellants in this very high value civil fraud claim, in which the Court of Appeal took the unusual step of ordering a retrial. Led (at first instance) by Clive Freedman QC and (on appeal) by Stephen Hofmeyr QC. She continues to act on behalf of the claimants as sole counsel.
- She is currently acting for the defendant directors and vendors in complex and substantial multi-party litigation in the Chancery Division involving claims in deceit and for breach of fiduciary law, dishonest assistance, knowing receipt, and

conspiracy, and related claims for breach of warranty of a share purchase agreement and under indemnities and guarantees. Led by Jonathan Gaisman QC.

- She recently advised investors in offshore investment funds in relation to potentially fraudulent conduct in relation to the management of those investment funds.
- Jo has previously acted on behalf of a defendant fund manager alleged to have acted in breach of trust and negligently in making various transfers and capital distributions out of the fund assets.
- Jo led the junior counsel team for the claimants in **Cattles v PwC**, a very high value and long-running professional negligence claim brought by an ex-FTSE 250 company and its subsidiary against their former auditors, which involved allegations of fraudulent accounting by the directors of the companies.

Many of the insurance cases in which Jo has acted have at their heart allegations of fraud, either in the underlying facts giving rise to the insurance claim, or in relation to the placement of the insurance contract or conduct of claims there under. Jo recently advised in relation to insurance issues arising out of the judgment in **SPL Private Finance v Arch Financial Products LLP** [2014] EWHC 4268 (Comm), a successful claim brought by various offshore funds against their former fund manager for breach of fiduciary duty, contract and negligence, and against a director of the fund manager for dishonest assistance and inducing breach of contract. She has also recently advised the claimants in relation to a fraud by their accountants in a high profile case regarding their potential routes of recovery, including under insurance policies. She was instructed in **Rathbone v Novae** [2015] Lloyd's Rep IR 095, a substantial claim under a professional indemnity insurance policy, where the underlying claim was against a personal trustee for breach of trust and fiduciary duty in relation to his alleged mismanagement of trust funds over a long period of time. Jo has previously advised in relation to various claims under professional indemnity/D&O cover in respect of claims against directors (and trustees) for breach of fiduciary duty.

Energy & Natural Resources

Jo has also advised and acted in various disputes in this area, including in relation to oil and gas supply contracts, and the construction and operation of off-shore and floating oil and gas platforms:

- Currently advising in relation to an electricity and gas supply contract.
- **Loon Energy Inc v Integra Mining (B) Sendirian Berhad** [2008] 1 Lloyd's Rep. Plus 1. A claim for declaratory relief as to the parties' rights in an oil field in Brunei. The case also raised jurisdictional issues and an application for a stay under section 9 of the Arbitration Act 1996. Led by Simon Picken QC.
- **Braspetro Oil Services Co v FSO Construction Inc** [2007] 2 All ER (Comm) 924: between 2005 and 2007, acted for the state oil company of Brazil in very substantial commercial litigation involving claims of several hundred million

dollars and concerning oil rig construction and financing. Led by Simon Picken QC and John Bignall.

Insurance & Reinsurance

Insurance and reinsurance form the core of Jo's practice, and she is recommended by the current editions of Chambers & Partners, Legal 500 and Who's Who Legal as a leading junior in insurance and reinsurance. She acts on behalf of insurers and insureds, in litigation, and domestic and international arbitrations. Many of the cases in which Jo is retained are determined in arbitration or settled before trial. A selection of recent cases concerning insurance and reinsurance in which Jo has acted is set out below.

Current and recent cases include:

- ***The Financial Conduct Authority v Arch Insurance (UK) Limited and others* [2020] EWHC 2448 (Comm)** Jo appeared on behalf of the Hospitality Insurance Group Action ("HIGA"), together with Philip Edey QC and Susannah Jones of 20 Essex Street, in the FCA business interruption insurance test case, in which the Court held that various policy wordings provide cover for business interruption losses suffered by insureds as a result of COVID-19.
- Jo is currently acting on behalf of insurers in two very high value claims under liability insurance policies being heard in London arbitrations (led by David Edwards QC). She has previously been involved in numerous very high value Bermuda Form arbitrations (led by Gavin Kealey QC, Christopher Butcher QC, and David Edwards QC).
- Jo is currently advising several insureds in relation to various business interruption claims arising out of the current Covid-19 crisis.
- Jo is currently acting (as sole counsel) on behalf of an insured in an employers' liability insurance claim raising new issues under the Insurance Act 2015.
- Jo is currently acting (as sole counsel) on behalf of an insured in a high value LCIA arbitration.
- ***ED & F Man Sugar Limited v RSA*** Jo acted (led by Peter MacDonald Eggers QC) on behalf of the insured sugar trader in this c.\$20m insurance claim, which settled shortly before trial in early 2020.
- ***Cheval Roc Residential Limited v Zurich Insurance Plc*** Jo acted (led by Adam Fenton QC) on behalf of the claimant insureds in relation to a significant insurance claim for property damage and business interruption, which settled shortly before trial in mid 2020.
- ***PM Law Ltd v Motorplus Limited and others*** [2016] 1 Costs L.R. 143. Jo appeared in this successful strike-out application on behalf of insurer.
- ***Rathbone Bros Limited v Novae Corporate Underwriting Limited and Others*** [2015] Lloyd's Rep IR 095 Appeared in the Court of Appeal (led by Peter MacDonald-Eggers QC) in an appeal concerning a claim for c. £100m under

professional liability insurance and rights of subrogation against a co-insured.

- ***Standard Life Assurance Limited v Ace European Group*** [2012] Lloyd's Rep IR 655. Claim for £100m under a professional indemnity policy. Led by Alistair Schaff QC and Andrew Wales.
- ***Beazley Underwriting Limited v The Travelers Companies Incorporated*** [2012] Lloyd's Rep IR 78. A case concerning issues of policy construction, and the effect of subjectivities on a slip. Led by Dominic Kendrick QC.
- ***Synergy Health (UK) Ltd v CGU Insurance Plc and Others*** [2011] 1 Lloyd's Rep IR 500. Instructed before trial (led by Richard Southern QC) on behalf of brokers in a Commercial Court fire insurance claim and a contingent claim for alleged brokers' negligence (unavailable for trial).
- Recently instructed in an LCIA arbitration concerning financial institution crime insurance. Led by Jonathan Gaisman QC.
- Instructed in a complex and high value multi-party arbitration in a claim under professional liability reinsurance, involving issues of coverage for fraud, avoidance for non-disclosure, and aggregation. Led by Jonathan Gaisman QC and Rebecca Sabben-Clare.
- Instructed in Commercial Court multi-party litigation (settled before trial) arising out of the judgment in ***Feasey v Sun Life & Phoenix Home Life*** [2002] EWHC 868 (Comm) concerning, inter alia, issues of agency, brokers' negligence, and policy coverage.
- ***Hollywood Realisations Trust Limited v Lexington Insurance Company and Others*** very high value film finance claim (settled during trial), and subsequently numerous other film finance claims.
- Advised, settled pleadings and appeared in interim hearings in numerous other insurance and reinsurance disputes concerning issues of agency, breach of warranty of authority, broker's duties of care, lack of fortuity, insurable interest, non-disclosure/misrepresentation, breach of warranty, claims notification provisions.

International Arbitration

Much of Jo's recent work has been in international arbitration, including LCIA, ICC and Bermuda Form arbitrations. She has settled and appeared in applications for permission to appeal from arbitration awards.

Current and recent arbitrations include:

- Jo is currently acting on behalf of insurers in two very high value claims under liability insurance policies being heard in London arbitrations (led by David Edwards QC).
- Jo is currently acting (as sole counsel) on behalf of an insured in a high value LCIA arbitration.

- She has previously been involved in numerous very high value Bermuda Form arbitrations raising, among other things, “Expected or Intended” defences, policy construction and limitation issues (led by Gavin Kealey QC, Christopher Butcher QC, and David Edwards QC).
- Jo was recently instructed in an LCIA arbitration concerning financial institution crime insurance. Led by Jonathan Gaisman QC.
- **B v S** [2011] 2 Lloyd’s Rep 18. 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. Led by Andrew Wales.
- **Sos Corporacion Alimentaria SA v Mataluni Spa** [2010] 2 Lloyd’s Rep 345. Application under section 12 of the Arbitration Act 1969 and an appeal under section 69 in relation to a FOSFA arbitration. Led by Simon Picken QC.
- Instructed in a complex and high value multi-party arbitration in a claim under professional liability reinsurance, involving issues of coverage for fraud, avoidance for non-disclosure, and aggregation. Led by Jonathan Gaisman QC and Rebecca Sabben-Clare.

Jurisdiction/Conflict of Laws

Many of the commercial disputes in which Jo acts involve one or more parties from outside the jurisdiction, or insurance of liability, property or other risks located overseas, and potentially conflicting foreign laws. As a result, Jo has extensive experience of advising and appearing as an advocate in relation to difficult jurisdictional issues and conflicts of law. This ranges from providing advice at an early stage of a dispute as to choice of a forum in which to commence litigation or arbitration to advocacy in the Commercial Court on complex points of conflicts of law.

Selected cases:

- Jo has recently advised in relation to questions of jurisdiction and conflict of law in relation to a major multi-jurisdictional dispute insurance dispute.
- **Aleagha v Amini** [2018] EWHC 2365 (Ch) Jo acted for the defendant in the successful application to stay proceedings brought in the Chancery Division on the grounds of forum non conveniens.
- Recently acted on behalf of Dutch clients challenging jurisdiction of the English Courts in an intellectual property dispute.
- Recently successfully obtained interim and final anti-suit injunction on behalf of an insurer to prevent proceedings against it in Australia.
- Advised in relation to a claim for negative declaratory relief by London reinsurers against Ontario insurer, and settled successful application for permission to serve out of jurisdiction.

- Acted on behalf of Brazilian defendant in a successful challenge to jurisdiction and application to set aside default judgment in relation to claim by commercial agent.
- Advised in major reinsurance dispute between Venezuelan insurers and London reinsurers as to jurisdictional and choice of law issues. Settled successful application for permission to serve out of jurisdiction and advised in relation to challenge to jurisdiction.
- Settled various other applications for permission to serve out of the jurisdiction, and applications to set aside service and/or challenge jurisdiction, including under the Judgments Regulation.
- Advised in numerous other cases (insurance, reinsurance and other commercial disputes) on applicable law (including in relation to floating choice of law clauses) and jurisdiction, including as to the prospects of seizing jurisdiction by pre-emptive proceedings for negative declaratory relief and in cases involving US service of suit clauses, and as to the prospects of obtaining anti-suit injunctions and stays under the Arbitration Act 1996.

Professional Negligence

Jo has extensive experience of professional negligence disputes, particularly in the financial sector. She is recommended as a leading junior for professional negligence in the current edition of Legal 500. She has experience of claims against accountants and auditors, solicitors, insurance brokers, architects, surveyors and engineers.

Selected cases:

- ***Brightside Group Limited and others v RSM Audit UK LLP*** [2017] 1 WLR 1943 Jo recently acted in a substantial professional negligence claim against auditors in the Commercial Court. Led by Christopher Butcher QC.
- Recently advised in relation to a potential professional negligence claim against a leading firm of solicitors and is acting in several other claims against firms of solicitors.
- ***Cattles Limited and Welcome Financial Services Limited v PwC LLP***. Between 2011 and 2015 Jo acted on behalf of Cattles and WFSL, sub-prime lenders, in their very substantial commercial court claim for professional negligence against their former auditors, PwC, which settled at the start of the 16 week trial.
- ***Synergy Health (UK) Ltd v CGU Insurance Plc and Others*** [2011] 1 Lloyd's Rep IR 500. Instructed before trial as junior counsel (led by Richard Southern QC) on behalf of brokers in a claim for brokers' negligence. Settled pleadings, advised, assisted in relation to witness statements and experts' reports, and appeared in interlocutory hearings.
- Acted in numerous disputes on behalf of, and against, defendant brokers in professional negligence claims relating to the placement of insurance and reinsurance, and notification of claims.
- Acted in various professional negligence claims against architects, surveyors and engineers.

Education

Brasenose College, Oxford: BA in Classics and English, First Class (1998)

Jo achieved the highest 1st in finals, and was awarded an Oxford University Prize (Passmore Edwards Prize), and a Brasenose College Prize.

City University, London: CPE/Diploma in Law, Distinction (1999)

Inns of Court School of Law: Bar Vocational Course, Highly Commended (2000).

Jo was awarded a Queen Mother Scholarship and a Harmsworth Entrance Exhibition from Middle Temple.

Memberships

Jo is a member of the Commercial Bar Association (COMBAR), the Commercial Fraud Lawyers Association (CFLA), the London Common Law and Commercial Bar Association (LCLCBA), and the British Insurance Law Association (BILA).

Directories

Jo is recommended in Chambers & Partners as a leading junior for insurance, in Legal 500 as a leading junior for commercial litigation, insurance and reinsurance and professional negligence, and in Who's Who Legal as a leading junior for insurance. Recent quotes include:

- "She is a true expert in the field with encyclopedic knowledge and a superior intellect but with the ability to deliver clear advice to suit the client audience in a calm, assured manner." "She's absolutely phenomenal - incredibly hard-working and very efficient in driving things forward." Chambers & Partners 2021
- 'Diligent, measured and tactically astute.' Legal 500 2021
- 'Has a deep knowledge of the law and is good at formulating practical solutions to issues that arise. She is also very responsive and very good with clients.' Legal 500 2021
- 'She is highly intelligent and user friendly.' Legal 500 2021
- "The "extremely diligent, commercially focused and hugely bright" Josephine Higgs draws effusive praise as "tactically astute". She "always gives constructive and helpful advice". Who's Who Legal, UK Bar 2020

- “She is extremely sharp and bright, very effective and gets right to the point.” “She considers every angle and provides practical and sensible advice.” Chambers & Partners 2020
- ‘Has excellent attention to detail and tactical awareness and she is very focused and hardworking.’ Legal 500 2020
- ‘She gives very good tactical, strategic advice and gets to grips with issues very quickly.’ Legal 500 2020
- ‘She is very highly-regarded.’ Legal 500 2020
- “Very responsive, hard-working and very clever.” “She is really good with clients and inspires confidence. She’s very personable.” Chambers & Partners 2019
- ‘She is noted for expertise in cases involving financial services professionals.’ Legal 500 2018
- ‘Intelligent, highly responsive, flexible and hardworking.’ Legal 500 2018
- “She is very easy to work with, incredibly responsive and keeps a cool, calm head.” Chambers & Partners 2018
- “Intelligent, flexible, commercially practical and on top of her brief.” Legal 500 2017
- “Hardworking.” Legal 500 2017
- “Undoubtedly the best junior in the field” Who’s Who Legal UK Bar 2017, Insurance and Reinsurance
- “Very focused.” Legal 500 2016
- “She quickly masters the detail of a case.” Legal 500 2016
- “Resoundingly brilliant” Who’s Who Legal UK Bar 2016
- “Absolutely brilliant; she has excellent attention to detail and recall of key points.” Legal 500 2015
- “She is ferociously hardworking, tenacious, and has an eye for the detail.” Legal 500 2015
- “Consistently impresses” Who’s Who Legal 2015
- “Receives ringing endorsements from peers, who “always want to work with her””. Who’s Who Legal 2015
- “Experienced in conflict of laws and jurisdiction, professional negligence and energy.” Legal 500 2014