



Stephen Hofmeyr QC

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"A powerful advocate." "Very bright and very thorough."

Chambers & Partners 2019

Practice Profile

Stephen Hofmeyr QC is a leading commercial barrister with a wide-ranging international commercial law practice.

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.

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 QC's substantial diet of work includes key areas of practice for chambers, as mentioned above, as well as professional negligence disputes. His transport sector experience encompasses, aviation, rail, shipping and related commodities claims.

He is currently involved in a Ukrainian oligarch fraud dispute coming to a hearing in the autumn; is advising a major provider of Business Interruption Insurance who is not participating in the FCA Test Case; and is also advising on specific BI insurance claims. Two other current topical areas on which Stephen is advising are Nox and CO2 emission limits (and mitigating steps) and the design and construction of LNG vessels.

His 2019 saw him act in litigation which saw 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.

Increasingly, Stephen sits as an arbitrator, having received over 200 appointments in recent years.

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. 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.

As an example of the breadth of his practice, Stephen represented underwriters in a high value patent infringement insurance arbitration; a large construction company in a number of related disputes with insurers arising out of the construction and development of waste management facilities and the provision of waste-to-energy management services across northern England; and also appeared in the Privy Council representing directors in a shareholder dispute, demonstrating his equal skill with marine and non-marine disputes alike.

Energy & Natural Resources

Stephen Hofmeyr 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 QC 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 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 **Archagelos**, 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 Gannett 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:

- ***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 know 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

For the past 33 years Stephen Hofmeyr 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 ("clausing" 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:

- **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 Vostokryborm 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 Daabo 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 clausing of bills of lading". The shippers tendered damaged cargo which the master rejected on basis that it was "subject to clausing 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 Osterreich 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

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.

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 Daabo 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.

Appointments

Stephen Hofmeyr QC is not only known for his considerable expertise in acting as Leading Counsel in domestic and international arbitrations but he also has a well-established practice as an arbitrator. His appointments cannot be described with any great particularity in view of the confidentiality of the process. However he is regularly appointed as sole arbitrator, party-appointed arbitrator or as the third arbitrator in a wide range of commercial disputes in ICC, LCIA, LMAA arbitrations and in other arbitration courts. In recent years Stephen has accepted over 200 appointments and has issued 18 awards as sole arbitrator and in excess of 20 awards as co-arbitrator. Stephen is a member of the London Court of International Arbitration, an Associate Member of the London Maritime Arbitrators Association, a member of the Baltic Exchange and, as an Associate of the Chartered Institute of Arbitrators, was a member of the Commercial Arbitration Users Programme Working Party. Until the scheme was discontinued, he was also a member of the SFA Consumer Arbitration Scheme Panel of Arbitrators and conducted numerous hearings as sole arbitrator. In 2015 Stephen became a member of the international panel of maritime arbitrators of the Marine Offshore Oil and Gas Association (MOOGAS) in Singapore and of the panel of the Singapore Chamber of Maritime Arbitrators.

General Information

Stephen Hofmeyr QC was born in Cape Town in 1956, educated at Diocesan College, Rondebosch, and matriculated with a First Class in 1973. His undergraduate and post-graduate degrees were taken at the University of Cape Town where he was awarded a Bachelor of Commerce in 1976 and an LLB in 1978.

In 1979 Stephen was awarded a Rhodes Scholarship and went up to Oxford to read law, receiving an MA in Jurisprudence in 1982. He was also a rugby Blue.

He qualified and then practiced as a solicitor in Cape Town between 1983 and 1985.

Following a pupillage with Gavin Kealey in 1986, Stephen became a member of 7 King's Bench Walk (7KBW) in 1987 and has practiced full time in these Chambers ever since. He took Silk in 2000, was appointed a Recorder (County and Crown Court Judge) in 2005 and a Deputy Judge of the High Court in the Queen's Bench Division in 2008.

Stephen was admitted to the Bahamas Bar as Counsel and Attorney in 2005, as a Barrister and Solicitor of the Eastern Caribbean States Supreme Court in 2012 and as a Registered Foreign Lawyer in the Singapore International Commercial

Court in 2015.

Languages:

Afrikaans (fluent); and Dutch and Flemish (working knowledge).

Directories

- “He’s very calm, methodical and experienced. He has the ear of the tribunal or court.” “He looks at complex issues and reduces them to the constituent parts and the legal principles.”
- “He is exceptional.” “An impressive black-letter lawyer. He looks at complex issues and reduces them to the constituent part of the legal principal.”
- “Great on his feet and really clever.” “Very hardworking and incredibly persistent.”
- ‘Extremely impressive, and a very good advocate.’
- ‘He is extremely tenacious, incisive and proactive and he gets to the crux of the issues quickly.’
- ‘One of the most experienced English lawyers I have worked with, he’s a real fighter.’
- ‘A gutsy barrister.’
- “Extremely well regarded and very tenacious.”
- “Great on his feet and really clever.” “Very hardworking and incredibly persistent.”
- ‘Well regarded for commercial and insurance disputes.’
- ‘A first-rate barrister and arbitrator.’
- ‘He has a wealth of experience.’
- “A powerful advocate.” “Very bright and very thorough.”
- “Very good at getting in the detail.” “Very hard-working.”
- “He is excellent on the legal issues. He is also proactive and co-operative.”
- ‘Very prompt and skilled, he gets to the main issues quickly, and doesn’t miss the wood for the trees.’
- ‘Has a particular expertise in marine insurance.’
- ‘Hugely knowledgeable.’
- ‘Very strong advocacy skills, attention to detail and a particularly tough cross-examiner.’
- ‘An excellent lawyer, particularly skilled in complex technical cases.’
- He combines academic excellence with a commercial approach to deliver reliable advice.
- First port of call in a difficult situation.

- He has an excellent eye for and grasp of technical details and the commercial bigger picture.
- Stands out for his legal knowledge and careful forensic analysis; he imbues clients with confidence.
- He is extremely experienced and can master a brief totally and very quickly.
- “Has gravitas and masses of expertise. He is a go-to for large cases as he’s exceptionally astute.”
- “Someone you go to when you want the nitty gritty to be looked at and you want sensible, solid advice.”
- “Always well prepared for everything and very smooth.” “Pleasant and professional. Stephen always tries to make time, no matter how busy he is, and he is approachable and happy to discuss details of the case at hand.”
- “He has a sharp mind - he thinks everything to an end and comes up with alternatives as well.”
- “He is excellent, he gives a really thorough academic analysis.” “A marine insurance heavyweight.”
- “Very cerebral and effective,” “he is very good with clients and offers very good common sense analysis.” One source comments: “When the going gets rough, bring in the Hof!”
- A great leader - calm and unflappable, while authoritative and knowledgeable.
- One of the best at giving clear, thorough and robust opinions.
- The “terrific” Stephen Hofmeyr QC is also commended for his practice, particularly for his advocacy work.
- A major player for offshore energy disputes.
- “He’s got a very thorough style and will not skimp on detail. If you’ve got a complex case he’s a good choice.”
- “His input is nothing short of excellent.” “Above all, he has a fantastic ability to strategically lead an argument.”
- “He offers a thorough legal assessment of complex issues, shows great attention to detail and displays very structured and analytical reasoning.”
- Advises with real gravitas, offering years of experience and a commercial approach.
- Offers real gravitas and deep experience; a pleasure to work with.
- Consistently impressive.
- “a heavyweight in this field” widely regarded as “one of the nicest insurance silks at the Bar”
- “one of the commercial Bar’s best all-round counsel.”
- “held in high regard by the market” and as “one of the Bar’s most impressive and likeable silks.”
- “quiet but effective all-rounder”, praised for his “wide practice and skillful advocacy” as well as his “insightful perspective that means he sees things others may miss.”
- “adept at more complicated commercial disputes” and “grounded and thorough - I can’t imagine he is ever thrown by anything.”
- “persuasive and confident manner” in handling tribunals and cross-examining witnesses.
- “fights his corner very hard” and “has an impressive compulsion for detail.”
- He is ranked as a Leading Silk in various fields, and is recommended in four fields (commercial litigation, insurance/reinsurance, professional negligence and shipping) in Legal Experts.