



## Sushma Ananda

Call: 2007

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**‘She is exceptional.’**

Legal 500 2020

## Practice Profile

Sushma has a broad commercial practice with a particular emphasis on insurance and reinsurance, professional negligence, shipping and international trade, and international arbitration.

Sushma has been instructed in a wide variety of commercial disputes both as sole counsel and as a junior. Sushma has appeared in the Supreme Court, Court of Appeal, Commercial Court, county courts and in many international arbitrations (including LMAA, LCIA, ICC, ARIAS, SIAC and Bermuda Form arbitrations). She has undertaken advocacy on her own in many of these forums, including successfully appearing against counsel more senior than her. Sushma also often works as part of a wider counsel team in complex commercial disputes leading to lengthy trials.

Sushma’s highlighted cases include the **2020 COVID-19 business interruption test case** (at first instance and in the Supreme Court) brought by the FCA against eight insurers, including Ecclesiastical Insurance Office plc and MS Amlin Underwriting Ltd (Sushma’s clients); ***Ferster v Ferster*** [2016] EWCA Civ 717, a case concerned with the unambiguous impropriety exception to without prejudice privilege; and ***Involnert Management v Aprilgrange Limited*** [2015] 2 Lloyd’s Rep 289, a multi-million euro professional negligence claim in the Commercial Court concerned with the insurance of a super yacht.

Sushma was called to the Singapore Bar in February 2015. She is ranked in the Legal 500 in Insurance & Reinsurance, International Arbitration, Professional Negligence, Shipping and Commodities. In October 2010 Sushma was cited by Legal Week as one of the “Stars at the Bar”.

Sushma also accepts arbitration appointments. She has acted as an arbitrator appointed by the LCIA Court. She is also on the panel of arbitrators for the Lloyd’s Arbitration Scheme, Tiers 1 and 2.

## Banking & finance

Sushma's recent experience in this field includes acting in a financial products mis-selling case brought by a private investor against a major international bank and in an unauthorised futures trading case against the London branch of a leading international bank.

### Selected cases:

- ***Citigroup Global Markets Limited v Amatra Leveraged Feeder Holdings Ltd and ors*** Acted as junior counsel (led by David Bailey QC) for the Defendant private investors in a derivatives mis-selling case in the Commercial Court. In the face of a claim by Citigroup Global Markets Ltd for negative declaratory relief arising out of two options transactions on standard ISDA form, the Defendants counterclaimed for hundreds of millions of dollars on the basis of breaches by Citibank Global Markets Ltd of its COBs duties. The case raised various interesting issues regarding the bringing of claims for breach of statutory duty under section 138D of the Financial Services and Markets Act 2000.
- ***Bominflot (Gibraltar) Limited v Macquarie Bank Limited, London Branch*** Acted as junior counsel (led by David Bailey QC) for the claimant company in its dispute with this major international bank concerning very significant losses (running to over US\$80 million) suffered as a result of unauthorised futures trading executed and cleared by the bank.

## Commercial Litigation

In addition to the specific commercial practice areas of shipping, insurance, and professional negligence, Sushma also acts in a wide variety of general commercial disputes.

### Selected cases:

- ***Ferster v Ferster*** [2016] EWCA Civ 717. Successfully represented (led by Christopher Butcher QC) the Respondent in an important Court of Appeal hearing concerned with the exceptions to without prejudice privilege. The Court of Appeal agreed with the Respondent that an email sent in the context of mediation was not protected by without prejudice privilege as it fell within the unambiguous impropriety exception, containing as it did threats amounting to blackmail. This case is of significant interest as it follows a series of Court of Appeal decisions where the unambiguous impropriety exception has been held not to apply.
- Represented a Swiss investment fund in relation to a multi-million dollar investment fund fraud claim against FCA regulated investment managers. The fraud arose out of the collusion and conspiracy of the CEO of the Swiss investment fund and a Managing Partner of the FCA regulated investment managers. The claim involved allegations of deceit, conspiracy, bribery, dishonest assistance and knowing receipt.
- Successfully acted as junior counsel (led by Dominic Kendrick QC) in a multi-million pound international trade/commodities arbitration involving the sale of sulphur at the peak of the market prior to the 2008 financial crash.

Dispute related to the quality of sulphur sold and involved serious allegations of fraud against Sushma's clients (which were successfully defended). It also raised interesting questions as to the meaning of final and binding inspection clauses which are in common use in the market. Sushma cross-examined factual and expert witnesses during the arbitration, and closed her client's case on quantum. She also drafted papers successfully resisting an application for permission to appeal under section 69 of the Arbitration Act 1996.

- Successfully acted as sole counsel representing sellers in a 3 day final hearing in an ICC arbitration held in Singapore, and governed by Singapore law. The arbitration concerned the sale of coal on FOB terms and involved interesting issues concerned with the nomination of vessels.
- ***Kingspan Environmental Limited and others v Borealis A/S & Borealis UK Ltd*** [2012] EWHC 1147 (Comm) Acted as second junior counsel (led by David Allen QC and James Brocklebank) in a large-scale multi-million pound dispute concerning the sale of polyethylene raw materials by Borealis to Kingspan for the production of green plastic oil tanks. The dispute involved a variety of legal issues including choice of law, misrepresentation, breach of contract, implied terms under the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977. The nature of the case also required Sushma to consider and be familiar with large amounts of scientific evidence concerning plastics and the moulding of plastics by a process known as rotomoulding. During the 12 week trial before Mr Justice Christopher Clarke (May 2011 to July 2011), Sushma cross-examined factual witnesses and a foreign law expert. Please click [here](#) for a summary of this case.
- ***Hamsah Investments Limited & Wall Capital Limited v The Republic of Liberia*** Instructed as sole counsel (appearing against a silk) by the Republic of Liberia to defend a summary judgment application for the enforcement of a debt.

## Insurance & Reinsurance

Sushma is a go-to junior in the fields of insurance and reinsurance. She is ranked in the Legal 500, and has been involved in many of the recent important cases in this field. Sushma has a particular expertise in relation to business interruption insurance, liability insurance (including policies written on the Bermuda Form) as well as reinsurance. At present Sushma is undertaking extensive work in relation to COVID-19 insurance and reinsurance claims. A substantial proportion of Sushma's work in this field is in the arbitration forum.

### Selected cases:

- Currently representing insurers (led by Gavin Kealey QC and Andrew Wales QC), Ecclesiastical Insurance Office plc and MS Amlin Underwriting Ltd, in the business interruption insurance test case brought by the Financial Conduct Authority against eight insurers to determine the availability of coverage for COVID-19 losses under various sample business interruption wordings. This is likely to be the most significant piece of insurance litigation for many years. The two-week expedited remote trial under the Financial Markets Test Case Scheme took place at the end of July 2020 and

Judgment was handed down by the Divisional Court (Flaux LJ and Butcher J) in September 2020 (***FCA v Arch Insurance (UK) Ltd and others*** [2020] Lloyd's Rep IR 527). Ecclesiastical was wholly successful; MS Amlin succeeded on its prevention of access wordings but not in relation to the disease clauses. A leapfrog appeal to the Supreme Court was heard between 16 and 19 November 2020. Judgment is awaited.

- Acted for insurers in respect of a high value (US\$30 million) arbitration claim on IADC rules brought by insureds under a Corporate Protection Insurance policy in respect of respect of losses allegedly suffered as a result of the Non-Petya computer virus attack. Key issues included the meaning of Extortion under the policy and whether wiperware, rather than ransomware, could amount to an Extortion under the policy.
- Successfully represented (led by James Brocklebank QC) Lloyd's placing brokers, OAMPS Special Risks Limited, in a multi-million euro professional negligence claim in the Commercial Court concerned with the insurance of a super yacht, the M.Y. Galatea, which suffered significant damage while berthed at a marina: see ***Involnert Management Inc v Aprilgrange Limited & Others*** [2015] EWHC 2225 (Comm). Leggatt J held that OAMPS neither owed any duty directly to the insured nor was it in breach of any such duty. To read more about the case, please click [here](#).
- Represented as junior counsel (led by Dominic Kendrick QC) London producing brokers, Houlder Insurance Services Limited, in a brokers' negligence claim concerning the fraudulent purported placement of financial insurance by a placing broker, ESR Insurance Services Ltd. This claim also involved allegations of fraud made by the Claimant (Hyundai Marine) and Houlder Insurance Services Limited against Hong Kong producing brokers arising out of the alleged falsification of documents and the 'grossing up' of premium.
- Represented as junior counsel (led by Simon Picken QC) retrocessionaire, Novae Corporate Underwriting Limited, in a reinsurance dispute arising out of damage to Tesco stores during the Thai floods of autumn 2011. Dispute raised important issues regarding the interpretation of follow the settlements clauses in the context of non-proportional excess of loss retrocessions. It also involved questions as to whether the losses suffered by Tesco should be aggregated as having been caused by one single occurrence. Following a trial of preliminary issues before Hamblen J, the following judgment was handed down: ***Tokio Marine Europe Insurance Limited v Novae Corporate Underwriting Limited*** [2013] EWHC 3362 (Comm). Hamblen J granted Novae permission to appeal to the Court of Appeal. A further summary judgment hearing took place before Field J concerning the 'proper and businesslike' proviso to the follow the settlements clause: ***Tokio Marine Europe Insurance Limited v Novae Corporate Underwriting Limited*** [2014] EWHC 2105 (Comm). Again, Field J gave Novae permission to appeal to the Court of Appeal.
- ***Orient-Express Hotels Limited v Assicurazioni Generali SPA t/a Generali Global Risk*** [2010] 1 Lloyd's Rep IR 531 Represented insurers as junior counsel (led by Simon Picken QC) in a three-week business interruption arbitration involving the impact of Hurricanes Katrina and Rita on the New Orleans luxury hotel industry. The decision was then the subject of a section 69 appeal to the High Court (determined by Hamblen J). The arbitration and appeal raised important questions as to whether an insured should be entitled to recover under a business interruption policy where it alleges

that losses are concurrently caused by an insured and an uninsured cause. Hamblen J's decision on appeal has become the key decision on business interruption coverage in the event of wide area of damage, and remains of significant topical relevance. It is now the subject of consideration by the Supreme Court in the FCA business interruption test case referred to above.

## International Arbitration

International arbitration, involving international parties, and, on occasion, different governing laws, is a mainstay of Sushma's practice. She has been involved in arbitrations under a variety of arbitration rules including LMAA, LCIA, ICC, ARIAS and SIAC, and covering a wide range of commercial matters including insurance and reinsurance, shipping, and commodities. In the insurance field, Sushma has been involved in a number of Bermuda Form arbitrations. Sushma is a member of the LCIA and a Supporting Member of the LMAA. She is ranked by the Legal 500 in the field of international arbitration.

Given the confidential nature of arbitration, details of the specific cases in which Sushma has been involved are not provided.

## Jurisdiction/conflicts of laws

Many of the commercial cases in which Sushma acts as counsel involve issues of private international law.

### Selected cases:

- ***Citigroup Global Markets Limited v Amatra Leveraged Feeder Holdings Ltd and ors*** [2012] EWHC 1331 (Comm)  
Acted as junior counsel (led by Simon Picken QC) for the Defendants in a successful challenge to the jurisdiction in the face of a claim by Citigroup Global Markets Ltd ("CGML") for negative declaratory relief arising out of two options transactions, evidenced by confirmations incorporating the form of the 2002 ISDA Master Agreement. Mr Justice Andrew Smith held that the Court had no jurisdiction to determine negative declaration claims brought by CGML in respect of its affiliates, including Citigroup Global Markets Inc, against whom arbitration proceedings had been commenced by the Defendants in New York under the FINRA regulatory regime, a regulatory regime instituted in the US to regulate the securities industry. Mr Justice Andrew Smith also held that this was a case in which rare and compelling circumstances existed justifying the grant of a case management stay until the conclusion of the FINRA arbitration.
- ***Kingspan Environmental Limited and others v Borealis A/S & Borealis UK Ltd*** Acted as second junior counsel (led by David Allen QC and James Brocklebank) in a large-scale multi-million pound dispute concerning the sale of polyethylene raw materials for the production of green plastic oil tanks involving issues of choice of law, and in particular, whether Danish law was the law applicable to the claims brought by Kingspan (in contract and in misrepresentation), and if so, the scope and effect of Danish law. Issues arose in the case as to the effectiveness of terms limiting liability as a matter of Danish law, time bar as a matter of Danish law and the scope and application of the

United Nations Convention on Contracts for the International Sale of Goods. During the 12 week trial before Mr Justice Christopher Clarke (May 2011 to July 2011), Sushma cross-examined the Danish law expert.

## Sale of goods

Sushma also advises and acts in respect of disputes involving the sale of goods, both domestic and international.

### Selected cases:

- Acted as junior counsel (led by Michael Holmes) in a multi-million dollar international trade and commodities arbitration involving the sale of limestone to the South American market. Dispute involved issues concerning the formation of contracts, fraudulent misrepresentation, the measure of damages for failure to purchase as well as loss of profit exclusions. Sushma successfully represented her client on her own in a three day preliminary issues hearing, appearing against a silk (Michael Davey QC) and a junior (Ben Gardner).
- Successfully acted as junior counsel (led by Dominic Kendrick QC) in a multi-million pound international trade/commodities arbitration involving the sale of sulphur at the peak of the market prior to the 2008 financial crash. Dispute related to the quality of sulphur sold and involved serious allegations of fraud against Sushma's clients (which were successfully defended). It also raised interesting questions as to the meaning of final and binding inspection clauses which are in common use in the market. Sushma cross-examined factual and expert witnesses during the arbitration, and closed her client's case on quantum. She also drafted papers successfully resisting an application for permission to appeal under section 69 of the Arbitration Act 1996.
- Sushma successfully acted as sole counsel representing sellers in a 3 day final hearing in an ICC arbitration held in Singapore. The arbitration concerned the sale of coal on FOB terms and involved interesting issues concerned with the nomination of vessels.
- ***Kingspan Environmental Limited and others v Borealis A/S & Borealis UK Ltd*** [2012] EWHC 1147 (Comm) Acted as second junior counsel (led by David Allen QC and James Brocklebank) in a large-scale multi-million pound dispute concerning the suitability and fitness for purpose of polyethylene raw materials sold to manufacturers for the production of green plastic oil tanks.

## Professional negligence

Another significant practice area for Sushma is professional negligence. Sushma is frequently instructed to act in professional negligence cases concerning the conduct of insurance brokers, solicitors, accountants, auditors and valuers. She is ranked by the Legal 500 in the field of professional negligence.

### Selected cases:

- Successfully represented (led by James Brocklebank QC) Lloyd's placing brokers, OAMPS Special Risks Limited, in a

multi-million euro professional negligence claim in the Commercial Court concerned with the insurance of a super yacht, the M.Y. Galatea, which suffered significant damage while berthed at a marina: see ***Involnert Management Inc v Aprilgrange Limited & Others*** [2015] EWHC 2225 (Comm). Leggatt J held that OAMPS neither owed any duty directly to the insured nor was it in breach of any such duty. To read more about the case, please click [here](#).

- Acted in a solicitors' negligence claim (led by Sue Prevezer QC) worth tens of millions of dollars against a leading City solicitors in relation to the negotiation and conclusion of a corporate finance transaction concerned with investment in the claimant technology company.
- Represented as junior counsel (led by Dominic Kendrick QC) London producing brokers, Houlder Insurance Services Limited, in a brokers' negligence claim concerning the fraudulent purported placement of financial insurance by a placing broker, ESR Insurance Services Ltd. This claim also involved allegations of fraud made by the Claimant (Hyundai Marine) and Houlder Insurance Services Limited against Hong Kong producing brokers arising out of the alleged falsification of documents and the 'grossing up' of premium.
- Instructed as sole counsel for Marsh in a brokers' negligence claim in the Commercial Court arising out of the alleged business interruption losses suffered by the insured as a result of the occurrence of Hurricane Sandy.

## Shipping & commodities

Sushma has a keen interest in this area of law and has been instructed in a wide variety of disputes, both on her own and as junior counsel, to advise, settle pleadings and attend at hearings both in arbitration and in the High Court. She is ranked in the Legal 500 in the fields of Shipping and Commodities.

## Selected cases:

- ***Agile Holdings Corporation v Essar Shipping Ltd*** [2018] EWHC 1055 (Comm); [2018] Bus LR 1513 Sushma represented the defendant charterers in an appeal under section 69 of the Arbitration Act 1996 brought by the claimant owners. Appeal concerned the apportionment of liability in respect of a cargo claim under the Inter-Club Agreement ("the ICA"), and in particular the meaning of "a similar amendment" in clause 8(b). The ICA is invariably incorporated into time-charters and the meaning of this phrase was being considered by the courts for the very first time.
- Acted as junior counsel (led by Michael Holmes) in a multi-million dollar contract of affreightment arbitration involving issues of estoppel and frustration. As part of the arbitration, Sushma successfully represented her clients on her own (appearing against leading and junior counsel) in a three-day hearing to determine the quantum for certain shipments where liability was admitted.
- Instructed by owners in respect of a high value (in excess of US\$15 million) contract of affreightment arbitration concerning the recovery of very substantial damages for failure by the charterers to ship significant volumes of wood pulp from Indonesia to Europe.

- ***Minimal Enterprises Company v Hellenic Mutual War Risks Association (Bermuda) Limited*** Represented insurers in a multi-million dollar insurance claim under a war risks policy arising out of the seizure and detention of the “Liquid Velvet” by pirates off the Somalian coast between October 2011 and June 2012.
- Acted as junior counsel (led by Helen Davies QC of Brick Court Chambers) on a substantial five-week shipbuilding arbitration under LMAA rules worth \$150m. The case concerned the late delivery of drilling rigs by a shipyard in China, and involved a number of complex technical and legal issues.
- Acted as junior counsel in a number of shipbuilding arbitrations arising out of the market crash in late 2008. These disputes raise issues as to the nature of shipbuilding contracts, the obligations owed by shipbuilders to buyers where the buyers have defaulted on instalment payments and also the scope for total failure of consideration arguments in the shipbuilding context.
- Acted as junior counsel in a dispute involving the sale and purchase of a Floating Production Storage and Offloading Tanker (FPSO) in which the claimant purchaser alleged that the respondent seller was liable for the costs of carrying out certain repairs to tanks in the FPSO.
- ***Matrix Europe Limited (In Liquidation) v Uniserve Northern Limited*** [2009] EWHC 919 (Comm). Instructed as junior counsel (led by Charles Friday) for the claimant in respect of a bailment dispute involving the theft of Bluetooth adaptors from a warehouse.

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## Education

Trinity College, University of Cambridge: BA in law, first class (2003-2006). During her time at Cambridge, Sushma was awarded a number of law scholarships and prizes by the University and Trinity College: Norton Rose Commercial Law Prize, Prize for Top First in Commercial Law, Clifford Chance European Union Law Prize, Prize for Top First in European Union Law, Trinity College Senior Scholar, Trinity College Lizette Bentwich Prize 2005, 2006, Trinity College Tripos Prize 2006, Inns of Court School of Law, London: Bar Vocational Course, Outstanding (2006-2007). During the Bar Vocational Course, Sushma was awarded the Marchant and Hardwick Scholarships and the Buchanan Prize for performance on the Bar Vocational Course by The Honourable Society of Lincoln’s Inn.

She also received the Whittaker Scholarship from Trinity College, University of Cambridge. She was also called to the Singapore Bar in February 2015.



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## Appointments

Member of Lloyd's Arbitration Scheme Arbitrators Panel - tiers 1 & 2

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## Directories

- 'A bright, hardworking, careful and highly capable junior.' Legal 500 2021
- 'A bright, highly capable junior, who took in her stride a challenging cyber-insurance coverage case and provided insightful pragmatic advice.' Legal 500 2021
- 'A bright, hard working, careful, highly capable junior, and provided insightful pragmatic advice and was a delight to work with.' Legal 500 2021
- 'She has a practice beyond her years.' Legal 500 2021
- 'A superb barrister.' Legal 500 2021
- 'She produces excellent pleadings, reflecting a thorough analysis of the issues.' Legal 500 2020
- 'Strong ability to focus in on issues quickly and good drafting ability.' Legal 500 2020
- 'She is exceptional.' Legal 500 2020
- 'She delivers rapid responses, ability to focus is on issues quickly, has good drafting ability.' Legal 500 2020
- A very impressive barrister. Legal 500 2018
- Bright and responsive. Legal 500 2018
- Thorough, and with a scientific insight to ascertaining and understanding any technical details. Legal 500 2018
- Bright, responsive and easy to work with. Legal 500 2017
- Top quality. Legal 500 2017
- Extremely intelligent and responsive. Legal 500 2017
- "A great team player, who deals with the difficult aspects of cases extremely well." Legal 500 2016
- "A high-quality junior; very good with the facts and the law." Legal 500 2015