

Stephen Kenny KC

Call: 1987 | Silk: 2006

“Stephen is a very safe pair of hands in even the most complex of disputes. He is able to distil and present the answers to challenging problems in a way which instils great confidence.”

Shipping & Commodities, Chambers UK Bar 2025



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Stephen Kenny KC acts as an advocate in commercial litigation and arbitration, and advises on all stages of the conduct of such proceedings.

He also has a significant advisory practice, particularly in relation to insurance matters. He is ranked as a leading silk for Shipping and Commodities by Chambers and Partners; and for Commodities, Insurance and Reinsurance, and Shipping by The Legal 500.

Stephen's practice covers many areas within Chambers' general expertise.

From the outset of his career he has acted in all manner of shipping and marine insurance matters. He has appeared in numerous shipping arbitrations and court hearings. He has particular experience of “scuttling” cases, having represented insurers in *The Captain Panagos DP*, *The Ikarian Reefer*, and *The Brillante Virtuoso*. He has acquired a rare understanding of the law of general average, acting for owners in *The Maersk Neuchatel*; and leading for owners in their successful appeal to the Supreme Court in *The Longchamp*.

He also has long practice in non-marine insurance and reinsurance cases, including claims against brokers and other professional advisers. He has acted for the Corporation of Lloyd's, both in civil disputes and in relation to disciplinary proceedings.

More recently, he has extended his experience to aviation insurance; acted in credit-hire cases; advised in relation to a long-term gas supply contract, appeared in ship-building-related arbitrations, and acted for English buyers of Cypriot holiday homes bought “off-plan”. He has advised in relation to an insurance of the risk of losing an appeal; on the insurance aspects of an internet lottery; on whether invoice discounters were subject to insurance regulation; and on various aspects of trade credit insurance and travel insurance cover.

He has particular experience of acting in large-scale and multi-jurisdictional disputes (and thus has a detailed understanding of conflicts of law issues). He is a team player who enjoys and has wide experience of working with technical experts, with foreign lawyers and with foreign clients.

Expertise

Shipping & Transport

Over the years, Stephen has advised and acted in a very large number of arbitrations and court hearings concerning shipping and carriage of goods by sea. A small selection of these cases are mentioned below.

Selected cases:

- In 2019 Stephen acted in arbitration for disponent owners, resisting allegations of on-board contamination of a cargo of fuel oil. The case was settled shortly before the hearing.
- In 2018 Stephen led for cargo claimants in the case of *"The Alhani"* [2018] EWHC 1495 (Comm); [2018] 2 Lloyd's Rep. 563, in which the issues were whether a claim for wrongful delivery (without surrender of a bill of lading) was subject to the one year time bar in the original Hague Rules; and if so, whether the claim had been preserved by promptly arresting and proceeding against the vessel in Tunisia, which (as had later emerged) was a non-contractual forum. The judge (David Foxton QC) answered these questions "yes" and "no"; but unhesitatingly gave permission to appeal, adding that "[h]earing advocacy of this quality, on points of this interest, has been a privilege". To the regret of lawyers, the case was settled shortly before the appeal was due to be heard in April 2020.
- In 2017 Stephen led for the owners in their successful appeal to the Supreme Court in *The "Longchamp"* [2017] UKSC 68. The case concerned the admission in general average, under Rule F of the York-Antwerp Rules 1974, of vessel operating expenses incurred during the period while a pirate ransom was being negotiated. It was argued that those expenses were incurred in place of other allowable expense, namely a higher ransom than that ultimately agreed. The Supreme Court, reversing the Court of Appeal, accepted that argument. This was the first case in the appellate courts in more than 20 years to consider the basic principles of general average. Instructed by Stephenson Harwood.
- Also in 2017 Stephen led for the owners in *The "Jia Li Hai"* [2017] EWHC 2509; an application to strike out, or grant summary judgment on, cargo interests' defence to a claim for general average, following a collision between two Chinese cargo vessels. Cargo asserted that owners' vessel was unseaworthy in having inadequate systems in place to prevent collisions, but could not particularise the inadequacies, nor how they had caused the collision. The application was successful.
- In 2014 Stephen led for the owners in *The "Maersk Neuchatel"* [2014] EWHC 1643 (Comm); [2014] 2 Lloyd's Rep. 377, persuading the Court that a charterers' Letter of Undertaking to pay general average "*ascertained to be due from the Cargo ... under an Adjustment prepared by the appointed Average Adjusters*" was in the nature of a demand guarantee. Pleas of rectification and estoppel were also rejected. Instructions from Holman Fenwick & Willan.
- In 2013/14, Stephen acted for the final charterer of a LNG carrier – let under a chain of three time-charters – who was claiming substantial damages resulting from a critical SIRE report on the vessel's safety and maintenance (which report had led to the premature termination of the charters). Disputes under all three charters were referred to concurrent arbitrations. The case settled in early 2015. Instructions from MFB Solicitors.
- Also in 2013, Stephen successfully represented in arbitration the disponent owners of a bulk carrier, whose Master had refused to load a cargo of steel coils on the basis that the point/ patch loading generated would exceed the design strength of the tank-tops.
- In 2011 and 2012 Stephen appeared twice on behalf of the claimant charterer in *Hyundai Merchant Marine Company Limited v Trafigura Beheer B.V., The "Gaz Energy"*, a case concerning speed and consumption guarantees in a chain of charters based on the Shelltime 3 form. Two sets of preliminary issues were determined. In the first judgment ([2011] EWHC 3108 (Comm), [2012] 1

Lloyd's Rep. 211) Flaux J found that "good weather" language in the contractually incorporated description of the vessel (Gas Form C) could not displace the "all weathers" terminology in the standard Shelltime 3 form. The guarantees were therefore "all weather" guarantees. In the second judgment ([2012] EWHC 1686 (Comm)), Teare J determined the meaning of "over-performance" when the promised consumption was qualified by the word "about". Instructions were from MFB Solicitors.

- In 2010 Stephen represented Chinese charterers (on the instructions of Winter Scott) in the arbitration of a claim for repudiation of a charter of a vessel to be built. The dispute raised difficult and novel questions of force majeure, frustration, and the date of quantification of loss – but was settled before an award could be made.
- Between 2007 and 2010 Stephen acted for Danish clients in two long-running arbitrations relating to the operation and termination of time-charters of a bulk carrier (instructed by Mills & Co.).
- In 2008 Stephen acted for Mexican charterers in an arbitration concerning the hire of off-shore support vessels for use in oil exploration (instructed by Thomas Cooper.)
- Also in 2008 Stephen acted for Chinese owners in an arbitration reference concerning the shipment of an insect-infested cargo of rice (instructed by Thomas Cooper).
- **CMA-CGM SA v Beteiligungs-Kommanditgesellschaft MS "Northern Pioneer" Schiffahrts-gesellschaft M.B.H & Co** [2002] EWCA Civ 1878, [2003] 1 WLR 1015. Stephen was instructed by Holman Fenwick & Willan for the Respondent owners, who successfully resisted an application for leave to appeal from an arbitration award. The arbitrators had concluded that German participation in the NATO air operations over Serbia and Kosovo did not constitute "involvement in war", and the charterers had not been entitled to cancel under the war clauses in four long-term time charters. This was the first case in which the Court of Appeal considered the principles by which leave to appeal may be granted under s. 69 of the Arbitration Act 1996 (cf. the *Nema* Guidelines).
- **Borealis v Stargas, The "Berge Sisar"** [2002] AC 205 (HL): instructed (with Jonathan Gaisman QC) by Richards Butler for Saudi Aramco. This case is the leading authority on Section 3 of the Carriage of Goods by Sea Act 1992. Saudi Aramco resisted joinder to an action, contending that it could not be liable under bills of lading pursuant to Section 3 of the Act unless it was also entitled to sue on the bills under Section 2. Since they were no longer lawful holders of the bills, they were neither entitled, nor liable. The House of Lords accepted this submission.
- However, in a related case, **Petroleo Brasileiro S.A. and others v Mellitus Shipping Inc and others, The "Baltic Flame"** [2001] 2 Lloyd's Rep. 203 (CA) Saudi Aramco's argument that it should not be joined to proceedings as a potential contributor because (a) this would outflank arbitration and jurisdiction agreements with those with whom it had contracted; and (b) a claim in contribution was unknown in its country of domicile, failed.
- **The "Sun" and the "Riza"** [1997] 2 Lloyd's Rep. 314 (Timothy Walker J): led by Jonathan Gaisman QC for the plaintiff charterers. These charterparty actions turned on whether the defendant, Captain John Vatis, had contracted personally or not. Held, that he had chartered on behalf of a Panamanian company (Kronos Maritime Agencies S.A) and was not therefore personally liable.
- **The "Breydon Merchant"** [1992] 1 Lloyd's Rep. 373 (Sheen J). Under the 1976 Convention on Limitation of Liability for Maritime Claims, shipowners were entitled to limit their liability to cargo owners in respect of cargo's share of a salvage award; although they could not limit their own liability to salvors.

Commodities

The sale of goods is a staple of commercial practice, and Stephen has been involved in various cases concerning the sale of goods, often in a specialized context. For example, he has acted for the buyer of a brand-new private jet; advised a major gas trader in relation to quality disputes arising from its long-term "take-or-pay" gas supply contract; acted for a leading bunker supplier in its claim alleging delivery of contaminated fuel oil to its mother ships off the West Coast of Africa; and has also acted or advised in relation to a number of ship sale or ship-building disputes.

Selected cases:

- In 2013/14, Stephen acted for the Defendant in **Glencore Energy UK Ltd v Cirrus Oil Services Limited** [2014] EWHC 87 (Comm); [2014] 2 Lloyd's Rep. 1. Issues of contract formation, the identity of the negotiating parties, and assessment of the market value of a crude oil from a young Nigerian oilfield – the Ebok field, on which publicly-available trading data was non-existent – arose for decision. Instructions from Osborne Clarke.
- In 2012 Stephen represented the dissatisfied buyer of a new private jet in **Air Transworld v Bombardier** [2012] EWHC 243 (Comm) [2012] 1 Lloyd's Rep. 349. The buyer claimed to have rejected the aircraft for breach of the conditions implied by the Sale of Goods Act 1979, but Cooke J held that, despite the absence of any reference to "conditions", the purchase agreement had successfully excluded those terms. Cf *The Mercini Lady* [2011] 1 Lloyd's Rep. 442. (He also held that the Unfair Contract Terms Act 1977 was not applicable.) The Court of Appeal gave leave to appeal, and the case then settled. Instructed by Stockler Brunton.
- In 2009 Stephen acted as leading counsel in several ship-building arbitrations for Korean clients (instructed by Clyde & Co).
- **OW Supply v Trafigura**; instructed by MFB Solicitors to act for a bunker supplier claiming delivery of contaminated fuel oil to its mother ships off the West Coast of Africa. The case was settled following mediation in 2009.
- **Zegluga Polska v T R Shipping (No. 2)** [1998] 2 Lloyd's Rep. 341 (C.A.): a ship sale case for the plaintiff sellers. The Court of Appeal held, in the plaintiffs' favour and overruling *The Aktion* [1987] 1 Lloyd's Rep 283, that the "Notice of Readiness" required by Clause 3 of the Norwegian Saleform meant notice of actual readiness, not of prospective readiness.
- **Axel Johnson Petroleum v M.G. Mineral Group** [1992] 1 W.L.R. 270. A leading case on the scope of legal set-off. This case established that, for the purposes of legal set-off, "mutual debts" refers to all liquidated claims, such that a cross-claim for short payment of the price on an earlier contract could be set off against a claim under a later contract for demurrage (liquidated damages). The claim and cross-claim need not arise from connected transactions
- **Vitol v Esso Australia** [1989] 1 Lloyd's Rep. 451 (C.A.). At first instance the judge (Leggatt J) held that buyers could reject a cargo of oil sold under a "cif delivered" contract on grounds of short-shipment. The Court of Appeal, reversing, held that the buyers were precluded from relying on this point by a "without prejudice" agreement, which it construed as representing that the point would not be taken.

Insurance & Reinsurance

Since the outset of his career Stephen has been instructed in a number of significant marine insurance cases. He has also been involved, over the years, in numerous insurance and reinsurance arbitrations.

Selected cases:

Marine Insurance

- **The "Brillante Virtuoso"** ([2016] EWHC 1085 (Comm)). In this substantial marine insurance claim (c. US\$100m) the owner claimed that its vessel was set on fire by pirates who had tricked their way on board while the vessel was waiting off Aden. Underwriters alleged that the vessel was deliberately destroyed by fire with the privity or connivance of her owner. Stephen was heavily engaged on this case, as part of a team of Counsel representing underwriters instructed by Norton Rose Fulbright, from January 2015 to September 2016. In May 2016, they succeeded in having the owner's claims dismissed, following failures to comply with disclosure obligations: see the judgment cited above. The Court described the owner's explanation for the

failures as “*a complete invention*”. (The claim of a mortgagee bank, as co-assured, continues. Trial is scheduled for April 2018.)

- ***Thor Navigation v Ingosstrakh Insurance*** [2005] EWHC 19, [2005] 1 Lloyd’s Rep. 547 (Gloster J): for the claimant shipowners, whose hull and machinery policy on their trading vessel “*Thor II*” was found by the Court to be an unvalued policy. A claim to rectify the policy failed.
- ***Seashore Marine S.A. v Phoenix Assurance Plc And Others (The “Vergina”)*** [2001] Lloyd’s Rep. 698, 719, [2002] 2 Lloyd’s Rep. 238 (Aikens J): for the claimant shipowners, who recovered their salvage payments from hull and machinery underwriters. The judge also awarded enhanced interest and indemnity costs under CPR Part 36.
- ***The “Sagheera”*** [1997] 1 Lloyd’s Rep. 160 (Rix J), for the defendant hull and machinery underwriters. This case concerned the assertion of legal professional privilege in relation to documents created in the course of a joint investigation conducted by the owners of this vessel and its war risks insurers, following an explosion which caused her total loss. Held, those documents were privileged from disclosure to others (e.g. hull and machinery underwriters). The judgment also deals with privilege claimed for documents disseminating legal advice “internally”, partly privileged documents, and common interest privilege.
- ***The “Ikarian Reefer”*** [1993] 2 Lloyd’s Rep. 68 (Cresswell J); [1995] 1 Lloyd’s Rep. 455 (C.A.), for the defendant underwriters. This well-known case concerned a claim on a policy of marine insurance, which the underwriters met by alleging scuttling and fraud. The Court of Appeal (after one of the longest appeals in English legal history) reversed the trial judge, finding that the vessel had indeed been scuttled with the privity or connivance of her owners. The case is primarily of interest for its facts, although it also contains valuable dicta about the role of expert witnesses.
- ***Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda) Ltd., The “Good Luck”*** [1992] 1 A.C. 233 (HL). This was, until the Insurance Act 2015, the leading case on the effect of a breach of an insurance warranty. The insurer is discharged from liability automatically, from the moment of breach. Here the insurers were found liable to the bank, for failing (in breach of an undertaking) to inform the bank that cover had ceased, as soon as they were aware of the breach of warranty.
- ***Bank of America National Trust and Savings Association v Taylor*** [1992] 1 Lloyd’s Rep. 484 (Waller J). It was proper for an underwriter subscribing to a policy of insurance to be sued as a representative of the other subscribers, even in the absence of a “leading underwriter” clause, or other cost-sharing arrangement.
- ***The “Captain Panagos DP”*** [1989] 2 Lloyd’s Rep. 33 (CA). This scuttling case concerned the inferences to be drawn from the fact (unchallenged in the Court of Appeal) that a vessel had been deliberately cast away. The beneficial owner of the vessel had died between the date of the loss of his ship and the date of trial. Held, it was to be inferred that the casting away had been done with his connivance. “*Ships are not cast away out of lightness of heart or sheer animal spirits*” (per Lord Sumner in *The Arnus* [1924] AC 850).

Non-marine Insurance and Reinsurance

- In 2017 Stephen was instructed by Cubism Law to represent the claimant on an application for summary judgment on his claim against travel insurers. The claimant sought cover for emergency medical expenses incurred in the US. The insurers resisted on the basis that they/ their medical advisors had not agreed to those expenses in advance. The case raised issues under the Consumer Rights Act 2015; but was settled on the eve of the hearing.
- In 2010, Stephen was instructed by Clyde & Co in ***PK Airfinance US Inc v Chartis Insurance UK Limited and others***, an aviation insurance case in which he acted for insurers resisting claims by the owners and mortgagees of three Boeing 747 aircraft. It was claimed that the aircraft were lost when misappropriated by an Iranian airline: see, by way of background, ***Blue Sky One Limited and others v Mahan Air and others*** [2009] EWHC 3314(Comm) and [2010] EWHC 631 (Comm). The case settled in September 2010, following a mediation.
- In ***CNA Insurance Co. Ltd v Willis Ltd*** Stephen acted for Willis (instructed, together with Gavin Kealey QC, by Slaughter and May) in a US\$300 million Commercial Court action arising out of the reinsurance of occupational accident risks. The case settled in

September 2009.

- In **CGU International v AstraZeneca** [2005] EWHC 2755 (Comm), [2006] Lloyd's Rep. IR 409 (Cresswell J), Stephen acted (with Christopher Butcher QC, instructed by Lovells) for the claimant reinsurers, who succeeded in overturning an arbitration award. Held, that a US service of suit clause in the underlying policy, which obliged the insurer to submit to and abide by the outcome of US proceedings, did not affect the scope of coverage afforded by the insurance or the reinsurance, both of which were governed by English law. Leave for a further appeal to the Court of Appeal was refused. (An application for permission to appeal against that refusal raised interesting arguments about the Court of Appeal's power under the Human Rights Act 1998 to review "unappealable" decisions – see [2006] EWCA Civ 1340, [2007] 1 Lloyd's Rep. 142 (C.A.) – but was also ultimately refused.)
- **European International Reinsurance Company v Curzon**. Stephen was instructed by Freshfields for the claimants (an associated company of Swiss Re) in a claim to avoid an asbestos liability reinsurance cover of some £166m. After almost three months of trial in the Commercial Court, where he was led by Gavin Kealey QC, the case settled (early 2004)
- In 2003 Stephen represented a European retrocessionaire contesting in arbitration its liability to "indemnify" its retrocedant for payments made under a commutation agreement. Instructions were from Barlow Lyde & Gilbert.
- In 1999 Stephen acted in a Bermuda form insurance arbitration, principally concerned with determination of the year in which a claim for directors' and officers' (D. & O.) excess liability coverage had been (or was deemed to have been) "made and reported". Subsidiary issues included the scope of an "insured v insured" exclusion; and the attachment point of cover. The governing law was New York law. Instructed by D J Freeman.
- **Excess Insurance v Mander** [1997] 2 Lloyd's Rep. 119 (Colman J), for the claimant reinsureds. This is a leading case on the incorporation of arbitration clauses into retrocession agreements by reference to the underlying reinsurance contract. Held, that general words of incorporation were ineffective to achieve this.
- **Merrett v Capitol Indemnity Corporation** [1991] 1 Lloyd's Rep. 169 (Steyn J). Reinsureds were not precluded from recovering from reinsurers by the reason of the fact that brokers had already gratuitously "funded" the claims.

Civil Fraud

Although fraud and corruption are present as a sub-text in many cases, in the following cases in which Stephen acted, allegations of fraud or corruption were central to the case:

- **The "Brillante Virtuoso"** ([2016] EWHC 1085 (Comm)). In this substantial marine insurance claim (c. US\$100m) the owner claimed that its vessel was set on fire by pirates who had tricked their way on board while the vessel was waiting off Aden. Underwriters alleged that the vessel was deliberately destroyed by fire with the privity or connivance of her owner. Stephen was heavily engaged on this case, as part of a team of Counsel representing underwriters instructed by Norton Rose Fulbright, from January 2015 to September 2016. In May 2016, they succeeded in having the owner's claims dismissed, following failures to comply with disclosure obligations: see the judgment cited above. The Court described the owner's explanation for the failures as "*a complete invention*". (The claim of a mortgagee bank, as co-assured, continues. Trial is scheduled for April 2018.)
- **Westacre Investments Inc. v Jugoimport SDPR Holding Company Ltd and others** [2000] QB 288 (C.A.); acting for the Defendants (the former Yugoslav military sales and procurement agency) on the instructions of Holman Fenwick & Willan. This arms trading case raised the issue of whether enforcement of a Swiss arbitration award would be contrary to English public policy (Arbitration Act 1975, Section 5(3)). The Defendants maintained that the underlying contract was to procure influence over, or to pay bribes to, Kuwaiti government officials. The Court of Appeal (by a majority) held that even if this was so, and even if the award had been obtained by fraud, it would still be enforced where the Defendants had had an opportunity of putting these matters before the Swiss arbitral tribunal. A petition for leave to appeal to the House of Lords was rejected: [1999] 1 WLR 1999.

- **Surzur Overseas Ltd v Koros** [1999] 2 Lloyd's Rep. 611 (CA). Stephen acted for the plaintiff, Surzur (a subsidiary of Société Generale). The saga began with an application for a world-wide *Mareva* injunction (for c. US\$54 million) over the assets of the Blue Flag Navigation Group and of its principal, Mr Nicholas Koros, to secure outstanding loans. The reported decision arose from a second action, alleging a conspiracy to defraud the plaintiff by (among other things) misleading the English High Court into varying that injunction using forged documents and false and perjured affidavits. The Court of Appeal held that this claim did not infringe the rules of "witness immunity". A defendants' Petition to the House of Lords was refused after an oral hearing. The "conspiracy" case settled shortly before trial (2001).
- **The "Ikarian Reefer"** [1993] 2 Lloyd's Rep. 68 (Cresswell J); [1995] 1 Lloyd's Rep. 455 (C.A.), for the defendant underwriters. This well-known case concerned a claim on a policy of marine insurance, which the underwriters met by alleging scuttling and fraud. The Court of Appeal (after one of the longest appeals in English legal history) reversed the trial judge, finding that the vessel had indeed been scuttled with the privity or connivance of her owners. The case is primarily of interest for its facts, although it also contains valuable dicta about the role of expert witnesses.
- **The "Captain Panagos DP"** [1989] 2 Lloyd's Rep. 33 (CA). This scuttling case concerned the inferences to be drawn from the fact (unchallenged in the Court of Appeal) that a vessel had been deliberately cast away. The beneficial owner of the vessel had died between the date of the loss of his ship and the date of trial. Held, it was to be inferred that the casting away had been done with his connivance. "*Ships are not cast away out of lightness of heart or sheer animal spirits*" (per Lord Sumner in *The Arnus* [1924] AC 850).

Energy & Natural Resources

Stephen has been involved in a number of cases concerning energy and natural resources, often in a specialised context. For example, he has recently advised a major gas trader in relation to quality disputes arising from its long-term "take-or-pay" gas supply contract; and acted for a leading bunker supplier in its claim alleging delivery of contaminated fuel oil to its mother ships off the West Coast of Africa.

Selected cases:

- In 2013/14, Stephen acted for the Defendant in **Glencore Energy UK Ltd v Cirrus Oil Services Limited** [2014] EWHC 87 (Comm); [2014] 2 Lloyd's Rep. 1. Issues of contract formation, the identity of the negotiating parties, and assessment of the market value of a crude oil from a young Nigerian oilfield – Ebok crude, on which publicly-available trading data was non-existent – arose for decision. Instructions from Osborne Clarke.
- **OW Supply v Trafigura**; instructed by MFB Solicitors to act for a bunker supplier claiming delivery of contaminated fuel oil to its mother ships off the West Coast of Africa. The case was settled following mediation in 2009
- **Axel Johnson Petroleum v M.G. Mineral Group** [1992] 1 W.L.R. 270 (CA). A leading case on the scope of legal set-off. This case established that, for the purposes of legal set-off, "mutual debts" refers to all liquidated claims, such that a cross-claim for short payment of the price on an earlier contract could be set off against a claim under a later contract for demurrage (liquidated damages). The claim and cross-claim need not arise from connected transactions.
- **Vitol v Esso Australia** [1989] 1 Lloyd's Rep. 451 (CA). At first instance the judge (Leggatt J) held that buyers could reject a cargo of oil sold under a "cif delivered" contract on grounds of short-shipment. The Court of Appeal, reversing, held that the buyers were precluded from relying on this point by a "without prejudice" agreement, which it construed as representing that the point would not be taken.

Professional Negligence

Stephen has advised in many cases and in various contexts on the liability of professionals; but particularly in relation to the business of insurance at Lloyd's. He has advised the Corporation of Lloyds, Lloyd's syndicates, integrated Lloyd's vehicles and individual liquidators concerning the potential liability of accountants, actuaries, managing agents and brokers.

Selected cases:

- ***Emulex Consultores v Swiss Re Europe SA and others***. Stephen represented Marsh Brokers Ltd, on the instructions of Sidley Austin, in this three-way fight arising out of the insurance of Pritchards Stockbrokers. The case settled in mid-2012
- ***CNA Insurance Co. Ltd v Willis Ltd***: acted for Willis (instructed, together with Gavin Kealey QC, by Slaughter and May) in a US\$300 million Commercial Court action arising out of the reinsurance of occupational accident risks. The case settled in September 2009.
- ***Allied Dunbar v The Underwriter Insurance Company and Willis Ltd***. In 2010 Stephen again acted for Willis (this time as leading counsel, instructed by Lovells). The disputes were resolved in mediation.

Banking & Finance

Asset financing and the financial arrangements underpinning international trade form the background to many commercial disputes, although only rarely are they the direct subject of litigation. Stephen acted in the following cases where they were:

Selected cases:

- ***Surzur Overseas Ltd v Koros*** [1999] 2 Lloyd's Rep. 611 (CA), for the plaintiff, Surzur (a subsidiary of Société Generale). The saga began with an application for a world-wide Mareva injunction (for c. US\$54 million) over the assets of the Blue Flag Navigation Group and of its principal, Mr Nicholas Koros, to secure outstanding loans. (The reported decision arose from a second action, alleging a conspiracy to defraud the plaintiff by (among other things) misleading the English High Court into varying that injunction using forged documents and false and perjured affidavits.)
- ***Kredietbank v Midland Bank; Karaganda Ltd v Midland Bank*** [1999] Lloyd's Rep. Bank 219 (CA), for the plaintiff, Karaganda Ltd. This letter of credit case concerned the requirement under UCP 500 for tender of original documents. The Court of Appeal held (notwithstanding the terms of Art. 20(b) of UCP 500) that a document created on a word-processor, printed on a laser-printer, but not "marked as original" was nevertheless an original (cf *Glencore v Bank of China* [1996] 1 Lloyd's Rep. 135). A Petition to the House of Lords was refused.

Commercial Litigation

The following cases do not fall easily into any of the more specialised areas of practice referred to above; and might therefore be considered as general "commercial litigation":

- Since 2013 Stephen has been acting, on the instructions of Highgate Hill Solicitors, for large numbers of English buyers of holiday homes, promised to be built in Cyprus. Allegations of mis-selling are made against various defendants, including the lending banks. The English buyers claim to be "consumers" for jurisdictional (and other) purposes. In the lead case, ***Ackerley v***

Alpha Panareti, a significant jurisdiction hearing was scheduled for June 2014; but the parties obtained an adjournment to allow settlement discussions to take place.

- **Poseidon Freight Forwarding Co. Ltd. v Davies Turner Southern Ltd.** [1996] 2 Lloyd's Rep. 388 (C.A.). The Court of Appeal held that reasonable notice of trading conditions had been given, albeit that the terms, referred to on the face of documents as printed on the reverse, were not transmitted by fax.

International Arbitration

Much of Stephen's practice is concerned with arbitrations, and he is therefore familiar with the law relating to arbitration, including the mechanisms for challenging jurisdiction and the procedures for challenging, and resisting challenges to, arbitration awards.

Selected cases:

- **CMA-CGM S.A. v. Beteiligungs-Kommanditgesellschaft MS "Northern Pioneer" Schiffahrts-gesellschaft M.B.H & Co** [2002] EWCA Civ 1878 [2003] 1 WLR 1015 (CA). Stephen was instructed by Holman Fenwick & Willan for the Respondent owners, who successfully resisted an application for leave to appeal from an arbitration award. The arbitrators had concluded that German participation in the NATO air operations over Serbia and Kosovo did not constitute "involvement in war", and the charterers had not been entitled to cancel under the war clauses in four long-term time charters. This was the first case in which the Court of Appeal considered the principles by which leave to appeal may be granted under s. 69 of the Arbitration Act 1996 (cf. the *Nema* Guidelines).
- **Westacre Investments Inc. v Jugoimport SDPR Holding Company Ltd and others** [2000] QB 288 (C.A.); acting for the Defendants (the former Yugoslav military sales and procurement agency) on the instructions of Holman Fenwick & Willan. This arms trading case raised the issue of whether enforcement of a Swiss arbitration award would be contrary to English public policy (Arbitration Act 1975, Section 5(3)). The Defendants maintained that the underlying contract was to procure influence over, or to pay bribes to, Kuwaiti government officials. The Court of Appeal (by a majority) held that even if this was so, and even if the award had been obtained by fraud, it would still be enforced where the Defendants had had an opportunity of putting these matters before the Swiss arbitral tribunal. A Petition for leave to appeal to the House of Lords was rejected: [1999] 1 WLR 1999.
- **Excess Insurance v Mander** [1997] 2 Lloyd's Rep. 119 (Colman J), for the claimant reinsureds. This is a leading case on the incorporation of arbitration clauses into retrocession agreements by reference to the underlying reinsurance contract. Held, that general words of incorporation were ineffective to achieve this.
- **Pan Atlantic Group Inc. v Hassneh Insurance Co. of Israel** [1992] 2 Lloyd's Rep. 120 (C.A.). An arbitration agreement required the arbitrators to be executive officials in insurance or reinsurance companies. Mr John Butler was appointed, but then retired and became a consultant to a firm of solicitors. Held, he was still eligible to act, since he had been qualified when appointed.

Jurisdiction / Conflict of Laws

This is an area of notorious difficulty and complexity. Stephen has acted in a number of cases involving the interaction of the jurisdiction rules in the Jurisdiction Regulation (EC) 44/2001, the Lugano Convention, the Brussels Convention, and the CMR, as well as the common law rules.

Selected cases:

- Since 2013 Stephen has been acting, on the instructions of Highgate Hill Solicitors, for large numbers of English buyers of holiday homes, promised to be built in Cyprus. Allegations of mis-selling are made against various defendants, including the lending banks. The English buyers claim to be “consumers” for jurisdictional (and other) purposes. In the lead case, **Ackerley v Alpha Panareti**, a significant jurisdiction hearing was scheduled for June 2014; but the parties obtained an adjournment to allow settlement discussions to take place.
- **Royal and Sun Alliance and another v MK Digital and others** [2006] EWCA Civ 629, [2006] 2 Lloyd’s Rep. 110 (CA) acting (ultimately unsuccessfully) for claimants seeking to sustain English jurisdiction in relation to a claim of non-liability by a French road transport operator.
- **Mora Shipping v Axa** [2005] EWCA Civ 1069, [2005] 2 Lloyd’s 769 (CA); acting for claimants asserting that a claim under a general average guarantee given by European insurers was subject to English jurisdiction.
- **Standard Steamship Owners Protection & Indemnity Association v GIE Vision Bail** [2004] EWHC 2457 (Comm), [2005] Lloyds’ Rep. IR 407 (Cooke J); for Louis Duty Free Shops, an operator of shopping concessions on Festival Cruise Lines vessels. Cover for its employees had been placed by Festival’s brokers with a P&I Club, which (on Festival’s default) claimed against Louis Duty Free Shops for all unpaid calls. The jurisdictional dispute centred on whether an exclusive jurisdiction clause in the Club’s Rules expressed as binding on “Members” was also binding on Louis Duty Free Shops as “Joint Entrant”.
- **Siboti K/S v BP France** [2003] EWHC 1278 (Comm); [2003] 2 Lloyd’s Rep. 364 (Gross J): instructed by Clyde & Co. for the Defendant, BP France, which successfully asserted its right to be sued in its country of domicile (France). The case turned on English and European law on the incorporation of a charterparty jurisdiction clause into a bill of lading.

Other (Miscellaneous)

Selected cases:

- **In re Medicaments** (2000): Stephen was instructed by Cameron McKenna for the respondent pharmaceutical associations, in this, the last case in the Restrictive Practices Court. The Director-General of Fair Trading challenged the practice of resale price maintenance (RPM) on branded “over-the-counter” medicines (a practice which had been adjudged to operate in the public interest in 1970). The first trial had to be abandoned after it became apparent that there was a real risk that one of the lay members of the Court might be biased: see [2001] 1 WLR 700 (C.A.). (At the second trial the pharmaceutical associations withdrew their opposition to the Director-General’s challenge.)
- **Steedman v Scofield** [1992] 2 Lloyd’s Rep. 163 (Sheen J). This personal injury case resulted from a collision between a speedboat and a jet-ski. Held that a jet-ski was not a “vessel used in navigation”, so that the two-year limitation period under the Maritime Conventions Act 1911 was not applicable.

Arbitration & Mediation

Stephen accepts appointment as an arbitrator and mediator. Please refer to his clerks.

Memberships

The Commercial Bar Association (COMBAR)

The London Common Law and Commercial Bar Association (LCLCBA)

The British Insurance Law Association (BILA)

Education

Stephen read jurisprudence at Worcester College, Oxford University, where he took a first in the BCL in 1986. He joined 7KBW in 1988, following the completion of his pupillage, and he has since practiced in these Chambers across a wide spectrum of commercial law. In 2001 “The Lawyer” magazine identified him as one of its top ten juniors at the commercial bar. He took silk in 2006.

Languages: French.