



## Claudia Wilmot-Smith

Called: 2008

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Claudia has a broad and international commercial practice, covering banking and finance, international trade, professional negligence, cross-border insolvency, shipping, and insurance and reinsurance.

She has appeared as sole and junior counsel in the Court of Appeal, High Court (primarily in the Commercial Court and Chancery Division), and before arbitral tribunals under the rules of a range of international organization rules. Many of her cases raise conflict of laws issues, and she is experienced in obtaining, and resisting applications for, anti-suit and anti-enforcement injunctions.

### Commercial Dispute Resolution

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Claudia has experience across a broad range of commercial areas, including banking and finance the sale of goods and international trade; commercial fraud; agency; injunctions; service out of the jurisdiction and jurisdictional disputes; and cross-border insolvency.

She has appeared as both sole and junior counsel in the Court of Appeal and High Court, as well as in arbitration proceedings.

Many of her cases involve an international element, and she frequently deals with conflict of laws issues in both the EU and non-EU context. She has experience seeking and resisting applications for anti-suit and anti-enforcement injunctions, and was recently instructed on an appeal to the Court of Appeal against her client's successful resistance to an application for an anti-suit injunction on the grounds of delay, in **The Kishore** (as junior to Simon Croall QC). The case settled shortly before the hearing.

She has also been instructed in actions proceeding in a number of different jurisdictions, including the Cayman Islands and Jersey.

She has been instructed by major banks to advise and act in a number of disputes involving allegations of fraud, and advise on and defend restitutionary claims raising issues involving breach of fiduciary duty; tracing; the enforcement of property rights; and resulting and constructive trusts.

She has a particular interest in commercial remedies, including developments in the law of damages, and the availability of restitution of unjust enrichment; and has appeared in leading cases and published articles in these fields.

Illustrative cases include:

- Acting for charterers (as junior to Nigel Jacobs QC) defending an arbitration claim for commission payments alleged to have been obtained by fraud and/or in breach of fiduciary duty. Charterers' defences raise issues relating to the proper law of agency agreements, illegality, breach of fiduciary duty, and the consequences of a range of civil wrongs.
- **Joseph v. Farrer** a professional negligence claim against a firm of solicitors, in which Claudia (as junior to N Randall QC of Matrix) acted for a claimant alleging professional negligence by a firm of solicitors instructed to procure payments from a discretionary trust. The claim raised issues relating to the scope of solicitors' retainer, and the circumstances in which duties of care can be owed to non-parties to a retainer.
- Being instructed (as junior to Stephen Cogley QC) in an urgent application to protect her client's position in the international insolvency context, whilst allowing it to continue to pursue its claims in England and Wales. The case involved issues under the UNCITRAL Model Law on Cross-Border Insolvency and the Cross-Border Insolvency Regulations 2006
- Acting in a two week arbitration (led by Luke Parsons QC) where she acted for Owners who successfully enforced a charterers' obligations under a guarantee. The dispute involved conflicts of laws issues, agency, authority, and the applicability and enforceability of Chinese exchange control regulations.
- **Rubenstein v. HSBC Bank Plc** [2012] EWCA Civ 1184 (as junior to Stephen Cogley QC), an appeal to the Court of Appeal on a

financial services mis-selling claim. The case considered issues concerning the scope of a financial adviser's duty of care, as well as issues of foreseeability, remoteness and causation in the context of market losses. Since then she has been instructed by financial advisers to advise and act in financial services misselling claims.

- Instructed (as junior to Stephen Thompson QC of XXIV Old Buildings) to resist an application by the Secretary of State to wind up companies on public interest grounds. The Secretary of State alleged that it was in the public interest that the companies be wound up, because their business model relied on fraudulent sales tactic and/or habitual misrepresentation, such that it was just and equitable that the companies be wound up. The companies denied making misrepresentations. The case included allegations of fraud, and involved detailed expert evidence on land values, and investments in land.
- **Glencore Energy (UK) Ltd v. Sonol Israel Ltd** [2011] 2 Lloyd's Rep 697, a case considering the proper construction of demurrage provisions in commodities contracts, and whether such provisions constitute a free-standing damages regime, or provide for an indemnity.
- **Vitol v Capri Marine Ltd** [2010] EWHC 458 (Comm) - Led by Luke Parsons QC and Poonam Melwani QC, Claudia successfully resisted an application to restrain the Respondent from pursuing proceedings in the United States, and to set aside an order giving the Respondent permission to use documents disclosed in English litigation to aid enforcement proceedings in the United States. The case raised conflict of laws issues; issues regarding the enforcement of judgments; and questions as to the scope of disclosure orders made subsequent to judgment.

## Insurance

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Claudia has experience in a wide range of marine and non-marine insurance and reinsurance disputes, including high-level excess liability insurance on the Bermuda Form. She has experience in disputes relating to avoidance for fraud, misrepresentation and non-disclosure, and coverage disputes under professional indemnity, D&O, product and public liability insurance and reinsurance policies, and K&R policies.

She was instructed as part of a 6 strong counsel team in Markerstudy Insurance Company Limited v Endsleigh Insurance Services Limited, a substantial Commercial Court action concerning negligent claims handling across a number of books of business, which was set down for a 40 day trial before a settlement.

## Banking

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Claudia has experience in a range of banking matters including disputes relating to guarantees; loan agreements; mortgages; breach of mandate; claims arising under letters of credit; commercial fraud (including invoice fraud); and claims against financial advisers involving allegations of bad investment advice.

She is instructed by major banks to advise and act in a number of disputes involving allegations of fraud, and advise on and defend restitutionary claims raising issues involving breach of fiduciary duty; tracing; the enforcement of property rights; and resulting and constructive trusts; and by financial advisers to advise and act in financial services misspelling claims.

She has also been instructed to advise and draft proceedings in matters relating to yacht finance.

Cases include:-

- Instructed by a company to advise on remedies and options available to a company whose name was used by invoice fraudsters to obtain moneys from that company's customers.
- Instructed by a firm of financial advisers to advise and act for it in financial services misspelling claims, in particular in claims involving the alleged misspelling of the AIG Premier Access Bond.
- Acted (as junior to Stephen Cogley QC of XXIV Old Buildings) in **Rubenstein v. HSBC Bank Plc** [2012] EWCA Civ 1184 - The claim was originally brought by a consumer who suffered loss following his investment in the AIG Premier Access Bond. The Judge at first instance found that whilst HSBC had been negligent and in breach of statutory duty, the loss suffered was caused by market hysteria following the collapse of Lehman Brothers and rumours about the collapse of AIG (a company distinct from the issuer of the bond). Claudia appeared as junior to Stephen Cogley QC representing HSBC on appeal to the Court of Appeal. The case raises issues of causation, foreseeability and remoteness, and Rix LJ extensively surveyed the leading authorities, before concluding that the loss was recoverable.

## Professional Negligence

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Claudia has experience in professional negligence disputes in a wide range of contexts.

### Solicitors' Professional Negligence

- Claudia is currently instructed to advise on the merits of a professional negligence claim against a firm of solicitors who acted for ship owners during a dispute that arose with cargo interests during and relating to the performance of a charterparty. In the events that followed, owners' vessel was arrested, and owners suffered a loss. Claudia has now been instructed by owners' new solicitors in relation to the professional negligence claim.
- She appeared (as junior to Nicholas Randall QC of Matrix Chambers) in **Joseph v Farrer LLP** [2017] EWHC 2072 (Ch), a 5 day

trial of a professional negligence claim against a firm of solicitors. The case raised questions about the circumstances in which a retainer will be implied; and the circumstances in which a solicitor will be under a duty of care to a third party beneficiary of a gift he is instructed to procure, as well as the nature and scope of such a duty.

- She was instructed, first as junior to Nick de Marco of Blackstone Chambers, and subsequently as sole counsel, in a substantial professional negligence claim raised by way of counterclaim to a solicitors' claim for unpaid fees. She was instructed to draft and amend pleadings, and to consider and advise on evidence. She was due to appear as sole counsel

### Other Professional Negligence Experience

Claudia has also been instructed to draft proceedings, provide advice, and appear at mediations and trials of professional negligence claims in a wide range of contexts.

- She appeared in the Court of Appeal (as junior counsel to Stephen Cogley QC) in **Rubenstein v HSBC Bank Plc** [2013] 1 All ER (Comm) 915, representing a bank alleged to have given negligent investment advice. The case is one of the leading authorities on remoteness of damage in the negligence context.
- She has since been instructed to advise and represent financial services providers in a number of professional negligence claims arising out of the alleged mis-selling of financial products.
- Claudia was recently instructed to advise, and bring a professional negligence claim against an insurance broker who was said to have been negligent in placing a policy for a luxury yacht. Claudia was closely involved in advising during settlement discussions, which resulted in a settlement shortly before a mediation was due to take place.
- She was instructed as part of a 6-strong counsel team in *Markerstudy Insurance Company Ltd v Endsley Insurance Services Limited*, a substantial Commercial Court action concerning negligent claims handling across a number of books of business, which was set down for a 40-day trial before it settled.

### Aviation & Travel

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Claudia regularly accepts instructions in this core area of Chambers' work.

- Currently instructed as sole counsel in a dispute arising from an aircraft crash in Venezuela. In particular, she has been instructed to advise in relation to the jurisdictional issues that arose therefrom.
- Appeared as junior to Jeremy Russell QC in a multi-million dollar arbitration involving issues of liability arising out of a mid-air collision.
- Frequently acts for major airlines in cases involving liability in relation to the carriage of passengers and baggage under EC Regulation 261/2004, and the Conventions.

Claudia has also been instructed by airlines and ground handling service providers in a number of personal injury matters arising out of accidents both in aircraft and at airports.

In addition, she has represented the Civil Aviation Authority in disputes involving services performed by the CAA in its capacity as Aviation Regulator. She also acts for a number of holiday companies, advising in relation to disputes arising out of the Package Travel Regulations.

### International Arbitration

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Claudia is currently instructed in a number of arbitrations, under both the LMAA and LCIA rules. She has appeared as sole counsel in an LCIA arbitration involving a dispute over the sale of steel.

Claudia has experience in disputes relating to jurisdiction; disclosure; and confidentiality in international arbitrations and has assisted in a number of international arbitrations.

### Shipbuilding

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Claudia has been instructed in a number of shipbuilding disputes.

- Instructed (as junior to John Passmore) to appear in a ten day shipbuilding arbitration. The dispute was as to buyers' right to cancel for delay, and involved detailed consideration of technical causes for delays in construction. The case settled the day before the arbitration was due to commence.
- In 2011 Claudia spent time on secondment to a major international law firm in Hong Kong, where she worked on a wide range of matters, including a number of high-value shipbuilding disputes.
- Acted as junior counsel to Luke Parsons QC in a multi-million dollar arbitration involving 5 shipbuilding contracts. In particular, the case involved consideration of provisions entitling buyers to a guaranteed right to a refund.
- Acted as junior counsel (led by Peter Ferrer) in *Riva Bella SA v Tamsen Yachts GmbH* [2011] EWHC 1434 (Comm), a multi-million pound dispute concerning the construction and sale of a super yacht.

### Shipping

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Claudia is regularly instructed in a range of dry shipping and commodities disputes, including:

- Charterparty disputes - disputes arising under both voyage and time charters, including off-hire, laytime and demurrage and bunker disputes; and disputes involving anchor handling and towage contracts.
- Bills of lading disputes - Hague/Visby Rules issues; the incorporation of arbitration and choice of law clauses; and a range of disputes arising from the carriage of goods.
- Commodities - including disputes arising from physical delivery of sugar from the futures market; and disputes as to the proper construction of international commodities contracts.
- Carriage by road - both domestic and international carriage by road disputes

Illustrative cases involve:

- Acting for charterers (as junior to Nigel Jacobs QC) defending an arbitration claim for commission payments alleged to have been obtained by fraud and/or in breach of fiduciary duty. The claim involves expert evidence on the role of brokers in the chartering business, and legal issues relating to the proper law of agency agreements, illegality, breach of fiduciary duty, and the consequences of a range of civil wrongs.
- She was instructed (as junior to Nigel Jacobs QC) to act for owners claiming hire due under two charterparties, and two guarantees for the payment of hire. The claim raised issues relating to the construction of contracts, and the nature of guarantees / performance bonds / warranties; and effect of assignments on a guarantor's obligations under a guarantee.
- She was instructed (as junior to John Russell QC) to act for owners/insurers of a cargo of oil lost during a piracy incident off the coast of Benin, in the Gulf of Guinea. The loss occurred shortly after the Lloyd's Market Association upgraded the threat risk in parts of the Gulf of Guinea and the Nigerian Exclusive Economic Zone to the same level as the waters off Somalia. Cargo interests claimed that owners had failed to exercise due diligence to render the vessel seaworthy, and had failed to comply with the requirements of their own anti-piracy best-management practice. The case settled shortly before trial.
- She was instructed (as junior to Sean O'Sullivan QC of 4 Pump Court) in a multi-million dollar arbitration arising from the shipment of a cargo of iron ore fines. The case raises issues as to cargo safety, and the nature and scope of owners' duties in relation to the shipment of potentially unsafe cargoes.
- She appeared as sole counsel in *Glencore Energy (UK) Ltd v Sonol Israel Ltd* [2011] EWHC 2756 (Comm), where Beatson J considered the proper construction of a demurrage provision in a contract of sale.
- She is frequently instructed to act in commodities disputes under the LCIA rules. These cases often involve jurisdictional disputes.

## Academic

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Bar Vocational Course, Inns of Court School of Law (Outstanding). Graduate Diploma in Law, City University (Commendation).

Middle Temple Astbury Scholarship and Certificate of Honour. BA in Theology, Trinity College, Cambridge (Double First).

Trinity College Cambridge, Senior Scholar 2006, 2005; Junior Scholar 2004. Tripos prizes 2004-2006.

Cambridge University Theology and Religious Studies Prize 2005.

## Publications

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Unjust enrichment and the direct transfer rule: *Investment Trust Companies v. Revenue and Customs Commissioners* Int. C.R. 2017, 14(5), 368-372

The contra proferentem rule in financial litigation B.J.I.B. & F.L. 2017, 32(11), 707-710

Subrogation based on unjust enrichment: *Menelaou v. Bank of Cyprus Plc* Int. C.R. 2016, 13(3), 211-214

*In Ras Al Khaimah Investment AUthoiryta nd Others v. Bestford Development Limited LLP* (casenote) Int.C.R. 2016, 13(2), 161-164

*Construction Contracts: Law and Practice* OUP 2nd Ed., 2010.

Contributor - contributing editor for chapters on "Mistake, Misrepresentation, and Frustration" and "Procurement and the European Community".

Continuing the Interest in Interest: The Compound Interest Project De Voil Indirect Tax Intelligence, July 2009, with David Scorey.

## Memberships

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