

Arbitrators

AT 24 LINCOLN'S INN FIELDS



Damien Walker

Damien Walker has over 20 years' experience of acting in very high value and complex international commercial arbitrations and investment treaty arbitrations under all of the major institutional rules (including the LCIA, ICC, SCC and ICSID rules), as well as numerous arbitration-related applications in the English Courts. After five years as an associate in the Litigation and Arbitration Division of Herbert Smith in London, Damien joined Essex Court Chambers, completed pupillage under David Foxton QC and became a tenant in 2006. As well as acting as counsel, Damien accepts arbitral appointments under all institutional rules.

Damien's cases have involved a broad spectrum of industries and subject matters, including oil and gas, commodity sale contracts, shareholder and joint venture agreements, share purchase agreements, agency agreements, licence and franchise agreements, construction and engineering, coal and gold mining, pharmaceuticals, civil fraud and asset tracing, insurance and reinsurance, and banking and finance. He has dealt with several cases which have involved complex scientific and engineering concepts, such as computerised control systems and aerodynamics.

Damien has for many years been ranked as one of the leading juniors for International Arbitration. He has been described as being *"first rate"* and an *"outstanding"* advocate and draftsman, with a *"great legal mind"*, a *"forceful"* and *"persuasive"* style, a *"staggering work ethic"*, a *"prodigious memory"*, a *"meticulous"* approach and an *"unparalleled"* ability to *"plough through complex material"* and distil it into *"highly effective"* advocacy. Clients have commended his *"tactical judgment"*, his *"commercial acumen"*, his ability to *"listen to the client's needs"*, his desire *"to look for constructive answers and to move the client's case onto the front foot"*, and his understanding of *"the practical issues involved in managing a case"*. They have described him as *"extremely attentive"* and *"user-friendly"* – in short, *"someone you want on your side"*.

Damien has worked extensively with the leading English arbitration counsel, including Graham Dunning QC, Vernon Flynn QC, Joe Smouha QC, Steven Berry QC and

David Wolfson QC, and has acted in arbitrations before most of the leading English and international arbitrators.

While the substantive issues in Damien's cases are often governed by English law, he also has extensive experience of handling cases governed by foreign law such as, UAE, DIFC, Qatari, Australian, Manx, Cayman, French, Greek, Swedish, Ukrainian, Brazilian, Ghanaian, Syrian, Lebanese and Egyptian law.

By virtue of their international character, Damien's cases also typically involve jurisdictional battles, conflict of laws issues or questions concerning arbitral procedure, including those which give rise to arbitration-related proceedings in the English Courts.

Arbitration (including arbitration-related court applications)

- Acted for the Government of India in relation to a further series of challenges by both parties under section 67, 68 and 69 of the 1996 Act to the award which followed the remission in the previous Commercial Court proceedings: *Reliance Industries Ltd and BG Exploration and Production India Ltd v The Union of India* [2020] EWHC 263 (Commercial Court)
- Acted for the respondent, the Government of India, in resisting multiple challenges under section 67, 68 and 69 of the 1996 Act to an award rendered by a Tribunal in long-running multi-billion dollar proceedings arising out of oil and gas production sharing agreements: *Reliance Industries Ltd and BG Exploration and Production India Ltd v The Union of India* [2018] EWHC 822 (Commercial Court)
- Acted for the Panama Canal Authority in its US\$290 million claims against a series of major international construction companies (the claims were made under guarantees which were governed by English law and contain exclusive English jurisdiction agreements; the Defendants commenced arbitration proceedings in which they sought negative declaratory relief under other guarantees which were governed by Panamanian law and contained Miami arbitration agreements, and sought a stay of the English proceedings under section 9 of the 1996 Act or as a matter of case management): *Autoridad del Canal de Panama v Sacyr SA, Salini-Impregilo SpA, Jan de Nul NV, Constructora Urbana SA and Sofidra SA* (Commercial Court), see [2017] EWHC 2228 (main judgment dismissing section 9 stay application) and [2017] EWHC 2337 (whether there should be a stay pending appeal)
- Acted for Ensco Global IV Ltd in relation to applications by Samsung Heavy Industries Co Ltd concerning the dismissal of its challenge to an award under section 69 of the 1996 Act (adequacy of reasons under section 69(6); recusal; residual jurisdiction of the Court of Appeal when it is alleged that there has been unfairness in the decision-making process): *Samsung Heavy Industries Co Ltd v Ensco Global IV Ltd* (Commercial Court and Court of Appeal)
- Acting for the respondent mine owner in relation to its defence of a claim for around \$100 million by a coal trader for damages for alleged repudiatory breach of a five year offtake agreement (agreement to agree; loss of a chance; exclusion clause) (LCIA arbitration)

- Acting for the Cypriot minority shareholders (ultimately owned by Messrs Igor Kolomoisky and Gennadiy Bogolyubov) of PJSC Ukrnafta, a major Ukrainian oil and gas company, in their claims against NJSC Naftogaz of Ukraine, the national oil and gas company of Ukraine and majority shareholder in PJSC Ukrnafta (the claims are made under a shareholders agreement which is governed by English law and contains an LCIA arbitration agreement; the enforceability of the arbitration agreement was unsuccessfully challenged by Naftogaz on various grounds) (LCIA arbitration, in the public domain)
- Acted for insurers in their application for an anti-suit injunction to restrain insureds from pursuing their US\$550 million claims in the Brazilian courts in breach of an agreement for London arbitration (governing law of an arbitration agreement where there is no express choice of law but an English seat; enforceability of an agreement to mediate; interpretation and reconciliation of an arbitration agreement and an exclusive jurisdiction clause): *SulAmerica & ors v Enesa & ors* [2012] EWHC 42 (Commercial Court), affirmed [2012] EWCA Civ 638 (Court of Appeal)
- Acted in relation to a successful application to the LCIA Court challenging a party-appointed arbitrator's appointment on the ground of circumstances giving rise to justifiable doubts as to his impartiality (LCIA arbitration)
- Acted in a case involving issues arising out of the purported commencement of arbitration proceedings against companies which had been dissolved, and the purported tolling of limitation periods on behalf of those companies following their dissolution (LMAA arbitration)
- Acted for Central Asia Minerals Ltd, Ratel Group Ltd and CGA Mining Ltd in a dispute against Westchester Resources Ltd in which the former commenced arbitration proceedings in London seeking negative declaratory relief, and the latter commenced judicial proceedings in Ghana (anti-suit injunction from the Tribunal to restrain the pursuit of the Ghanaian proceedings; claims for damages and a West Tankers indemnity for breach of the arbitration agreement; application for a stay of the Ghanaian proceedings, which was opposed on the grounds of non-justiciability) (LCIA arbitration, in the public domain)
- Acted for Invensys Systems Inc and Invensys Systems Italia SpA in a dispute against members of the Mytilineos Group in which the former commenced Belgian arbitration proceedings against their contractual counterparty seeking negative declaratory relief, but the latter, attempting to circumvent the arbitration agreement, procured the commencement of judicial proceedings in Greece by members of the Group which were not party to it (application for a stay of the Greek proceedings; responding to preliminary objections to the Tribunal's jurisdiction) (ICC arbitration, in the public domain)
- Acted for the claimant buyers in their application for an anti-suit injunction to restrain the respondent yard from pursuing Chinese proceedings brought in breach of a London arbitration agreement: *Spliethoff v Rongcheng Xixiakou Shipyard Co Ltd* (LCIA arbitration, in the public domain)
- Acted for US insurers, against whom negative declaratory proceedings had been commenced by reinsurers in London, in their application to set aside service out (construction of reference to "Service of Suit Clause" in

reinsurance contracts; forum conveniens principles in service out context): BAIC & ors v OneBeacon America (Commercial Court)

- Acted for a claimant in relation to its application for an anti-suit injunction to restrain the respondent from pursuing Indian proceedings brought in breach of a London arbitration agreement (arbitration)
- Acted for claimants in two different sets of proceedings in relation to their applications for orders under section 18 of the 1996 Act to complete the constitution of tribunals
- Acted in relation to a dispute as to whether a party had waived its rights under an arbitration agreement by participating in foreign judicial proceedings (arbitration)
- Various other applications under the 1996 Act

Banking & Financial Services

- Acting for the Panama Canal Authority in its US\$290 million claims against a series of major international construction companies (proper interpretation of guarantees governed by English law): *Autoridad del Canal de Panama v Sacyr SA, Salini-Impregilo SpA, Jan de Nul NV, Constructora Urbana SA and Sofidra SA* (Commercial Court), see [2017] EWHC 2228 (Commercial Court)
- *Deutsche Bank AG v Vik*: acted for the bank in relation to its restitutionary claim to recover money paid by to Vik by mistake (Commercial Court)
- Acted in relation to a claim by Shinhan Bank to enforce a letter of comfort against a syndicate of South Korean banks (Commercial Court)
- Acted in a claim against agents in respect of errors made in the allocation of shares following an IPO

Commercial Dispute Resolution

- Acting for the first defendant, Mr Mohammad Hilal Salim Bin Tarraf, in relation to his application to set aside registration of a default judgment of the Ontario Court under the Foreign Judgments (Reciprocal Enforcement) Act 1933, and in response to the claimant's challenge to the 1933 Act under the Human Rights Act 1998 on the basis that it is incompatible with Article 6(1) and Article 1 of Protocol 1 of the European Convention on Human Rights (High Court)
- Acted for DP World and DP World (Sokhna) in defence of claims by Platinum Services Company for unlawful means conspiracy, inducing breach of contract and defamation arising out of the termination of contracts concerning the provision of services at Sokhna Port, Egypt (Dubai World Tribunal, in the public domain)
- Acted for the defendant in relation to claims brought against it under a licensing agreement pertaining to the use of the name of an international sportsman in connection with the marketing of a major real estate development (ICC arbitration, confidential)

- Acted for Play LA Inc in its claim against multiple defendants for repudiation of a share purchase agreement concerning the purchase and sale of a majority shareholding in NFC Data Inc (an online gaming company) (BVI litigation)
- Acted for Airbus S.A.S in defence of claims by Aviation Partners Inc, provisionally quantified at in excess of US\$1 billion, for alleged misuse of confidential information provided under a Non Disclosure Agreement in connection with the development of the winglets for the A320 family of aircraft (ICC arbitration, in the public domain)
- Acted for Invensys Systems Inc and Invensys Systems Italia SpA in a dispute against members of the Mytilineos Group in a case concerning the operation of a high-tech computerised control system (DCS) at a cogeneration power plant in Greece and an incident at the plant in which substantial damage occurred to turbines (ICC arbitration; Greek governing law)
- Acted in arbitration proceedings concerning a major construction and engineering project in Estonia (ICC arbitration)
- Acted for the UAE subsidiary of a UK company in defence of claims brought by a Qatari company for commission alleged to be due under consultancy and sponsorship agreements (ad hoc Doha arbitration; Qatari governing law)
- *Bassam Y Alghanim v Kutayba Y Alghanim*: acted in the worldwide proceedings between the Alghanim brothers concerning the division of their billion dollar business empire, including English proceedings concerning email hacking
- *ITPU Holdings Ltd v Sophos Public Listed Company*: acted for the minority shareholder in connection with the sale of Sophos by the majority shareholders to a third party; enforcement of pre-emption rights; resistance of attempt to enforce drag rights; opposition to re-registration of the company (Commercial Court)
- Acted in a matter concerning the enforceability of a “Poison Pill” provision which had been inserted in an agreement between a company and its preferred suitor in an attempt to discourage a hostile takeover by a third company
- Acted in a matter concerning the interpretation of a “Make Whole” provision in a share sale agreement
- *JND Dairies Ltd v Johal Dairies Ltd* [2010] EWCA 348: acted for the successful respondent on an appeal in which it was alleged that the trial judge had closed his mind to the appellant’s case (Court of Appeal)
- *Tesco Holdings Ltd v Indigo Ltd & ors*: acted for Indigo and the Spicerhaart Group in their dispute with Tesco concerning a joint venture to develop the internet estate agency i-Sold.com (Commercial Court)
- *Laura Ashley v L’Oreal*: acted for the claimant in relation to its claim for wrongful termination of a 20 year licensing agreement (ICC arbitration, in the public domain)
- Acted in relation to a claim by an agent for commission in respect of his introduction of two companies in the pharmaceutical industry

- Acted in relation to a dispute between two publishing houses concerning royalty payments
- Acted in relation to an attempt by an employment agency to recover unpaid fees from various NHS trusts
- Acted in relation to a dispute concerning the ownership of the original Darth Vader costume

Energy & Natural Resources

- Acting for the Cypriot minority shareholders (ultimately owned by Messrs Igor Kolomoisky and Gennadiy Bogolyubov) of PJSC Ukrnafta, a major Ukrainian oil and gas company, in their claims against NJSC Naftogaz of Ukraine, the national oil and gas company of Ukraine and majority shareholder in PJSC Ukrnafta (the claims are made under a shareholders agreement which is governed by English law; the enforceability of the agreement is challenged by Naftogaz on various grounds) (LCIA arbitration, in the public domain)
- Acted for an international gold mining company in its claim to enforce an option agreement concerning mining rights relating to a site in the Caribbean (LCIA arbitration, confidential)
- Acted for Central Asia Minerals Ltd, Ratel Group Ltd and CGA Mining Ltd in a dispute against Westchester Resources Ltd which involved claims for US\$2.7 billion for breach of contract and fraudulent misrepresentation which arise out of a joint venture agreement concerning a gold mining tenement in Ghana (LCIA arbitration, in the public domain; Ghanaian governing law)
- Acted for Botas International Ltd (a Turkish state entity) in its claims worth approximately US\$2.5 billion against a consortium led by BP arising out of the host government and operating agreements in respect of the Baku-Tbilisi-Ceyhan Pipeline (ICC arbitration, in the public domain)
- *Rosukrenergo v Naftogaz*: acted for Rosukrenergo (a JV between Gazprom and Centragas) in its claims worth approximately US\$5 billion against the Ukrainian national gas company, Naftogaz, concerning the supply of gas to and through Ukraine, the switching off of the gas supply by Gazprom, and the misappropriation of gas by Naftogaz (Stockholm arbitration, in the public domain; Ukrainian and Swedish governing law)
- *Proton Bank S.A. v Greenoak Renewable Energy Ltd*: acted for Proton in relation to its claims against GRE arising out of a joint venture to develop a windfarm in the North Sea (Commercial Court)
- Acted for a claimant in a dispute about rights in relation to an unincorporated joint venture concerning a gold mine in Africa (LCIA arbitration)
- Acted for the claimant in a dispute between joint venture partners in relation to the exploitation of rights to oil fields in west Africa (LCIA arbitration)

Insurance & Reinsurance

- Acted for the insured (a major pharmaceutical company) in its claim against its insurers pursuant to a Bermuda form policy (allocation of settlement amounts and defence costs between covered and uncovered claims, and between insured and uninsured parties) (London arbitration, confidential)
- A number of disputes involving issues such as avoidance for material non-disclosure, coverage and proof of loss

International Trade & Transport

- Acting for the respondent mine owner in relation to its defence of a claim for around \$100 million by a coal trader for damages for alleged repudiatory breach of a five year offtake agreement (agreement to agree; loss of a chance; exclusion clause) (LCIA arbitration)
- Acted for the claimant in a dispute as to whether or not a price renegotiation clause in a long term contract for the sale of alumina had been triggered (LCIA arbitration)
- Acted for the claimant seller in an action for damages for repudiatory breach of a contract for the sale and purchase of coal (LCIA arbitration)

Investment Treaty Arbitration

- Acting for the Cypriot minority shareholders (ultimately owned by Messrs Igor Kolomoisky and Gennadiy Bogolyubov) of PJSC Ukrnafta, a major Ukrainian oil and gas company, in their US\$4.67 billion claims against the Republic of Ukraine under the Energy Charter Treaty (SCC arbitration, in the public domain)
- Acting for Gilward Investments BV, a minority shareholder of CJSC Aerosvit Airlines, formerly the leading Ukrainian carrier, in its claim against the Republic of Ukraine under the bilateral investment treaty between the Netherlands and Ukraine (ICSID arbitration, in the public domain)

Career

2006	Essex Court Chambers
2001-2006	Associate, Litigation & Arbitration Division, Herbert Smith (London)
2000	Associate to Justice Lehane, Federal Court of Australia (Sydney)
1999	Law Graduate, Litigation Division, Mallesons Stephen Jacques (Sydney)
1997	Paralegal, Litigation Division, Ashurst Morris Crisp (London)

Education

2006	Called to the Bar at Lincoln's Inn
2006	Admitted as a solicitor of the Supreme Court of England & Wales
2000	Admitted as a solicitor of the Supreme Court of New South Wales, Australia
1997-1999	Two year Bachelor of Civil Laws (BCL), St Catherine's College, Oxford; First Class Honours; Subjects included Conflict of Laws and Evidence
1996	Awarded Commonwealth Scholarship to Oxford; Awarded Kobe Steel Scholarship to Oxford
1991- 1996	Bachelor of Laws, University of Sydney; First Class Honours (placed in top five in year); Prize for Commercial Equity
1991-1994	Bachelor of Arts (Economics Honours), University of Sydney; First Class Honours and University Medal (first in year)
1989	Higher School Certificate, St Joseph's College, Hunters Hill (Sydney)