

# ESSEX COURT CHAMBERS

BARRISTERS



## HUW DAVIES QC

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### PROFESSIONAL PRACTICE

Huw Davies QC is an experienced advocate with “an incredibly impressive style and approach” and “very user friendly”.

He specialises as an advocate in substantial commercial disputes both domestic and international generally leading a team of junior counsel. He has acted as co-counsel with overseas lawyers on numerous occasions (India; Malaysia; New York; Singapore) and is noted as being a “very effective cross examiner”.

He appears regularly at all levels in the Courts in the UK, as well as offshore, and has appeared in many international arbitrations both in London and worldwide. He has particular experience of appearing as an advocate before the Privy Council.

Over the years he has developed expertise in a wide range of specialist areas. He is recognised as a specialist in the following fields: aviation; banking; civil/commercial fraud and cross border asset recovery; insurance and reinsurance; jurisdiction disputes (Court and Arbitration); shareholder disputes; international trade and ship building.

His clients include states and state entities, major commercial corporations and banks as well as high net-worth individuals.

He sits as an arbitrator in domestic and international arbitrations and he is also a CEDR accredited mediator.

## AREAS OF EXPERTISE

- Arbitration & related court applications
- Aviation
- Banking & financial services
- Civil Fraud/Commercial Chancery Disputes/Restitution Claims
- Commercial dispute resolution
- Energy & natural resources
- Including shipping
- Insurance & reinsurance
- Offshore litigation
- Professional negligence
- Sports law
- Telecommunications
- Unjust enrichment & restitution claims

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## WHAT OTHERS SAY

Huw is recommended in Chambers & Partners and Legal 500 in various disciplines, including Aviation, Commercial Dispute Resolution, International Arbitration and Civil Fraud.

Comments include:

**“Very, very able and incredibly user friendly”** Chambers and Partners 2015

**“A superb lawyer; so client friendly and approachable”** – Legal 500 (2014)

**“An incredibly effective advocate”** – Legal 500 (2014)

He is a counsel who presents as **“a very calm and effective leader”**. He is useful to those that use him not just because of his evident legal skills but also because he is **“eminently capable of delivering difficult advice clearly and without pomposity”** – Chambers & Partners (2013)

He is **“commercially minded and hard-working”** and is an advocate **“who adopts a hands on and collaborative approach”** – Chambers & Partners (2012)

He has a great following among instructing solicitors and earns praise for his **“smooth advocacy style, user-friendliness and tremendous track record”** – Chambers & Partners (2011)

Noted as being **“extremely able and approachable”** in the sphere of Commercial Litigation and Civil Fraud – Legal 500

In the context of his Insurance and Reinsurance practice he is referred to in the Legal 500 as being **“very approachable, responsive and pragmatic”**. He also receives praise for **“fighting**

*around issues to come up with practical solutions”.*

In the context of his Aviation practice he is referred to in Legal 500 as being rated “**very highly**” by solicitors, “**an incredibly effective advocate**” and as being “**first choice for Aviation Litigation**”.

He is said to be “**very bright and very quick to respond, drafting is excellent and he is prepared to put in the hard graft**” – Chambers & Partners.

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## EXAMPLES OF RECENT CASES

**Unaoil Ltd v Leighton Offshore Pte Ltd:** This was a dispute arising out of a substantial oil infrastructure project in Southern Iraq. Huw acted for the successful claimant in relation to its claim as a sub-contractor appointed by the defendant. The claim involved significant sums of money and issues of contractual intent/construction and quantum. The two week trial was heard before Eder J: [2014] EWHC 2965 (Comm).

**Cruz City 1 Mauritius Holdings v. Unitech Ltd & Ors:** This matter arises out of a \$300m arbitration award in favour of the claimant against Unitech. The claimant is seeking to enforce that award against Unitech (an Indian company). Huw is instructed on behalf of an interested third party (Unitech Corporate Parks, an Isle of Mann company) to protect its interests in relation to certain assets it holds. The case involves numerous issues concerning the scope of freezing/receivership/Chabra orders and hearings before Flaux J and Males J.

**Teekay Tankers Ltd v STX Offshore & Shipping Co:** This case concerns contracts for the acquisition of several oil tankers which were to be built by the defendant for the claimant (or its related entities). In total, the deal involves the construction and sale of 16 oil tankers. Huw is instructed on behalf of the claimants and is leading James Willan. The matter gives rise to an arbitration in respect of 4 oil tankers and a separate dispute in the Commercial Court under an option agreement. Issues of certainty of contract, frustration and quantum arise. The claimant was successful in resisting the defendant’s challenge to the Court’s jurisdiction: [2014] EWHC 3612 (Comm) (Hamblen J).

**AAH Pharmaceuticals Ltd v Mercury Pharmaceuticals Ltd & Ors:** Huw successfully acted for the claimant in relation to this matter which concerned an application for an interim mandatory injunction restraining the defendants from terminating a contract, and requiring them to perform the same. The contract was a pharmaceutical supply contract and extremely valuable to the claimant: [2014] EWHC 541 (Comm) (Teare J).

**Kesabo & Ors v. African Barrick Gold Plc & Ors:** This matter concerns a claim by numerous

individuals, estates of deceased individuals and their dependants arising out of shootings at a mine in Tanzania owned the defendants. Huw was brought into the case to obtain and maintain an anti-suit injunction on behalf of the claimants against the defendants to stop them from pursuing related proceedings in Tanzania. The claimants' application was successful in this regard before Simon J and Green J: [2013] EWHC 4045.

**Senergy Ltd v. Zeus Petroleum Ltd:** This was a trial in which Huw was instructed on behalf of the defendant, together with Tom Ford. The two week trial involved a claim for damages by the successful claimant in relation to the hire of a semi-submersible oil rig to drill a well in the North Sea: [2011] EWHC 3382 (Comm).

**Examples of recent Arbitration cases, which are typical of Huw's practice include:**

A series of LCIA Arbitrations relating to multi-hundred million dollar investments in property developments in an Arab State. Huw is instructed along with James Willan. The latest series of cases involves 4 separate (although similar) arbitrations, each involving a couple of hundred million US\$. The issues include allegations of fraudulent/dishonest conduct, bribery and breach of contract and issues of Qatari law.

Huw is instructed by the prospective claimants in relation to a dispute with an African State concerning the latter's threatened confiscation/theft of the claimants' oil pipeline and infrastructure. It is a highly confidential and sensitive matter.

An ICC Arbitration concerning the ownership of an oil block in Nigeria. The underlying dispute involves significant sums of money. Huw acted for the respondent in successfully challenging the jurisdiction of the tribunal. Difficult issues of Issue Estoppel and the construction of the ICC Rules and the Arbitration Act 1996 arose.

An ICC Arbitration concerning the construction and renovation of a hotel in an ex-Soviet State. Huw is instructed on behalf of the respondent, together with Anton Dudnikov. The matter has involved a challenge to the jurisdiction of the tribunal which itself raised difficult issues of conflict of laws and local law.

An LCIA Arbitration concerning the scope of reinsurance cover provided in respect of damage caused by Hurricane Katrina to an oil platform in the Gulf of Mexico. Huw acted for the claimant, leading Siddarth Dhar, in the two week hearing.

An LCIA Arbitration concerning a claim by a State airline for a significant amount of commission due in respect of tickets issued and then cancelled under a computerised reservation system operated by the respondents. Huw acted for the successful claimant, together with Jeremy Brier.

Two Ad Hoc Arbitrations concerning claims by a substantial ship-owning company against a

South Korean shipbuilding yard in respect of two shipbuilding contracts which were wrongly repudiated by the yard. Huw acted for the successful claimant in respect of both arbitrations.

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## **ARBITRATION & RELATED COURT APPLICATIONS**

Huw advises and acts in a wide range of arbitral proceedings both domestically and overseas.

He has acted as Counsel in numerous arbitrations of all types: ICC, LCIA, LMAA, Stockholm Chamber of Commerce, UNCITRAL and Ad Hoc.

He has particular experience of arbitrations in Malaysia, Singapore and Hong Kong and has acted as co-counsel in arbitrations with counsel from New York, India, Malaysia, Qatar, Azerbaijan and Norway.

Noted in Legal 500 as “*a superb lawyer; so client friendly and approachable*”.

The arbitrations in which Huw has acted cover a broad range of topics: aviation (including aviation insurance and disputes in relation to leasing agreements) insurance and reinsurance; commodities (coal and oil and gas, including contamination disputes); shareholder agreement disputes (under both English law and Indian law); share sale/warranty; credit default swap agreements; construction (particularly shipbuilding and oil rig construction); joint venture agreements.

See also by way of example the cases referred to above in the “Recent Cases” section.

Huw is regularly instructed to seek or resist interim relief in connection with arbitrations and/or to challenge the jurisdiction or awards of Tribunals.

For example:

**Telenor East v. Altime Holdings** [2011] EWHC 735 (Comm) in which Huw acted for the respondent in successfully resisting an interim injunction to restrain a US\$6.5bn acquisition transaction;

**Interprods Ltd v. De La Rue International Ltd** [2014] EWHC 68 (Comm) in which Huw acted, together with Siddarth Dhar, for the respondent in successfully resisting a challenge to an Award pursuant to ss. 67 and 68 of the Arbitration Act 1996.

Huw also sits as an arbitrator, a task he is fulfilling more and more.

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## AVIATION

Since he commenced practice in 1987 Huw's practice has always encompassed aviation matters. In this regard, his practice embraces a wide range of matters including aircraft lease disputes (including return conditions), aircraft recovery, Warsaw Convention, accidents caused by defective aircraft/helicopters and/or pilot error, aviation agency agreements, aviation insurance, regulatory requirements and the trading of airport slots at Heathrow.

He has acted as adviser to the Turkish Government in relation to the issue of direct flights between Northern Cyprus and the United Kingdom.

Recently, Huw has acted in relation to a number of aviation related arbitrations:

- An LCIA Arbitration concerning a claim by a State airline for a significant amount of commission due in respect of tickets issued and then cancelled under a computerised reservation system operated by the respondents. Huw acted for the successful claimant, together with Jeremy Brier.
- An LCIA arbitration between an aircraft owner and an airline concerning the termination of an aircraft lease and the monies due in respect thereof.
- An LCIA arbitration between another aircraft owner and an airline concerning alleged breaches of a lease agreements and the alleged defective condition on return.

Reported cases include:

### **Antwerp United Diamond v Air Europe**

Concerned the correct construction of the Warsaw Convention on limits of liability and issues of wilful misconduct: [1996] QB 317 (CA).

### **Bristows Helicopters v Sikorsky Aircraft Corp (2004)**

Claim by Bristows arising out of the crash of a Sikorsky helicopter in July 2002. In addition to technical liability issues the case gave rise to a number of jurisdiction issues: [2004] 2 Lloyd's 150 (Morison J).

### **v Airport Coordination Ltd, ex parte Guernsey (1999)**

A decision concerning the allocation of airport slots at Heathrow (Maurice Kay J).

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## BANKING & FINANCIAL SERVICES

Huw has acted for numerous lending institutions on issues concerning loan agreements, letters of credit, performance bonds and swap agreements.

Cases of note include:

### **Skipskredittforeningen v Emperor Navigation**

He acted for claimant bank in its recovery of loan monies on a summary judgment application. Issues of misrepresentation, set-off, mortgagee's obligations, UCTA 1977 and no set-off provisions: [1998] 1 Lloyd's LR 66 (Mance J)

### **Sampo Credit v Superfast Ferries (2002-3)**

He acted for claimant bank in its recovery of loan monies. Involved the unwinding of several swap agreements.

### **Depis Financial Services v Den Norske Bank (2003)**

He acted for the claimant financier in its recovery of monies due under an on demand guarantee. Concerned a number of construction issues relevant to on demand guarantee

### **PGS Shipping v Deutsche Bank AG (2006)**

He acted for the claimant lessees of certain vessels in relation to "lease tail" arrangements entered into by the defendant bank for tax purposes.

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## **CIVIL FRAUD/COMMERCIAL CHANCERY DISPUTES/RESTITUTION CLAIMS**

Huw has considerable experience of commercial cases involving allegations of fraud and conspiracy. He regularly deals with cases concerned with constructive trust claims and unjust enrichment/restitutionary claims. Many of these cases have also involved applications for freezing injunctions, disclosure orders and search orders. Cases of note include:

### **Bankgesellschaft Berlin v Makris, Emmanuel & Others (1998)**

A case concerning conspiracy to defraud in relation to loan agreements in respect of a number of vessel acquisitions. Huw conducted a 6 week trial before Cresswell J acting as lead Counsel whilst still a junior (with Paul McGrath (now QC)) for the successful claimant bank.

### **Bankgesellschaft Berlin v Zihnali (2001)**

This case concerned a conspiracy to defraud arising out of various loans provided by the

claimant bank. The case involved proceedings in England and Luxembourg and numerous applications before the Commercial Court concerning freezing injunctions, search and disclosure orders. Acted as lead Counsel (whilst still a junior) on behalf of the claimant bank.

#### **Marlwood v Kozeny (2001-2005)**

This matter concerned allegations of commercial fraud and illegal conduct arising out of the privatisation of various industries (including the oil industry) in Azerbaijan. It gave rise to proceedings in numerous jurisdictions (England, Bahamas, British Virgin Islands, Switzerland, United States) and numerous interlocutory applications concerning freezing injunctions, jurisdiction, stay of US proceedings (Gross J: [2002] CLC 132) and disclosure (Court of Appeal: [2005] 1 WLR 104). Huw was instructed on behalf of the ultimately successful defendants.

#### **Aoun v Bahri & Angelou (2001-2003)**

A dispute concerning the control and ownership of several shipowning companies and their respective vessels. The case involved issues of commercial fraud, shipping, damages, partnership and company law. Numerous interlocutory applications were heard before the Commercial Court (for example: [2002] 3 All ER 182 (Moore-Bick J)).

#### **In re X (Restraint Order) (2004)**

This case concerned an application to set aside/vary various restraint orders that had been obtained on behalf of HM Customs & Excise. The matter concerned allegations of fraudulent trading on the part of X known as “carousel trading”. Huw acted for X. The case gave rise to an important issue of construction of the Criminal Justice Act 1988 which was resolved in X’s favour: [2004] 3 WLR 906 (Davis J).

#### **Boris Berezovsky v Estate of the late Arkadi Patarkatsishvili & Others (2008-2010)**

Huw acted for the claimant in his attempt to recover substantial sums from various entities and individuals both in and outside the UK. He was involved as part of a substantial team of Counsel.

#### **Digicel Ltd v Cable & Wireless**

Huw acted for the claimant in relation to cross border allegations of, amongst other things, unlawful means conspiracy. The eight month trial took place in 2009 and gave rise to numerous interlocutory skirmishes in relation to e-disclosure and privilege: [2008] EWHC 2522 Ch; [2009] EWHC 1437 Ch; [2010] EWHC 774 Ch; [2010] 888 Ch. Whilst the claimant failed in the action Huw was successful in establishing fraudulent conduct on the part of one of the defendant entities.



## **Seller of Properties v Buyer of Properties (2012 – continuing)**

This matter involves a series of LCIA Arbitrations relating to multi-hundred million dollar investments in property developments in an Arab State. Huw is instructed along with James Willan. The latest series of cases involves 4 separate (although similar) arbitrations, each involving a couple of hundred million US\$. The issues include allegations of fraudulent/dishonest conduct, bribery and breach of contract and issues of Qatari law.

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## **COMMERCIAL DISPUTE RESOLUTION**

As noted above, Huw specialises as an advocate in substantial commercial disputes both domestic and international. His practice is split between acting as an advocate in Court and acting as an advocate in Arbitrations.

Over the years he has developed expertise in a wide range of specialist areas, and as noted throughout this CV, he is recognised as a expert in numerous specialist fields.

See further the sections above regarding “Recent Cases” and “What Others Say”.

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## **INCLUDING SHIPPING**

Shipping, shipbuilding, international trade, forward freight swap agreements and issues arising out of ship sale agreements have been a mainstay of Huw’s practice since 1987. Cases include:

### **Red Sea Tankers Ltd v Papachristidis**

This case concerned a fund’s investment in 4 oil tankers. It involved allegations of gross negligence and wilful misconduct against the fund managers and its officers and gave rise to the vexed issue of the personal liability of directors in tort. Acted for the successful defendants. [1997] 2 Lloyd’s LR 547 (Mance J).

### **Great Peace Shipping Ltd v Tsavliris Salvage Ltd (The Great Peace)**

This case concerned the wrongful repudiation of a contract for the hire of a vessel. It gave rise to important issues in relation to common mistake and judicial precedent and is now one of the seminal authorities on the law of common mistake. Huw succeeded in persuading the Court of Appeal to overrule *Solle v Butcher*. [2003] QB 679 (CA).

### **Thoresen v ES Shipping**

This case concerned a disputed ship sale agreement. Huw acted for the unsuccessful claimant. [2004] 1 Lloyd's LR 622 (Langley J).

### **Haugland Tankers AS v RMK Marine (2005)**

This case concerned the interpretation of an option agreement and whether the claimant owners had successfully exercised an option to acquire a new vessel. [2005] EWHC 321 (Langley J).

### **Teekay Tankers Ltd v STX Offshore & Shipping Co**

This case concerns contracts for the acquisition of several oil tankers which were to be built by the defendant for the claimant (or its related entities). In total, the deal involves the construction and sale of 16 oil tankers. Huw is instructed on behalf of the claimants and is leading James Willan. The matter gives rise to an arbitration in respect of 4 oil tankers and a separate dispute in the Commercial Court under an option agreement.

- Two Ad Hoc Arbitrations concerning claims by a substantial ship-owning company against a South Korean shipbuilding yard in respect of two shipbuilding contracts which were wrongly repudiated by the yard. Huw acted for the successful claimant in respect of both arbitrations.
- An arbitration between a luxury yacht builder and a high net worth individual. Huw acted for the successful claimant individual who was seeking to enforce the terms of a contract for the supply of a super-yacht (2012).
- An arbitration between a substantial cement manufacturer and a supplier of coal. The case concerned the respondent's attempt to renege on its agreement to supply shipments of coal. Huw acted for the successful claimant. The case involved difficult issues of force majeure and frustration.

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## **INSURANCE & REINSURANCE**

Huw's practice covers a broad spectrum of insurance and reinsurance matters, ranging from advising on policy wording and acting in relation to all types of insurance and reinsurance disputes. The bulk of his reinsurance related work is in arbitration. Cases include:

### **ICCI v The Royal Hotel**

An attempt by claimant insurers to avoid and recover payments previously made. A leading authority on the issue of affirmation: [1998] Lloyd's IR 151 (Mance J).

### **Clarendon v Lincoln/Federal/John Hancock**

A series of arbitrations acting on behalf of Clarendon as reinsured arising out of policies written in the 1990's covering US workers' compensation business giving rise to issues of PA spiral, carve out business, avoidance, waiver, affirmation and policy construction.

### **Equitas v Stronghold**

A series of Commercial Court proceedings and arbitrations acting on behalf of Stronghold as reinsurer. Issues included the question of whether a reinsurer is obliged to indemnify the reinsured in the context of global settlements/commutation payments.

### **Zurich Insurance v Messenger Insurance PCC**

An arbitration acting for Zurich as reinsurer. It raises the issue of a reinsurer's entitlement to avoid the reinsurance contract on grounds of non-disclosure by the reinsured (a reverse avoidance case).

### **WISE (Underwriting Agency) Ltd v GNP**

A marine reinsurance dispute acting for defendant reinsured. The case gave rise to issues of misrepresentation, non-disclosure, waiver and affirmation. Ultimately decided in defendant's favour by the Court of Appeal: [2004] 2 Lloyd's LR 483. A leading authority on waiver and affirmation.

### **College Credit v NIG**

A large credit default insurance case, acting for the claimant. Involved issues of construction, coverage, misrepresentation, non-disclosure and waiver. Resolved in the claimant's favour: [2005] Lloyd's Rep IR 5 (Gross J).

### **Thor Navigation Inc v. Ingosstrakh Insurance Co Ltd (Thor II)**

This case concerned a marine insurance policy, the central issue being whether the policy in question was valued or unvalued with subsidiary issues of estoppel, mistake and rectification. Huw acted for the successful Russian insurers. A leading case on each of the aforementioned issues (especially valued/unvalued and unilateral mistake): [2005] EWHC 19 (Gloster J).

### **Gjensidige v ACE**

Acted for the respondent in relation to the avoidance of certain excess of loss reinsurance contracts on the grounds of non-disclosure. Hearing took place in Oslo, Norway and involved issues of Norwegian law.

- An LCIA Arbitration concerning the scope of reinsurance cover provided in respect of damage caused by Hurricane Katrina to an oil platform in the Gulf of Mexico. Huw acted for the successful claimant, leading Siddarth Dhar, in the two week hearing. The case involved numerous technical issues as well as an important issue concerning “follow the settlements”.
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## **OFFSHORE LITIGATION**

As Huw has become more senior he has become more and more involved in offshore litigation. This is inevitable given the fact that much of his work involves focuses on commercial fraud.

He has been called to the Bar of Gibraltar and has also acted in the Cayman Islands and the BVI.

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## **CAREER**

2009 Called to the Bar of Gibraltar

2008 Admitted to the Courts of the DIFC

2006 Queen’s Counsel

1991 Essex Court Chambers

1987 1 Crown Office Row

1985 Call: Gray’s Inn

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## **EDUCATION**

1985 BVC, Council of Legal Education

1984 LLB (Hons) (First Class Honours), University College, Cardiff University

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## **AWARDS**

1986 David Karmel Scholarship (Gray’s Inn)

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1984/5 Bacon Scholar of Gray's Inn