

ESSEX COURT CHAMBERS

BARRISTERS



STEVEN BERRY KC

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PROFESSIONAL PRACTICE

Steven Berry specialises in advocacy in substantial commercial cases in the English courts and domestic and international arbitral tribunals, including ICC, LCIA, LMAA and SIAC, especially in the related fields of insurance and reinsurance, shipping, international banking, commodities and arbitration. He also acts as arbitrator in suitable cases.

AREAS OF EXPERTISE

- Arbitration & related court applications
- Banking & financial services
- Civil fraud & asset tracing
- Commercial dispute resolution
- Commercial fraud / asset recovery
- Commodity disputes
- Energy & natural resources
- Insurance & reinsurance
- International trade, transport & commodities
- Shipping & admiralty

EXAMPLES OF NOTABLE RECENT CASES

LCIA arbitration as arbitrator (ongoing), on bank credit risk insurance, involving issues of misrepresentation, non disclosure, breach of warranty.

Avonwick v Webinvest (Chancery Division and Court of Appeal, 2014), advancing claims of

US\$190 million under a Loan and Personal Guarantee by a Ukrainian party against Russian parties, against a dishonest defence of collateral oral agreement.

SIAC arbitration hearing (2014), advancing claims for debt and damages of €30 million for wrongful detention of a ship by repairers at a yard in Thailand.

LCIA arbitration hearing (2013), advancing claims for the price under and damages for breach of a contract for the sale of coal to Chinese buyers.

Otkritie v Urumov and others (Commercial Court and Court of Appeal, 2013), advancing claims of US\$170 million for conspiracies, thefts and frauds by bankers against their employer, a private Russian financial institution.

Novoship v Mikhaylyuk (Commercial Court and Court of Appeal, 2012-2014), defending claims by Russian State owned shipping companies for account of profits of US\$150 million for bribery and dishonest breach of fiduciary duty.

BP v Target (Commercial Court and Court of Appeal, 2012-2013) defending claim by charterer for restitution of alleged overpayment of freight on the basis of mistake of law and or fact.

Fiona Trust v Privalov and Intrigue Shipping v H Clarkson (Commercial Court and Court of Appeal, 2009 – 2014 and ongoing) defending claims by Russian state-owned shipping companies for over US\$800 million for theft, fraud, bribery and corruption in shipping and ship finance transactions. The case involved (among other things) tracing of assets worldwide, disputes over the applicable law and the relevant Russian law, allegations of political persecution in Russia, intimidation of witnesses, illegal evidence gathering, fraud by London shipbrokers, anti suit injunctions against duplicative foreign proceedings, and enforcement of cross undertaking in damages for wrongful freezing orders.

SIAC arbitration hearing (2012), advancing claims for overpayment and damages, and defending counterclaims for remuneration and damages, of US\$50 million, following repudiation and termination of a contract for construction of a ship in China.

Toisa Pisces (Commercial Court and Court of Appeal, 2011-2012), advancing a marine insurance claim for indemnity against breakdown, against defences of non disclosure and failure to exercise due diligence.

Yukos CIS v Yukos Hydrocarbons (High Court of the BVI and Eastern Caribbean Court of Appeal, 2010-2011), disputed claim to ownership of Yukos assets.

Korean National Insurance Corp v Allianz (Commercial Court and Court of Appeal, 2008), defending a claim by the state reinsurance company of North Korea to enforce a North Korean

judgment for €55 million in respect of a helicopter crash in North Korea.

Others of interest include

- A US\$180 million dispute over the bank financing, and forced sale, of an investment in an oil field in Azerbaijan (part of which reached the courts as *Berghoff Trading v Swinbrook*, 2008);
- an arbitration in Madrid of claims in tort governed by Mexican law for destruction of a port facility in Mexico;
- several substantial LCIA arbitrations, acting variously for the (re)insured and the (re)insurer, on political risk insurance and reinsurance policies, of claims for expropriation of Chinese energy investments; collateral Cuban sugar; Argentine energy investments; and Tajik aluminium rights;
- a jurisdictional dispute in General Motors' claims against the London parents of its US insurers in respect of asbestos claims: *General Motors v Royal & Sun Alliance* (2007);
- arbitration of a claim by Greek shipowners against Pakistan government charterers for breach of a sale port warranty, for US\$100 million for the total loss of their tanker, and indemnity against pollution claims of US\$6.5 billion dollars, arising out of a major casualty and oil spill at Karachi;
- arbitration of a claim by Greek shipowners against Korean charterers for breach of a dangerous cargo warranty, for US\$90 million for the total loss by fire and explosion of their container vessel;
- two arbitrations of disputes over importation of commodities into India;
- an arbitration, and consequent appeal to the Commercial Court, on whether the presence of rats makes cargo dangerous: *The Darya Radhe* (2009).

ARBITRATION & RELATED COURT APPLICATIONS

Advising on and acting in many LMAA, LCIA, ICC, SIAC and other arbitration tribunals and court cases on the Arbitration Acts, and acting as arbitrator.

BANKING & FINANCIAL SERVICES

Advising and acting on international banking disputes, including banking fraud eg. *Otkritie v Urumov*.

CIVIL FRAUD & ASSET TRACING

Advising on and acting in substantial fraud cases at trial and on appeal; eg. *Fiona Trust v*

COMMERCIAL DISPUTE RESOLUTION

Advising on and acting in substantial commercial disputes; eg. *Avonwick v Webinvest*.

ENERGY & NATURAL RESOURCES

Advising on and acting in oil trading and a wide range of other commodity disputes in court and in arbitration.

INSURANCE & REINSURANCE

All kinds of insurance and reinsurance disputes in the courts and in arbitration, including marine, property, business interruption, professional indemnity, product liability, political risk, film finance, and motor insurance disputes, facultative and treaty quota share and excess of loss reinsurance disputes, and Lloyd's disputes.

Notable earlier cases include *Pan Atlantic v Pine Top* (1995, the leading case on avoidance for non disclosure and misrepresentation); *Kastor Navigation v Atlantic Bank of New York* (2003, marine, CTL and ATL claims for fire and sinking; costs of issues); *NOCZIM v Sturge* (1991, meaning of "terrorism" and "insurrection").

INTERNATIONAL TRADE, TRANSPORT & COMMODITIES

Advising on and acting in court cases and arbitrations on international trade disputes (including oil trading and commodities), international banking disputes (including letters of credit, bank guarantees, loan facilities and agreements) and all kinds of interlocutory and jurisdiction disputes (including stays of proceedings, anti suit injunctions, proper law disputes and freezing orders).

See also Banking and Financial Services, Insurance and Reinsurance, Shipping .

SHIPPING & ADMIRALTY

Advising on and acting in all kinds of dry shipping disputes, including bill of lading, charterparty, ship sale and shipbuilding as well as marine insurance disputes, in the courts and in arbitration.

Earlier court cases of interest include *Kastor Navigation v Atlantic Bank of New York* (Commercial Court and Court of Appeal 2003, total loss); the *Starsin* (200, Commercial Court and Court of Appeal, identity of carrier and title to sue in tort); the *Ines* (Commercial Court, 1995, misdelivery to port authorities); the *Bijela* (HL, 1994, charterparty, general average); the *Dominique* (1989 HL, the leading case on the right to freight).

CAREER

2002 Silk

1985 Tenant, Essex Court Chambers

1984 Call: Middle Temple

EDUCATION

1984 BVC, Inns of Court School of Law

1983 BCL (First Class Hons), Exeter College, Oxford University

1982 BA (Jurisprudence) (First Class Honours), Exeter College, Oxford University

1974-8 High School of Stirling

AWARDS

1984 Eldon Law Scholar, Oxford University

1984 Astbury Scholar, Middle Temple

1980 Open Scholar (on award of distinction in Law Moderations), Exeter College, Oxford University