

James Watthey

Call 2000



James Watthey is an experienced commercial barrister handling heavyweight international arbitration and litigation.

In addition to LMAA, LCIA, SIAC, ICC and other institutional and ad hoc arbitrations all around the world, he also frequently handles disputes in the Commercial Court, Circuit Commercial Court and the Admiralty Court, as well as other divisions of the High Court. He has particular experience of international actions involving jurisdictional disputes.

He is a busy and in-demand Arbitrator and expert in English law in foreign proceedings. His arbitration practice includes both substantive proceedings and challenges under the Arbitration Act 1996, on grounds such as want of jurisdiction, apparent bias, serious irregularity and errors of law.

As a member of the Attorney-General's "A" Panel, he is appointed to advise and act in some of the Government's most sensitive and complex legal disputes.

James has a broad commercial practice, with particular specialist expertise in:

- Shipping
- Shipbuilding, Offshore Construction & Energy
- Trade, Commodities & International Arbitration
- Insurance & Reinsurance
- Professional Negligence
- Banking & Finance

Shipping

James regularly acts in charterparty and bill of lading disputes, contentious sale and purchase, shipbuilding contracts, piracy, forward freight agreements (FFAs), claims arising out of carriage of goods by rail, air and road, and commodity sale and purchase agreements, and crew/passenger claims. He also has experience of Admiralty matters such as arrests, collisions, groundings and ship mortgage claims, and in marine insurance and superyacht claims. He also has expertise in aviation matters. For marine insurance cases, see the "Insurance" section.

Featured Shipping cases

- **“Storm Emma” Limitation Claim**, *Holyhead Marina v Farrer & ors* on the meaning of “dock” under s.191 Merchant Shipping Act 1995 and whether the owners of Holyhead Marina were entitled to limit their liability by bringing the marina within that definition. Sole Counsel in the Admiralty Court and led by Nigel Cooper KC in the Court of Appeal.
- **Greek Owner v Middle-eastern Charterer** Successful sole counsel in a final LMAA hearing concerning a failure to redeliver a vessel in accordance with a firm notice of redelivery. This concerned 3 novel points of law: (1) the effect of a firm notice of redelivery (2) the effect of a final voyage clause in this situation and (3) the applicability or otherwise of The Achilleas where the breach is the specific failure to redeliver on the stated date.
- **Private Part 62 hearing, unrep.** Obtained a post-Brexit anti-suit injunction against Greek proceedings, retraining their use for anything other than security in support of London arbitration. At the return date, the Respondent unsuccessfully sought to persuade the Judge that EU law principles still affected his powers and then agreed to give undertakings to a similar effect.
- **“HAPPY LUCKY” v “FESCO VOYAGER”** [2020] 2 Lloyd’s Rep 317. Appearing alone against a Silk, James successfully resisted an antisuit injunction application which was brought on the purported basis that the parties had agreed to exclusive English jurisdiction under the Admiralty Solicitors Group’s ASG Form. The Court found that the putative agreement had not been finalised, contrary to the practice of P&I Club claims executives and Admiralty lawyers.
- **Greek Owners v Singaporean Charterers** [2020]. James was appointed jointly by the parties as an agreed independent expert charterparty barrister to issue a binding determination on the appropriate daily rate for the calculation of damages. This involved interesting questions of causation and foreseeability requiring detailed understanding of market practice.
- **Crowther v Crowther / Castle Ship Management**. Co-counsel in the Family Division [2020] EWHC 1037 (Fam), led by Charles Hale KC in the Court of Appeal [2021] Lloyd’s Rep. Plus 60, and sole Counsel in the Admiralty Court (unrep.). James was first involved when an urgent without notice freezing injunction was issued against the Castle Group’s ships in support of Divorce proceedings. The injunction was successfully set aside before Holman J who praised James’s “great expertise in Admiralty law”. Eventually it was re-imposed on varied terms by the Court of Appeal. Proceedings were drafted by James in the Admiralty Court to have Castle declared as the owners of the ships and these were eventually transferred to be tried in the Family Division.
- **Lambert v VJ Glover Ltd (“The REJOICE”)** [2020] 1 Lloyd’s Rep Plus 21 An Admiralty Court claim arising out of a catastrophic hand injury to a share fisherman, which involved a sensitive Fundamental Dishonesty application and well as requiring deep understanding of matters of seamanship and vessel management. James successfully defeated the claim.
- **Close Brothers v AIS Marine 2 Ltd (“OCEAN WIND 8”)** [2019] 1 Lloyd’s Rep. 510. A Admiralty Court claim for a substantial shortfall under a mortgage over an offshore support vessel in which the defence (which James successfully defeated) was that the vessel was sold at an undervalue.

- **Deep Sea v Monjasa A/S (“The ALHANI”)** [2018] 2 Lloyd’s Rep. 563. The first decision on whether claims for wrongful misdelivery without presentation of bills of lading are caught by the Hague Rules time bar. Led by Stephen Kenny KC.

- **A v B (arbitration claim – contractual terms – foreign language)** [2018] EWHC 1370 (Comm) Successfully challenging a decision by an LMAA Tribunal that they did not have jurisdiction. The Court decided that a Russian arbitration clause in an Asbatankvoy form which was translated as “*Arbitration proceedings – London international arbitration court*” simply required reference to London arbitration and not to the LCIA. Following appointment of LMAA Full Members and their acceptance on LMAA Terms, the reference was to proceed on the basis of those terms.

- **Austen v Pearl Motor Yachts Ltd** [2014] EWHC 3544 (Comm): A technical dispute concerning the cause of failure of the vessel’s hull, which gave way after light grounding. The trial, before Eder J, involved complex expert evidence.

- **Sun United Maritime Ltd v Kasteli Marine Inc (The “IMME”)** [2014] 2 Lloyd’s Rep. 386: An appeal under section 69 and jurisdictional challenge under section 67.

- **Summit Navigation v Generali Romania (The “BERIL 1”)** [2014] EWHC 398 (Comm); [2014] 1 W.L.R. 3472, a relief from sanctions application after which James subsequently won at trial, and recovered an indemnity for Turkish shipowners against their hull underwriters.

- **Med Marine v Castillo Schiffahrts-GMBH & CO KG MS (The “CONTI CARTAGENA”)** [2014] 2 Lloyd’s Rep. 162: A decision on the proper method of construing apparently conflicting jurisdiction clauses. The claim is for a declaration of non-liability for damage suffered in towage operations in Turkey.

- Defending a cargo claim in arbitration, arising out of shipment of bananas to Syria that are said to have suffered chilling damage.

- Advising on the right to an indemnity and/or apportionment under the Inter-Club Agreement and the proper means of claiming the same.

- A charterparty dispute in LMAA arbitration, arising out of the refusal of the Master to load iron ore that was said to present a danger of liquefaction.

- A GMAA arbitration in Hamburg arising out of the shipment onboard deck of a superyacht, which was damaged during the lifting process.

- **“TE HSING”**[2012] EWHC B16 (Comm); Lloyd’s Law Reporter, 21 Sep 2012; [2012] All ER (D) 115 (Sep); NLJ: The Commercial Court clarified the rules on what is required in order to obtain security for costs against a party that is resident outside the EU. The case was then settled, and James’s Chinese shipowner clients obtained a full indemnity from their hull underwriters in respect of the CTL of the vessel.

- **Barnes v the Charterers of the Motor Vessel (The “SNOW BUNTING”)**: The Admiralty Court clarified and

interpreted the Regulations that govern liability for collisions in the non-tidal Thames.

- **George v Coastal Marine 2004 Ltd (The “BON AMI”)**: Successfully defending an unsafe port claim against wharfingers in a 3 day trial before Gloster J. The decision establishes the duty of care for wharfingers who own and control the quay wall but not the tidal foreshore on which moored vessels come to ground at low water.
- A dispute between hull underwriters and owners as to whether the H&M policy covered ransom to be paid to pirates for the release of a bulk carrier, in circumstances where a specific K&R policy was in place.
- A helicopter charter dispute, in which it was alleged that the charterer’s pilot caused the aircraft’s engines to overheat and suffer irreparable damage.

Shipbuilding, Offshore Construction & Energy

James’s work has a particular emphasis on shipbuilding and repair, construction of dock facilities, oil and gas rig / pipeline work and energy distribution, and other large scale engineering projects. He has considerable experience of most of the common type of dispute (such as delay, extension of time, termination), the technical aspects of ship design, repair and construction, and of enforcement of refund guarantees.

Featured Shipbuilding, Offshore Construction & Energy cases

- Advising in a series of Supplytime charterparty disputes arising out of alleged defects with the various OSVs (including speed, consumption and geopositioning) and their equipment (including ROVs).
- Acting (against Queen’s Counsel) as sole counsel for a Spanish shipyard defending a claim in which the buyers of a new-build cancelled due to alleged delay in delivery and claimed a refund of instalments of over €39million plus interest. James’s instructions were from the bank against whom a claim lay under the refund guarantees.
- Acting as leading counsel for a Chinese shipyard in a very high value LMAA arbitration and related Commercial Court appeal. As well as claims for payment and cross-claims for delay and defects, related claims were made upon the refund guarantees in the same arbitration.
- A fatal accident suffered by a commercial diver carrying out survey and repair work at an offshore wind farm in German waters.
- A devastating injury to a chief engineer suffered during sea trials of a new-build. James acted for the Korean shipyard and handled a complex jurisdictional dispute before settling the dispute at mediation.

Trade, Commodities & International Arbitration

James advises the international commercial community in relation to the sale of goods, services and physical commodities (for derivatives, see Banking section).

Featured Trade, Commodities & International Arbitration cases

- **Biogra Trading Ltd v Sistem Ecologica DOO Srbac & Ors** [2021] EWHC 3653 (Comm). A biofuels dispute in which James successfully obtained a stay in favour of related foreign proceedings. The substantive claim in England was for damages arising from a fine imposed by Belgian customs on the basis of findings by OLAF (the EU Anti-fraud Office) about the specification and origin of the product. OLAF's procedure and findings and the legality of the fine were being challenged in civil and criminal proceedings in Belgium and in the General Court of the EU and the Commercial Court agreed that it was appropriate to await the outcome of those challenges.
- **Vitol v Beta Renewable Group** [2017] 2 Lloyd's Rep. 338. A claim by buyers of biofuel producers, who had consistently failed to supply the contractually required product. The points in dispute (as well as the right to terminate) included the time and method of acceptance of breach and the proper measure of loss, including recoverability of hedging losses.
- A complex oil trading claim in LCIA arbitration, involving disputes over performance, delivery, transshipment, termination and an allegation of defamation.
- A quality dispute in SIAC arbitration arising out of the sale and buy-back of met coke.
- An LCIA arbitration concerning the balance of payments due under an oil purchasing joint venture.
- A media services dispute concerning promotion of concerts by a well-known Islamic pop star.

Insurance & Reinsurance

James has a leading marine and non-marine insurance practice, acting for and against members of the London Market, P&I Clubs and the international insurance and reinsurance community. Before coming to the Bar, he worked as a member of the Insurance and Reinsurance Disputes team at what is now Hogan Lovells.

He deals with the full range of coverage disputes: non-disclosure, misrepresentation, fraud / scuttling, breaches of warranty / condition precedent, and policy construction.

Featured Insurance & Reinsurance cases

- **ABS Company Ltd v Pantaenius UK Ltd & Ors ("QUEEN B SPEED")** [2020] EWHC 3720 (Comm) A complex yacht

insurance claim in which a great deal of technical input was required in order to deal with the main issue in dispute: the reasonableness of the repair costs of a highly specialised propulsion unit in a high speed planning-hull vessel.

- **Cruise & Maritime v Navigators Underwriting Agency (“The MARCO POLO”)** [2017] 1 Lloyd’s Rep. 575. A claim by a cruise line under a Charterers’ Liability policy for an indemnity against losses said to arise toward passengers as a result of a huge norovirus outbreak onboard.
- Claims against insurance brokers (see Professional Negligence section).
- Handling a Commercial Court hull claim on behalf of Chinese shipowners against Eastern European underwriters.
- A dispute between hull underwriters and owners as whether the H&M policy covered for ransom to be paid to pirates for the release of a bulk carrier, in circumstances where a specific K&R policy was in place.
- Total loss of a vessel lost after striking a reef, involving breach of a warranty as to minimum complement of crew.
- Responding to a Lloyd’s complaint and pre-action correspondence relating to an alleged scuttling and material non-disclosure.
- Defending a claim on a marine policy due to scuttling.
- Various claims by judgment creditors under the Third Parties (Rights Against Insurers) Act 1930.
- Advising underwriters on coverage of public liability after a fatal accident at a shipyard.
- Insurance claims arising out of piracy (see Shipping section).

Professional Negligence

James has vast experience in professional liability actions involving a wide range of industry sectors and professions, including: solicitors, engineers, architects and other construction professionals, barristers, insurance brokers, chartered surveyors, and marine surveyors.

Featured Professional Negligence cases

- Successfully bringing a high value negligence claim against brokers who had failed to put in place appropriate Business Interruption insurance; acting on behalf of a post-production house whose operations were disrupted by Hurricane Sandy.

- An allegation that conveyancers had failed to consider and advise on the effect of new-build property being sold without the benefit of NHBC cover. Allegedly negligent advocacy leading to a claim for catastrophic financial losses.
- A series of actions acting for banks against valuers who were accused of negligent or even fraudulent valuations.
- Advising on a claim against a transactional shipping lawyer in relation to his handling of the sale of an oil rig.

Banking & Finance

James deals with the financing side of shipping, construction and trade, as well as practising banking law as a separate specialism. Expertise includes derivatives agreements based on the ISDA 1992 and 2002 master agreements, documentary credits, asset finance (including ship mortgages and aircraft finance), together with all manner of retail and commercial banking disputes such as dishonoured cheques and recovery of mistaken payments.

Featured Banking & Finance cases

- **ETC Export Trading Company SA (A Company Incorporated In Switzerland) & Anor v APLA Importer (A Company Incorporated in Ethiopia) & Anor** [2020] EWHC 3229 (QB) ETC entered into a Joint Venture and commodities trading contract with Aplas for the supply of wheat to the Ethiopian government. Payment was to be by Letter of Credit, and Aplas and ETC were to issue performance guarantees through Berhan Bank in respect of the vessel loads of cargo to be supplied by them. Aplas agreed only to call on ETC's guarantee if ETC was in breach. Commerzbank AG and BNP Suisse SA issued counter-guarantees up the chain. In circumstances which remain highly unclear, claims were made on the counter-guarantees, seemingly pursuant to ETC's guarantee. As the L/C had never been opened by the Government, ETC's obligation to ship the wheat never arose, so no call on the guarantee can have been proper. Thus ETC applied out of hours to Pepperall J overnight on 24/25 November and obtained an urgent injunction to prevent the call on the guarantee being executed. This injunction was maintained by Andrew Baker J at the first return date on 3 December.
- **Bank of Baroda, GCC Operations & Ors v Nawany Marine Shipping FZE & Ors** [2016] EWHC 3089 (Comm) Successfully resisting an application to challenge English jurisdiction in a claim by Indian banks under a Facility Agreement. The debtors relied upon the existence of "parallel proceedings" in India but (1) the Facility Agreement permitted parallel proceedings by the Banks and (2) the proceedings in India were a form of "self help" involving enforcement of security under the Indian SARFAESI Act.
- Advising on and drafting proceedings in a US\$13million freight derivatives dispute arising out of a swap based on ISDA 1992.
- **Oliver v Dubai Bank Kenya Limited**, a £1.29m letter of credit claim; authority on the legal test where one of the documents to be presented was a certificate of compliance with the underlying contract that had to be issued by the Issuing Bank.

- Various claims on ship mortgages (see “Shipping” section above).
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- Advising a German bank regarding a bill of exchange indorsed on a “non recourse” basis and not paid by the acceptor.
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Appointments

- Called to the BVI bar
- Attorney-General’s “A” Panel of Junior London Counsel

Memberships

- Supporting member of the LMAA
- Member of the LCIA Users’ Council
- Worshipful Company of Shipwrights

Education

- MA (Cantab) Law
- BCL (Oxon)

Recommendations

James is recommended as a leading junior in the Legal 500, Chambers & Partners and Legal Experts.

Comments include:

- Superb intellect
- Simply brilliant
- Greatly impresses instructing solicitors with his commercial approach
- He is very responsive to clients’ needs, and seeks solutions that fit clients’ requirements
- Impresses with his ‘ability to drill down to the essential issues in dispute and then apply maximum pressure to the opponents’ case
- Good, sensible and strategic advice
- A great counsel who understands and gets to the point in issue. He deals with it swiftly and effectively and doesn’t waffle around
- Very approachable and fantastic with clients