

Neil Henderson

Call 2004



Neil Henderson's practice focuses on shipping and international trade but also encompasses broader areas of commercial dispute resolution.

Before joining the Bar, Neil worked in the corporate finance departments of JPMorgan and Robert Fleming & Co. investment banks. He advised on both M&A work and fund raisings (both public offerings and private equity) with a particular expertise in the technology and software sectors.

Neil represents clients in the High Court (typically the Commercial Court and the Admiralty Court) and in international arbitration. He is usually instructed as a sole advocate, but also works as junior counsel in higher-value proceedings. He is currently acting on behalf of the Indian Banks in their enforcement action against the high-profile Indian entrepreneur, Dr Mallya.

Neil's High Court practice includes urgent freezing injunctions (including Chabra jurisdiction injunctions), anti-suit injunctions, contempt/committal applications, as well as more vanilla interim applications for security for costs, disclosure and other matters, CMCs and trials.

Neil's arbitration practice includes both substantive arbitral proceedings, either ad hoc or under various different arbitral body rules (LMAA, LCIA, ICC and SIAC), and challenges on grounds of want of jurisdiction, serious irregularity (s.68) and errors of law (s.69). He has experience of enforcement of awards under section 66 of the Arbitration Act 1996 including the recent Court of Appeal case of Sinocore v RBRG, as well as considerable experience of applications for urgent relief under section 44.

Neil has particular specialist expertise in:

- Shipping & Commodities
- Shipbuilding, Offshore Construction & Energy
- Insurance & Reinsurance
- Arbitration Appeals & Challenges
- Commercial Dispute Resolution

Neil is qualified to undertake Public Access work.

Shipping & Commodities

Neil acts on behalf of owners, charterers and cargo interests in disputes arising out of charterparties (time, voyage and bareboat), COAs and bills of lading. Neil also has considerable experience in Admiralty matters.

Neil is a regular visitor to Greece where he is instructed by numerous solicitors and P&I and Defence Clubs. Neil has previously spent 5 weeks in Piraeus working alongside his various clients.

Featured Shipping & Commodities cases

Representing owners in an LMAA arbitration demurrage dispute with their charterers resulting from extensive delays at the discharge port of Chittagong, allegedly due to fog.

Acting on behalf of the defendant owners in a Commercial Court claim by the bank with whom the receivers had pledged the bills of lading. The claim involves allegations of misdelivery against the owners.

The Bao Yue [2016] 1 Lloyd's Rep. 320: Acted for the successful defendant shipowner in this 3-day Commercial Court trial. The Claimant cargo owner had failed to take delivery of a cargo of iron ore in China, had then abandoned it for over 3 years and then sued the shipowner. The case raises two important issues: (i) the duties/obligations on a shipowner when discharging a cargo; and (ii) a shipowner's right to return of the bill of lading.

The Adventure [2015] 1 Lloyd's Rep. 473: Acted on behalf of the appellant shipowners in a Section 69 Arbitration Appeal against an award which held that the shipowners' claim for demurrage was time-barred. The decision was reported and has attracted industry comment because it has informed the understanding of a widely used standard form charterparty documentation.

Acted on behalf of the successful defendant shipowners in a cargo claim which has given valuable guidance to the industry on the allocation of responsibility for loading/stowing a cargo under bills of lading which incorporate the Gencon form charterparty. The claim was appealed to the Court of Appeal where Neil again acted as sole counsel. The appeal was eventually abandoned by the cargo claimant.

Acting on behalf of CEMEX in relation to a dispute with the operators of a dredger which resulted in the discharge pipe to the CEMEX facility becoming blocked and the dredged cargo being dumped on the seabed below the berth.

Acting on behalf of claimant shipowners for breach of a safe port warranty arising out of the fouling of her anchors at a mid-stream berth on the Mississippi River.

Numerous speed and performance disputes involving issues such as mechanical problems, hull fouling and intentional slow steaming.

Acting on behalf of the port in The Malaviya 20, a long-running detention and arrest of a vessel which had been abandoned by her insolvent Indian owners. The dispute involved issues relating to the port's statutory powers of detention.

The Stolt Kestrel [2014] 2 Lloyd's Rep. 483: 2-day hearing in the Court of Appeal on whether it was possible to extend time for the issue of a claim under the Merchant Shipping Act 1995. The case is of considerable interest to Admiralty practitioners and the decision of the Court of Appeal is eagerly awaited.

The Sanko Mineral [2015] 1 Lloyd's Rep. 247: Acted for the successful applicant at first instance against specialist

insolvency Queen's Counsel. The case is of note because it considered for the first time the relationship between the Cross-Border Insolvency Regulations and Admiralty Jurisdiction. For that reason, the Court of Appeal gave permission to appeal to both parties but it was subsequently settled.

Acted on behalf of the arresting party in a dispute before the Admiralty Court arising from unpaid bunkers. The claim included the successful defence of a claim by a berth owner for berthing dues and then representation at the final priorities hearing.

Retained on behalf of the applicant bank for an order for the sale of the vessel M/V Aspen. The application was successful and the vessel was duly sold. Neil also advised in relation to a claim by the unpaid crew of the vessel.

Acting on behalf of the claimant owners of the M/V Islamabad in a High Court claim for General Average against cargo interests following the breakdown of the vessel's main engine.

Acted on behalf of the cargo interests for a multi-million dollar claim resulting from the grounding of an oil tanker in the Suez Canal. Neil acted as sole counsel in a three-party arbitration hearing on liability before Jeremy Russell QC at which the other parties were represented by Nigel Jacobs QC and Simon Rainey QC.

Representing an international cotton trading company in an International Cotton Association arbitration claim against its Bangladeshi buyer for unpaid demurrage.

AS Klaveness Chartering v Pioneer Freight Futures Co Ltd: Junior counsel in a claim against the defaulting counterparty under an FFA contract.

Acted on behalf of the Claimant in an LCIA Arbitration in relation to a dispute over the condition of a consignment of shredded scrap steel as part of a long term CIF sale and purchase agreement.

Dispute relating to the CIF (Rotterdam) purchase of a consignment of 20mt molybdenum rods by an Estonian company from a Chinese manufacturer for approximately US\$1.5 million. Acted on behalf of the purchaser for a claim relating to the quality of the cargo. LCIA arbitration subject to English law.

Shipbuilding, Offshore Construction & Energy

Neil has worked on numerous shipbuilding disputes which have included the most common type of disputes such as delays, terminations, technical disputes and refund guarantees.

Featured Shipbuilding, Offshore Construction & Energy cases

Representing the UAE purchasers in an LCIA arbitration claim against the shipyard resulting from the significant delays in a conversion project of a cable-laying and repair vessel.

Acted on behalf of a Chinese shipyard in an LCIA arbitration claim by the purchasers of an innovative pipelaying vessel following the cancellation of the project for delay.

Acted on behalf of a shipyard in respect of a dispute over the late delivery of a monoethylene glycol (MEG) package.

Instructed on behalf of the buyers of a 63,350 dwt bulk carrier which was cancelled as a result of delay. The buyers were seeking repayment of the instalments paid before cancellation.

Acted on behalf of the respondent buyer in claims by the shipyard for wrongful cancellation of four offshore support vessels, each with a contract value of US\$24 million.

Acted on behalf of the successful Scandinavian owner in relation to a US\$12 million claim arising out of the construction of an innovative ultra-deepwater drillship which was abandoned by the shipyard only months into the project.

Instructed on behalf of a claimant buyer in a dispute with a Chinese shipyard over the non-payment of an instalment following substantial delays to other ships under construction by the same yard for the same buyer.

Acted for an Egyptian off-shore contractor which has ordered 8 new-build vessels from an Indian shipyard. The dispute concerned the late delivery of the vessels by the shipyard and was worth in excess of twenty million dollars.

Insurance & Reinsurance

The majority of Neil's insurance and reinsurance practice is maritime-related.

Featured Insurance & Reinsurance cases

Acting on behalf of a shipowner in a dispute with insurers who have refused cover following the breakdown and salvage of the vessel on the basis that she was not classed at the time of the incident.

Acting on behalf of the claimant cargo owner in a dispute with the cargo insurers for damage to a cargo of soya bean meal. The defence is based on the alleged failure of the claimant to take timely steps to sell the cargo.

Sole counsel acting on behalf of a defendant producing broker in a four-party dispute before the Commercial Court following a claim by the owner of a vessel. The broker was alleged to have failed to obtain appropriate or any insurance on behalf of the owner. The claim settled in mediation.

Acted as sole counsel on behalf of claimant shipowners in a High Court claim resulting from the failure of the insurer to pay out on insurance for loss of charter hire. The claim involved the breakdown of the vessel's main engine on her voyage to the place of delivery.

Junior counsel in a reinsurance claim by insurers following the capsizing and subsequent salvage of a barge.

Arbitration Appeals & Challenges

Neil has substantial experience of both bringing and defending applications to challenge arbitral awards, primarily under sections 68 and 69 of the Arbitration Act 1996.

Featured Arbitration Appeals & Challenges cases

The Bulk Indonesia [2017] 2 Lloyd's Rep. 385: Acted on behalf of the appellant disponent owner in relation to a dispute with its charterer for reimbursement under the BIMCO Piracy Clause 2009.

The Adventure [2015] 1 Lloyd's Rep. 473: Acted on behalf of the appellant shipowners in a Section 69 Arbitration Appeal against an award which held that the shipowners' claim for demurrage was time-barred. The decision was reported and has attracted industry comment because it has informed the understanding of a widely used standard form charterparty documentation.

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The Wisdom C [2014] 2 Lloyd's Rep. 198: Instructed on behalf of the respondent to an arbitration appeal in respect of the applicability of the Late Payment of Commercial Debts Act 1998 to charterparty situations.

Acting on behalf of appellant shipowners in relation to an appeal on a question of law under s.69 of the Arbitration Act 1996 in respect of a demurrage claim relating to the commonly used BPVOY4 form charterparty.

Sole counsel on behalf of the respondents to an application under section 68 of the Arbitration Act 1996 for an alteration to the final award, alternatively a supplemental award. The application was dismissed with costs.

Sole counsel on behalf of appellant under a Section 57 application challenging the award made by the tribunal on the basis that there had been a serious irregularity. The appeal was successful and the matter was remitted to the Tribunal for further consideration.

Commercial Dispute Resolution

Neil acts on behalf of clients on more general commercial matters, such as derivatives, guarantees, joint venture agreements, shareholders' agreements, and general contractual matters.

Featured Commercial Dispute Resolution cases

Taher v Ikon Finance Limited: Acting on behalf of the defendant company in a Commercial Court claim for payment out under a guarantee. The claim is at the pleadings stage.

State Bank of India & Others v Dr VJ Mallya [2018] 1 WLR 3865: Acting on behalf of the consortium of Indian Banks in their claim to enforce a judgment of the Bangalore DRT for over £1.1bn against Dr Mallya, the Indian entrepreneur.

RBRG Trading (UK) Ltd v Sinocore International [2018] 2 Lloyd's Rep. 133; [2017] 1 Lloyd's Rep. 375: Acted on behalf of the successful Chinese trading company in a claim to enforce a CIETAC arbitration award in the jurisdiction of England and Wales. The claim was opposed on the basis of public policy. The claim succeeded both at first instance, and then on appeal.

Ipartner Pte Shipping Ltd. v Panacore Resources DMCC [2015] EWHC 1098 (Comm): Acted on behalf of the Claimant. Successfully defeated an application for security for costs on the basis that security would stifle the claim. The Court of Appeal gave permission to appeal because the decision was of public importance but the matter subsequently settled.

Acting on behalf of a company manufacturing products for the oil industry in a claim in the TCC division of the High Court with a supplier over the failure of components. The principal issue in the dispute was the interaction of UCTA and the

contractual exclusion clauses.

Junior Counsel in a multi-million dollar claim by mezzanine debt holders in relation to a restructuring of a German company. Involved proceedings before both the English and German courts.

Acting on behalf of the founding partners of both a leading investment management partnership and an early stage private equity firm in relation to changes to the partnerships' management and governance.

Junior Counsel in a High Court claim by US company against former head of European operations for breach of confidentiality and other breaches of fiduciary duty.

Junior counsel instructed on behalf of a claimant developer in multi-million dollar claim against Liverpool City Council for breach of an option agreement.

Publications

- Maritime Risk International, 13 May 2015: What supporting documents should owners provide with demurrage claims?
- Case Note: Effective Transfer of Responsibility for Stowage under a Bill of Lading – *The Eems Solar*.
- No Place for Hindsight Principle When Valuing Client Trust Monies – Journal of International Banking & Financial Law March 2013
- Slow Steaming: the cost – The Lawyer Bar Briefing: Shipping, 24 September 2012
- Demurrage Time-bars: Another Victory for Common Sense – Lloyd's List, 29 November 2011
- Using Debt Set-offs in Dispute Resolution – Lloyd's List, 17 November 2010
- Dangerous Cargoes: Legal and Physical Dangers – International Trade & Transport Newsletter, Vol 1 Issue 3, LexisNexis

Education

- Graduate Diploma in Law (Guildford) (Distinction)
- BA Hons Medieval & Modern History (First Class)
- Hitotsubashi University, Tokyo

Recommendations

Neil is recommended for Shipping and Commodities in Chambers & Partners and Legal 500.

Comments include:

- he is responsive, takes initiative, is a pleasure to work with and is reliable
- a tenacious counsel. He is very dynamic and shows a good understanding of the marine market which enables him to bring a commercial approach to disputes.

- excellent and commercial
- very dynamic and willing to be innovative
- a determined and switched-on professional
- likeable and down-to-earth. He comes across well to judges and exercises good judgement.
- bright and tenacious, and has a good eye for detail
- seems to grasp points quickly, and provides pragmatic and sensible advice
- excellent client skills