

Nigel Tozzi QC

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Nigel Tozzi QC has a wide ranging commercial practice.

He has particular expertise in:

- Commercial Litigation & International Arbitration
- Arbitral Appointments
- Professional Negligence
- Banking & Finance
- Insurance & Reinsurance
- Energy
- Ship Building
- Information Technology
- Formula One & Moto GP

He is also regularly appointed as an Arbitrator.

Commercial Litigation & International Arbitration

Nigel has extensive experience of multi-million pound disputes in both Court and arbitration proceedings, including ICC, LCIA and LMAA arbitrations. He is used to working closely with forensic accountants and other experts.

Areas of law covered include all aspects of contract law, agency, breach of warranty, breach of confidentiality, misrepresentation, fraud, waiver and estoppel, sale of goods, jurisdiction and conflicts, evidence and procedural matters (including urgent injunctions).

Featured Commercial Litigation & International Arbitration cases

State Bank of India and others v Mallya [2018] EWHC 1084 (Comm): Acting successfully for the claimant banks seeking to

register for enforcement in the UK judgments obtained in India against a high profile tycoon, and in securing a freezing order for over £1bn.

Motortrak v FCA Australia [2018] EWHC 1464 (Comm): Acting successfully for Fiat Chrysler defending a claim for breach of an agreement for the provision of website and online marketing services, and counterclaiming damages for bribery.

NIVE v Rembrandt [2018] EWHC 1857 (Comm): Acting for a purchaser defending claims for alleged breach of an agreement for the supply of egg products from the Netherlands for use in the USA, and counterclaiming successfully for fraudulent misrepresentation.

Golden Belt v BNP Paribas [2017] EWHC 3182 (Comm): Acting successfully for Certificate Holders against BNP Paribas as the arranger, sole bookrunner and lead manager of the Saad Golden Belt Sukuk (an Islamic Bond) for failing to ensure that a Promissory Note, which was one of the critical documents forming part of the Sukuk, had been signed correctly in accordance with the law of Saudi Arabia. The case was identified as one of *The Lawyer* magazine's Top 20 Cases of the Year for 2017.

Acting for a Japanese franchisee claiming damages following a sale of its business, and resisting claims of alleged fraudulent misrepresentation.

Acting for the liquidators of a hedge fund pursuing significant claims in an LCIA arbitration against its investment manager and valuation agent following a fraud.

Acting for a designer of blended winglets in an LCIA arbitration against one of the world's largest airline companies claiming substantial damages for the wrongful use of confidential information.

Acting for various parties in an LCIA arbitration against the manager of a fund with assets in Russia, Ukraine and Serbia claiming damages for contractual breaches of duty, computer hacking and breach of confidence.

Acting for former employees of a large hedge fund defending claims concerning their design and operation of various computer generated programmes, and making cross claims for equity in the fund management companies, unpaid profit share and / or bonuses.

Arbitral Appointments

Nigel has been appointed as the Chairman, as a party appointed Arbitrator, and as the sole arbitrator in a number of LCIA, LMAA, ICC and ad hoc arbitrations concerning a wide range of matters including general commercial disputes, ship construction, offshore construction, insurance, shareholder disputes and IT.

Nigel has also determined issues on paper pursuant to a QC clause in:

- insurance cases;
- disputes concerning the nature and extent of an indemnity clause in a building contract;
- disputes under a Transportation, Processing and Operations Services Agreement relating to various gas fields.

Professional Negligence

There is considerable overlap between this area of practice and all other areas of expertise. Nigel advises and appears in a wide range of professional negligence disputes including acting for and against valuers, surveyors, property managers, solicitors, barristers, accountants, auditors, actuaries and pension fund managers, and mountain guides. Nigel also has experience of acting in regulatory and disciplinary hearings.

Featured Professional Negligence cases

Currently acting for solicitors in a claim brought against them by Ched Evans, a professional footballer, for allegedly failing to adduce evidence at his first criminal trial for rape, and on his first appeal against that conviction.

Currently acting for solicitors in a claim brought against them for an alleged failure to advise on disclosure obligations resulting in a Consent Order being set aside (as reported in *KG v LG* [2015] EWFC 64).

Currently acting for a stadium owner and operator in a claim against a ‘golden circle’ city firm of solicitors for allegedly negligent drafting of an agreement providing for the use of a stadium by a premier league football club.

Acting for a barrister alleged to have been negligent in the conduct of a matrimonial dispute.

Currently acting for solicitors alleged to have been negligent in various property transactions.

Currently acting for accountants resisting claims against them based on alleged dishonest assistance.

Currently acting for the liquidators of a company in Bermuda claiming damages against the company’s former solicitors for dishonest assistance.

Acting for solicitors in a claim brought against them for allegedly failing properly to advise the former Chairman and Chief Executive of a premier league football club in respect of his claims against the club following his dismissal.

Healey v Shoosmiths [2016] EWHC 1723 (QB): Acting for solicitors in a claim brought against them following the failure by their former client to complete the purchase of a super yacht.

Hirtenstein v Hill Dickinson [2014] EWHC 2711 (Comm): Acting for solicitors in a claim brought against them following the sale of a super yacht.

Acting for claimants on claims in the Royal Court of Guernsey arising out of the failure by a provider of fiduciary and company administration services to ensure compliance with the requirements of a bank facility being used for a luxury development in London, which resulted in the bank calling in the loans so that the development was unable to proceed. The case settled, but would have been the first Guernsey case to decide the law of directors’ duties and the application of indemnities and exemptions.

Acting for a national chain of valuers in respect of claims against them by various lenders for alleged under valuations on numerous “buy to let” properties.

Acting for valuers in a claim in respect of a number of properties which are said to have been significantly over-valued, involving allegations of fraud on the part of the valuer and the solicitors who acted for the buyers.

Banking & Finance

Nigel has been instructed in numerous cases arising from the 2008 banking crisis involving challenges to close-outs under both 1992 and 2002 ISDA Master Agreements, claims for mis-selling of interest rate hedging products (swaps) and claims arising from the manipulation of LIBOR. He has also advised and acted in bankers' bonus claims.

Featured Banking & Finance cases

Acting for the liquidators of a hedge fund (KPMG) in relation to a claim against Citigroup Global Markets Ltd arising from the closing out of total return swaps and credit default swaps under the terms of a 2002 ISDA Master Agreement.

Acting for a bank defending a claim for alleged knowing receipt of funds which had been obtained by deception from the Claimant.

BHL v Leumi ABL Ltd 2017] EWHC 1871 (QB): Acting for a bank in relation to a dispute arising over the enforceability of a Receivables Financing Agreement.

Acting for the liquidators of an insolvent bank in a claim against a major US investment bank. Case involved total return swaps and currency related derivatives, and gave rise to complex valuation issues, and legal issues concerning the exercise of discretion under the terms of a 2002 ISDA Master Agreement.

Acting for the liquidators of a hedge fund in relation to a claim against a Swiss investment bank arising from the closing out of credit default swaps under the terms of a 1992 ISDA Master Agreement.

Acting for the liquidators of a hedge fund in relation to a claim against a Swiss investment bank arising from the closing out of credit default swaps and swaptions under the terms of a 2002 ISDA Master Agreement. The case also involved issues as to set-off.

Acting for a Swiss asset management company in relation to fraud claim against a Swiss investment bank arising from a conspiracy to procure the purchase of structured products which were outside the scope of the trader's authority.

Acting for various companies seeking to challenge interest rate swaps on ground of mis-selling.

Acting for parties seeking to have interest rate swaps rescinded as a result of LIBOR manipulation.

Acting for for employees and former employees of Dresdner Kleinwort in their successful claim for payment of bonuses following a takeover by Commerzbank.

Advising a Japanese Bank on potential claims by employees for discretionary bonus payments.

Acting for a bank against a borrower (who was also a mortgage broker) who had secured various loans fraudulently.

Acting for a hedge fund against a major bank in claims arising out of the bank's investment in the fund. Claims included Chancery Division proceedings (Barclays Bank Plc v Nylon Capital LLP [2011] EWCA Civ 826), a contested arbitration and a section 994 Companies Act claim.

Insurance & Reinsurance

Nigel has wide experience of advising on and appearing in insurance and reinsurance disputes (principally, but not exclusively, non-marine), usually for insurers. Areas covered recently specifically in relation to insurance and reinsurance disputes include contract formation, cover notes and binders, the construction of policy wording, coverage disputes, warranties, material non disclosure, misrepresentation, fraud, breaches of condition, double insurance, jurisdiction and conflicts.

Featured Insurance & Reinsurance cases

Acting for an insured bank claiming under a Crime & Civil Liability Policy for losses suffered by its Hong Kong branch following a fraud by a customer who used funds and other assets belonging to an insurance company of which he was the Chairman and CEO as security for loans made to him personally by the bank, which he then failed to repay. The bank had to return the “security” to the insurance company, leaving it to suffer substantial losses of over US \$88 million.

Advising and acting for an insurer on the application of an aggregation clause in a solicitors’ professional indemnity policy where the solicitors are being sued by a large number of investors (for whom they acted) in respect of their investments in hotel rooms which have proved to be worthless following a fraud.

Advising and acting for Insurers on an indemnity claim arising from the defective design of a sewage plant. Issues raised include coverage, the number of claims, notification, aggregation, and allocation between policies for different year.

Advising and acting for insurers in respect of their liability to pay for replacement cladding on various buildings following the Grenfell fire; issues of coverage, material non disclosure and misrepresentation.

Advising and acting for insurers following the wrongful payment out of funds when a fraudster obtained access to the Insured’s IT systems. The claim is made under a Civil Liability Insurance Policy which contains an exclusion for any claim arising directly or indirectly out of, amongst other things, theft, alteration of, or interference with electronically held data of the Insured.

Acting for an insured making a claim under an Erection All Risks (EAR) Policy for losses suffered as a result of damage to a sub sea pipe installation following a storm. Insurers contend that any loss is caught by a ‘normal action of the sea’ exclusion. The issues turn on the exact cause of the loss, and whether this comes within the terms of the Policy.

Acting for excess insurers in a coverage dispute (namely the meaning and effect of an allocation clause following a partial notification) arising out of the defective design of a school.

Advising and acting for insurers seeking to avoid liability under a Management & Corporate Liability Blended Insurance Policy on the grounds of dishonest misrepresentations made by a director to the insurers when the Policy was entered into.

Advising and acting for Insurers who have avoided cover on the basis of a material misrepresentation by the Insured regarding its relationship with sub-contractors and / or material non disclosure of the fact that it had sub contracted work on terms which limited the liability of the sub-contractor.

Advising and acting for professional indemnity insurers who have declined to indemnify an insured in reliance on fraud exclusions.

Energy

Nigel's wide ranging practice has seen him involved in energy disputes primarily connected with the oil and gas sector.

Featured Energy cases

Acting for an oil and gas exploration and production company, on application for an urgent injunction prohibiting another oil and gas exploration company from commencing the drilling of a well off the western coast of Scotland. The dispute arose under a Joint Operating Agreement for the exploration, development and production in the East Shetland Basin of the United Kingdom Continental Shelf.

Acting for Seller in LCIA arbitration. Claims were made under 2 contracts, but only one arbitration commenced resulting in challenge to jurisdiction. Nigel made (successful) submissions on the jurisdictional challenge to the Tribunal.

Acting for ExxonMobil in a dispute about the quantities of oil delivered under an oil supply contract.

Acting for Claimants in a claim for damages under an oil supply contract. Issues include claims for state immunity and allegation that the contract was procured through bribery.

Acting for global commodity trading and mining company defending claims for commissions allegedly due for securing the release of various Russian sailors apprehended and detained in Nigeria for alleged gun running, and for introducing an alleged oil supply opportunity.

Acting for an energy trader against the operator of an oil field in Nigeria in claims for breach of contract concerning the sale of the oil and failure to repay sums which had been advanced, with cross claims for alleged breaches of collateral warranties.

Acting for a participation rights holder in an oil and gas exploration area ("the Block") against the Operator of the Block. Proceedings involved getting an urgent injunction to prevent the Operator from exercising rights unfavourable to the rights holder, and bringing urgent ad hoc arbitration which had to be dealt with from commencement to award in 10 days.

UNCITRAL Arbitration: Acting for the owner and operator of an aluminium smelting plant in Slovakia claiming damages of up to \$650 million for breach of pricing agreements in respect of electricity.

Acting for receivers of Enron in a claim resulting from energy trades (physical and derivatives). The case involved complex issues of legal and equitable assignment and set off.

Shipbuilding & Construction

Nigel also has in depth experience of disputes involving ship building and construction.

Featured Shipbuilding & Construction cases

Advising and acting for buyers (in a number of cases) seeking to avoid having to take delivery of new build Vessels.

Acting for a bank (HSBC) seeking to enforce its mortgage over a Vessel by taking possession.

Acting for Buyers in an LMAA arbitration for the return of instalments paid under a ship construction contract terminated for delay, with cross claims by the Yard for repudiatory breach.

Acting for Buyers in 4 separate but related LMAA arbitrations claiming damages for failure by a shipyard to construct four 80,700 DWT bulk carriers in accordance with the specifications.

Acting for Bank on question whether a payment guarantee was a demand bond: (1) Wuhan Guoyu Logistics Group Co Ltd (2) Yangzhou Guoyu Shipbuilding Co Ltd v Emporiki Bank [2012] EWCA Civ 1629.

Acting for Buyers in an LMAA arbitration concerning the provision of refund guarantees, conditions precedent and quality of work arising under a contract for the construction of a pipe laying vessel.

Acting for the owners and operators of a drill ship in claims concerning the services provided by them under a Drilling Contract and Drilling Services Sharing Agreement.

Acting for Buyers in an arbitration following the cancellation of a ship construction contract.

Acting for Claimants in an ICC arbitration arising from the performance of a contract for subsea trenching and backfilling in relation to the laying of a subsea liquefied natural gas ('LNG') pipeline.

Acting for Sellers following the cancellation of memorandums of agreement for the purchase of four vessels: Parbulk v (1) Kristen Marine (2) Aurele Trading [2010] EWHC 900 (Comm).

Advising various ship-owners in respect of claims under various ship building contracts.

Acting for owners / buyers in LMAA arbitration and court proceedings following the termination of various ship building contracts.

ICC arbitration in Geneva. Acting for Respondent engineering and construction company in a \$95 million arbitration concerning the construction of two offshore production platforms for the South Pars oil field.

Acting for Claimant ship-owners in ad hoc arbitration concerning the construction of bulk carriers in Korea.

Defending a \$300 million claim against Moscow Oil Refinery in London arbitration, and on appeal, in connection with a dispute regarding the construction of a new polypropylene processing plant in Moscow.

The "SOLITAIRE": A lengthy LMAA Arbitration acting for the respondent shipyard in a dispute involving sums in excess of £300 million in respect of the conversion of a bulk carrier into the largest pipe laying vessel in the world.

Information Technology

Nigel has rapidly built up an enthusiastic following in IT related disputes.

Featured Information Technology cases

Acting for IBM defending a claim by Co-op Insurance Services for £132 million claim in the TCC involving allegations of wilful default in relation to a failed project for a new insurance system.

Advising and acting for a provider of technology systems and solutions for the insurance industry in a claim against a UK insurance broker for breaches of a Licence and Services Agreement.

Advising and acting in a dispute over the termination of an IT Partnership Agreement between a local government authority and leading telecoms provider.

Advising and acting for a provider of transport communications and systems engineering solutions in a claim under a Network Solutions Agreement against a well-known ground handling, aviation and airport services company.

Defending a €40 million claim in ICC arbitration proceedings brought against one of the world's leading software companies relating to the supply of resource and management software.

Acting for Oracle in a claim relating to the supply of an administration and management information system for a University.

Acting for the National Health Service in a multi-million pound claim and cross claim relating to the installation of national email and directory service.

Acting for NEC in a contractual dispute with Spectrum concerning supply of internet/broadband services to Travelodge hotels.

Acting for software supplier of enterprise resource planning system. Issues relating to functionality and contract terms.

Formula One & Moto GP

Featured Formula One & Moto GP cases

Acting for the Haas F1 team in proceedings before the International Court of Appeal of the FIA concerning the use of an unlawful car in the 2018 Italian Grand Prix.

Acting for Valentino Rossi in an appeal against the sanction imposed on him following the 2015 Malaysia Motorcycle Grand Prix.

Advising a driver on possible claims against his former team.

Acting for Ferrari in proceedings before the FIA concerning the improper testing of Pirelli tyres by Mercedes in 2013.

Acting for Ferrari in proceedings before the World Motor Sports Council concerning ‘team orders’ during the 2010 German Grand Prix.

Acting for Ferrari in proceedings before the International Court of Appeal of the FIA concerning the legality of a “double diffuser” fitted to the Brawn Formula One cars.

Acting for Ferrari in High Court proceedings for the recovery of confidential information, and in subsequent hearings before the World Motor Sports Council at which the McLaren Formula One racing team was fined \$100 million.

Acting for Ferrari in proceedings before the International Court of Appeal of the FIA concerning the alleged use by the Williams and BMW formula one cars of fuel which was too cool during the Brazilian Grand Prix.

Acting for Ferrari in proceedings before the International Court of Appeal of the FIA concerning the decision to impose a “drive through” penalty on Lewis Hamilton following the 2008 Belgian Grand Prix.

Memberships

- LCIA Users’ Council
- LMAA

Education

- Bar Exams (1st Class)
- LLB (1st Class), Exeter

Recommendations

Nigel is recommended in various directories including the Legal 500 and Chambers and Partners as a leading silk in no fewer than 8 practice areas (Banking and Finance, Commercial Litigation / Commercial Dispute Resolution, Energy, IT, Insurance and Reinsurance, International Arbitration, Professional Negligence and Shipping). Descriptions include:

- A star of his generation; totally outstanding
- Pure class; he rolls his sleeves up and gets on with it, and is a real pleasure to work with
- A blindingly good advocate...he’s a fantastic cross-examiner
- A brilliant, client-friendly, judge-friendly advocate who is charming and hugely intelligent and always impeccably prepared
- He’s a real workaholic who is tenacious and persuasive
- Incredibly bright. He has amazing attention to detail and is very user-friendly

- He is a master of the detail and excellent to work with
- Exceptional

Nigel was nominated by Chambers in 2018 for silk of the year in Professional Negligence, and by the Legal 500 in 2019 for silk of the year in Commercial Litigation.