

Simon Goldstone

Call 2004



Simon is an experienced senior junior and trial advocate. His work is almost exclusively in the High Court, where he often appears alone against Silks. He is registered also to appear in the DIFC Court in Dubai.

He has expertise in the following areas:

- Insurance, in particular: Construction All Risks (CAR) insurance
- Company and insolvency
- Fraud and Commercial, especially cases involving share purchase agreements
- Professional negligence
- Construction and property damage

Insurance

Simon has experience of claims involving issues of subrogation, double recovery, policy construction, repudiation and non-disclosure.

Featured Insurance cases

Sky & Mace v Riverstone: Highly complex (technically and legally) £200m Contractors' All Risks (CAR) arising from damage to roof at BskyB premises

Success in a £60m CAR arbitration claim before Lord Mance, arising from alleged damage to a sea wall.

\$10m arbitration concerning the collapse of a stacker at an oil refinery in Mozambique.

£7m CAR arbitration claim arising from alleged damage to a school's foundations.

Successfully representing the insured employer at a trial in which the Defendant insurer had denied that the EL policy covered mesothelioma.

Acting for insurers where the issue was whether assignors of claims under travel insurance had sustained losses which entitled the assignee to sue.

Acting for claimant insurers in a claim for equitable contribution/reimbursement against a marine policy involving technical legal and scientific issues. Simon's clients were successful at trial, in the Court of Appeal and were awarded indemnity costs.

He has particular interest in claims featuring allegations of fraud, in which he is instructed by insurers and policy holders alike. His insurance work includes subrogated high value property damage claims.

Company & Insolvency

Simon has significant experience of company and insolvency matters. Recently he represented a successful respondent in *Re Mitt Wearables* in a 2-week trial of an Unfair Prejudice (s994 Companies Act) petition; and in recusal application involving allegations of judicial bias.

He appeared in the Court of Appeal for the successful appellant in *LDX International LLP v Misra Ventures Ltd.* in which the Court of Appeal upheld Simon's argument that the Court below should not have granted an injunction restraining the presentation of a winding up petition.

Aside from s994 petitions and applications to restrain presentation/advertisement of petitions, Simon's work includes: allegations of negligence against insolvency practitioners; company deadlock and applications under ss301-306 Companies Act 2006; fraudulent/wrongful trading cf ss213, 214 Insolvency Act 1986; derivative claims by minority shareholders; claims against LPA Receivers; claims against liquidators; validation orders under s127 Insolvency Act 1986; financial assistance for the purpose of the purchase of a company's shares.

Featured Company & Insolvency cases

Trial of s994 unfair prejudice petition instructed by non-executive director respondent

Part 8 trial in *Re Oxford House (Wimbledon) Management Company Limited* [2019] EWHC 2181, the leading modern authority on ss301-306 Companies Act 2006 and the chair's ability to withdraw resolutions from a company meeting.

£15m misfeasance claim against administrators.

Derivative actions (under s262 Companies Act) against the directors of companies who had been diverting company assets and opportunities.

Fraud and Commercial

Simon is regularly instructed in multi-jurisdictional disputes, including anti-suit injunctions. His recent international work includes a an application in Cayman to restrain proceedings in Florida arising from a nine-figure insolvency; complex multi-party fraud dispute arising from the breakdown in commercial relationship between Russian shipping

operators, involving proceedings in the Isle of Man, Russia and other jurisdictions.

Simon has considerable experience of fraud cases and often accepts instructions in urgent applications for search orders and freezing orders.

Simon was instructed at trial and in the Court of Appeal in *BV Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises, Inc* [2019] EWCA Civ 596, the leading case concerning causation in the context of fraudulent misrepresentation and the circumstances in which a contracting party can claim for losses sustained by a non-party.

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Aside from acting in a range of matters for and against banks, Simon has particular experience in claims arising from receivables financing and other forms of asset-based lending. These include claims involving fresh-air invoicing, other frauds on the lenders, contractual disputes, and claims for breaches of personal guarantees arising from the failure of the borrower.

Featured Fraud and Commercial cases

Ahmed v Ouajjou & Ors: Simon obtained a WFO in a £45m claim arising from PPE financing fraud; also a leading recent case on the circumstances in which admissions may be withdrawn

Rasmala v Trafigura: claim arising from commodities financing fraud

Manchester v Balfour & Sochin [2019] EWHC 194 (Comm): Freezing Order, unlawful conspiracy, procuring breach of contract, trial in October 2020.

Shareholder disputes:

- Acting for Claimants in High Court trial for outstanding payment of deferred consideration falling due under a share purchase agreement.
- Acting for defendants in a multi million pound claim for breach of share purchase agreement with a counter-claim for fraudulent misrepresentation inducing the SPA.
- Acting for defendant solicitors in a professional negligence case in which it was alleged that they gave inappropriate advice as to the meaning and effect of an earn-out clause

Freezing Injunction for a Bank against the foreign-domiciled heirs of a deceased guarantor. Other guarantee claims:

- Against guarantors in a claim where the counter-party to the guarantee was alleged to be entitled to the benefit of a clause by which a certificate was to be conclusive evidence of the guarantor's liability;
- For guarantors where the defence was based on a set-off between the lender and the defaulting company;
- For guarantors in a summary judgment application concerning the validity and form of prior demands;
- Two week High Court trial of the legality of a collection fee in a receivables finance agreement. The trial also involved a detailed review of the law concerning the exercise of contractual discretions.

Successful claim for 'secret commissions' arising from a commercial property development against both the agent and the commission payer.

Stakeholder action where the debtor sought a ruling as to which of two asset financiers were entitled to payment in respect of a shipment of cargo.

Obtaining urgent injunctive relief including search orders, freezing orders and prohibitory injunctions for applicants in 'springboard' actions where it was alleged that employees had stolen confidential data in order to secure a competitive advantage.

Appearing at trial and in the Court of Appeal in a claim concerning an estate agent's entitlement to commission following the sale of a golf club.

Shah v HSBC [2011] EWCA Civ 1154, the leading case on the conflict between a bank's duties towards its customers and its duties under the Proceeds of Crime Act 2002.

Professional Negligence

Simon is regularly instructed in claims against a range of professionals, including solicitors, accountants, valuers, architects, and financial advisors.

Featured Professional Negligence cases

Solicitors:

- Appearing for the successful appellant in *Elliott v Hattens* [2021] N.L.R.25 the leading modern authority regarding the law of limitation regarding 'flawed transaction' cases and 'contingent liability'
- Representing the claimant in *Shulman v Hogan Lovells International LLP*, a claim against solicitors for negligence/breach of fiduciary duty, having allowed their client's £500m claim to be struck out
- Striking out claim against solicitor where the Court accepted that the claim for breach of fiduciary duty, whilst not expressly covered by Limitation Act 1980, was statute barred.
- Acting for claimant solicitors in a fraud/tracing action following the theft from the client account of the proceeds of sale of a property. Simon obtained worldwide freezing orders, disclosure orders against banks, and the claimant was able to recover a substantial proportion of the stolen sums.
- Acting for solicitors at trial accused of exercising undue influence.
- Instructed by the defendant solicitors in a number of high profile negligence/breach of trust claims brought by the purchasers of holiday homes in Italy.
- Acting for the claimant whose solicitors allowed a client's disputed seven-figure personal injury claim to be struck out.

Auditors, Accountants and Financial Advisers:

- Advising auditors in professional regulatory proceedings before the ICAEW and a connected claim for £10m+ arising from their allegedly fraudulent failure to qualify financial reports so as to note that the companies were trading whilst insolvent.
- Acting for the defendant accountants in a High Court trial concerning s14A Limitation Act 1980, with particular focus on the date on which a shareholder is deemed to know that the company's accounts showed unlawful dividends.
- High Court trial concerning advice as to corporate restructuring, with special focus on financial assistance and the

availability of the statutory 'whitewash' procedure.

- Claims involving investment advice including Collective Investment Schemes.
- Acting for the defendant in a multi-million pound claim concerning the tax treatment of research and development expenses.

Architects:

- Acting for a defendant who was alleged to have disregarded planning conditions when designing a multi-million pound residential development.
- Seven figure claim concerning the design of the foundations of a Tennis Academy.

Structural Engineers:

- TCC trial concerning the defendant's failure to advise that a residential property be demolished.

Valuers:

- Subrogated claim against a valuer accused of multiple fraudulent over-valuations.
 - Acting for defendant valuers of residential properties; the defendants argue that an apparent fraud by the vendors' solicitors broke the chain of causation.
 - Acting for commercial valuers, where the dispute centres on the correct method of valuing potential rental income.
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Construction, Cladding and Property Damage

Simon has substantial experience of disputes arising from construction projects and property damage. He is regularly instructed in cases involving allegations of inadequate cladding and is deeply familiar with relevant Building Regulations and the Building Safety Act 2022. Adjudications and enforcements make up a significant part of Simon's practice. He is comfortable even with cases of the highest technical complexity.

Featured Construction, Cladding and Property Damage cases

Naylor v Galliard & Roamquest: Acting for defendant property developers in strike out application arising from allegations that re-cladding resulted in diminution in property value

Acting for defendant insurers in a £12m arbitration claim arising from the expansion of foundation fill

Acting for claimant beer producer in £2m claim arising from shipment of defective bottles

Fire claims

Flooding claims

Direct Access

Qualified to undertake Direct Access work.

Previous life

Before coming to the Bar, Simon spent 5 years as a management consultant with Accenture. As a result, he has a particular insight into the issues that can arise on large scale IT outsourcing and implementation projects. He also worked as a professional musician, touring with pop group Morcheeba.

Appointments

- Part II of the DIFC Courts' Register of Legal Practitioners

Education

- Dip Law (BPP)
- BA Modern Languages (French & Russian, First Class) (Oxon)

Languages

- French (good working knowledge)
- Russian (good working knowledge)

Simon has a first class degree in Russian from Oxford University and has lived in the Former Soviet Union. His language skills and cultural awareness enable him to deal comfortably with Russian clients and give him and his clients an advantage in cases involving Russian documents and issues.

Recommendations

Simon is ranked as a leading junior in the directories where he is described as "A very skilful advocate and tactician, who is very user-friendly".