

Stephen Cogley KC

Call 1984 Silk 2011



Stephen Cogley KC is a heavyweight commercial silk with a market leading reputation for his advocacy and ability to manage high value and complex disputes across a range of areas and forums, often centred around a combination of fraud, insolvency and asset recovery. His expertise is demonstrated by his rankings in the directories, with Chambers & Partners noting that he is *"an impressive advocate with a fighter's instinct and the ability to think quickly on his feet"* (2022 – Commercial Dispute Resolution).

His practice spans the full range of Chambers core commercial fiduciary and trade areas ranging from energy, oil and gas, banking and financial services, shipping, aviation and insurance, shareholder and share sale/warranty disputes and specialises in multi-jurisdictional, often cross-border, disputes that span several areas of law. These frequently involve complex legal issues and tough cross-examination of witnesses and experts, through which he has been noted as being *"outstanding – it's a combination of his intellect and oratory ability"* (Chambers & Partners – Energy).

Stephen regularly appears in the Court of Appeal, Commercial Court and Chancery Division as sole and leading counsel, with Legal 500 remarking that he is *"creative and very commercial, Stephen is on top of the detail at all times and a pleasure to work with"* (Commercial Litigation).

Stephen is frequently involved in disputes in off-shore jurisdictions including Cayman, BVI, Cyprus, Hong Kong and Singapore and has given expert evidence in Jersey and Texas. Stephen is a member of the BVI bar and has been called to the Cayman Islands bar.

He also undertakes arbitrations, both domestically and internationally as counsel and as arbitrator, including acting in related High Court litigation to enforce arbitration awards.

Commercial Litigation

Stephen's commercial clients include airlines, blue chip companies, domestic and global PLCs, individuals and SMEs. He has an established reputation acting for high net worth individuals and their structures in domestic and international commercial disputes. Stephen has also acted for barrister's chambers, members of the Bar, European Royal Families, football clubs, global companies, insurers, law professors, rock stars, sports personalities, the world's biggest ship owners and their families, and solicitors in commercial disputes. He also undertakes oil and gas arbitrations for and against large multi-nationals and state entities in various jurisdictions.

Featured Commercial Litigation cases

Current arbitration with associated part 8 Arbitration claims; 6 arbitrations and proceedings in Russia. Obtained a world-wide freezing injunction worth £225m for a Russian trading house against a Russian oil refinery. [2019 and continuing].

Claim against sellers under share purchase agreement tax covenants. *Stobart v Tinkler and Stobart*. [2018 and continuing].

Claim by investors against a Bank for failing to open a segregated client account. Now the leading case on the Contracts (Rights of Third Parties) Act 1999. *Chudley and ors v Clydesdale Bank* [2019] EWCA Civ 344.

Acted on a case concerning the biggest non-party costs order ever made, worth £64m. *Deutsche Bank v Sebastien Holdings and Alexander Vik* [2016] EWCA Civ 23.

Bailment; Retention of Title; Sale of Goods; Title; Transfer of property in goods. Described by The Lawyer as "the biggest shipping imbroglio so far this century". *PST Energy 7 Shipping LLC v OW Bunker Malta Ltd and ING* [2016] I Lloyd's Rep. 228/ [2015] EWCA Civ 1058 (all levels including Supreme Court).

Acted for Smiths in its long running supply contract dispute with 20th Century – winning at all levels. *WH Smith v 20th Century Fox* [2015] EWCA Civ 1188.

No lien over database as it was intangible property for purposes of conversion. *Your Response v Datateam* [2014] EWCA Civ 281.

S49 Sale of Goods Act exclusive remedy for the price in sale contracts. *Caterpillar v Holt* [2013] EWCA Civ 779.

Civil Fraud, Asset Tracing & Recovery

Stephen's cases frequently involve allegations of fraud and international wrongdoing, particularly in his commercial and insolvency cases. Stephen thrives in difficult trials involving cross-examination of experts and professionals.

Featured Civil Fraud, Asset Tracing & Recovery cases

Various proceedings in the Commercial Court and arbitrations involving allegations of fraudulent double selling of oil cargos worth in excess of USD150m. [2019 and continuing].

Fraud claims against several defendants on behalf of an airline, with a world-wide freezing injunction. Involves breach of fiduciary duty, fraud, asset tracing and piercing the corporate veil. *Gulf Air v OIL and Ors* [2018 and continuing].

Acted against a Bank on a claim worth in excess of £600m, alleging fraudulent sale of portfolio of sub-prime credit card agreements infected with mis-selling. *CCUK v Barclays Bank* [2012-2018. Settled].

Acted on behalf of billionaire Steve Wynn (of the Bellagio and Oceans 11 fame) in relation to a claim against the skipper of his super yacht and others for fraud. *Aquarius v Barber and ors* [2016] EWHC 2806.

Claim alleging fraudulent misrepresentation by W to induce M to give up 3% share in Kurdistan Oil Field. *Monde Petroleum v WesternZagros* [2016].

Acted for city solicitor personally accused of fraud in \$12m damages claim. *Westwood Shipping v O'Neil and ors* [2013].

Shipping & Maritime

Stephen has over 17 years of experience working on numerous high-profile and complex shipping and shipbuilding cases across the full range of disputes. Specific experience includes cargo claims, charter-party and COA disputes, commodities (particularly oil and gas), derivatives (in particular freight futures), letters of credit, marine insurance, rig construction and deployment, sanctions, shareholder/JV cases, ship finance, and a number of associated banking disputes. A significant number of cases in these areas also involved fraud, either as a substantive cause of action or significant part of the background of the dispute. Many of Stephen's cases start with freezing injunctions and jurisdiction challenges.

Stephen has recently been involved in six arbitrations and associated commercial court cases concerning shipping and oil contracts between Russian entities, including obtaining an award of Euro 208M and an associated Freezing Injunction and resisting numerous discharge applications and jurisdiction challenges: *VTB Commodities Trading DAC v Antipinsky Refinery* [2020] EWHC 72 and [2019] EWHC 3292]. He has recently been involved in *The Tai Prize* – which, as a result, is now proceeding to the Court of Appeal.

Featured Shipping & Maritime cases

A V B and C: ICC arbitration concerning JV in relation Oil Rig deployment to South Atlantic. Allegations of fraud, breach of fiduciary duty. Issues concerning suitability and condition of Rig; jurisdiction, conflict of laws [2018].

The *Res Cogitans* [2016] UKSC 23. Described by the Lawyer as “the biggest shipping imbroglio so far this century” Stephen acted at all stages. He also acted in numerous of the arbitrations involving the same or similar issues (the “OW Bunkers” disputes” with USD billions involved, leading three juniors). This case is extensively referred to in the leading textbooks (see Publications).

The grounding and structural failure of one of the largest cargo vessels built whilst on her maiden voyage.

The *Alexandros T* [2014] EWHC 3068. Marine insurance. Constructive Total Loss. Fraudulent claims. Construction of settlement deeds.

The *Rowan* [2012] EWCA 198. Oil Major Approvals. Distressed cargo. Hedging. Now a leading case in this area.

Acted for Iranian Tanker Fleet (NITC) in its dispute with bankers resulting in securing \$1.6 billion of financing. Case arose out of US and EU Iranian sanctions.

Established for first time that a breach of contract does not preclude the wrongdoer obtaining a remedy in restitution: *Newland Shipping v Toba Trading* [2014] EWHC 661; (Oil trading; COA; charter-party/cargo dispute).

Established for the first time that there is no jurisdiction to give permission to serve committal proceedings out of the jurisdiction on a shadow director: *Integral v Petrogat and San Trade* [2018] EWHC 2686.

Banking & Financial Services

Many of Stephen's cases are subject to arbitration agreements and are thus confidential. Some have nevertheless entered the public domain whether as a result of jurisdiction challenges or appeals, or the sheer scope of the dispute.

This happened in respect of *Bentini Spa v Petrodar*, (ICC) in which Stephen, instructed by Pinsent Masons, was leading a team of 13 counsel and solicitors (including Rachel Ansel KC from 4 Pump Court) defending a \$1.6B claim with a \$130M counterclaim in relation to a pipeline and a PSA and transit fees. The background was the recent creation of South Sudan and the ensuing civil war with Sudan, which in turn concerned ownership of oil fields and the pipeline the subject matter of the arbitration. Stephen's client succeeded in all respects.

He was also involved in a number of the shipping/cargo disputes connected with the arbitration as part of his maritime practise.

Similarly he has recently been involved in 6 connected LCIA arbitrations acting for VTB Trading, securing an award of Euro 208M on its behalf against Russia's largest oil refinery (*Antipinsky Refinery*). This became public knowledge as result of *Antipinsky's* unsuccessful section 32 jurisdiction challenge and attempts to discharge the Euro 225M Freezing Order that he obtained on VTB's behalf.

He has recently finished an LCIA arbitration concerning a share sale in relation to a Ukrainian Grain Silo and Grain handling company- securing a substantial award on behalf of his client.

He has undertaken numerous LMAA arbitrations as part of his maritime practise and as many ICC, LCIA and UNCITRAL arbitrations as part of his wider commercial practise.

Stephen also sits as arbitrator, domestically and overseas, and welcomes party appointments.

Aviation

The Legal 500 describes Stephen in this area as 'Very easy to work with, tenacious, very commercial and strategically savvy.'

He has been in many significant aviation cases, both in Court and arbitration. He has advised on numerous occasions in relation to aircraft leases (lease, lease-purchase, operating and finance leases, tail-end leases); delivery and re-delivery obligations; and sought and resisted delivery up orders, preservation orders and associated asset freezing orders. In

addition he has been involved in fraud cases within the aircraft industry, joint venture disputes and technical disputes concerning engines (and engine leases), and helicopters. He has acted in a case involving a solicitor organising a bribe to secure a Global Sales Agency (*Nayyer v Advani*); a ticket sector allocation dispute between a major travel agency and *Ryanair*, and recently on behalf of *GulfAir* in securing a Worldwide Freezing Order and ultimately judgment in its \$19M claim against former key employees who diverted payments for inflight entertainment to shell companies owned by them. He acted for *Paramount Airways* in its hard fought relief from forfeiture lease disputes with GE Capital, which is still the leading case on the availability of relief from forfeiture in respect of operating leases.

Insolvency & Shareholder Disputes

Stephen's insolvency practice consists of claw-back proceedings, including cases with a specialist maritime focus. His cases have involved mainstream office holder's actions, claims by creditors, and 994 Unfair Prejudice Petitions. He has acted in a number of cross-border insolvency cases in the maritime field arising out of the rehabilitation of Korea Line Corporation in Korea, as well as other charterers and owners. He was also heavily involved in numerous issues arising out of the global insolvency of the O.W. Bunker Group in various jurisdictions, and in relation to Sanko and Hanjn.

Featured Insolvency & Shareholder Disputes cases

Grand Court of the Cayman Islands, Financial Services Division. A current case concerning the conversion of voluntary liquidation into compulsory liquidation. This involved the replacement of the liquidators. *Re Asia Private Credit Fund (involuntary liquidation)* 2019.

Advised in s994 petition concerning significant shareholder disputes (excess £70m) in the renewables sector. Settled. *Re X v Y*. [2018].

Administration, conduct of secured creditors. Probity of appointment. *Re Stobart Energy v Western BioEnergy* [2016].

Acted on behalf of 21 ship owners and charterers arising out of the global insolvency of the O.W. Bunker Group. This included Stephen acting in the Supreme Court.

Banking & Financial Services

Stephen has acted for and against most of the major banks in both retail and commercial disputes including inter-bank cases. He has acted for investment banks, tertiary lenders, hedge funds and off-shore investment vehicles and is often involved in asset tracing claims (international and domestic), frequently arising out of fraud disputes. His practice is both advisory and litigious with freezing and anti-suit injunctions. He has recently been engaged in various matters arising out of the mis-selling of hedge and other derivative products, and has recently advised one bank in relation to its takeover of another.

Featured Banking & Financial Services cases

Advising and acting for VTB in various disputes – concluded and on-going, as well as transactional/trading matters. *Re*

VTB [various 2017-2019].

Acted against a Bank on claim worth in excess £600m, alleging the fraudulent sale of a portfolio of sub-prime credit card agreements infected with mis-selling. *CCUK v Barclays Bank* [2018].

Advised a “Rich List” entrepreneur in his successful claims against his bankers in mis-selling multi-million pound hedging products. *Dudding v RBS* [2017].

Claim against RBS and NatWest arising out of serial mis-selling of Target Accrual Redemption Notes. *Gheeko v RBS* [2014].

The largest non-party costs order ever made (£64 million) against a company director and sole shareholder on the basis of his fraudulent evidence and advancing a multi-billion USD counterclaim against a bank based on that evidence. *Deutsche Bank v Vik (Costs Party)* [2016].

Energy, Oil & Gas

Stephen’s oil and gas practice includes cases relating to pipe lines, mineral ownership disputes, oil purchase and sale, mid-stream pipe line transit fees, EPSAs, PSCs and options to participate in oil field development. He has acted both in cases heard in the Commercial Court and in arbitrations.

Featured Energy, Oil & Gas cases

Case involving £225m in relation to an oil refinery dispute, including several satellite cases and arbitrations.

Dispute arising out of SPAs and EPC’s in relation to 19 solar parks across the UK. *Toucan v Wirsol and ors* [2019].

Involving claims between JV participants in PSA in Ukraine, post Russian annexation. Arbitration [2017].

Domestic enforcement of ICSID Award. *Re Venezuela* [2017].

Claim alleging fraudulent misrepresentation by W to induce M to give up 3% share in Kurdistan oil field. *Monde Petroleum v WesternZagros* [2016].

Uncitral arbitration. \$1.6B claim against client was defeated with judgment on Counterclaim for excess \$120m. *Bentini Spa v Petrodar* [2014].

Various arbitrations involving oil field concessions in African states. [2014-2016].

Dispute involving power generation in Africa and the sale of power units. *Caterpillar v Holt* [2013] EWCA Civ 1232.

Insurance & Reinsurance

Stephen has a broad insurance practice, and while he frequently acts for the insured, he has extensive experience acting for the other side.

Featured Insurance & Reinsurance cases

Acted in relation to Group Litigation Order claims arising out of “diesel emissions scandal”. Re Inchcape (Volkswagen GLO) [2018].

Acted in relation to a claim against brokers by a well-known fashion retailer. Ted Baker v Bluefin [2017].

Acted in each of the two major commercial court trials and three Appeal hearings on behalf of fashion retailer Ted Baker in its coverage dispute with Axa and co insurers concerning BI claims consequent upon non-violent employee theft over a number of years. Now one of the leading cases on rectification of insurer’s standard wordings and insurer’s duty to speak. Ted Baker v Axa (No’s 1,2 and 3) [2013- 2017].

Acted in a case involving the construction of a settlement agreement, including aspects of insurance, shipping and constructive total loss. Acted for Loss Adjusters demonstrating that they had the benefit of three settlement agreements entered into between insurers and ship owners who subsequently were sued for substantial damages arising out of a constructive total loss. Starlight Shipping v Allianz Marine and Ors. “The Alexandros T” [2014] EWHC 3068.

Acted on behalf of NITC in respect of a \$1.6B dispute concerning allegations that it had breached insurance covenants as a result of the imposition of US sanctions, and associated claims by its syndicated lenders for accelerated loan repayments. Re NITC. [2012].

Claim brought against solicitors for vicarious liability of fraudulent partner in advising payment of a bribe. Coverage issues. Nayer v DWS and Advani [2012] EWHC 623.

Media & Defamation

Stephen has also acted in several media and defamation cases, generally as part of a series of wider disputes.

Featured Media & Defamation cases

Acting on behalf of Royalty Magazine in defamation proceedings commenced by Prince Radu of Hohenzollern concerning allegations that his title was bogus, and on behalf of Prince Paul of Romania in connected proceedings in Germany commenced by the Hohenzollerns.

Acting on behalf of a shipping magnate Claimant in proceedings for defamation in various newspapers and over the internet, in respect of allegations arising out of a multi-million euro scandal in Greece concerning the fraudulent sale and purchase of the former Olympic village.

Re Baby P. Acted on behalf of Haringey BC in relation to the protection of confidential information, databases and breach of duty.

Appointments

- Member of the BVI Bar
- Called to the Cayman Bar

Publications

- Author of the 'Banking' & 'International Trade and Sale of Goods' chapters in *Butterworths Commercial Court & Arbitration Pleadings*
- *International Corporate Rescue: Stays under the Cross Border Insolvency Regulations*
- *International Corporate Rescue: Sale or No sale?* – an update on O.W.Bunkers
- Contributed the chapter 'The *Res Cogitans*' to *Commercial Maritime Law*, Hart Publishing 2019

Recommendations

Stephen's reputation is well recognised in both Chambers & Partners and Legal 500:

- Stephen is a smart operator. He is robust and compelling in his advocacy and fights tooth and nail for his clients
- An intellectual forward-thinking silk who thinks outside of the box
- He is outstanding – it's a combination of his intellect and oratory ability
- His cross-examination is just superb and he has an incredible ability to unpick the other side
- A vigorous advocate who fights exceptionally hard for the client, assimilates huge volumes of information and processes it effectively to deliver the necessary results
- He is tenacious, quick, responsive and very knowledgeable
- A very persistent advocate and undoubtedly a very clever man
- He does very heavyweight litigation, with a very robust cross-examination style. He ticks all the boxes
- He's an excellent advocate who is not afraid to push challenging arguments
- Fabulous intellect and really tenacious. Great advocate. Incredibly commercial and ability to cut through complex data sets to identify the key facts
- Tenacious, strategically astute, commercial – a good advocate with an incredible intellect
- The perfect silk for legally complex and challenging cases that require quick working in difficult circumstances
- An incredibly user-friendly silk – completely on top of his brief and his advocacy skills are first rate
- One of the new breed of client-friendly and client-committed silks able to find and develop arguments that others at the Commercial Bar cannot
- A tenacious, punchy and cerebral silk with substantial banking and finance experience
- Resilient and has a good courtroom presence. When your back is against a wall he can turn a case around
- An impressive advocate with a fighter's instinct, who has the ability to think quickly on his feet. He is very strategic and very hands-on in his approach.
- Extremely commercial and speaks the client's language. He's a robust advocate who thinks outside the box
- His advocacy is absolutely superb and his understanding and mastery of the brief is peerless. Not only that, he is also commercial and talks the client's language. A notable commercial litigator

Stephen was identified as an outstanding KC in The Lawyer Hot 100 for 2015.