



David Railton QC

Call date

1979

Silk date

1996

Practice Areas

David specialises in commercial litigation and advisory work, in particular in the following practice areas:

- Commercial dispute Resolution
- Insurance and reinsurance
- Banking and finance
- Civil Fraud
- Professional negligence
- Conflict of laws and private international law
- Arbitration

Recommendations (Practitioners' Guides)

David is recommended as a Leading Silk by Chambers UK (in the fields of Commercial Dispute Resolution, Banking and Finance, and Insurance), Legal Experts (Commercial Litigation, Banking, Insurance/Reinsurance and Professional Negligence), Legal 500 (Commercial Litigation, Banking and Finance, Insurance/Reinsurance), and Chambers Global (Commercial Dispute Resolution). Comments include:

- *“David Railton QC is lauded by peers and clients for ‘submerging himself in a case, selecting the right points and putting them across in a straightforward and persuasive manner’” (Chambers & Partners, 2010, Banking & Finance)*
- *“One commentator enthused: ‘I have rarely seen a commercial silk with such judgement and finesse. He’s beautiful to watch as an advocate’” (Chambers & Partners, 2010, Professional Negligence)*
- *“David Railton QC is a particular favourite of many a barrister and solicitor alike, with many sources praising him as ‘an unshakable and extraordinarily successful opponent.’” (Chambers & Partners, 2010, Insurance)*



- “David Railton QC is *‘meticulous and extremely clever’*” (Legal 500, Banking and Finance, 2010)
- David Railton QC is *“credited for ‘inspiring confidence due to his cool head and superb eye for detail’*” (Chambers & Partners, 2010, Commercial Dispute Resolution)
- “David Railton QC is for many the silk of choice when it comes to *‘anything that requires drilling into complex arrangements and the cross-examination of experts.’* Sources comment that this fantastic individual is *‘extremely incisive and just incredible on his feet’*” (Chambers UK, 2009, Banking & Finance)
- “David Railton QC’s great strength lies in his splendid courtroom manner. Solicitors note that *‘he can bring the most surprising points to bear, and always remains utterly calm and composed in all he does’*” (Chambers UK, 2009, Insurance)
- “David Railton QC gains respect for his *‘incredible analytic skills & succinct written advice’*” (Chambers UK, 2009, Commercial Dispute Resolution)
- “Peers are in awe of his *‘laser-like intellect’* that cuts to the nub of proceedings and ensures that *‘he doesn’t waste time and never misses a beat’*” (Chambers UK, 2008, Commercial Dispute Resolution)
- “David Railton QC is *‘technically excellent, a crisp advocate and a clear thinker’*” (Legal 500, 2008, Commercial Litigation)
- “David Railton QC has the ability to *‘make improbable arguments sound almost reasonable’*” (Legal 500, 2008, Insurance & Reinsurance)
- “David Railton QC, a silk to come back to *‘again and again,’* according to solicitors. His *‘dedication, intelligence and excellent manner with clients’* make him stand out, and observers assured us that he is *‘not one of those silks who needs juniors to carry him’*” (Chambers UK, 2008, Banking & Finance)

Education

Balliol College, Oxford

- *Distinction in Moderations* (1976)
- *1st Class Hons Jurisprudence* (1978)

Prizes & Scholarships

Balliol:

Gibbs Prize; Jenkyns Prize; Paton Studentship; Coolidge Pathfinder Award.

Gray's Inn:

Holt Award; Birkenhead Award.

Appointments

Recorder (2000); Bencher Gray's Inn (2005)



Called to Bar of British Virgin Islands 2012.

Professional Experience

David has a broad based commercial practice, having acted for and advised a wide range of commercial clients. He has some 30 years experience in practice of commercial litigation and arbitration, including cases with international and multi-jurisdictional elements. He has extensive experience of substantial commercial litigation, having acted in a number of long-running and complex cases. His practice is primarily as an advocate in Court and arbitration proceedings (in London and abroad), but he also regularly advises clients on transactional and product issues. He also sits as an arbitrator (in London and abroad).

Recent Practice

Examples of David's recent practice in his main practice areas include the following:

Insurance & Reinsurance

- acting for and advising insureds/insurers/reinsurers in connection with construction and coverage issues under various insurance policies, including all risks, business interruption, financial institution, bankers bond, aviation, construction, theft, liability, product, Bermuda form, property, war risk, viatical, mortgage indemnity and professional indemnity policies
- acting for and advising insureds/insurers/reinsurers in connection with issues relating to the aggregation of claims, including investment management, property, pension, endowment, split capital and other financial product claims
- acting for and advising insurers/reinsurers in connection with construction and coverage issues under various proportional and non-proportional reinsurance policies, including risk transfer arrangements
- acting for and advising insureds/insurers/reinsurers in connection with jurisdiction/conflicts issues, including applications to contest the jurisdiction, for stays, and anti-suit injunctions
- acting for insurers in proceedings for the rectification of a slip and policy
- acting for insurers in connection with the termination and run-off of an underwriting agency agreement
- acting for insurers in relation to insurance backed film finance (Hollywood Funding 4, 5 & 6)
- acting for brokers and insurers in connection with London market personal accident arbitrage underwriting and PA LMX spiral issues
- acting for insurers in the TAG Group litigation, and in connection with issues arising in relation to The Accident Group and Claims Direct
- acting in arbitration proceedings for reinsurers in relation to asbestos related claims
- acting in arbitration proceedings for insurers in relation to WorldCom liabilities



- advising an insurer in relation to issues concerning syndicate funding, funds at Lloyds, and Lloyds premium trust deeds

Banking & Finance

- acting for and advising banks, investors, issuers, insurers and Trustees in connection with issues arising out of note/bond issues (including Lehman notes)
- acting in arbitration proceedings for a life assurance company in connection with claims against its investment manager concerning its investments in structured products (including CDOs, CLOs, FRNs)
- acting for and advising investors, investment managers and insurers in relation to investment management claims
- acting for a hedge fund in proceedings to determine the correct construction of the payment provisions under a note issue
- acting for and advising banks, investors, and others in connection with swaps (including credit default, total return, variance, and dispersion swaps), futures, options, and other derivatives
- acting for and advising a bank in connection with advances made to Norwegian municipalities by way of zero coupon swaps
- acting for and advising financial institutions and others on jurisdiction/conflicts issues, including applications to contest the jurisdiction, for stays, and anti-suit injunctions
- acting for and advising the FSCS in connection with claims relating to high yield bonds
- advising in relation to potential claims against investment bank as a result of an aborted property transaction
- advising a collateral manager in relation to CDOs
- advising a credit card issuer in connection with the OFT's default charges inquiry
- advising a fund manager in relation to split capital investment trust issues
- acting for an investor in connection with a GKO derivative
- acting for Lexington in relation to insurance backed film finance
- acting for insurers in their subrogated claims against administrators/forfeitors relating to securitised sovereign trade debts
- advising banks and other financial institutions on financial services issues
- advising a leading bank on the nature of a novel international financial product
- acting for and advising arrangers, agents, and others in connection with syndicated loans
- acting for and advising banks and others in relation to claims on bills and promissory notes



- acting for and advising banks on letter of credit issues
- acting for and advising banks in connection with personal and proprietary remedies (including injunctions), here and abroad, against defaulting customers/third parties
- acting for and advising banks in recovery actions following insolvency of customers
- advising banks on issues relating to their factoring books
- advising credit card issuers and finance houses on consumer credit issues

Professional Negligence

- acting for and advising a bank in claims against its overseas solicitors for negligent advice in connection with a swap transaction
- acting for and advising directors and investment manager in connection with claims against them relating to transactions entered into by a Cayman fund (proceedings in the Cayman Islands)
- acting for insurers in their subrogated claims against solicitors relating to The Accident Group
- acting for Lexington in its claims against brokers and solicitors relating to insurance backed film finance
- acting for Wasps RFC in their claim against valuers for the negligent valuation of their ground
- acting for insurers in their subrogated claims against administrators/forfaiters relating to securitised sovereign trade debts
- acting for solicitors in claims against them relating to Formula One
- acting for insureds/reinsureds and brokers in relation to claims against brokers in connection with the placing of various insurances/reinsurances

Commercial Litigation (other)

- acting for and advising companies in relation to share purchase agreements
- acting for and advising companies in connection with their contracts with service providers
- acting for and advising the Nigerian Government in its action to recover stolen funds from the Abacha family
- advising a major utility company in connection with options under a share sale agreement
- advising a company in connection with the terms of an oil and gas exploitation agreement
- acting for and advising companies on claims against directors/employees who had diverted business opportunities



- acting for and advising commercial parties on jurisdiction/conflicts issues, including applications to contest the jurisdiction, for stays, and anti-suit injunctions

Notable Cases

Examples of David's recent or notable Court cases include the following:

Haugesund Kommune v. Depfa ACS Bank & Wikborg Rein (No. 2) [2010] EWHC 227 (Comm Ct)
- measure of damages payable by bank's negligent solicitors; relevance of claims against municipalities in restitution to damages recoverable from solicitors

Dunlop Haywards (DHL) Ltd v Erinaceous Insurance Services [2009] Lloyd's Rep. I.R. 464 (CA); [2009] EWHC 2900 (Comm Ct); [2009] EWHC 3479 (Comm Ct)
- claim for rectification of a slip and policy

Haugesund Kommune v. Depfa ACS Bank & Wikborg Rein (No. 1) [2009] EWHC 2227 (Comm Ct)
- capacity of Norwegian municipalities to enter into zero coupon swaps; restitution counterclaim by bank; professional negligence claim against bank's solicitors

Re BNY Corporate Trustee Ltd; Re Eurosail-UK 2007 3 BL Plc [2009] EWHC 513 (Ch)
- construction of trust deed/note conditions relating to priority of payments under note issue

UBS AG v HSH Nordbank AG [2008] 2 Lloyd's Rep. 500 (Comm Ct); [2009] 2 Lloyd's Rep. 272 (CA)
- allocation of jurisdiction between NY/London in connection with a dispute relating to an investment in a multiple tranche synthetic CDO

Financial Services Compensation Scheme v. Abbey National Treasury Services [2008] EWHC 1897 (Ch)
- validity and effect of assignments taken by the FSCS

Standard Life v. Oak Dedicated 2008 1 LRIR 552 (Comm Ct)
- construction of Financial Institutions policy in relation to endowment claims

Europ Assistance v. Temple Legal Protection 2007 EWHC 1785 (Comm Ct)
- rights of insurer to terminate run-off by agent

Financial Services Compensation Scheme v. Abbey National Treasury Services 2007 EWHC 2868 (Ch)
- legal professional privilege

Law Debenture v. Elektrim 2006 All ER(D) 97 (Ch)
- construction of trust deeds and other agreements relating to a Eurobond issue

Euler Hermes v. Apple Computer 2006 LRIR 691 (CA)
- construction of settlement of credit risk insurance claim

Tektrol v. International Ins. Co. of Hannover 2006 LRIR 38 (CA)
- construction of combined all risks policy

Peekay Intermark v. ANZ 2006 2 LLR 511 (CA)
- misrepresentation relating to investment in a GKO derivative product



Tonicstar v. American Home 2005 LRIR 32 (Comm Ct)

- anti-suit injunction to restrain motion to compel arbitration in New York

Banco Santander v. JPMorgan 2005 (Comm Ct)

- claim under perpetual ISDA interest rate swap; settled shortly before trial

Wasps v. Lambert Smith Hampton 2004 All ER (D) 61 (Comm Ct)

- claim against valuers for negligent property valuation

Hollywood Realisation Trust v. Lexington Insurance Co & Others 2003 (Comm Ct)

- Hollywood Funding 4&5 film finance litigation; acted for Lexington (6 month+ Commercial Court case; settled during trial)

Sphere Drake v. Euro International Underwriting 2003 All ER (D) 160 (Comm Ct)

- PA reinsurance "arbitrage" dispute (12 month Commercial Court trial)

Federal Government of Nigeria v Abacha; Compagnie Noga v. Abacha 1999-2003; 2001 3 All ER 513; 2003 2 All ER (Comm Ct) 915; 935 (CA)

- dispute as to settlement of FGN's claims against former Nigerian regime (6 month+ Commercial Court trial)

ABCI v Banque Franco-Tunisienne 2003 2 LLR 146 (CA)

- jurisdiction dispute; forum conveniens

Gan v Tai Ping (No. 3) [2002] Lloyd's Rep. I.R. 612 (CA)

- issues as to failure of co-operation in settlement by insurer of claim

Gan v Tai Ping (No. 2) [2001] Lloyd's Rep. I.R. 291 (Comm Ct); 2001 LRIR 667 (CA)

- insurance; construction of claims co-operation clause

Versailles Trade Finance v Clough 2001 (CA)

- banking; privilege against self-incrimination

Askin v ABSA 1999 (CA)

- jurisdiction dispute; forum conveniens

Manoukian v. Prince Jefri of Brunei 1998

- contractual dispute (6 month+ Commercial Court case; settled during trial)

Sumitomo v BBL 1997 1 LLR 487 (Comm Ct)

- banking; syndicated loans; duties of arranging bank

Pointwest litigation 1996

- banking, insurance and property litigation (6-9 month case; settled shortly before trial)

Investors Compensation Scheme v. C&G 1996 2 BCLC 165 (Ch)

- **construction of assignment under Investors Compensation Scheme**

BBL v Eagle Star 1995 1 LRLR 17 (Comm Ct)

- mortgage indemnity insurance; banking; surveyors negligence; damages (9 month Commercial Court trial)



Bates v Barrow 1995 1 LLR 680 (Comm Ct)

- stop loss reinsurance; illegality

Assitalia v OUI 1995 1 LRLR 76 (Comm Ct)

- reinsurance/limitation periods in German law

O'Brien v Hughes Gibb 1995 LRLR 90 (Ch)

- insurance broking; bloodstock policies relating to Shergar

GE Capital v. Bankers Trust 1994 (Comm Ct)

- takeover, banking, accountancy negligence litigation (9 month case; settled during trial)

Rafsanjan Pistachio Producers v. Bank Leumi 1992 1 LLR 513 (Comm Ct)

- letters of credit; UCP; fraud

Overseas Union v. New Hampshire 1992 QB 434 (ECJ)

- stay under Article 21 Brussels Convention

OUI v. Incorporated General Insurance 1992 1LLR 439 (CA)

- jurisdiction dispute; appropriate forum; ICA illegality

Texas Eastern v. Enterprise Oil 1989 (CA)

- pre-emption rights relating to North Sea syndicate

CTI v Oceanus 1984 1 LLR 476 (CA)

- insurance; duty of disclosure