



## Giles Wheeler

**Call:**  
1998

**Email:**  
[gw@fountaincourt.co.uk](mailto:gw@fountaincourt.co.uk)

### Summary of Practice

Giles Wheeler has a broad commercial practice with a particular emphasis on banking and professional negligence work. Giles has been recommended for professional negligence work by the Legal 500 in both 2009 and 2010. In recent months, Giles has been instructed in several very substantial commercial disputes, and has been involved (both acting alone and with a leader) in a number of trials in both the Commercial Court and elsewhere in the High Court. Significant matters on which Giles has recently been instructed include:

- *Close Bros v Pearce* [2011] EWHC 298 (QB) – Giles acted for the defendant to a claim under a bank guarantee claim, raising a defence of revocation
- *Essentially Different Ltd v Bank of Scotland* [2011] EWHC 475 (Comm) – Giles acted for the defendant bank in a dispute over the terms of a loan term, raising issues as to rectification
- *Gamit v MTU Maintenance Hannover* [2011] EWHC 989 (Comm) – Giles acted for the defendant to a dispute over the ownership of surplus aircraft engine parts, following an engine refurbishment
- *Roll Formed Fabrications Ltd v Dow Chemical Company Ltd* – Giles acted for the defendant to a TCC action (which settled the week before trial) concerning allegations that a foam in-fill developed by the defendant for a composite panel manufactured by the claimant had been negligently designed
- *Goldman Sachs International v Natixis* – Giles acted for the defendant bank, in a claim over the termination of three related credit default swaps
- *Barclays Bank plc v UniCredit Bank* – Giles is instructed for the claimant bank, in a claim concerning the attempted termination of related credit guarantee agreements



- a substantial claim for breach of trust and fiduciary duty, which concerns the transfer of shares held subject to trust as part of an employee share ownership scheme, in which Giles is instructed to act for the defendant
- a professional negligence action in which Giles is instructed for a Guernsey incorporated cell in pursuing a claim for negligence and breach of fiduciary duty against an investment management company which was entrusted with the management of assets in excess of US\$150 million

Giles is frequently instructed on work with an international dimension, which often raises jurisdiction and foreign law issues, and he has experience of litigation governed by foreign law (including experience of arguing foreign law points in the Court of Appeal).

## **Professional Experience**

### ***Banking & Finance:***

Giles regularly acts both for and against banks in connection with a wide variety of banking matters and regularly advises on the issues arising out of the interpretation of complex finance agreements. Giles has been involved in a number of substantial recent actions arising from disputes over derivatives in various forms, including in particular interest rate swap agreements and credit default swaps. Giles has also recently dealt with litigation arising out of guarantees, disputed term loans, mortgages and other securities. Giles' other experience in this area includes cases concerning letters of credit, the conversion of cheques and breach of mandate for honouring unauthorised cheques.

Recent instructions include:

- *Destiny 1 Ltd v Lloyds TSB*: Acted on behalf of the Bank as Respondent in the Court of Appeal in a matter concerning whether the Bank had contractually committed itself to provide a bank guarantee in favour of the Claimant. Giles had also acted for the Bank at the trial of the claim (in mid 2010).
- *Goldman Sachs International v Natixis*: Acted on behalf of the Defendant (led by Iain Milligan QC and Timothy Howe QC) in an expedited trial (which settled on the first day) which concerned the validity of the termination of three



related credit default swaps and the extent to which terms could be implied into those swaps requiring the disclosure of information by the credit protection buyer to the credit protection seller.

- *Barclays Bank Plc v UniCredit Bank*: Instructed (with David Railton QC) on behalf of the Claimant in a dispute over whether the Defendant was entitled to terminate a series of credit guarantees given by the Claimant in its favour.
- *Close Brothers Limited v Pearce*: Acted for the Defendant at trial in early 2011 in a claim under a contract of guarantee, raising issues as to the construction of the terms of the guarantee and whether the guarantee had been revoked.
- *Essentially Different Ltd v Bank of Scotland*: Acted for the Defendant at a trial on issues of liability in early 2011 in relation to a claim that the Bank was in breach of contract in failing to advance loan monies to the Claimant. Giles continues to act in connection with allegations that the Claimant has suffered substantial loss of profit as a result of being unable to develop its business in the absence of loan finance.
- *Plexus Fund Ltd v Deutsche Bank AG*: Instructed (with David Railton QC) on behalf of the Claimant in a dispute over the terms of a bespoke variance swap dispersion package.
- *Zeckler v Lloyds TSB*: Instructed on behalf of the Defendant in opposing the continuation of a without notice injunction which prohibited receivers appointed by the Bank from selling properties by which *the Claimant's liabilities to the Bank* had been secured. Also instructed on behalf of the Bank in relation to the underlying claim, which arose out of a failure by the Bank to advance sums which it had allegedly agreed to lend to the Claimant.

Giles has also been instructed on several recent occasions to advise in connection with the alleged mis-selling of interest rate swap agreements in a retail banking context, in circumstances in which interest rate swaps have been sold by Banks as a means of effectively fixing the interest rate on a loan but have subsequently proved to be ineffective in doing so or otherwise unsuited to the circumstances of the retail customer.

### ***Professional Negligence:***

Giles regularly acts and advises in relation to professional negligence claims for and against a number of professions, with particular experience in relation to both



solicitors and financial professionals such as accountants and actuaries. Giles has been instructed in a number of substantial professional negligence claims (including the Independent Insurance litigation) and has also recently dealt with claims against solicitors, insurance brokers and professional trustees. In addition, Giles has handled litigation against various other professionals, including architects and engineers.

Cases include:

- Substantial ongoing litigation by a Guernsey incorporated cell against an investment manager concerning the negligent management of investments valued in excess of US\$150 million.
- *Roll Formed Fabrications Ltd v Dow Chemical Company Ltd*: Instructed on behalf of Dow Chemical Company in defending allegations of negligence in the formulation of a foam for use in composite panels to be manufactured and sold by the Claimant for use in building construction (settled the week before trial in early 2011).
- *Bradley v Wm Fortune & Son*: Instructed on behalf of the Claimants in pursuing a claim arising out of the alleged over-valuation by the Defendant accountant of a shareholding in the company of which the Claimants were shareholders and directors and the Defendant was the auditor and accountant.
- *Mote v Loring*: Instructed on behalf of the Claimant in pursuing a claim for the negligent preparation of accounts and tax returns by the Defendant accountant over a number of years.
- *Independent Insurance v Watson Wyatt*: Instructed on behalf of the liquidators of Independent Insurance pursuing claims for around £350m alleging negligence in the conduct of actuarial reviews of the reserves of Independent. This was very substantial litigation raising numerous issues, including the scope of an actuary's duty of care (and liability for unprofitable business) and the impact of fraudulent activity on the actuary's work.
- *Independent Insurance v KPMG*: Also instructed on behalf of the liquidators of Independent Insurance in pursuing a claim arising out of the same facts against the auditors of Independent.



- *Barings litigation*: Instructed on behalf of Barings (Singapore) PTE Ltd for the 5 day quantum hearing to determine the recoverable losses flowing from the negligence of the auditors of Barings bank.

### **Conflict of laws & Private International Law:**

Giles has substantial experience advising and acting in relation to all aspects of the private international law, including jurisdiction issues, the enforcement of foreign judgments in the English courts and the application of foreign law in the English courts (including knowledge of the provisions of the Rome I and Rome II Regulations). Giles regularly advises on the application of the EC Judgments Regulation 44/2001 and issues of applicable law. Giles also has experience of various foreign laws, including recently handling cases involving Kazakh, French, German, Austrian and Liechtenstein law.

Cases include:

- *X v Y*: Currently acting for a claimant bringing arbitration proceedings in a claim for US\$27m governed entirely by Kazakh law.
- *Catalyst Recycling v Nickelhutte Aue* (2008) Env LR 2 and [2008] All ER (D) 293 (CA): Appeared on behalf of the successful Claimant both at trial and before the Court of Appeal (acting alone) in a claim turning on the legality under German law of the import of metal catalysts into Germany. The claim also raised issues as to the interpretation of the relevant EC regulation, repudiatory breach of contract and the extent of recoverable damages.
- *Rosenberg v Nazarov*: Instructed on behalf of the Defendant in a substantial claim arising out of an alleged partnership or joint venture, which raised various issues of Liechtenstein law.
- *Lord v Doffman*: Acted on behalf of the respondent to an application to set aside a statutory demand, which raised issues as to the governing law of a loan agreement and the effect of the relevant French law.
- *CSOB v Nomura* [2002] All ER (D) 157: Acted for Nomura (led by Anthony Boswood QC and David Waksman QC) in obtaining a stay of English Commercial Court litigation in favour of the courts of the Czech Republic on grounds of forum non conveniens.
- *Casio v Kaiser* [2001] I.L.Pr 43: Appeared on behalf of the Appellant in an appeal to the Court of Appeal (led by Brian Doctor QC) in which the issues



were: whether knowing receipt and dishonest assistance are torts for the purposes of article 5(3) of the Brussels Convention; and when cases against different defendants are sufficiently connected to extend jurisdiction under article 6(1) of the Convention.

### ***Insurance & Reinsurance:***

Giles has acted and advised in relation to both Lloyds and non-Lloyds insurance litigation (including both professional negligence proceedings against brokers and film finance litigation).

Cases include:

- *Liberty Syndicate v Compania Internacional de Seguros*: Instructed to act for the Defendant, the putative reinsured, in a dispute concerning the implications of a fraud by a broker in purportedly arranging reinsurance with a Lloyds syndicate, which raised issues as to the duties of the putative reinsurer when liaising with the putative reinsured's regulator.
- *Tektrol v International Insurance Company of Hanover* [2005] 2 Lloyd's Rep 701 (CA); [2005] Lloyd's Rep IR 358 (Langley J): Acted on behalf of the Defendants both before Langley J and in the Court of Appeal for the hearing of preliminary issues (led by David Railton QC) concerning construction of exclusion clauses in the business interruption section of an all risks policy.
- *Pedley v Avon Insurance*: Acted on behalf of the Claimant (led by Stephen Rubin QC) in bringing successful proceedings in the High Court under the Third Parties (Rights Against Insurers) Act; raised issues of misrepresentation, non-disclosure and breach of warranty.
- *AMS Consultants v Harrison Bros Underwriting Ltd*: Appeared at trial on behalf of the defendant Lloyds' members' agent in a dispute concerning the interpretation of an agreement to pay commission to a consultant, which raised various disputes as to Lloyds' market practice.
- Advised in a dispute between power station owners and underwriters regarding a business interruption insurance claim (as outlined below under "Energy & Natural Resources").

### ***Energy & Natural Resources:***

Giles has been instructed in a number of substantial energy related matters.



Instructions include:

- *X v Y*, an ICC arbitration governed by Kazakh law, concerning the sale of rights to explore for and produce hydrocarbons in an oil field in Kazakhstan.
- *Texuna International v Cairn Energy*, in which Giles was instructed to defend a US\$120m claim for loss of profit alleged to have arisen from the failure of a joint venture project to explore for oil in Turkmenistan.
- Giles acted on behalf of the Claimant (led by David Waksman) claiming loss of profit from the withdrawal of rights to exploit gas reserves in the former Soviet Union in a 9 day ICC arbitration which involved considerable technical expert evidence on geological, geophysical and statistical issues.
- Giles has also been instructed on behalf of a major international energy company to advise on an insurance claim arising out of the failure of power station turbine rotors, which raised various technical issues regarding the operation of and repairs to the turbines. Giles was subsequently instructed to appear in LCIA arbitration proceedings against the turbine manufacturers in a claim for financial support which turned on the availability in the insurance market of insurance for the particular turbine in question.

### ***Commercial Litigation:***

Giles is instructed in High Court and County Court proceedings in a wide range of general commercial litigation, including litigation arising out of civil fraud allegations. Many of the matters listed under other headings above also fall within the ambit of general commercial litigation and Giles has experience of most aspects of such work, but recent matters on which Giles has been instructed involving general commercial contracts include disputes arising out of partnership agreements, joint ventures, franchises and supply and distribution agreements.

Cases include (in addition to those listed under other headings above):

- *X v Y*: Instructed for the Defendant to a claim concerning the alleged misappropriation of shares (said to be worth over £20 million) which were held in trust as part of an employee share ownership scheme.
- *Linden Homes (South East) Limited v Kelly and Boyle*: Acted for the Claimants in obtaining a post-judgment worldwide freezing injunction in order to preserve assets for the purposes of enforcement.



- *Ueda Yagi Tanshi Co Ltd v Imadzu*: Acted for the Claimants in obtaining a third party debt order and pursuing an application under s. 423 of the Insolvency Act in order to enforce a judgment for fraud obtained in Japan.
- *Rosenberg v Nazarov*: Acted for the Defendant to a claim based on an alleged fraudulent misappropriation of the assets of an alleged partnership connected with the sale of aluminium produced by the TadAZ aluminium plant in Tajikistan.
- *Gamit v MTU Maintenance Hannover*: Instructed for the Defendants in a dispute concerning the refurbishment of aircraft engines giving rise to issues as to the ownership of various engine parts.
- *FMC Foret S.A. v Unilever Supply Chain Company A.G.*: Acted on behalf of the Defendant in a dispute concerning a chemical supply contract, raising questions of contractual construction and performance.
- *Fisher Advanced Composite Components v St Bernard*: Instructed for the Claimants in a claim of duress regarding the variation of a contract relating to the supply of components used for the manufacture of aircraft engines.
- *Profile Pursuit v Your-Move.co.uk*: Instructed on behalf of the Defendants in a 7 day High Court trial (acting alone) of a claim for loss of profit flowing from a breach of a contract to distribute a promotional magazine.
- *Wandsworth Borough Council v Railtrack plc* [2001] 1 W.L.R. 368; [2002] QB 756 (CA): Acted for Railtrack at trial and before the Court of Appeal (led by Timothy Dutton QC) in a claim concerned with whether Railtrack was liable in nuisance for the activities of pigeons roosting on a railway bridge over the highway.
- *Watson & Watson v Appleyards plc and others*: Acted on behalf of the claimants in a Commercial Court claim (which settled shortly before trial) against multiple defendants for conspiracy and interference with business by unlawful means.
- *Hamilton v Fayed* [2001] EMLR 15: Acted on behalf of the claimant in an application for permission to appeal to the Court of Appeal in an attempt to set aside the judgment against the claimant on the grounds that the defendant had conducted his defence in a manner amounting to an abuse of process and that the judgment had been obtained by fraud.
- *Profilate Italia v Painewebber Inc* [2001] 1 Lloyd's Rep 715: Acted as 2<sup>nd</sup> junior counsel opposing an application under s.68(2)(g) of the Arbitration Act



1996 to set aside an arbitration award on the grounds that it had been obtained in a manner contrary to public policy as a result of the alleged non-disclosure of documents by the successful party.

### ***Professional Discipline and Conduct:***

Giles has experience of advising and acting in relation to disciplinary action against both solicitors (acting both for the Law Society and for solicitors), accountants and other financial services professionals. Giles has particular recent experience in advising on challenges to decisions made by the Financial Ombudsman Service and on FSA related issues (including recent instructions on the extent to which the activities of an insurance intermediaries required FSA authorisation).

Giles has regularly acted both for and against solicitors in connection with both interventions and other aspects of solicitors' professional obligations. Recent instructions include both acting for the Law Society (led by Patricia Robertson QC) in an application to intervene in an appeal brought by a solicitor against a disciplinary tribunal ruling which raised the issue of the standard of proof applicable to disciplinary tribunal rulings and acting for a firm of solicitors (led by Robert Hildyard QC) in resisting a claim for an injunction to restrain the firm from acting against a former prospective client of that firm.

Giles has advised on the impact of the Human Rights Act on professional disciplinary proceedings, including the application of article 6 of the ECHR to hearings before professional disciplinary tribunals, and has regularly dealt with the ECHR aspect of professional disciplinary matters. Giles also has experience of judicial review proceedings in a regulatory context.

Cases include:

- *Afolabi v Solicitors Regulation Authority* [2011] EWHC 2122 (Admin): Instructed by the Solicitors Regulation Authority in responding to an appeal against findings of misconduct made by the Solicitors' Disciplinary Tribunal.
- *Re the Law Society*: Instructed by the Solicitors Regulation Authority in making a without notice application to determine the nature of the SRA's entitlement to provide materials, which it had seized during an intervention, to the police in connection with criminal investigations.
- *Re a Firm of Solicitors*: Instructed by a firm of solicitors (led by Robert Hildyard QC) in a Commercial Court trial of a claim brought by a former



prospective client of the firm who sought to restrain the firm from acting against him in a related matter to that in which he had previously contemplated instructing the firm. Raised the issue as to the extent to which *Bolkiah v KPMG* (and solicitors' obligations of confidentiality more generally) applies to a prospective client for which the firm has never acted.

- *Richards v The Law Society (Disciplinary Body), The Law Society (Professional Body) intervening*: Instructed for the Law Society (Professional Body) (led by Patricia Robertson QC) to apply to intervene in an appeal which raised an issue (ultimately not decided by the Court) as to the appropriate standard of proof to be applied by the Solicitors' Disciplinary Tribunal.
- *R on the application of Williams v Financial Ombudsman Service* [2008] All ER (D) 35: Acted for an independent financial advisor challenging a decision of the Financial Ombudsman on the grounds that the ombudsman had relied too heavily on his own knowledge uncorroborated by any further evidence relevant to the matter.
- *R v Law Society, ex parte Pamplin* (The Independent), 9 July 2001: Acted for the Law Society (led by Timothy Dutton QC) in defending judicial review proceedings brought by a solicitor's clerk challenging the legality of the passing of information by the police to the Law Society and challenging the procedures adopted by the Law Society under s.43 of the Solicitors' Act 1974, including the consideration of challenges under articles 6 and 8 of the E.C.H.R.
- Appeared before a JDS Appeal Tribunal (led by Timothy Dutton QC) on behalf of Coopers & Lybrand, appealing against findings of professional misconduct arising out of the audit of Barings Bank.

### Reported Cases

*R on the application of Williams v Financial Ombudsman Service* [2008] All ER (D) 35 (Jul) (scope of the ombudsman's entitlement to rely on his own knowledge)

*Rosenberg v Nazarov* [2008] All ER (D) 57 (Apr) (striking out; abuse of process on the grounds of two sets of almost identical proceedings; remedies for a partnership claim)



*Catalyst Recycling v Nicklehütte Aue* [2008] All ER (D) 293 (May) (CA); (2008) Env LR 2 (legality of shipments of waste metal under German law and the governing EC regulation)

*Tektrol v International Insurance Company of Hanover* [2005] 2 Lloyd's Rep 701 (CA); [2005] Lloyd's Rep IR 358 (construction of an insurance policy)

*Texuna International v Cairn Energy* [2005] 1 BCLC 579 (security for costs)

*CSOB v Nomura* [2002] All ER (D) 157 (forum non conveniens application)

*Wandsworth Borough Council v Railtrack Plc* [2002] QB 756 (CA); [2001] 1 WLR 368 (public nuisance from roosting pigeons)

*Casio v Kaiser* [2001] I.L.Pr 43 (CA) (Knowing receipt and dishonest assistance and multiple defendants under the Brussels Convention)

*R v Law Society, ex parte Pamplin* (The Independent), 9 July 2001 (decision to bring disciplinary proceedings against solicitor's clerk)

*Hamilton v Fayed* [2001] EMLR 15 (CA) (obtaining judgment by fraud/in a manner amounting to abuse of process)

*Profilate Italia v PaineWebber Inc* [2001] 1 Lloyd's Rep 715 (setting aside arbitration award)

## **Publications**

*Assicurazioni Generali Spa v CGU International Insurance Plc – following the settlements without question* – article for *Sweet & Maxwell Insurance & Reinsurance Law Briefing*, July 2003

Author of the chapter on passenger airline tickets and baggage checks in *Carriage by Air* (2001, Butterworths)

Contributing editor of *Commercial Court Procedure 2001* (2<sup>nd</sup> edition)



**Education**

LL.M (Cantab) First Class

M.A. (Cantab) First Class

**Prizes & Scholarships**

Everard Ver Heyden Foundation Prize (1998)

Bar Council Certificate of Honour (1998)

Lechmere Essay Prize (1998)

Astbury Scholarship (1997)

Harmsworth Entrance Exhibition (1997)

Ziegler Prize for Law (1996 and 1997)

C J Hamson Prize (1996)

Willoughby Prize (1994 and 1995)

Squire Scholarships (1994-1996)