



Stephen Moriarty QC

Call:
1986

QC:
1999

Email:
sm@fountaincourt.co.uk

Practice Areas:

Stephen has a very broad commercial litigation and advisory practice, with particular emphasis upon banking and financial services matters; professional negligence disputes; insurance and reinsurance disputes, international commercial arbitrations, and joint venture and shareholder disputes, as well as large contractual disputes of a commercial nature more generally.

Academic History:

BA in Jurisprudence (First class), Brasenose College, Oxford (1977)
B.C.L. (First class), Brasenose College, Oxford (1978)

Martin Wronker grant (for second place in Final Honour School of Jurisprudence, 1977)

Vinerian Scholarship for best result in B.C.L. 1978

Fellow and Tutor in Law, Exeter College Oxford, and University Lecturer in Law in the University of Oxford: 1979-1986

Appointments:

Vice-Chairman of the Commercial Bar Association (COMBAR) 2009 -

Professional Experience:

After spending eight years teaching a wide range of subjects, both at undergraduate and graduate level, in the law faculty of the University of Oxford, Stephen commenced practise as a barrister in 1987. He was called to the Bar in 1986, and took silk in 1999. Both as a junior barrister, and as a QC, he has practised widely in all aspects of commercial litigation, with particular emphasis upon a wide range of banking and financial services matters; professional negligence disputes; insurance and reinsurance disputes, international commercial arbitrations, and joint venture and shareholder disputes, as well as large contractual disputes of a commercial nature more generally.

Directories:

Stephen is recognised in the legal directories as a leading silk in **Commercial Litigation/Dispute Resolution** (Legal 500 and Chambers), **Banking and Finance** (Legal 500), **Professional Negligence** (Legal 500 and Chambers), **Insurance and Reinsurance** (Legal 500 and Chambers), **Commercial Arbitration** (Legal 500) and **Aviation** (Legal 500). Recent comments and recommendations in the directories on his professional qualities as a barrister include:



“extraordinarily knowledgeable and clever” (Chambers UK, 2010, Commercial)

“tremendously able, efficient and effective silk who provides stellar advice.” (Chambers UK, 2010, Insurance)

“outstanding ... combines a compendious knowledge of the law with considerable originality in his thinking”

“extraordinarily gifted”

“wonderful advocate”

“known for his academic mind ... his powers of analysis allow him to penetrate right through to the core of a case”

“recommended for his intellectual prowess”

“can be guaranteed to do a fantastic job on any case”.

Practice:

Banking & Finance:

In the banking and financial services field, Stephen has experience over a broad area, including domestic and investment banking; project finance; futures and derivatives trading; securitisations; and the financial markets more generally; together with regulatory and other proceedings involving financial intermediaries. Amongst other things, he appeared in the House of Lords in ***Barclays Bank v. Boulter* [1999] 1 W.L.R. 1919**; he acted for the Secretary of State for Trade and Industry in “tracing” proceedings brought against B.C.C.I. (***Re Bank of Credit and Commerce International (No. 4)* [1994] BCLC 419**); he acted for the LME in a number of proceedings arising out of the Sumitomo copper futures scandal, and he has acted for financial intermediaries in compensation and restitution proceedings brought by the Financial Services Authority. Most recently, he has appeared for Terra Firma in proceedings arising out of the Box Clever securitisation; and for Deutsche Bank in its appeal to the Court of Appeal raising important questions of European law under the Brussels Regulation (***Deutsche Bank AG v Asia Pacific Broadband Wireless Communications Inc* [2008] 2 Lloyd’s Rep. 619**). He is currently advising a number of clients on issues arising out of the “credit crunch”

Professional Negligence:

In the area of professional negligence, Stephen has extensive experience of claims in a wide range of professional disciplines, including those against accountants, bankers, solicitors, financial intermediaries, and brokers. Amongst the many proceedings in which he has been involved, he acted for Touche Ross in the leading House of Lords authority on the extent of an accountant’s duty of care (***Caparo v. Dickman* [1990] 2 A.C. 605**), and for the Secretary of State for Trade and Industry in a series of substantial professional negligence actions against legal and financial advisers arising from the collapse of the Barlow Clowes group. He is currently acting for several well-known firms of solicitors in legal proceedings against them alleging professional negligence.

Insurance & Reinsurance:

In the area of insurance and reinsurance, Stephen has advised and acted for (re)insureds, (re)insurers, and brokers in all manner of disputes, and dealt with almost all fields of marine and non-marine insurance and reinsurance, including D&O



insurance, war risks insurance, credit insurance, LMX reinsurance, and alternative risk transfer products. In the “Lloyd’s litigation” in the 1990s, he acted for a number of the large names’ action groups, including the Outhwaite names (***Stockwell v RHM Underwriting Agencies Ltd***), the Merrett names (***Henderson v. Merrett Syndicates v. Ernst & Young [1993] 1 Lloyd’s Rep. 540***), the Feltrim names (***Arbuthnott v. Feltrim Underwriting Agencies Ltd.***), and the Rose Thomson Young names (***Berriman v. Rose Thomson Young (Underwriting) Ltd. [1997] L.R.L.R. 247***); and he appeared in the leading House of Lords authorities establishing the existence of a duty of care owed by underwriters (***Henderson v. Merrett Syndicates Ltd.; Feltrim Underwriting Agencies Ltd. v. Arbuthnott [1995] 2 A.C. 145***). Other leading insurance and reinsurance cases in which he has appeared include ***Lord Napier & Ettrick v. Hunter [1993] A.C. 713*** (nature and extent of an insurer’s right of subrogation; ***Toomey v. Eagle Star Insurance [1994] 1 Lloyd’s Rep. 516*** (difference between insurance and reinsurance), and ***Toomey v. Eagle Star (No. 2) [1995] 2 Lloyd’s Rep. 88*** (effect of clause excluding right to avoid). Amongst the substantial Commercial Court proceedings in which he has been involved, he acted for a major credit insurance company in multi-million pound proceedings involving a fraudulent claim on an export credit insurance policy.

Arbitration:

In the field of arbitration, Stephen has extensive experience of appearing in arbitration proceedings, both *ad hoc* and institutional (ICC, LCIA and AAA) in a variety of different areas, ranging from all manner of insurance and reinsurance claims to IT, railway industry, and defence-related disputes. Although the details of most of his work in this area remain confidential for obvious reasons, he appeared in the Privy Council in ***AEGIS Ltd. v. European Re [2003] 1 W.L.R. 1041*** (duty of confidentiality in arbitrations), and more recently in ***Sea Trade Maritime Corporation v. Hellenic Mutual War Risks Association (Bermuda) Limited [2006] 2 Lloyd’s Rep. 147*** (scope of Arbitration Act 1996, s. 47 providing for different awards on different issues) and ***Sea Trade Maritime Corporation v. Hellenic Mutual War Risks Association (Bermuda) Limited (“The ATHENA”) (No. 2) [2007] 1 Lloyd’s Rep. 280*** (dealing with when an arbitration clause can be incorporated into a contract by reference). Other recent arbitrations in which he has been involved include a railway industry dispute arising out of the Hatfield train disaster, in which he sat as arbitrator; an international defence-related dispute in which he appeared in the U.S. for a major defence contractor; and an international arbitration arising out of the misappropriation of a fleet of commercial aircraft. He also sits as an arbitrator.

General commercial disputes, including joint venture and shareholder disputes:

The breadth of Stephen’s experience in the commercial field, combined with his academic background before coming to the Bar, means that he is also instructed in a wide variety of large commercial disputes, often of a very technical nature, and raising the application of first principles of law to a new area, as well as complicated questions of construction. Included within this aspect of his practice are disputes between the participants in large international joint ventures, and between shareholders. Amongst recent disputes of this nature in which he has been instructed, he acted for one of the parties to a major dispute arising out of an international 3G mobile telephony joint venture; and he acted for a major international defence contractor in a dispute arising out of a multi-national defence-related joint venture.



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Publications:

Editor of Insurance Chapter in *Chitty on Contracts* 26th edition (1989) and 27th edition (1994)

Contributor to *Laundering and Tracing* O.U.P. 1995 (Chapter entitled *Tracing, Mixing and Laundering* dealing with the tracing of laundered monies through bank account)

General Editor (with Raymond Cox) *Commercial Court Procedure* (Sweet & Maxwell)