



# Deborah Horowitz

Call 2010

 [dxh@fountaincourt.co.uk](mailto:dxh@fountaincourt.co.uk)  +44 (0)20 7583 3335

Deborah Horowitz's practice spans commercial, banking, insurance, aviation, trade finance, construction, corporate crime (including fraud, bribery and money laundering) and regulatory cases.

Recent instructions include representing the UK Financial Conduct Authority in its successful test case trial against eight major insurance companies in relation to business interruption insurance claims stemming from COVID-19, affecting some 370,000 policyholders across the UK. She has also advised the FCA in respect of other business interruption insurance issues, and (being dual-qualified in England and Australia) was instructed by the Australian Financial Complaints Authority on similar matters, as well as in the equivalent Australian test case proceedings. In addition, she acted on behalf of RBS in the litigation relating to its £12 billion rights issue – one of *The Lawyer's* Top 10 Cases of 2017. She also acted for GECAS at trial and in its successful defence in the Court of Appeal in respect of a \$30 million claim in relation to aircraft finance.

Prior to commencing work as a barrister in 2010, Deborah was a litigation and regulatory investigations solicitor at Freshfields in London and Mallesons in Melbourne, and she has over 17 years' experience in practice. She holds a doctorate in law from the University of Oxford, which was subsequently published as a book: *Letters of Credit and Demand Guarantees: Defences to Payment* (OUP). She is a contributing author to Brindle & Cox (eds), *Law of Bank Payments*, as well as the author of a number of journal articles, including a recent co-authored piece (in the *New Law Journal*) on COVID-19, force majeure and frustration; she has acted in a number of matters in that area.

## Recent Highlights

### FCA v Arch Insurance (UK) Limited & Others

Appearing (with Colin Edelman QC, Leigh-Ann Mulcahy QC and others) on behalf of the FCA in its successful test case proceedings against eight insurance companies, in relation to construction, causation and prevalence issues in the context of business interruption insurance and COVID-19, affecting some 370,000 policyholders.

### The RBS Rights Issue Litigation

Acting for RBS (with David Railton QC and others) in a large-scale piece of litigation relating to representations

made in RBS's Prospectus for its £12 billion Rights Issue.

---

### **BMW v HSBC & Barclays**

Acting (with Patricia Robertson QC) for HSBC in proceedings relating to alleged cyber-fraud, fiduciary duties, employee liability, money laundering, unconscionable receipt and unjust enrichment.

---

### **Alpstream AG v PK Airfinance & GE Capital Aviation Services**

Acting (with Akhil Shah QC) for GE Capital in trial proceedings and then in its successful defence in the Court of Appeal of a \$30 million claim brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of seven Airbus A380 aircraft.

---

### **OCA v Novans**

Acting (with Michael McLaren QC) in relation to a dispute involving a \$14.4 million aircraft lease agreement, addressing issues covering breach of contract and unjust enrichment.

## Expertise

### **Aviation & Travel**

---

#### Notable Aviation & Travel cases

---

### **Alpstream AG v PK Airfinance & GE Capital Aviation Services**

Acting (with Akhil Shah QC) for GE Capital in trial proceedings and then in its successful defence in the Court of Appeal of a \$30 million claim brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of seven Airbus A380 aircraft.

---

### **OCA v Novans**

Acting (with Michael McLaren QC) in relation to a dispute involving a \$14.4million aircraft lease agreement, addressing issues covering breach of contract and unjust enrichment.

---

Acting for a worldwide aircraft finance company in relation to claims under a standby letter of credit, with issues involving mistake, rectification, fraud and the UCP 600.

---

Advising as to English law issues raised in Indian proceedings, relating to a \$5.4 million loan agreement, aircraft mortgage, guarantee and lease agreement.

---

Representing a major aviation entity in its \$10 million claim against a company for failing to arrange a standby letter of credit on the required terms, leading to the loss by the claimant of a major contract for the provision of aircraft to an overseas military operation.

---

Representing numerous airlines in their response to claims brought by passengers in relation to delays and cancellations of flights – dealing with issues such as industrial strikes, etc.

## Banking & Finance

---

### Notable Banking & Finance cases

---

#### The RBS Rights Issue Litigation

Acting for RBS (in a team led by David Railton QC) in a large-scale piece of litigation relating to representations made in RBS's Prospectus for its £12 billion 2008 Rights Issue.

---

Acting (with Patricia Robertson QC) for a large international bank in proceedings relating to alleged fraud, fiduciary duties, employee liability, money laundering, unconscionable receipt and unjust enrichment.

---

#### Alpstream AG v PK Airfinance & GE Capital Aviation Services

Acting (with Akhil Shah QC) for GE Capital in trial proceedings and then in its successful defence in the Court of Appeal of a \$30 million claim brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of seven Airbus A380 aircraft.

---

Advising in relation to proceedings in France dealing with the enforceability of an English-law governed \$9 million guarantee. Issues raised covered fraud, novation and alleged abusive calling under the guarantee.

---

Acting for a large international bank in relation to a trade finance claim, connected with the fraudulent procurement of funds from the bank.

---

Advising in relation to proceedings in Singapore as regards the enforceability of a S\$3.9 million performance bond.

---

#### HSBC Management (Guernsey) and HSBC Bank Russia LLC (HBR) v Mr Nogotkov of Dalnyaya Step LLC

Providing formal English law advice on behalf of HSBC for use during Russian banking/insolvency proceedings, on

the subject of a judgment regarding a recognition order under the Cross-Border Insolvency Regulations 2006.

---

### **Seymour Direct v Worldpay (UK) Limited**

Acting for Worldpay in respect of a claim regarding the payment of commission.

---

Advising as to English law issues raised in Indian proceedings, relating to a \$5.4 million loan agreement, aircraft mortgage, guarantee and lease agreement.

---

### **Nomihold Securities Inc v Mobile Telesystems Finance SA**

Instructed (with Richard Handyside QC) in relation to an application for a declaration that an investment bank could assist in a transaction involving the purchase of \$400 million notes.

---

### **The Argo Fund Limited v Merrill Lynch International**

Instructed (with Richard Handyside QC) in a dispute in relation to a credit default swap governed by the ISDA Master Agreement, in which the reference obligation was a \$175 million loan from the bank. The case involved consideration of the principles from *BNY Corporate Trustee Services Ltd v Eurosail-UK 2007-3BL Plc* [2011] 1 WLR 2524.

---

### **RBS v Axis Bank Ltd**

Acting (with Akhil Shah QC) on behalf of RBS in its claim for reimbursement of \$15.5 million from an Indian issuing bank under a standby letter of credit.

---

Represented (with Michael Blair QC) Deutsche Bank in its defence of Italian proceedings involving alleged mis-selling of bonds issued by Parmalat pursuant to an EMTN programme.

---

Acting for a large international investment bank in its defence of allegations, including those made by the FCA and the SEC, that it mis-sold mortgage-backed CDOs.

---

Acting on behalf of banks in swaps-related cases, including: a large commercial bank in its defence of a claim for £18 million in relation to an interest rate swap; and an investment bank in a dispute emerging from the Icelandic financial crisis, in which the bank had entered into a total return swap, pursuant to an ISDA Master Agreement, with an Icelandic bank.

---

Representing investment banks in disputes involving jurisdiction issues in the context of derivatives, including: acting for a bank in relation to claims brought against its Spanish branch in the Madrid courts, relating to swaps, forwards and puts; and acting for a bank in its defence of claims by Turkish entities in connection with swaps and puts.

---

---

Acting for a large bank in its defence of claims brought by Korean banks in the Seoul District Court for payment under letters of credit and bills of exchange; participated in an associated mediation.

---

Acting for a large airport in proceedings involving the enforcement of a guarantee given by the Italian parent company of an insolvent subsidiary.

## Commercial Crime

---

### Notable Commercial Crime cases

---

Advising (with Richard Lissack QC) a leading international law firm in relation to issues concerning financial transactions, POCA notifications and money laundering.

---

Currently acting (with Patricia Robertson QC) for a large international bank in proceedings relating to alleged fraud, fiduciary duties, employee liability, money laundering, unconscionable receipt and unjust enrichment.

---

Representing a large international reinsurance broker in its response to claims and regulatory investigations (brought by the FSA (at it was), the SEC and the DOJ) in relation to alleged third party payments and bribery in the UK, US and Asia.

## Commercial Disputes

---

### Notable Commercial Disputes cases

---

Acting (with Richard Lissack QC) for a private equity investment firm, in relation to the scope and enforceability of its contractual rights in respect of certain investment funds based in Guernsey and Luxembourg.

---

Acting for an organisation which provides medical facilities, in a dispute involving the faulty installation by a supplier of equipment at a medical site, leading to a large-scale claim for damages.

---

### Gasfin & Abberfield v Fisher

Acting for Russian clients as regards an Isle of Man-related claim dealing with unjust enrichment, directors' duties and other company law issues, and misrepresentation in respect of investments and a loan agreement.

---

Acting (with Nik Yeo) for a large football organisation in a dispute with an entity in Hong Kong regarding a contract covering rights to televise matches and an associated standby letter of credit.

---

Acting for an Egyptian entity in a claim against an English company regarding the defective supply of agricultural equipment.

---

Acting for an Egyptian entity in a dispute with a consultancy firm regarding commission payments.

---

Acting in relation to a claim against a consultancy firm and also a firm of solicitors as regards potential fraud and negligence.

---

Representing a large international investment bank in its defence of allegations, including those made by overseas regulators, that certain bank employees engaged in misconduct in relation to precious metals trading.

---

### **SPL Private Finance (PF1) IC Limited & 17 Others v Arch Financial Products LLP**

Instructed (in a team led by Richard Coleman QC) 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 \$150 million.

---

### **Cluff Gold Plc v IAF Capital Limited**

Instructed to advise and appear on behalf of a mining company in an appeal in relation to costs issues.

---

### **Validus v IPC Holdings & Max Capital**

Acting for a Bermudian reinsurer, which was the target of a hostile takeover bid, in two sets of court proceedings in Bermuda: first, involving the enforceability of a break fee clause in a merger agreement; and secondly, in relation to a proposed scheme of arrangement.

---

### **TTI Team Telecom v Hutchison 3G**

Representing the telecommunications company in its defence of proceedings brought by the supplier of technology for a 3G network.

---

Advising on actions against the manager of feeder funds affected by the Madoff Ponzi scheme.

---

Defending a large accounting firm in a claim brought against it by a commodities broker.

---

Representing an international pharmaceuticals company in its defence of claims brought in relation to allegedly defective hair-dye products.

---

---

Advising the purchaser of a property business on claims for breach of warranty.

## Company, Restructuring & Insolvency

---

### Notable Company, Restructuring & Insolvency cases

---

Acting (with Richard Lissack QC) for a private equity investment firm, in relation to the scope and enforceability of its contractual rights in respect of certain investment funds based in Guernsey and Luxembourg.

---

#### Gasfin and Abberfield v Fisher

Acting for Russian clients as regards an Isle of Man-related claim dealing with unjust enrichment, directors' duties and other company law issues, and misrepresentation in respect of investments and a loan agreement.

---

#### SPL Private Finance (PF1) IC Limited and 17 others v Arch Financial Products LLP

Instructed (in a team led by Richard Coleman QC) 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 \$150 million.

---

#### Validus v IPC Holdings and Max Capital

Acting for a Bermudian reinsurer, which was the target of a hostile takeover bid, in two sets of court proceedings in Bermuda: first, involving the enforceability of a break fee clause in a merger agreement; and secondly, in relation to a proposed scheme of arrangement.

---

Advising on actions against the manager of feeder funds affected by the Madoff Ponzi scheme.

## Financial Services

---

### Notable Financial Services cases

---

#### FCA v Arch Insurance (UK) Limited & Others

Appearing (with Colin Edelman QC, Leigh-Ann Mulcahy QC and others) on behalf of the FCA in its successful test case proceedings against eight insurance companies, in relation to construction, causation and prevalence issues in the context of business interruption insurance and COVID-19, affecting some 370,000 policyholders.

---

Completing a secondment at the FCA, during part of 2018, and assisting with its review of overdraft charges, including considering industry views on proposals and drafting rules relating to repeat use.

---

Completing a secondment at Linklaters LLP (in its Financial Regulation Group) during part of 2014, where she was acting on behalf of a large bank in its response to an investigation by the FCA into the Bank's handling of PPI complaints.

---

Acting on behalf of a large investment bank in its response to allegations by an overseas regulator that certain of the bank's employees engaged in misconduct when conducting precious metals trading.

---

Representing a large international reinsurance broker in its response to claims and regulatory investigations (brought by the FSA (at it was), the SEC and the DOJ) in relation to alleged third party payments and bribery in the UK, US and Asia.

---

Representing a large investment bank in its response to regulatory investigations by the FSA (at it was) and the SEC in respect of alleged mis-selling of CDOs – involving consideration of the FSA's Principles, SYSC, COBs, etc.

---

Representing a bank in relation to an SEC investigation associated with Sarbanes-Oxley issues.

---

Representing banks and other institutions in relation to FCA and FOS-related matters – eg data theft, mis-selling, etc – involving frequent consideration of the FCA Handbook.

## Insurance

---

### Notable Insurance cases

---

#### FCA v Arch Insurance (UK) Limited & Others

Appearing (with Colin Edelman QC, Leigh-Ann Mulcahy QC and others) on behalf of the FCA in its test case proceedings against eight insurance companies, in relation to construction, causation and prevalence issues in the context of business interruption insurance, affecting some 370,000 policyholders.

---

Advising the FCA in relation to further business interruption insurance matters, including guidance in respect of the legal consequences flowing from the prevalence of COVID-19 across different sectors of the UK.

---

Advising the Australian Financial Complaints Authority in respect of issues relating to business interruption insurance.

---

Acting on behalf of eight businesses in the Australian test case proceedings (analogous to those in the UK) against insurers in relation to business interruption insurance, addressing issues of coverage, causation and adjustment.

---



Representing a large international reinsurance broker in its response to claims and regulatory investigations (brought by the FSA (at it was), the SEC and the DOJ) in relation to alleged third party payments and bribery in the UK, US and Asia.

Acting in relation to court proceedings in Bermuda involving three reinsurance companies and corporate restructuring issues.

## Education

- D.Phil in Law, Merton College, University of Oxford (2009)
- M.Phil in Law (Distinction), Merton College, University of Oxford (2007)
- BCL (Distinction), Merton College, University of Oxford (2006)
- LLB (Hons), University of Melbourne (2003)
- BA (Hons) (English & French), University of Melbourne (2003)

## International Bar / Court Appointments

- Admitted to practise in the High Court of Australia and the Supreme Court of Victoria (2004 to present)

## Memberships

- Solicitor, Freshfields Bruckhaus Deringer LLP, London (2007-2010)
- Solicitor, King & Wood Mallesons, Melbourne (2004-2005)
- Former Lecturer and Tutor in Contract Law, University of Melbourne and Trinity College, Melbourne (2000, 2002)
- Volunteer Legal Adviser at the Bethnal Green Legal Advice Centre (2011-2012)
- UK Foundation for International Uniform Law Scholarship for Doctoral Studies (UKFIUL)
- Rae & Edith Bennett Travelling Scholarship for Doctorate, University of Melbourne
- Exhibition for the BCL, Merton College, University of Oxford
- British Chevening Scholarship & Rotary Scholarship for the BCL, British Council & Rotary
- David Wells Law Scholarship, Trinity College, University of Melbourne
- Faculty Prize for Restitution Law, University of Melbourne
- Faculty Prize for Property Law, University of Melbourne
- Melbourne National Scholarship (inaugural), University of Melbourne

## Publications

- Horowitz, *Letters of Credit & Demand Guarantees: Defences to Payment* (Oxford University Press, 2010; publication of my doctoral thesis)
- Horowitz, Brindle, Coleman & McClelland, “Documentary Credits and Related Transactions” in Brindle and Cox (eds), *Law of Bank Payments* (Sweet & Maxwell, 5<sup>th</sup> edn, 2018)
- Horowitz, Robertson and Lynch, “COVID-19, Force Majeure and Frustration: Key Legal Principles & Industry Implications” (2020) *New Law Journal* 13 (8 May 2020); reproduction of an article we published can be found [here](#)
- Horowitz, “Banco Santander and the UCP 600” (2008) 6 *Journal of Business Law* 508
- Horowitz, “The Fate of High Seas Fisheries in the Southern Bluefin Tuna Case” (2001) 25 *Melbourne University Law Review* 810
- Deborah also regularly gives lectures to law firms, banks and other clients on a variety of subjects, both in London and internationally – for example, she was recently invited to lecture at the National University of Singapore, as well as the AIFC Academy

## Languages

- French (fluent)