



James Cutress QC

Call 2000 | Silk 2018

"An exceptional lawyer, who is extremely bright." "He is incredibly responsive, easy to build a good working relationship with, and someone you can rely on."

Chambers & Partners

✉ jc@fountaincourt.co.uk ☎ +44 (0)20 7583 3335

James Cutress QC is an experienced commercial advocate, described in the legal directories as being "immensely effective in court", "brilliant on tactics" and "excellent at cutting to the chase".

He regularly acts both before the courts and in international arbitrations. His cases are typically heavy and complex commercial disputes which are international in nature and often raise jurisdictional issues.

James has significant experience and expertise in a number of practice areas, including Aviation, Banking & Finance, Financial Services, Civil Fraud, Insurance, Professional Negligence and Professional Discipline. He is ranked by legal directories in Commercial Litigation, Banking & Finance, Insurance, Aviation and Professional Negligence.

James is co-Author of Thanki's The Law of Privilege (3rd edition) and gives specialist and expert advice in relation to privilege issues and disputes. He has also sat on the Bar Standard Board professional complaints committee (now Independent Decision Making Body) for a number of years.

Recent Highlights

Commercial disputes

Acting in a high-profile claim involving alleged 'front running' of foreign exchange stop loss orders by HSBC (*ECU Group Plc v HSBC*), a major multi-party arbitration arising out of a substantial oil pipeline joint venture, a substantial dispute relating to the Madoff fraud and in a number of recent disputes involving force majeure clauses, material adverse change clauses and frustration.

Banking & Finance disputes

Acting in a \$423 million claim involving allegations of LIBOR manipulation (*London Bridge v RBS*) and a £663 million claim which was the largest mis-selling claim of its type then brought against a bank (*Stuart Wall v RBS*).

Aviation disputes

Acting for Lufthansa in a widely-publicised claim relating to the termination of nine aircraft leases with LaudaMotion, as well as in a range of disputes relating to airport detentions, liens, slots and leases arising out of each of the recent Flybe, Thomas Cook and Monarch insolvencies and the sanctions imposed on Russia.

Insurance arbitrations

Acting in a number of high value credit insurance arbitrations and Bermuda Form disputes and arbitrations.

Sanctions issues

Advising in relation to contractual, recovery and insurance issues arising out of sanctions including the recent sanctions imposed on Russia.

Expertise

Aviation & Travel

James is a leading silk in aviation and has a wealth of aviation, aviation lease and aviation financing dispute experience. He is described in the directories as “someone who has that understanding of how things work in the aviation industry”. He was recently instructed in relation to matters arising out of each of the Thomas Cook, Monarch and Flybe insolvencies.

Notable Aviation & Travel cases

Acting for Lufthansa (leading a team of two juniors against two silks and a junior) in a widely publicised dispute between Lufthansa and LaudaMotion relating to the termination of nine aircraft leases.

Manchester Airport v Archway Aviation

Acting for a lessor in relation to the arrest of a number of aircraft by Manchester Airport in the wake of the Monarch insolvency.

Instructed by the special managers of Thomas Cook shortly before it entered into liquidation to advise in relation to aviation-related regulatory and contractual issues and slot allocation.

Acting for Export Development Canada in relation to a high-profile dispute concerning the termination of an aircraft lease entered into with an entity related to the Guptas, who are accused of ‘state capture’ in South Africa.

Alpstream AG & Others v PK Airfinance & GE Capital [2015] EWCA Civ 1381; [2014] 1 All ER (Comm) 441

Acting in a high-profile four-day appeal and seven-week trial of a \$30 million claim arising out of the repossession and subsequent sale of seven airbus aircraft.

Instructed in a \$10 million claim by an aircraft purchaser against Embraer for allegedly repudiating an aircraft sale agreement.

Virgin Atlantic v Koito [2014] EWHC 1671

Advising on a £20 million claim arising out of the sale of aircraft seats in relation to which the manufacturer was alleged to have falsified test results.

Acting on a two-week arbitration in relation to an end of lease dispute, involving a claim of over \$10 million.

Acting on a \$20 million claim arising out of the total loss of a 747 aircraft in a hanger fire in Thailand.

Regularly advising in relation to lease and aircraft financing disputes, disputes between airlines (including in relation to IATA terms) and aviation related insurance disputes.

Banking & Finance

James regularly acts in a wide range of disputes and recovery proceedings, including in particular in relation to syndicated loans, guarantees and performance bonds, securitisations, derivatives, in jurisdiction disputes and in relation to regulatory issues. He is recommended by *Chambers & Partners* for his work in Banking & Finance.

Notable Banking & Finance cases

ECU Group Plc v HSBC

Acting in a high-profile claim involving alleged 'front running' of foreign exchange stop loss orders by HSBC.

London Bridge v RBS

Acting for RBS in a \$423 million claim involving allegations of LIBOR manipulation.

FSCS v Paragon & Others

Acting for FSCS in proceedings against multiple defendants to recover tens of millions paid out in compensation in relation to PPI insurance.

Stuart Wall v RBS (2017)

Acting for RBS in a £663 million claim, which was the largest mis-selling claim of its type then brought against a bank.

Lukoil Mid-East Ltd v Barclays Bank Plc [2016] BLR 166

Acting in a claim for £7 million raising issues of construction of a demand guarantee / performance bond.

Greenclose Ltd v National Westminster Bank Plc [2014] 2 Lloyd's Rep 69

Advising on a claim raising issues of construction of general importance in relation to the notice provisions under the ISDA Master Agreement.

DVB Bank SE v Shere Shipping Co, IRISL & Others [2013] EWHC 2321 (Comm)

Acting as sole counsel in a claim for €42 million against Iranian owned or controlled entities who asserted defences of supervening illegality arising out of the EU sanctions against Iran.

BMA Special Opportunity Hub Fund Limited v African Minerals Finance Ltd [2013] EWCA Civ 416

Acting in a \$17 million dispute in relation to a prepayment fee under a \$500 million syndicated loan agreement.

Kookmin Bank v Rainy Sky & Others [2011] 1 WLR 2900 (SC)

Acting for Kookmin Bank in a landmark \$50 million dispute determined by the Supreme Court relating to the construction of a series of advance payment bonds.

Acting for Deutsche Bank in a \$70 million dispute arising out of the purchase of asset backed CLOs, including a dispute as to the grant of anti-suit injunctions in relation to which the Supreme Court granted permission to appeal.

Acting in numerous LIBOR and/or mis-selling claims relating to the sale of financial derivatives, including IRHPs (including *Wani LLP v Royal Bank of Scotland Plc* [2015] All ER (D) 22 (May)).

Acting in a number of cases involving allegations of misconduct by recoveries teams within banks.

Civil Fraud

James regularly acts in cases involving civil fraud. He has acted in disputes arising from some of the biggest frauds in recent times. He is experienced in acting in relation a wide range of interim relief including freezing orders,

Norwich Pharmacal orders and Bankers Trust orders.

Notable Civil Fraud cases

ECU Group Plc v HSBC

Acting in a high-profile fraud claim involving alleged 'front running' of foreign exchange stop loss orders by HSBC.

Ashley v Jimenez [2019] EWHC 17

Acting in a high-profile multi-million pound fraud case raising issues of forgery and relating to a substantial property investment abroad.

Acting in a \$200 million arbitration arising out of a massive fraud in the Middle East.

Kazakhstan Kagazy v Zhunus, Arip & Others [2015] EWHC 996

Advising on claims in relation to an alleged fraud of over \$150 million from various Kazakh companies, raising complex jurisdictional, legal and factual issues.

Virgin Atlantic v Koito [2014] EWHC 1671

Acting on a £20 million claim in deceit arising out of the sale of aircraft seats in relation to which the manufacturer was alleged to have falsified test results.

Acting for a fund manager in a claim in the Cayman Islands for over \$500 million arising out of the Madoff fraud.

Acting for employer in a £4 million employee fraud in which a range of interim relief was obtained, including freezing orders, disclosure orders and Bankers Trust orders.

Acting in a series of claims involving alleged LIBOR and FX misconduct and fraud.

Commercial Disputes

James has acted in numerous high value and complex commercial disputes across a wide range of subject matters. He is recommended by *Chambers & Partners* for his work in commercial dispute resolution and has been described as having "instinctive commercial thinking".

James has particular expertise in disputes concerning jurisdiction and conflicts of law. He has acted and advised in many such disputes, including disputes in relation to anti-suit injunctions, *forum conveniens*, jurisdiction clauses,

choice of law, concurrent proceedings and the enforcement of foreign judgments.

Notable Commercial Disputes cases

ECU Group Plc v HSBC

Acting in a high-profile claim involving alleged 'front running' of foreign exchange stop loss orders by HSBC.

Acting for a fund manager in a claim in the Cayman Islands for over \$500 million arising out of the Madoff fraud.

Stuart Wall v RBS (2017)

Acting for RBS in a £663 million claim, which was the largest mis-selling claim of its type ever brought against a bank.

Acting as sole counsel in a €13 million arbitration raising complex issues relating to the enforceability of option agreements.

Alpstream & Others v PK Air Finance [2015] EWCA Civ 1318; [2014] 1 All ER (Comm) 441

Acting in a seven-week trial and subsequent appeal in a claim for breach of equitable duty and conspiracy against PK and GECAS arising out of the repossession and sale of seven airbus aircraft.

Treatt v Barratt [2015] EWCA Civ 116

Acting in trial and appeal raising issues of construction of a share purchase agreement.

Union Marine v Comoros [2015] 2 Lloyd's Rep 59

Acting as sole counsel in an arbitration and then arbitration appeal raising important issues as to the scope of the appeal powers under s.67 of the Arbitration Act.

Multi Veste 226 BV v NI Summer Row Unitholder BV

Acting in a three-week trial of a £30 million dispute relating to a joint venture to construct a £300 million shopping centre.

Commercial Disputes - Jurisdiction and conflicts of law

James has particular expertise in disputes concerning jurisdiction and conflicts of law. He has acted and advised in

many such disputes, including disputes in relation to anti-suit injunctions, *forum conveniens*, jurisdiction clauses, choice of law, concurrent proceedings and the enforcement of foreign judgments.

Notable Commercial Disputes - Jurisdiction and conflicts of law cases

Acting in a €200 million dispute between a state entity and an investment bank in relation to the entry into a series of derivatives transactions, raising numerous jurisdiction issues, including as to the relationship between jurisdiction clauses in connected agreements.

Ashley v Jimenez [2019] EWHC 17

Acting in a widely reported dispute raising a series of issues as to jurisdiction, including regarding whether an exclusive jurisdiction clause in favour of a foreign court had been forged and whether service out should be granted in relation to a number of different claims.

IMS SA v Capital Oil and Gas Industries Ltd [2016] 4 WLR 163

Acting in a \$5.8 million dispute raising important issues of principle as to the correct interpretation and application of the procedural rules relating to challenges to English jurisdiction, as well as issues whether a jurisdiction clause had been agreed.

Virgin Atlantic v Koito [2014] EWHC 1671

Acting for an airline in a \$20 million jurisdiction dispute with two manufacturers, raising complex issues as to the scope and applicability of many of the common law heads of jurisdiction.

Acting in a \$70 million dispute between a bank and a hedge fund arising out of repurchase transactions, raising issues of principle relating to the ability to obtain anti-suit injunctions in the context of non-exclusive jurisdiction clauses. The dispute settled shortly before it was to be heard by the Supreme Court.

UBS AG v Kommunale Wasserwerke Leipzig [2010] 2 CLC 499

Acting in a jurisdiction dispute between an investment bank and a German counterparty arising out of a series of CDO and CDS transactions, raising issues including as to the applicability of article 22 of the Judgments Regulation.

Insurance

James has acted and advised in numerous cases across the full spectrum of insurance disputes, including acting for (re)insurers and (re)insureds, in claims for and against brokers and in Bermuda form, credit insurance, fidelity insurance, business interruption, political risks, aviation, property and professional indemnity disputes. He is recommended in the directories in insurance and was nominated for 'Insurance Junior of the Year' in 2013.

Notable Insurance cases

Acting in a number of credit insurance arbitrations and disputes each involving claims of over \$10 million.

Acting in numerous Bermuda Form disputes including a three-week £100 million Bermuda Form arbitration, a three-week \$25 million Bermuda Form arbitration and a \$50 million coverage dispute.

Advising on a \$40 million arbitration under a political risks policy in connection with commodities trading.

Advising on a \$200 million arbitration in relation to a policy of fidelity insurance.

Acting for insurers in a one-week arbitration relating to the payment of profit commission under a coverholder agreement.

Acting for insurers in a £1 million claim pursuant to an equine insurance policy.

All Leisure Holidays v Europäische Reiseversicherung AG & Others [2012] Lloyd's Rep IR 193

Acting for an insured in proceedings raising issues of construction relating to over 400 claims on a passenger protection insurance policy arising out of the insolvency of a tour operator.

Acting in a \$20 million coverage dispute under a war risks insurance relating to alleged corruption in the Egyptian courts.

Acting for BAE in a major LCIA reinsurance arbitration involving \$3 billion worth of cover.

International Arbitration

James has extensive arbitration experience under a range of institutional rules (including LCIA, ICC and LMAA) in a number of commercial contexts, including commercial contracts, oil and gas, insurance/reinsurance disputes, fraud and aviation. His experience includes appeals from arbitration awards and disputes relating to enforcement of arbitration awards.

Notable International Arbitration cases

Acting in an arbitration between four major international oil companies relating to a substantial oil storage and pipeline joint venture.

Acting in a €13 million international arbitration arising out of a failed joint venture relating to property in Romania.

Union Marine v Comoros [2015] 2 Lloyd's Rep 59

Acting in an arbitration and then arbitration appeal raising important issues as to the scope of the appeal powers under s.67 of the Arbitration Act.

APC v Eltete [2015]

Obtaining the stay of an £8 million claim under s.9 of the Arbitration Act 1996 on the grounds of a Finnish arbitration clause, the applicability of which was disputed.

Acting in a \$200 million three-week arbitration on a policy of fidelity insurance.

Acting in a one-week arbitration in relation to the payment of profit commission under coverholder agreements.

Acting in a \$40 million claim under an insurance policy in connection with commodities trading.

Acting in a two-week aviation arbitration relating to disputes under aircraft lease agreements.

Professional Negligence & Professional Discipline

James has acted in very substantial claims in a wide range of disciplines, including in relation to fund managers, financial advisers, auditors, solicitors and valuers.

Notable Professional Negligence & Professional Discipline cases

Acting for well-known accountants in response to high-profile disciplinary proceedings in which the FRC sought the largest fine ever to be imposed.

Acting for a bank in a £48 million claim against valuers arising out of a series of allegedly negligent valuations of a major development site.

Acting for a fund manager in relation to a claim by a major client for alleged negligence in the management of a substantial portfolio during the financial crisis.

Acting for a leading provider of independent financial advice in a series of claims against former independent financial advisers.

Acting for a fund manager in a professional negligence claim for over \$500 million arising out of the high-profile Madoff fraud.

Acting for a law firm in a claim for alleged negligence in connection with the structuring of a \$2 billion collateralised bond obligation transaction.

Acting in a series of cases involving the alleged mis-sale of financial instruments including derivatives.

Directory Quotes

"Straight-talking, incredibly bright, unflappable and utterly focused." "An absolute pleasure to instruct: razor-sharp, accommodating and very easy to work with."

Chambers & Partners

"He is hugely knowledgeable. Calm and measured, while forceful and persuasive. Great with clients, who always feel reassured and confident after a conference."

The Legal 500

"He holds the court in the palm of his hand and his cross-examination is excellent." "He always makes himself available when required and is excellent at getting into the detail."

Chambers & Partners

"James Cutress QC is open-minded and a creative thinker." "He combines a brilliantly analytical mind with instinctive commercial thinking, and delivers the goods time and again."

Chambers & Partners, Global

"Hugely clever and someone who has that understanding of how things work in the aviation industry. He can speak plain English to lay clients who don't necessarily understand the law or the procedure involved in a case."

Chambers & Partners

"He has a formidable intellect and can always see creative solutions to the most difficult problems."

The Legal 500

"Super-intelligent, excellent on paper and brilliant on tactics."

The Legal 500

"He's great to deal with and a great advocate."

Chambers & Partners

"Immensely effective in court." "Excellent in all areas."

The Legal 500

Directory Rankings

Chambers & Partners – Global

- Dispute Resolution: Commercial – UK (Global Guide)

Chambers & Partners – UK

- Aviation
- Banking & Finance
- Insurance
- Commercial Dispute Resolution
- Professional Negligence

The Legal 500 – UK

- Aviation
- Insurance & Reinsurance
- Professional Negligence

Education

- BA Law, Oxford (Top First in the University)
- BCL, Oxford (First Class)
- LLM, Harvard Law School (magna cum laude equivalent)
- Inns of Court School of Law (Second in year)

Memberships

- Bar Standards Board Complaints Committee (2016-2019) and Independent Decision Making Body (2019-)
- Eldon Scholarship (Oxford University, 2000)
- Denning Scholarship (Lincoln's Inn, 2000)
- Scarman Scholarship (Inns of Court School of Law, 2000)
- Summer Associate, Litigation Department, Simpson Thacher & Bartlett, New York (2000)
- Winner, Robert Wright Mooting Competition, Lincoln's Inn (2000)
- Mansfield Scholarship (Lincoln's Inn, 1999)
- Hardwick Entrance Award (Lincoln's Inn, 1999)
- Tutor in Law (Part Time) City University (1999)
- Kennedy Scholarship (Kennedy Memorial Trust, 1998)
- British Academy Award for Postgraduate Study (1997)
- Andrew Dixon Scholarship (Worcester College, Oxford, 1995)
- Martin Wronker Prize (Oxford University, 1997)
- Field Fisher Waterhouse Prize (Oxford University, 1997)
- Prize for Best Finals Performance in Trusts (Oxford University, 1997)
- Henry S.Q. Henriques Prize (Worcester College, Oxford, 1997)

Publications

- Co-Author, *The Law of Privilege* (3rd Ed. Thanki, OUP, 2018)

Awards

