

Michael Ashcroft QC

SILK: 2011 | CALL: 1997

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Overview

Michael has a broad commercial practice, specialising in high value and complex (often highly technical) commercial contract disputes. He took silk in 2011, at only 38 years of age.

He was awarded the prestigious “International Arbitration Silk of the Year” by Chambers & Partners in 2016. Over recent years, he has been ranked as a leading silk by Chambers & Partners and The Legal 500 in the following practice areas: shipping, commodities, energy, civil fraud and international arbitration.

Michael has vast experience of jurisdictional disputes, having appeared in several of the leading cases. He is also regularly involved in applications for injunctions and for the enforcement of judgments and arbitration awards.

He appears regularly in the High Court, Court of Appeal, and Supreme Court. Michael also has a wide range of experience of cases before, and on appeal from, arbitration tribunals in various jurisdictions (including Singapore, Hong Kong, Sweden, Malaysia, Paris and New York). He is a team player and has led large teams of counsel in significant cases; he works frequently as co-counsel with lawyers qualified in other jurisdictions. Michael also has significant experience of mediation.

Michael accepts appointments as an arbitrator both in London and abroad. He is a member of the MOOGAS panel of international arbitrators and mediators. Michael also acts as an expert on English law in foreign proceedings.

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Publications

- Co-author of *Voyage Charters* (4th edn, Informa Law 2014).

Professional memberships

- Commercial Bar Association

Education

- University of Oxford, Magdalen College: BA, First Class; Bachelor of Civil Law, First Class

Example cases

- Acted for an English plc in relation to a US\$2 billion dispute in an LCIA arbitration against Indonesian interests arising out of the sale of shares in various mining companies.
- Acted for Naftogaz in a US\$2.5 billion dispute with Gazprom relating to a gas transit contract.
- Acted for mortgagees in the leading Court of Appeal case relating to “tracker” mortgages (*Alexander v West Bromwich* [2017] 1 All ER 942).
- Acted for the appellants in an appeal to the Supreme Court relating to various provisions of the Marine Insurance Act (“*The Renos*” [2018] 1 Lloyd’s Rep 285).
- Acted in the Court of Appeal for the successful claimants in relation to claims under letters of indemnity (*Glencore v Navig8* [2018] 2 Lloyd’s Rep 374).
- Acted for banks in ICC arbitration and High Court proceedings in relation to substantial claims under letters of credit and various bonds.

Commercial arbitration

Michael has vast experience of general commercial arbitration (primarily as an advocate, but also as an arbitrator) under ad hoc and institutional rules, in numerous jurisdictions, including London, Singapore, Hong Kong, Malaysia and New York. He is comfortable dealing with any commercial contractual disputes and his recent work has included share and asset sale disputes, investment joint ventures, finance leases, gas supply contracts, oil rig disputes, and construction disputes (from superyachts to windfarms). His preeminence in this area has been recognised by his nomination as 2016 Chambers & Partners “Silk of the Year” for International Arbitration.

Recent examples of work

- Acted for an English PLC in relation to a US\$2bn dispute in LCIA arbitration against Indonesian interests arising out of the sale of shares in various mining companies.
- Acted for UAE financiers in relation to a finance lease concerning a ship. The case gave rise to a question of general importance as to whether the hirer of a chattel progressively acquires a beneficial proprietary interest in it as a result of hire payments made.
- Acting in an ICC arbitration concerning the construction of a windfarm off the English coast.
- Led a team including four other counsel (including a junior silk) in a 3 days preliminary issue hearing and then five weeks substantive hearing, involving over 20 factual and expert witnesses, concerning a \$500m+ dispute arising out of the construction and delivery of semi-submersible drilling rigs from Chinese to Brazilian interests.
- Acted for BVI interests in a substantial ICC arbitration dispute with Peruvian interests relating to gas supply contracts.
- Acted for a high profile Bulgarian individual in a substantial LCIA arbitration relating to claims under an investment/joint-venture agreement. The arbitration involved allegations of fraud, breach of fiduciary duty, the taking of secret profits and questions as to proprietary remedies arising out of an agreement to transfer shares.

Commercial litigation / dispute resolution

Michael has considerable experience dealing with general commercial disputes in a wide variety of areas, including share and asset sales, options, joint ventures, performance bonds, finance/investment agreements, (bank and other) guarantees, agency relationships, letters of credit, indemnities, mortgage securities and mining agreements. He is very familiar with the ISDA Master Agreement terms.

Michael is also very familiar with jurisdictional disputes, which arise in many of the cases that he deals with. He recently acted in the Court of Appeal and Supreme Court in hotly contested multi-party litigation concerning the *lis pendens* provisions of the Judgments Regulation. He has acted regularly in anti-suit injunction cases.

Recent examples of work

- *Alexander v West Bromwich Mortgage Company Ltd* [2016] EWCA Civ 496. Acted for a very large group of landlords in a successful appeal to the Court of Appeal concerning tracker mortgages. The case is of considerable general importance. It established that the West Bromwich’s standard terms and conditions did not permit it to vary interest

rates otherwise than strictly in accordance with base rate movements and did not permit termination of mortgages on a mere one month's notice, absent any default or other circumstances justifying termination.

- The *Alexandros T* [2014] 1 Lloyd's Rep. 223, [2013] 1 Lloyd's Rep. 217. Acted with Iain Milligan QC and Luke Pearce in this heavy, multi-party, commercial litigation dispute before the Court of Appeal and the Supreme Court. The case involved points of fundamental importance concerning the *lis pendens* provisions of the Judgment Regulation, which apply in all civil and commercial matters that involve a European element. The case is the leading authority on the proper interpretation of Arts 27 and 28 of the Judgments Regulation.
- *Quadra Commodities v various insurers & Filhet-Allard Maritime*. Acted for Filhet-Allard Maritime (French insurance brokers) in two substantial (\$10m+ each) multi-party disputes arising out of insurance policies relating to soybeans. The claims against FAM were for professional negligence and/or breach of mandate. The cases involved complex issues of English and French law. Both cases proceeded very close to trial, but were successfully settled following a substantial mediation. Michael took the lead in preparing the clients' written mediation statement and advised before and during the mediation itself.
- *EFT Holdings Inc v Marinteknik Shipbuilders* (before the Singapore High Court and Court of Appeal) [2014] 1 SLR 860. Acted for the Respondents in \$20m+ claims for unlawful means conspiracy. Advised generally and prepared written opening, closing and appeal submissions for use in the Singapore proceedings. All claims were defeated. One of the leading Commonwealth cases on the requirements of the tort of conspiracy by unlawful means.
- *CIMC Raffles Offshore (Singapore) Ltd v Schahin Holding SA* [2013] 2 Lloyd's Rep. 575, [2012] EWHC 1758. Acted for the Claimants in the Commercial Court and Court of Appeal in relation to claims under a guarantee issued by a holding company of Brazilian interests that had purchased semi-submersible oil rigs. The Court of Appeal case is the leading judgment on the scope of the *Triodos Bank* (or 'purview') doctrine and an important case so far as concerns anti-discharge/anti-avoidance provisions in guarantees generally.
- *Seraphim Capital LP v Dietzen and others*. Acted for the Respondents in Commercial Court proceedings that were closely related to Californian proceedings. Disputes arose out of share sales and investment agreements. Complex jurisdictional issues and complicated questions relating to recoverability of alleged losses and reflective loss. The case was settled as part of a global settlement.
- *Rainy Sky v Kookmin Bank* [2012] 1 Lloyd's Rep. 34. Acted for the successful appellants before the Supreme Court in relation to this important case concerning refund guarantees. The judgment of Lord Clarke JSC provides important guidance as to the construction of commercial contracts generally, in particular as to the extent to which judges should take into account business common sense when choosing between rival interpretations.

Civil fraud

Michael has received recent praise in legal directories for his knowledge of civil fraud issues. Many of his cases involve civil fraud, directly or indirectly.

Recent examples of work

- Acting for charterers of a vessel in a \$60m London arbitration where one of the main defences is that the Owners were in fundamental breach of an implied term of the contract to act honestly, in such serious a way as to repudiate the relationship between the parties and justify termination of the contract.
- *Pablo Chiriboga, Jaime Chiriboga and Jaya Sudhir v Intervisatrade SA*. Acting in a substantial Commercial Court dispute arising out of the sale of shares in a power-generating plant. The case involves allegations of fraudulent misrepresentation and breach of warranty.
- *EFT Holdings Inc v Marinteknik Shipbuilders* (before the Singapore High Court and Court of Appeal) [2014] 1 SLR 860. Acted for the Respondents in US\$20m+ claims for unlawful means conspiracy. Advised generally and prepared written opening, closing and appeal submissions for use in the Singapore proceedings. All claims were defeated. One of the leading Commonwealth cases on the requirements of the tort of conspiracy by unlawful means.
- Acted successfully for the builders of semi-submersible drilling rigs in a \$500m dispute in which one of the central allegations (although not ultimately pursued at the hearing) was that the builders fraudulently misrepresented their capability to perform the contract, giving rise to liability in deceit.
- Acted successfully for a high profile Bulgarian individual in a substantial LCIA arbitration relating to claims under an investment/joint venture agreement. The arbitration involved allegations of fraud, breach of fiduciary duty, the taking of secret profits and questions as to proprietary remedies arising out of an agreement to transfer shares.

Shipping and commodities

Michael deals with all aspects of the law relating to shipping and commodities and, in addition to being ranked as a leading

silk in Band 1 (the highest) by Chambers & Partners, he was nominated as “Silk of the Year” (2014) in this category, and has again been nominated for this award in 2016. He has great experience of shipbuilding and ship sale disputes of all types, including offshore supply vessels, cargo ships, passenger ferries, chemical tankers, VLCCs, and mega-yachts. His construction related experience extends to offshore structures of various kinds, including oil rigs and their constituent parts, tower wishbone systems and SBMs. Many of these cases involve very complex structures and highly technical issues. Michael enjoys technical disputes and is very comfortable dealing with cases in which substantial expert evidence is required. He thoroughly enjoys commodities disputes of all types and has vast experience dealing with all sorts of sale of goods cases. Michael is privileged to be one of the authors of *Voyage Charters*, one of the leading shipping law textbooks.

Recent examples of work

- Acted in arbitration proceedings for the Owners of a Suezmax tanker that grounded in the Suez canal, closing it to all traffic for three days. Defeated very substantial claims arising out of the incident.
- *Classic Maritime v Lion Holdings*. Acting for Classic in a substantial commercial court dispute concerning a contract of affreightment relating to iron ore pellets in which the charterers are alleging that force majeure (arising out of the well-publicised Samarco tailings dam burst) excused the performance of numerous shipments.
- *Sea Powerful v Oldendorff*. Acting for head owners in a substantial claim in the commercial court arising out of the arrest of their vessel in China on account of the discharge/delivery of cargo without the original bill of lading.
- *Mercuria Trading v Esso*. Acted for Esso in this important Commercial Court case concerning fuel oil cargo. It gave rise to issues concerning the certification of cargoes, and the point at which “quality” may become final under sale contracts, which are of general importance.
- *The Valle di Cordoba* [2015] 1 Lloyd’s Rep. 529, [2014] 1 Lloyd’s Rep. 550. Acted for shipowners in a novel case concerning an in-transit loss clause. Charterers contended that the clause imposed strict liability for cargo loss (exceeding US\$5m), even though this was caused by pirates high-jacking the vessel and requiring the master at gunpoint to discharge the premium motor spirit cargo into lighters. Won the case in front of Andrew Smith J and in the Court of Appeal.
- Acting for the charterers of a vessel in a \$60m arbitration dispute with owners. Issues arise as to whether the vessel that was tendered for delivery was properly the subject matter of the contract.
- Acted for the buyers of anchor handling tugs in four LCIA arbitration disputes with the builders. The references gave rise to interesting and complicated issues concerning rights of termination due to insolvency, critical delays and the proper approach to listing and dealing with construction defects.
- Acted for the claimants in two arbitrations relating to the proposed sale of a fleet of tankers and barges.
- Acting (or recently acted) in numerous arbitrations in London, Singapore and Hong Kong concerning diverse shipping law issues arising out of charterparties, bills of lading, construction contracts, sale contracts and related agreements. Vast recent experience of shipbuilding disputes and MOA disputes.
- Acted in a substantial ICC arbitration relating to a long-term contract for the supply of gas from Peruvian fields.
- Acting in a substantial LCIA arbitration relating to the sale of iron ore fines. Interesting points arise to whether the product complied with the contract description and in relation to damages, including the extent to which one party’s hedging position may increase or reduce the overall loss.
- Acted successfully for German sellers of bio-diesel in a substantial LCIA arbitration with Romanian interests. There were major disputes as to whether the product complied with the contract and as to whether it was fit/suitable for importation into Romania given the provisions of Romanian customs law.

Energy and natural resources

Michael has great experience of issues relating to the transportation of various types of energy products. He has worked frequently on cases involving concessions and joint venture agreements in this context. He has recently led a team including 4 other counsel in a very large arbitration relating to contracts to supply semi-submersible oil rigs for ultra-deep water drilling in Brazil. He has just finished a substantial LCIA arbitration concerning gas supply contracts. He has very good knowledge of drilling, mining and other natural resource exploration/exploitation contracts.

Recent examples of work

- Acted for an English PLC in a US\$2bn LCIA arbitration relating to the sale of shares in various (gold, and other precious metal) mining companies. The case raised numerous interesting points of construction of the sale & purchase agreements, which are in fairly standard form, and of mining joint venture agreements, and various questions of Indonesian law.
- Successfully led a team including 4 other counsel (including a junior silk) in a 3 days preliminary issue hearing and then 5 weeks substantive hearing, involving over 20 factual and expert witnesses, concerning a \$500m+ dispute arising out of

the construction and delivery of semi-submersible drilling rigs from Chinese to Brazilian interests. Difficult questions arose as to whether, and if so on what basis, the buyers could claim massive losses allegedly suffered under drilling contracts by reason of late delivery.

- Acted for the buyers in a substantial ICC arbitration relating to a long-term contract for the supply of gas from Peruvian fields.
- Acting in a very substantial, accelerated, \$500m+ arbitration dispute concerning the cancellation of oil rig drilling and construction contracts.
- Acting in a \$100m ICC dispute relating to the construction of a windfarm of the English Coast.

Insurance

Michael has significant recent experience in relation to marine and cargo insurance. He has recently acted successfully for assureds in the Commercial Court and Court of Appeal following total loss of ships, and won an important recent case concerning “follow clauses”, which is of significance to the insurance markets generally. He is very familiar with coverage disputes and issues relating to non-disclosure and misrepresentation. He acted recently for brokers in two complex multiparty litigation cases arising out of cargo insurance policies, giving rise to numerous coverage issues, allegations of non-disclosure and aspects of French insurance law. He has acted in several insurance claims arising out of the loss of superyachts. He is currently advising an oil major in relation to \$1bn claims in the commercial court under CAR policies relating to a MOPUstor project on the Norwegian Continental Shelf.

Recent examples of work

- “The Renos” [2016] Lloyd’s Rep. Plus 59. Acting for various insurers in a substantial marine insurance case (\$17m claim) arising out of the alleged constructive total loss of a ship. The case gives rise to fundamentally important questions relating to the proper meaning and effect of various provisions of the Marine Insurance Act, which are of general application in relation to any marine insurance dispute, including as to whether costs incurred prior to service of a notice of abandonment and/or SCOPIC salvage costs can rank towards a CTL. Michael is currently seeking permission to take this important case to the Court of Appeal.
- “The St Efreem” [2014] 2 Lloyd’s Rep. 265. Acted successfully for the assured in a case concerning the proper interpretation of a “follow clause” in an insurance policy. The decision of Teare J is of wide importance and will apply in relation to any insurance contracts (not only marine insurance contracts) that contain a “follow the settlements” or “follow the leader clause”.
- The Alexandros T [2014] 1 Lloyd’s Rep. 223, [2013] 1 Lloyd’s Rep. 217. Acted with Iain Milligan QC and Luke Pearce in this heavy, multi-party, insurance dispute before the Court of Appeal and the Supreme Court. The case involved points of fundamental importance concerning the lis pendens provisions of the Judgment Regulation, which apply in all civil and commercial matters that involve a European element. The case is the leading authority on the proper interpretation of Arts 27 and 28 of the Judgments Regulation. It also involved important questions as to the scope of jurisdiction clauses in the underlying insurance contracts and the proper interpretation and true effect of the settlement agreement that was concluded between some, but not all, of the parties involved.
- *Quadra Commodities v Various Insurers & Filhet-Allard Maritime*. Acted for Filhet-Allard Maritime (French insurance brokers) in two substantial (\$10m+ each) multi-party disputes arising out of cargo insurance policies relating to soybeans that suffered damage or were misappropriated in Indonesia. The claims against my clients were for professional negligence and/or breach of mandate. The cases involved complex issues of English and French insurance law. Both cases proceeded very close to trial, but were eventually settled on very favourable terms for my clients following a substantial mediation.
- *Garnat Shipping & Trading Ltd v Baominh Insurance Corporation* [2011] 2 Lloyd’s Rep. 492 (Court of Appeal) [2011] 1 Lloyd’s Rep. 589 (Clarke J). Acted successfully for the assured in this substantial dispute relating to the total loss of a floating dock due to an encounter with a tropical storm while under towage to Vietnam. The dispute concerned numerous allegations of breach of warranty and alleged non-disclosure of material facts, all of which were rebutted.
- Michael has been involved in several confidential arbitrations relating to various different types of insurance/reinsurance, including marine (hull and cargo) liability, property, financial and political risks.

Recommendations

A hugely intelligent practitioner... Thoughtful, diligent and very good on his feet. [Chambers UK Bar 2019](#)

Michael Ashcroft QC is unflinching even in times of adversity. [Chambers UK Bar 2020](#)

Extremely easy to deal with and intellectually at the top of the tree. [The Legal 500 UK Bar 2020](#)

Very bright indeed - a good strategist who provides excellent submissions and skeletons. [The Legal 500 UK Bar 2020](#)

He's a clever, sensible and straightforward guy who knows his stuff, gets on with it and presents his points well. [Chambers UK Bar 2020](#)

A "go-to" silk in the shipping and commodities sector. [The Legal 500 UK Bar 2020](#)

He is an exceptionally gifted barrister. [The Legal 500 UK Bar 2020](#)

Amazingly hard-working and responsive. He is very clever and has a fantastic advocacy style. [Chambers UK Bar 2019](#)

Clearly highly experienced in international arbitration and inspires confidence in his solicitor team and the client. [The Legal 500 UK Bar 2020](#)

Tough, gritty and very experienced in international trade and commodities work. [The Legal 500 UK Bar 2019](#)

He is very calm and collected and very impressive in court. [Chambers UK Bar 2020](#)

Michael is extremely user-friendly as well as a very intellectual and detail-driven individual. He is excellent on tricky chartering questions in particular. [Chambers UK Bar 2020](#)

Extremely intelligent and inspires complete confidence. [The Legal 500 UK Bar 2019](#)