

Rupert Hamilton

CALL: 2010 (ENGLAND AND WALES); 2022 (BRITISH VIRGIN ISLANDS)

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Overview

Rupert enjoys a varied practice covering all aspects of commercial law. He has experience across Chambers' key areas of expertise, including in particular shipping and international trade, arbitration, company and insolvency disputes, and private international law.

He is regularly instructed to advise and to represent parties both in litigation and in arbitration proceedings. While Rupert is frequently led by silks and senior juniors on high-value, complex cases, he is also often instructed as sole counsel and has appeared unled both in the Commercial Court and in the Court of Appeal, as well as in matters before the Insolvency and Companies Court.

Rupert prides himself on being responsive to clients' needs and on being a team player who is ready to roll his sleeves up and get stuck in. He goes out of his way to make himself available for clients and ensure that their expectations can be met.

Before coming to the Bar, Rupert read science at university and then spent three years working in investment banking as a corporate finance analyst. He is good with figures and also with difficult technical or scientific issues and he particularly enjoys dealing with expert evidence, while his expertise with Excel regularly proves invaluable on cases.

Awards, prizes and scholarships

- Scholar of Corpus Christi College (2003)

Publications

- Co-author (with Christopher Newman) of the PLC Practice Note on Commercial Fraud: Bribery.

Professional memberships

- Commercial Bar Association
- LMAA Supporting Member

Education and career

- Corpus Christi College, Oxford: BA (Physics and Philosophy), First Class (2005)
- Between 2005 and 2008, Rupert held positions as a corporate finance analyst at several investment banks, including Macquarie Bank, Climate Change Capital, and Tricorn Partners (since acquired by Nomura).
- City University: GDL, Distinction (2009)
- BPP, London: BVC, Outstanding (2010)

- Queen Mother Scholarship, Middle Temple (2009)
- Harmsworth Entrance Exhibition, Middle Temple (2009)
- Certificate of Honour, Middle Temple (2010)

Shipping and commodities

Rupert has a busy shipping and international trade practice and is frequently instructed by shipowners, charterers, cargo interests, buyers, sellers and others besides in relation to all manner of disputes falling within these spheres. As well as undertaking many cases as sole counsel, he is regularly instructed as a junior to silks in Chambers in relation to high value and complex matters.

Significant cases, and examples of other recent instructions include:

- *Maersk AS v Mercuria Energy Trading SA* [2021] EWHC 2856 (Comm) – Acted (led by Michael Collett QC) for the purchasers of a cargo of copper ingots, who were the victims of a cargo substitution fraud, as respondents to an application by the carriers for an anti-suit injunction.
- *MSC Flaminia* – Acted (led by Julian Kenny QC) for the charterers in an arbitration claim by owners of a container vessel for loss and damage of US \$200million resulting from an explosion on board caused by autopolymerisation of undeclared cargoes of divinylbenzene (DVB) while the vessel was at sea.
- Instructed by sellers of a cargo of bitumen in respect of claims against purchasers for failing to complete the purchase and potential application for an anti-suit injunction to restrain proceedings in China.
- Instructed by shipowners in an arbitration claim against charterers for loss and damage caused by a fire started while the vessel was loading cargo.
- *CMA CGM SA v Nile Dutch Africa Line BV* – Acted (with Michael Collett QC) for charterers of a container vessel defending a claim by owners for loss and damage caused by explosion of an undeclared cargo of sodium hypochlorite. Claim Settled.
- Acted for a steel producer in an arbitration claim brought by a purchaser for breach of an exclusivity provision which precluded the seller from shipping any other cargo to the market where the purchaser operated for a period of three months.
- Acted for shipowners in a series of arbitrations with a total value in excess of US\$30m, involving claims for unpaid hire and other sums due under a number of charterparties (led by Philip Edey QC).
- *Dainford Navigation v PDVSA* [2017] 2 Lloyd's Rep. 409 – junior counsel for owners on a s.44 application for sale of a cargo subject to arrest and lien as security for a claim against charterers (led by Michael Coburn QC).
- Acted for the seller of a cargo of hot briquetted iron (HBI) defending a claim for damage said to have been caused to the purchaser's electric arc furnace (EAF) by the HBI allegedly failing to meet the contract specification (led by Philip Edey QC).
- Acted for charterers of several of LPG tanker vessels in a case concerning the Iranian sanctions regime and whether Charterers were entitled to trade the vessels to Iran, including issues relating to arrangements for payment of hire in US dollars (led by Timothy Young QC).
- Acted for charterers in a claim involving the name and hull number of a newbuilding vessel being altered/concealed shortly before her delivery from the shipyard, giving rise to questions over whether charterers were obliged to accept delivery of the vessel whose identity had been changed (led by Michael Ashcroft QC). Settled before application for leave to appeal against the arbitration award was finally determined.
- *San Evans Maritime v Aigaion Insurance Co* [2014] 2 Lloyd's Rep 265 – appeared for the successful claimant in a dispute concerning the meaning and effect of a "follow clause" in a marine insurance policy following grounding of a vessel (led by Michael Ashcroft QC).
- *The "Astra"* [2013] 2 All E.R. (Comm) 689 – formerly a leading case on the controversial question of whether prompt payment of hire is a condition of a charterparty (assisting Josephine Davies).
- *Yilport Konteyner Terminali v Buxcliff* [2013] 1 Lloyd's Rep. 378 – appeared for the successful claimant port operator in a claim for port charges for discharging cargo from a holed vessel (led by David Lewis QC).
- Instructed by shipowners defending a claim for damages arising out of alleged misdescription of a container ship and counterclaiming for damages for early redelivery of the vessel (led by Michael Coburn QC). Claim settled.

- Instructed by a shipyard on a claim by the insurers of the purchaser of the vessel following an engine failure shortly after delivery which resulted in significant salvage costs.
- Instructed by shipowners claiming damages for repudiation of a time charter and early redelivery outside the redelivery range.
- Acting for the purchaser of steel billets in a claim against a seller for failure to deliver goods.
- Instructed by charterers on a claim arising out of delays resulting from stevedores' refusal to discharge on grounds that vessel's gear did not comply with local safety regulations.

Arbitration

Arbitrations account for a large part of Rupert's practice, and he is regularly instructed at all stages, from advising on potential claims, drafting claim or defence submissions, advising in relation to all aspects of evidence, through to drafting written submissions and attending oral hearings. He recently acted for MSC (led by Julian Kenny QC) in a complex and document-heavy arbitration concerning the explosion of undeclared dangerous goods on board the MSC *Flaminia* while the vessel was in the mid-Atlantic.

Rupert is also regularly instructed on applications to court in support of arbitration proceedings, including applications for leave to appeal against arbitration awards under s.69 of the Arbitration Act (including an almost unique application for leave to appeal to the Court of Appeal in respect of an unsuccessful s.69 application for leave to appeal). He has also been involved in an application made to Court in support of arbitration proceedings in order to obtain an order for sale of cargo on board a vessel.

Rupert has appeared unled in both the Commercial Court and Court of Appeal on such applications, although he is also frequently led by prominent silks in Chambers on high-value arbitrations, or those which involve difficult technical issues.

Significant cases, and examples of other recent instructions include:

- Ad hoc Arbitration – *MSC Flaminia* – Acted (led by Julian Kenny QC) for the charterers in a claim by owners of a container vessel for loss and damage of US \$200million resulting from an explosion on board caused by explosion of containers of divinylbenzene (DVB) while the vessel was at sea.
- LCIA Arbitration – Instructed by the owner of a private jet in relation to a claim by an intended purchaser for alleged breach of an aircraft purchase agreement.
- BVI IAC Arbitration – Acted for a major African conglomerate defending a claim by a construction company in respect of a cancelled contract for construction of a port storage facility.
- LMAA Arbitration – Instructed by shipowners in a claim against charterers for loss and damage caused by a fire started while the vessel was loading cargo.
- LMAA Arbitration – Acted for charterers defending an unsafe port claim by owners for damage caused to a vessel while berthing.
- ICC Arbitration – Acted for a steel producer in an arbitration claim brought by a purchaser for breach of an exclusivity provision which precluded the seller from shipping any other cargo to the market where the purchaser operated for a period of three months.
- LMAA Arbitration – Acted for claimants in a series of document-heavy and factually-intricate arbitrations with a total combined value in excess of US\$30m (led by Philip Edey QC).
- *Dainford Navigation v PDVSA* [2017] 2 Lloyd's Rep. 409 – Instructed by claimants on a s.44 application brought in support of arbitration proceedings for sale of a cargo subject to arrest and lien as security for a claim against charterers (led by Michael Coburn QC).
- 69 Application – Instructed by an unsuccessful respondent, who was subject to an award for over USD \$45million, on a unique application to the Court of Appeal challenging a High Court judge's refusal of leave to appeal on an application made under s.69 of the Arbitration Act (led by David Joseph QC). The case settled before the application was heard by the Court of Appeal.
- *Frontier Agriculture v Bratt Brothers* [2015] 2 Lloyd's Rep. 500 (CA) – an application to enforce an award under section 66 of the Arbitration Act which turned on questions concerning whether the respondent had participated in the arbitration, and on whether the respondent had adduced sufficient evidence to call into question the existence of the arbitration agreement.
- 69 Application – Instructed by an unsuccessful respondent, who was subject to an arbitration award for more than EUR €20million, arising out of a contract for the construction and purchase of a megayacht, on an application for leave to appeal under s.69 of the Arbitration Act (led by Michael Ashcroft QC).
- *Al Nasr Co for Coke & Chemicals v Fairdeal Supplies* [2013] EWHC 3131 (Comm) – Successfully resisted a section 69

appeal from an arbitration award in dispute concerning failure to supply a cargo of coal.

- *The "Astra"* [2013] 2 All E.R. (Comm) 689 - Instructed on the successful application for leave to appeal under section 69 of the Arbitration Act; assisted Josephine Davies on the appeal hearing, which led to the controversial (now overruled) decision by Flaux J concerning whether prompt payment of hire is a condition of a charterparty.
- LCIA Arbitration - Application to an arbitral tribunal for an anti-suit injunction to restrain respondent from pursuing court proceedings outside the jurisdiction.
- LCIA Arbitration - Instructed by the respondent to a claim for damages in relation to a cargo which was alleged to have been off-specification (led by Philip Edey QC).
- LCIA Arbitration - Acted for the operator of an electric arc furnace (EAF) claiming damages for losses caused by reduced productivity resulting from the respondent's failure to deliver raw materials. Claim settled.
- SIAC Arbitration - Claim for misrepresentation and breach of warranty arising out of a contract for the sale of shares in a company operating a consumer goods business (led by Duncan Matthews QC). Claim Settled.

Company and insolvency

Rupert has worked on a broad range of disputes between shareholders, companies and/or their directors, often in the context of claims by insolvent companies against former officers. He has been instructed as junior counsel on several large and complex matters, and in 2016 he spent six months in the Cayman Islands on secondment to Mourant Ozannes, where he was part of the team working on Primeo Fund's USD \$2million claim against HSBC subsidiaries.

- *Re Yeowart* - Acting (with Blair Leahy KC) for the trustees in bankruptcy of former directors of companies who had perpetrated a double-financing fraud worth an estimated £250million.
- *Sian Participation Corp v Halimeda International Limited* (BVI Court of Appeal) - appeared (led by Paul Lowenstein QC) for the respondents to an appeal against an order that the appellant should be put into insolvent liquidation on the basis that the debt was disputed and the appellant had a claim against the respondent that was worth more than the debt.
- *Unicorn Investment Holdings and others* - instructed (with Martin Pascoe QC and Blair Leahy) to advise the liquidators of several BVI companies which are the holding companies for a larger corporate group. Numerous issues arise out of the fact that certain assets held by the group formerly belonged to a convicted fraudster and there are numerous parties claiming to be shareholders and/or the rightful owners of assets held by the group. The matter has involved an application by the liquidators to the BVI Court for *Berkeley Applegate*. The case also concerns issues arising out of the fact that the fraudster is subject to a restraint order and confiscation order under the Criminal Justice Act.
- *Primeo Fund v HSBC Securities Services (Luxembourg)* (Cayman Islands Grand Court, 23 August 2017) - complex claim worth approximately US\$2bn brought by insolvent investment fund against its custodian and administrator following discovery that it had been a victim of the infamous Ponzi scheme operated by Bernard Madoff (while on secondment to Mourant Ozannes' Cayman Islands office). The claim involved difficult questions relating to reflective loss, as well as various interlocutory issues concerning the powers and obligations of the fund's liquidators.
- *Richards v Vivendi* [2017] B.P.I.R. 1390 - Acted for a petitioning creditor to resist an application under s.265 of the Insolvency Act to annul a bankruptcy order (assisting Blair Leahy).
- *Bergen Bunkers* - Acted for the insolvency estate of Bergen Bunkers (the Norwegian subsidiary of the OW Bunkers Group) on an application for recognition of Norwegian insolvency proceedings under the Cross Border Insolvency Regulations, and subsequently to advise in relation to the recognition order and management of claims against debtors.
- Unfair prejudice petition - Instructed (led by Blair Leahy) to defend a petition issued following a catastrophic breakdown in relations between shareholders. The case involved difficult questions over valuation, and was complicated by the parties' wildly different views as to the value of the business. Settled at mediation.
- Acted for the defendant to a claim brought by a former director and shareholder for alleged breach of conduct following his removal from office for alleged gross misconduct. Settled at mediation.
- Advised (with Stephen Atherton QC) on jurisdiction issues under the Lugano Convention arising out of insolvency of a party to a contract.
- Acted (led by Stephen Atherton QC) on a claim against the former directors, the administrator and the manager of an insolvent Isle of Man fund which had been the victim of a suspected fraud involving investment in US life insurance policies.
- Acted (led by Blair Leahy) on a complex claim by an insolvent investment fund arising out of a fraud by its founders and directors in which over £200million was stolen. The matter involved significant forensic accounting evidence, complex issues in relation to the assessment of damages, and potential claims against the fraudulent directors, non-executive directors, auditors and solicitors.

Private international law

Most of the matters which Rupert deals with involve parties and assets based in multiple jurisdictions and thus commonly give rise to issues concerning jurisdiction and applicable law.

Other commercial

Virtually all of the matters on which Rupert is instructed are commercial disputes, and he advises on all manner of issues including contractual relationships between parties as well as tort or other claims arising out of business relationships or in commercial contexts.

Some examples include:

- *Deutsche Bank AG v Vik* [2022] EWHC 2057 (Comm) – (led by Duncan Matthews KC) instructed by a former director of a company in relation to committal proceedings brought for an alleged failure to comply with a Part 71 Order for cross examination and production of company documents, including on an appeal to the Court of Appeal against findings of contempt made by the Commercial Court.
- Freezing Injunction – Obtained a worldwide freezing injunction against “persons unknown” for the victim of a business email compromise and payment redirection fraud and also associated Bankers Trust relief against banks to which funds were paid.
- Instructed (led by Timothy Young QC) by the former lessee of a commercial airliner in relation to disputes with the owner/lessor concerning the late redelivery of the aircraft and its condition on redelivery.
- Instructed by the owner of a private jet in relation to an arbitration claim by an intended purchaser for alleged breach of an aircraft purchase agreement.
- Instructed on claim against energy supplier for payment of half-secret commissions to an energy broker.
- Acted for a major African conglomerate successfully defending an arbitration claim by a construction company in respect of a cancelled contract for construction of a port storage facility.
- *Lemos v Lemos* – Acted (led by Tom Raphael QC) for claimants in a complex dispute concerning ownership and control of a family business. The case raised issues of Greek and Liberian law, as well as of the administration of wills. Claim settled.
- *Primeo Fund v Securities Services (Luxembourg)* (Cayman Islands Grand Court, 23 August 2017) – complex claim worth approximately US\$2bn raising issues concerning the duties and obligations of the administrator and custodian of an investment fund which was a victim of the infamous Ponzi scheme operated by Bernard Madoff (while on secondment to Mourant Ozannes’ Cayman office).
- Acted (led by Duncan Matthews QC) for the shareholder of a company defending an arbitration claim brought by a party that had purchased 55% of the shares in the company for misrepresentations and breach of warranty relating to underperformance of the company and misconduct by the company’s officers. Claim settled.