

Stephen Atherton KC

Year of call: 1989 (England & Wales); 2009 (Bar of the Eastern Caribbean)

Year of KC: 2006

Stephen's practice comprises international and domestic corporate insolvency and restructuring, company law, civil aspects of international and domestic commercial fraud, personal insolvency, banking, general offshore and international commercial litigation, and international and domestic asset tracing.

He has considerable experience in commercial litigation, civil fraud and contentious insolvency proceedings in the UK, Hong Kong, Brunei Darussalam, Malaysia, Singapore, the Cayman Islands, Bermuda, British Virgin Islands, Jersey, Guernsey, Samoa and the Isle of Man.

Stephen is admitted to the Bar of the Eastern Caribbean (British Virgin Islands). He is also called to the Bars of Bermuda, the Cayman Islands, the Isle of Man and Samoa for specific cases. Stephen has rights of audience in Brunei Darussalam for specific cases.

He was named as Insolvency/Corporate Restructuring Silk of the year at the Chambers Bar Awards 2014.

Stephen has also provided expert evidence on English, Bermuda, BVI and Cayman Islands' law for use in foreign proceedings, including proceedings in Singapore, Hong Kong, New Hampshire and the Netherlands.

Recommendations

- “Stephen's advocacy is persuasive and rigorous – he combines perception and humour in a very effective way” Chambers UK Bar 2020
- “He is great with lawyers, judges and clients – he has the ability to explain the same point to multiple different people, which is a rare skill in a barrister. His technical judgement is superb and he is super commercial, as well as being really easy to deal with” Chambers UK Bar 2020
- “A court-friendly advocate who will take no nonsense” The Legal 500 2020

- "...a first-rate trial advocate" The Legal 500 2020
- "A punchy draftsman and an excellent advocate with a light touch that can prove very effective." The Legal 500 2019
- "He is a very good advocate." The Legal 500 2019
- "He's brilliant. A sensible man and a safe pair of hands, who is very down-to-earth." Chambers UK 2018
- "Really nice to work with, he's great in court and really impressive all round." Chambers UK 2018
- "He continues to be unafraid to give unequivocal answers to questions posed where other counsel might hedge their bets – he is invaluable when the client wants clear guidance as to what to do." Chambers UK 2018
- "He's very thorough and not afraid to give an opinion so you know where you are." Chambers Global & UK 2018
- "He is a tremendously robust advocate." Chambers Global & UK 2018

Practice areas / areas of expertise

- Banking
- Civil aspects of international and domestic commercial fraud
- Company law
- Domestic and international commercial litigation;
- International and domestic corporate insolvency and restructuring
- Offshore
- Personal insolvency

Key cases

Stephen has been involved in many of the major insolvencies and restructurings of the last 25 years, these include most recently:

- Cath Kidston Limited: Advising the company in relation to its administration and proposed rescue.
- Phoenix Commodities Pvt Ltd: advising the company and other companies in the worldwide group in relation to its liquidation.
- Floatel International Limited: advising the Bermudian incorporated company in relation to its proposed restructuring.
- Homebase Plc: Advising the company and the supervisors of the company's

CVA as regards the mechanism to exit the CVA early.

- Debenhams Plc: Advising Sports Direct in relation to the restructuring and potential take-over of the company.
- Thomas Cook Plc: Advising the financial backers to various credit card companies in relation to the collapse of Thomas Cook.
- Premier Oil Plc: Advising a Hong Kong-based hedge fund and one of the company's largest creditors in relation to its opposition to the company's refinancing and scheme of arrangement.
- The Bartec Group: Advising the major lender to the group in relation to the proposed refinancing of the Group.
- Carillion Plc: acting for the lenders to the Carillion Group and also for various project companies in relation to the Royal Liverpool Hospital, Portsmouth and Southsea General Hospital and Three Valley NHS Trust.
- Four Seasons Healthcare: acting for the main lender in relation to the restructuring of the company.
- House of Fraser Plc: in relation to the company's CVA.
- Carpetright Plc: in relation to the company's CVA.
- New Look: in relation to the company's CVA.
- Mothercare Plc: in relation to the company's CVA.
- Prezzo: in relation to the company's CVA.
- Dana Gas: acting for the majority bondholders in relation to attempts to restructure the company's liabilities under an Islamic Bond and related litigation.
- Famar: acting for the main creditors of the group in relation to its restructuring.
- Vertu Corporation Limited: acting for the liquidator in relation to challenges to antecedent transactions.
- Lehman Brothers: for the administrators of Lehman Brothers Holdings ("Waterfall III") and Lehman Brothers Asia (in relation to the bank's scheme of arrangement) and in the UK for the company's landlords and various counterparties, clients and creditors of the Lehman group.
- Boris Berezovsky: acting for the trustees of Mr Berezovsky's deceased insolvent estate.
- Herald SPC Fund: acting for the official liquidator and certain investors in relation to the liquidation and proceedings against the Primeo Fund.
- Westinghouse Electric UK Holdings Plc: acting for the company in relation

to the restructuring of the Westinghouse group.

- Jack Wolfskin: acting on behalf of the group companies in relation to their restructuring.
- African Minerals acting for the lenders to and subsequent owners of the company.
- Portugal Telecom: instructed by the group companies in relation to their pan- European restructuring.
- Phones 4U: acting for the Security Trustee.
- UK Coal Plc: acting for the company in relation to its restructuring.
- SSH Steel Plc acting for the company in relation to its attempts to restructure.
- Glasgow Rangers FC, acting for and advising the liquidators of the company in relation to various proceedings.
- The Hillsborough Disaster acting for the company that formerly owned Sheffield Wednesday Football Club and the Hillsborough stadium.
- OAS Group, acting for bondholders in relation to the restructuring of the Brazil based corporate group.
- ATU Group: acting for the group in relation to its global restructuring.
- MF Global: acting for a number of counterparties to the company.
- The Saad Group, on behalf of the liquidators of a number of the Cayman Islands incorporated companies).
- *Re Herald Fund SPC* (unreported), 27 August 2018, Grand Court of the Cayman Islands (Kawaley J): instructed on behalf of the official liquidator of the Fund as regards the issue of whether statutory interest was payable on provable subordinated claims.
- *Shulman v Kolomoisky Ch D* (Fancourt J) 19/10/2018: successful appeal against case management order staying an application to challenge jurisdiction. The claim against Mr Kolomoisky was dismissed for want of jurisdiction.
- *Gertner v CFL Finance Ltd* [2018] EWCA Civ 1781: successful challenge to an individual voluntary arrangement proposed by a property tycoon once ranked amongst Britain's richest individuals relating £600 million debt.
- *Ctrip Investment Ltd v eHi Car Services Limited* (unreported), 29 June 2018 Grand Court of the Cayman Islands (Kawaley J): successful application to have what was described by the Court as a “cynical” and “abusive” just and equitable winding up petition.

- *Capital Partners Securities Co Ltd v Sturgeon Central Asian Balanced Fund* Bermuda Court of Appeal [2018] CA (Bda) 5, Civ: dispute as to the proper interpretation of the bye-laws of a long-term investment fund and whether it was just and equitable to wind up the fund on the basis of an alleged wrongful amendment to the bye-laws.
- *Dana Gas PJSC v Dana Gas Sukuk Ltd and others* [2018] EWHC 278 (Comm): Legal and procedural issues concerning rights and obligations in respect of an Islamic bond.
- *Staray Capital Ltd v Cha (British Virgin Islands)* [2017] UKPC 43: shareholder dispute in relation to a company that held shares in a mining project in Canada involving issues concerning directors' powers and duties, minority shareholders rights and unfair prejudice.
- *Pearson v Primeo Fund (Cayman Islands)* [2017] UKPC 19: issues concerning prioritisation of distribution in a Liquidation between feeder hedge funds where the investment medium was redeemable shares.
- *Ronelp Marine Ltd v STX Offshore & Shipbuilding Co Ltd* [2016] EWHC 2228 (Ch): successful application to lift a stay of the Commercial Court action imposed under the Cross-Border Insolvency Regulations following the defendant entering into Korean insolvency proceedings.
- *Lockston Group Inc v Wood* [2016] 1 WLR 2091: issues relating to the date on which debts provable in a deceased's insolvent estate were to be quantified, as well as the date on which debts are to be identified and when debts denominated in foreign currencies had to be converted into sterling for the purposes of proof.

Publications

- "Interpreting schemes of arrangement: A Welcome intervention?": "Butterworth's Journal of International Banking and Financial Law" (2015) 8 JIBFL 500.
- "Re Business Environment Fleet Street Ltd (in Administration) - 'The application of paragraph 72 of Schedule B1 to the Insolvency Act 1986: the importance of possession...of the facts, the evidence and the relevant property'": "The Company Lawyer" (2015) Vol 36 (No 6) p 184
- "What should administrators consider before seeking relief?": "Tolley's Company Law and Insolvency", Volume 14 Issue 6 (December 2014).
- "More time for claims from the 'twilight zone'": "The Lawyer", 19 January 2014.
- "A review of 2013 - How has the law relating to corporate restructurings

and insolvencies developed over the course of the last year?": "LexisPSL Commercial", 11 December 2013.

- Responsible for drafting the Practice Statement on insolvency officeholders' remuneration.
- "Charges over chattels: issues in the fixed / floating jurisprudence": "The Company Lawyer" (2005) Vol 26 (No 1) p 10.

Professional memberships

- Association of Business Recovery Professionals (R3)
- Chancery Bar Association
- Commercial Bar Association
- Insolvency Lawyers' Association
- Restructuring and Insolvency Specialists Association (Caribbean)
- Singapore Chamber of Maritime Arbitration.

Lectures / talks

- "Company Voluntary Arrangements in a Retail Context: When Landlords Attack...or Have They lost Their Bottle": delivered to the Finance and Restructuring Departments of Clifford Chance.
- "Governance and Stewardship: Before and After Corporate Failure": Delivered to the General; Counsel Department of Financial Services Compensation Scheme.
- "Insolvency and Restructuring Law - Legal Update and Annual Review": delivered at the Pinsent Masons Annual Restructuring and Insolvency Conference 2018 in London.
- Chair of the R3 London Insolvency Litigation Seminar 2018.
- "Issues of policy and principle in Cayman insolvency clawback claims": delivered in Grand Cayman to the Chancery Bar Association's 2016 Cayman Islands Conference.
- "Prest for an Answer: piercing the corporate veil under English law": delivered to C5's 29th Forum on "Fraud Asset Tracing & Recovery", 2016 in Geneva.
- "Directors and insolvency": Chair of 2016 R3 Conference in London.
- "When to use the 'F word'": delivered to C5's 28th Forum on "Fraud Asset Tracing & Recovery", 2015 in Geneva.

- *"Insolvency and Restructuring Law - Legal Update and Annual Review"*: delivered at the Pinsent Masons Annual Restructuring and Insolvency Conference 2014 in London.
- *"Navigating the Murky Waters of Fiduciary Duties"*: delivered at the Turnaround Management Association Annual Conference 2014 in Toronto.
- *"Issues for Directors in Corporate Insolvency"*: delivered to members of the Corporate, Litigation and Restructuring Departments of Mischon de Reya.
- *"Company Voluntary Arrangements: An Instrument of Corporate Rescue for Corporate Tenants or an Instrument of Torture for Landlords?"*: delivered to R3.
- *"Issues for Directors in the "Twilight Zone""*: delivered to members of the Corporate, Litigation and Restructuring Departments of Weil, Gotshal & Manges LLP.
- *"Freight Future Agreements in Insolvency - Set-Offs, Preserving Value and Other Issues"*: delivered in Singapore to the Annual Conference of the Singapore Chamber of Maritime Arbitration.
- *"The Remuneration of Insolvency Officeholders, the UK Perspective"*: delivered in Singapore to the to the Insolvency Practitioners Association of Singapore.
- *"Eating Peas: a Fork or Chop Sticks? The Interpretation of Contracts in England and Singapore"*: delivered in Singapore to the Wong Partnership.
- *"Current Issues in Personal Insolvency Law"*: delivered to the R3 Personal Insolvency Conference in Manchester.
- *"Insolvency Law - Legal Update and Annual Review"*: delivered at the Lawrence Graham Restructuring and Insolvency Conference.
- *"Why guess when you can know... reality versus contextuality in the interpretation of contracts"*: delivered to members of the Recovery and Insolvency Specialist Association, Road Town, British Virgin Islands.
- *"Intercreditor Issues and Other Hot Topics"*: delivered to the Insolvency Lawyers' Association London Conference.
- *"Corporate and Business Rescue - the UK Perspective and Cross-Border Considerations"*: delivered in Amman Jordan to the "Workshop on the Draft Liquidation, Insolvency and Bankruptcy Code".
- *"The Good, the Bad and the Ugly"* - member of discussion panel considering "pre-pack" administrations hosted by Ernst & Young LLP.

- "Why all the fuss? - Approval of Insolvency Officeholders' Remuneration": delivered in London as part of the Hawksmere conference: "Current Issues in Insolvency".
- "Getting Paid - Approval of Insolvency Officeholders' Remuneration": delivered to the 11th Annual Conference of the Association of Business Recovery Professionals ("R3") held at Lake Maggiore, Italy.
- "Obtaining Approval for Corporate Office Holders Remuneration": delivered to the Insolvency and Litigation Departments of Clifford Chance Limited Liability Partnership.
- "Financial Aspects of Corporate Moratoria": delivered to R3.
- "Insolvency and Sport - How to Make a Small Fortune...": delivered to the Finance and Insolvency Departments of Latham & Watkins LLP.
- "Funding Litigation in an Insolvency Context": delivered to the Insolvency and Litigation Departments of Herbert Smith.
- "Legal Issues of Significance and Interest for E-business": delivered in Colombo, Sri Lanka to the Innovation, Security and Accountability in Information Technology seminar hosted by The British High Commission, The British Council and the Council for Information Technology (CINTEC).
- "Law and the Internet": delivered to the Corporate and Litigation Departments of Skadden Arps Meagher & Flom LLP.
- "Co-operation Between Insolvency Courts - The UK Perspective": delivered in Hong Kong to the Hong Kong Society of Accountants.
- "Litigating in the Clients' Interest": delivered to the Litigation Department of Linklaters.
- "The Art of War: Litigation Tactics in Large Commercial Disputes": delivered to the Litigation Department of Travers Smith.

Education

- University of Cambridge: LLM, First Class
- Lancaster University: LLB (Hons)