

NIGEL EATON

ESSEX COURT CHAMBERS

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Practice

Nigel Eaton has been a member of Essex Court Chambers since 1992. He has a broad-based practice in domestic and international commercial litigation, with a particular emphasis on shipping and insurance & reinsurance. He appears in the English Courts at first instance (particularly in the Commercial Court) and appellate level, and in both institutional and *ad hoc* arbitrations.

His shipping practice includes disputes under bills of lading and contracts of affreightment, as well as under time charters, voyage charters, and demise charters. It also extends to ship sale & purchase contracts, and he has considerable experience of shipbuilding litigation.

In insurance & reinsurance, his practice covers both marine and non-marine business in areas including property, liability, P&I, professional indemnity, and political risk. He has acted in both proportional and non-proportional reinsurance disputes.

In addition to these core specialities, he has substantial experience of commercial litigation in other practice areas, including commodities, oil and gas, and international trade and transport. He also regularly deals with conflicts of law issues, and with remedial and procedural matters which arise during litigation, including freezing injunctions and other interlocutory applications.

Education & Call

1992	Member, Essex Court Chambers
1991-1992	Pupil, Essex Court Chambers (which was called 4 Essex Court at the time)
1991	Call (Gray's Inn)
1991	Inns Of Court School Of Law
1991-1992	Lecturer in Law, Magdalen College, Oxford
1990	Bachelor Of Civil Law (First Class Honours), Magdalen College, Oxford

	1989	BA in Jurisprudence (First Class Honours), Magdalen College, Oxford
Awards	1991	Eldon Law Scholarship, University Of Oxford
	1990	Inns Of Court Scholarship
	1989	Martin Wronker Prize for best performance in Jurisprudence Finals. Subject prizes for best performances in tort and in trusts
	1988	Demy Scholar of Magdalen College, Oxford

Memberships Commercial Bar Association (COMBAR)
London Common Law & Commercial Bar Association
London Court Of International Arbitration (LCIA)
London Maritime Arbitrators Association (Supporting Member)

Practice Areas **Arbitration & International Commercial Arbitration**

A very significant proportion of the cases in which Nigel Eaton is instructed take place in arbitration, and he has substantial experience of both *ad hoc* and institutional arbitrations involving a wide range of commercial disputes, including insurance, reinsurance, sale of goods, shipping, and other commercial agreements. He has acted in numerous LCIA and LMAA arbitrations in England, and has appeared in ICC arbitrations in Paris and in Brussels. He regularly deals with applications under the Arbitration Act 1996, such as applications to stay legal proceedings, for the appointment/removal of arbitrators, for the exercise of judicial powers in support of arbitral proceedings, and for the correction of awards, as well as appeals from arbitration awards on points of law and challenges to awards for want of jurisdictional or on grounds of serious procedural irregularity. He has provided expert evidence on the 1996 Act for use in foreign courts in proceedings to enforce English arbitration awards.

Banking

Many cases in Nigel Eaton's practice areas have some banking aspect, and he has acted in disputes involving a variety of banking instruments, including letters of credit, bills of exchange, performance bonds, and guarantees. Relevant experience includes acting for a London clearing bank in discharging an injunction which a Lloyd's Name had obtained to prevent the bank honouring a guarantee of the Name's Lloyd's liabilities, and acting for an Indian bank defending claims under performance bonds on the grounds that the bonds had

been procured by fraud (*Solo Industries UK Ltd v Canara Bank* [2001] 2 Lloyd's Rep 578 (Commercial Court & Court Of Appeal) and *Standard Bank London v Canara Bank* May 2002 (Commercial Court)). He recently acted for a broker which was suing on a personal guarantee issued by a client's director, in an action which gave rise to issues of construction as to whether the guarantee was an independent instrument which was payable on simple demand (*Sucden Financial Ltd v Garcia* (Commercial Court)).

Commercial Litigation

As well as the more specific practice areas mentioned above and below, Nigel Eaton has advised and acted in commercial disputes involving a wide range of other subject matters. Substantial cases include acting for technology companies in disputes involving the development of software for use in fingerprint recognition and in oil refining; acting for accountants in long-running litigation arising out of a failed tax avoidance scheme; acting in litigation concerning logistics arrangements in the retail industry; and acting for a company suing for the recovery of loans which it had advanced (in disputed circumstances) to its founding director. More recently, he acted for the successful broker in an action against a former client under a sugar futures brokerage contract (*Sucden Financial Ltd v Fluxo-Cane Overseas* [2010] EWHC 2133(Commercial Court)), and for one of the defendants in very substantial Commercial Court litigation involving allegations of bribery and corruption in relation to the time chartering of Russian vessels (*Novoship (UK) Ltd v Mikhaylyuk & Others*). A substantial part of his practice involves questions of construction arising under commercial contracts of various different kinds.

Commodity Disputes

Nigel Eaton has substantial experience of disputes involving the sale and transportation of a range of commodities, including coal, mineral ores, and grains and other foodstuffs. He has acted in litigation involving sales on both CIF and FOB terms, as well as other forms of sale contract, such as DES and other INCOTERMS variants. Recently, he acted for the successful claimants in cases relating to the export of South American ore to China, and has been involved in a number of disputes involving the sale of coal on Global Coal's SCOTA form. He also has experience of contractual disputes involving sampling and certification clauses (eg, *Galaxy International Energy Ltd v Eurobunker SPA* [2001] 2 Lloyd's Rep 725 (Commercial Court)).

Conflict Of Laws

Cases in Nigel Eaton's practice areas very often involve complex questions of conflict of laws, and he frequently deals with choice of law issues and jurisdiction disputes in a wide range of commercial disputes. He has acted on challenges to the jurisdiction of the English Court under both common law principles and EU legislation (eg, *Implants International v Stratec Medical* [1999] 2 All ER (Comm) 933), on applications for permission to serve High Court proceedings outside the jurisdiction, and on applications for anti-suit injunctions. He appeared in the Privy Council in an appeal involving the Court's jurisdiction to grant injunction in support of foreign proceedings (*Mercedes Benz v Leiduck* [1996] AC 284). More recently, he acted for a party challenging the jurisdiction of the High Court in litigation about title to assets held in Switzerland by a Liechtenstein corporation.

Energy

Nigel Eaton has acted in litigation involving the sale & purchase and the transportation of electricity, gas, and coal, including disputes under "take or pay" supply contracts, "send or pay" transportation agreements, and flexible pricing structures. He has also advised on the construction and effect of various types of energy contract, and reviewed and commented on a range of draft agreements.

Insurance & Reinsurance

Nigel Eaton has substantial experience of claims, coverage, and avoidance disputes in both the marine and the non-marine field in a range of areas, including property, liability, P&I, and professional indemnity. This experience includes business written in both the Lloyd's market and the wider market. Reported cases include *Promet Engineering (Singapore) Ltd v Sturge (The 'Nukila')* [1997] 2 Lloyd's Rep 146 (*Commercial Court & Court Of Appeal*), on the scope of the "Inchmaree" Clause. More recent experience involves acting for the insured in claims under a Directors & Officers policy, and for the insured owners of a drilling rig which became a constructive total loss after being case adrift while under tow from South America to Singapore.

He has also acted in a number of political risks cases, including a claim arising out the refusal by the foreign government to pay for work done on the reconstruction of oil facilities in Africa and claims caused by government intervention in the Argentinian and Chinese power industries. More recently, he has acted for insurers in a claim by a bank relating to the misappropriation of oil products from a state-owned storage facility.

In reinsurance, he was involved in High Court litigation arising out of the LMX Spiral (Hugh Sinclair Arbuthnot v Feltrim Underwriting Agencies), and has acted in disputes involving both proportional and non-proportional business, and both treaty and facultative cover. Reported cases include Clarence Roy Hill v Citadel Insurance Co [1995] LRLR 218 (Commercial Court) & [1997] LRLR 167 (Court Of Appeal).

International Trade & Transport

Cases in Nigel Eaton's practice areas regularly involve legal issues relating to the sale & purchase, supply and transportation of a wide range of goods and commodities. For example, he has recently acted in disputes relating to the sale/transportation of ore, coal and oil. His sale of goods experience includes CIF, FOB and DES contracts, as well as contracts using INCOTERMS. In addition to carriage of goods by sea, he has experience of disputes involving carriage by road and by air under the CMR and Warsaw Convention legal regimes.

Oil & Gas

Nigel Eaton has experience of litigation involving both the transportation and the sale & purchase of oil and gas. He acted in the Commercial Court, the Court Of Appeal, and the House Of Lords in the CRTA case, large-scale litigation between an oil-company joint venture and Enron under a contract for the reservation of capacity in and transportation of gas through a North Sea pipeline system (Amoco (UK) Exploration Company & Others v Teesside Gas Transportation Ltd [2001] 1 All ER (Comm) 865). He has advised upon the construction and effect of a variety of transportation contracts, sale & purchase contracts and field operating agreements, and has acted in disputes under "take or pay" contracts. He has acted in quality disputes under oil sale contracts which included "final and binding" certification clauses (eg, Galaxy International Energy Ltd v Eurobunker SPA [2001] 2 Lloyd's Rep 725 (Commercial Court)). He recently acted for the seller in a dispute under a DES contract for the sale of oil, where quality issues arose, and each party accused the other of repudiation. He has also acted in other disputes relating to the oil and gas industry, including litigation arising out of an accident on board a deep sea drilling ship and claims and counterclaims in connection with damage to a jack-up rig during installation at an exploration drilling site (Seadrill Management v OAO Gazprom [2010] 1 Lloyd's Rep 543 (Commercial Court) & (2010) 131 Con LR 9 (Court Of Appeal)).

Shipping

Nigel Eaton has very substantial experience of cargo claims and freight and demurrage/dispatch disputes under bills of lading, contracts of affreightment, and voyage charters, and of cargo claims, hire/off-hire disputes, and delivery/re-delivery disputes under time charters (eg, *Merit Shipping Co Inc v Boesen (The 'Goodpal')* [2001] 1 Lloyd's Rep 638 (Commercial Court)). He also regularly deals with disputes involving the nomination/rejection of vessels, seaworthiness issues, and safe/unsafe ports. He is familiar with charterparty and bill of lading forms in common use, and regularly deals with legal issues under the Hague/Hague-Visby Rules and the Carriage of Goods by Sea Act 1992. He has acted in disputes under letters of indemnity and the Inter-Club Agreement, and has some experience of General Average disputes.

Recently, he has been involved in a number of cases involving the early termination of long term time charters and contracts of affreightment as a result of the credit crunch. These include acting for the successful owners in claims for damages for repudiation of time charters, and advising charterers in relation to the prospective termination of a long term contract of affreightment for the carriage of ore.

Other recent shipping cases include acting for charterers in claims by owners under a letter of indemnity for delivery of cargo without production of the bills of lading; acting for owners in cargo damage/shortage claims arising out of carriage of rice to West Africa; advising owners in relation to a dispute under a bunker supply contract; and acting for disponent owners in arbitrations arising out of the escape of toxic fumes from an oil tanker.

In related areas, he has experience of ship sale & purchase disputes under the Norwegian Sale Form and other contract forms (eg *Manatee Towing Co v Oceanbulk Maritime San (The 'Bay Ridge')* [1999] 2 Lloyd's Rep 227 (Commercial Court)). He also has substantial experience of shipbuilding litigation. Recent cases include acting for Korean builders in an arbitration about whether or not a vessel was in a fit condition to be delivered, and acting for buyers in a number of cases where the central issues were whether the delivery date had been extended by *force majeure* events or whether buyers were entitled to rescind the contracts for delay.

Nigel Eaton also has experience of litigation involving luxury yachts, including a dispute about the design of an innovative new yacht for a wealthy international businessman and an arbitration concerning lengthy delays in the construction and delivery of a luxury yacht fitted with unusually large engines. He has also been involved in litigation concerning fast passenger ferries.

Reported Cases

Hugh Sinclair Arbuthnott v Feltrim Underwriting Agencies Ltd [1995] CCH Commercial Cases 437 & 1550 (Commercial Court): Action by 1,500 Lloyd's Name against their member and managing agents for the recovery of losses incurred as a result of participation in the LMX Spiral. The case involved issues as to whether or not the underwriters had been negligent in their approach to underwriting excess of loss business, and as to the correct principles for the assessment of damages.

Clarence Roy Hill v Citadel Insurance Co [1995] LRLR 218 (Commercial Court) & [1997] LRLR 167 (Court Of Appeal): Avoidance by reinsurers of a quota share treaty, in circumstances where the reinsured had misrepresented the costs of excess of loss protection and had not made a fair presentation of the risk.

Mercedes-Benz AG v Leiduck [1996] AC 284 (Privy Council): Whether the Court had jurisdiction to grant an injunction in aid of foreign proceedings for the misappropriation of US\$20 million following a collapsed export transaction, and whether the claim for an injunction fell within any of the grounds on which the Court could give permission for the Writ to be served outside the jurisdiction.

Promet Engineering (Singapore) Ltd v Sturge [1996] 1 Lloyd's Rep 85 (Commercial Court) & [1997] 2 Lloyd's Rep 146: Whether, when the legs of a jack-up drilling rig developed fatigue cracks as a result of defective welding, there was an insured loss within the scope of the "Inchmaree" Clause in a marine policy.

Manatee Towing Co v Oceanbulk Maritime SA (The 'Bay Ridge') [1999] 1 Lloyd's Rep 876 (Commercial Court): The scope of the Court's jurisdiction to order disclosure, and, in particular, whether a party to an action could be ordered to disclose documents which were relevant to claims which were only being pursued against another party, and which did not involve the party against whom the disclosure was sought.

Implants International v Stratec Medical [1999] 2 All ER (Comm) 993: Whether the English Courts had jurisdiction to determine a dispute under a commercial agreement between two medical companies, or whether the Swiss Courts had exclusive jurisdiction under the Brussels Convention because the parties had concluded a binding jurisdiction agreement.

Gulf Interstate Oil Corp v ANT Trade & Transport Ltd (The 'Giovanna') [1999] 1 Lloyd's Rep 867 (Commercial Court): Whether a Freezing Injunction against a shipowner following the partial loss by fire during discharge of a cargo of gasoil should be set aside for non-disclosure, and whether "without prejudice" communications could be

taken into account in deciding whether or not there had been any material non-disclosure.

Manatee Towing Co v Oceanbulk Maritime SA (The 'Bay Ridge') [1999] 2 Lloyd's Rep 227 (Commercial Court): Claim for breach of an alleged Norwegian Sale Form contract for the sale of a second-hand oil tanker. The central issue was whether the negotiations through brokers had resulted in the conclusion of a contract by offer and acceptance.

Merit Shipping Co Inc v Boesen (The 'Goodpal') [2001] 1 Lloyd's Rep 638 (Commercial Court): Claim by shipowners against time charterers for an indemnity against a liability for short delivery which owners had incurred to receivers of after receivers at a prior loadport had discharged more than their rightful share of a bulk cargo. The case raised issues of the extent to which the receivers at the first loadport were to be treated as time charterers' agents for the purposes of the charterparty.

Amoco (UK) Exploration Co v Teesside Gas Transportation Ltd June 1997 (Commercial Court), July 1999 (Court Of Appeal, & [2001] 1 All ER (Comm) 865 (House Of Lords): £100 million action, resulting in a 38 day trial and appeals to the Court Of Appeal and House Of Lords, involving claims and counterclaims in respect of send-or-pay payments under a North Sea gas Capacity Reservation & Transportation Agreement between a joint venture of major oil companies and Enron. The case involved legal issues of construction of the 350 page contract and technical/expert issues as to whether or not the pipeline had been properly built.

Solo Industries UK Ltd v Canara Bank July 2000 (Commercial Court) & [2001] 2 Lloyd's Rep 578 (Court Of Appeal): Claim by the beneficiary under a performance bond which had been issued by a bank as security for performance by the bank's customer of a metals trading agreement. On the beneficiary's application for summary judgment, the bank claimed that it was entitled to avoid the bond for fraud in which the beneficiary had been involved. The case raised novel legal issues as to the standard of proof.

Galaxy International Energy Ltd v Eurobunker SPA [2001] 2 Lloyd's Rep 725 (Commercial Court): Whether buyers of a cargo of low sulphur fuel oil were entitled to reject the cargo and to resist sellers' claim for the price, on the grounds that the cargo was not of contractual quality, in circumstances where the contract provided that quality was to be conclusively determined by a surveyors' test certificate.

Standard Bank London v Canara Bank May 2002 (Commercial Court) Lawtel: This case arose out the same general background as *Solo Industries UK Ltd v Canara Bank* (above). The claimant bank had loaned money to the metals trading companies and the defendant bank had issued a performance bond as security. When the claimant bank

sued on the bond, the defendant bank claimed that it was entitled to avoid the bond for fraud by the metals trading companies.

Seadrill Management Services Ltd v OAO Gazprom (The 'Ekha') [2010] 1 Lloyd's Rep 543 (Commercial Court) & (2010) 131 Con LR 9 (Court Of Appeal): US\$50 million action involving claims and counterclaims under a contract for the use of a rig to drill exploration wells in the Bay Of Bengal. The rig sustained physical damage during installation, and the case involved factual and technical issues as to the cause of the damage and legal issues as to liability for the resulting losses.

Novoship (UK) Ltd v Wilmer Ruperti & Others February 2010 (Commercial Court) Lawtel: Whether or not the Court should continue a Freezing Injunction which had been obtained without notice in proceedings in which the claimants alleged bribery and corruption in relation to the time chartering of a fleet of Russian vessels.

Sucden Financial Ltd v Fluxo-Cane Overseas [2010] 2 CLC 616 (Commercial Court): Claim by a sugar futures & options broker for the balance due from a customer after liquidation of the account for the client's default. The case involved issues as to whether the broker had been contractually entitled to terminate, and whether the broker had conducted the liquidation negligently. At an earlier stage of the litigation, the broker obtained judgment on a guarantee which had been issued by the client's founder and director. That application raised issues as to the meaning and effect of the guarantee and whether the decision in *Basche v Banque Vernes* [1972] 2 Lloyd's Rep 437 applied: *Sucden Financial Ltd v Garcia* (Commercial Court).

Al-Sadi v Jender Stiftung & Others April 2011 (Commercial Court) Lawtel: Whether or not the Court had jurisdiction to try claims made against a Liechtenstein foundation by the family of a deceased businessman for the recovery of donations which the businessman had made to the foundation during his lifetime.