



SIMON BRYAN QC

Born 1965

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Practice

- Arbitration
- Banking, Securities, Derivatives
- Civil Fraud
- Commodity Disputes
- Conflict of Laws
- Energy & Utilities
- Information Technology
- International Trade & Transport
- Insurance & Reinsurance
- Mediation
- Multi-Party Commercial Litigation
- Professional Negligence
- Sale of Goods & Product Liability
- Shipping

Simon Bryan QC has an extensive, and wide ranging, commercial practice. He is an experienced trial advocate who is equally at home in Court, or acting in international commercial arbitrations (LCIA, LMAA, ICC and UNCITRAL). His advice is regularly sought on both contentious and non-contentious matters arising under English law, and written and oral advocacy are at the heart of his practice. He also accepts appointments as an arbitrator and as a mediator.

He has been consistently ranked as a leading commercial barrister by professional directories including Chambers & Partners and Legal 500.

He is a Member of the Chartered Institute of Arbitrators (MCIArb), a CEDR Accredited Mediator and an advocacy tutor on Lincoln's Inn Continuing Education Programme.

Career

2009- Recorder
2006- Queen's Counsel
1989- Essex Court Chambers
1988-89 Supervisor in Law, Magdalene College,
Cambridge
1988 Call: Lincoln's Inn

Education	<p>1987 BA (First Class Hons) in Law, Magdalene College, Cambridge University</p> <p>1988 Bar Vocational Course</p> <p>1991 MA Magdalene College, Cambridge University</p>
Awards	<p>1987 Lincoln's Inn Major Scholarship (Denning)</p> <p>1986 Council of Legal Education Studentship</p> <p>1985 Elected Scholar, Magdalene College, Cambridge</p> <p>1985 Maxwell Prize (Top First in university Law Part 1A)</p> <p>1985 George Long Prize (Top First in university Roman Law)</p>
Member	<p>British Insurance Law Association</p> <p>British Maritime Law Association</p> <p>Chartered Institute of Arbitrators (MCI Arb)</p> <p>CEDR Exchange (CEDR Accredited Mediator)</p> <p>Commercial Bar Association (COMBAR)</p> <p>London Maritime Arbitrators Association (Supporting Member)</p> <p>London Court of International Arbitration (LCIA)</p> <p>London Common Law and Commercial Bar Association</p> <p>ARIAS (UK)</p> <p>South Eastern Circuit</p> <p>Entered in Part II of the Dubai International Finance Centre Court's Register of Legal Practitioners</p>
Publications	<p>Assistant Editor, Encyclopaedia of International Commercial Litigation, Kluwer Law International (Loose-leaf).</p>
Specific Areas	<p>Arbitration</p> <p>Acted as counsel in numerous shipping, insurance and reinsurance, and commercial arbitrations before international and domestic tribunals including on ICC, LCIA, UNCITRAL and LMAA terms, as well as in numerous arbitration applications before the Commercial Court under sections 67, 68 and 69 of the Arbitration Act 1996, and applications for injunctive relief in support of arbitration provisions. Acted as sole, party and third arbitrator in shipping disputes, in reinsurance disputes and energy/utility disputes. Member of the Chartered Institute of Arbitrators and a CEDR Accredited Mediator.</p> <p>Recommended as a leading silk in Arbitration by Legal 500 2008/2009, and in previous years, impressing the editors with "exceptional knowledge of the law" and noted for the "forceful way he puts his point across".</p> <p>Cases include: <i>Stellar Shipping Co LLC v Hudson Shipping Lines</i> [2010] EWHC 2985 (Comm) (jurisdiction of arbitrators in relation to alleged guarantee of charterparty); <i>Primetrade Ltd v Ythan Limited</i> [2006] 1 All ER 367 (jurisdiction of arbitrators and scope of jurisdictional challenge to the Commercial Court under section 67 of the Arbitration Act 1996); <i>London Arbitration 20/06</i> (2006) 705 LMLN 3 (recoverability of legal costs incurred in an arbitration by a P&I Club member against the unsuccessful party in the arbitration in respect of costs of the in-house Club solicitor retained by the member); <i>Lady Navigation Inc v LauritzenCool</i> [2005] 1 Lloyd's Rep. 260, [2005] 2 Lloyd's Rep. 63 CA (injunction restraining withdrawal of vessels pending arbitration seeking specific performance); <i>Internaut Shipping v Sphinx Navigation</i> [2003] 2 Lloyd's Rep. 430 CA (appointment of</p>

arbitrators and misnomer re: parties); *Nagusina Naviera v Allied Maritime ("The Maria K")* [2002] CLC 385; [2002] EWCA Civ 1147 CA (strike out of appeal from arbitrators for want of prosecution).

Banking, Security, Derivatives

Acted as counsel in relation to various aspects of banking litigation and banking disputes including professional negligence of banks and merchant banks, take over work, letters of credit (including claims for injunctive relief against banks), bank guarantees, loan facilities, mortgages and ship finance, debt recovery, civil fraud, breach of fiduciary duty, constructive trust claims, and tracing of assets (including obtaining freezing injunctions). Also spent time on placement at Lloyds Bank Head Office and its International Operations Centre in Birmingham (documentary credit processing centre).

Cases include acting for Barclays Bank (on behalf of BZW) in the Atlantic Computers Litigation in the Chancery Division (alleged professional negligence of merchant banks and accountants) and for Lloyds Bank (now Lloyds Banking Group) in the Commercial Court action *Energoprojekt v Lloyds Bank* (obligations of bank re: holding and realisation of loan notes and bonds). Recently acted for sellers of goods seeking draw-down under a letter of guarantee issued by a Chinese bank at the request of the Chinese buyers in the context of injunction proceedings against the bank in China, and for buyers of goods resisting a reimbursement claim by their bank following payment of a letter of credit against allegedly non-conforming documents which raised issues as to the scope of the fraud exception.

Civil Fraud

Acted as counsel in cases involving allegations of deceit, fraudulent misstatement, conspiracy, breach of fiduciary duty, receipt of secret commissions and bribes, dishonest assistance and knowing receipt, and associated equitable remedies and claims for relief including tracing claims and the taking of an account, together with the obtaining of injunctive relief and freezing injunctions.

Successfully represented Tagir Izmaylov, the President of Novoship in the Fiona Trust civil fraud trial which was described by *The Lawyer* magazine as one of the "top 10 court battles of 2009". The trial involved allegations of bribery, breach of fiduciary duty, dishonest assistance and conspiracy. After a 76 day trial, with 51 days of factual evidence and 10 days of expert evidence all claims against Mr Izmaylov were dismissed in a 421 page judgment delivered in December 2010 (*Fiona Trust v Privalov & Others* [2010] EWHC 3199 (Comm)).

Previous cases include acting for a steel company obtaining a freezing injunction, and subsequent orders for repayment, against one of its directors who had fraudulently diverted monies to bank accounts controlled by him; acting in a Singapore arbitration in relation to obtaining relief against former directors found liable for breach of fiduciary duties, fraudulent misrepresentation and conspiracy; acting in an ICC arbitration for a trading company bringing claims for breach of fiduciary

duty against its agent who had made secret profits in relation to imports of goods into China, and acting for the director of a Lloyd's Members Agent accused of fraudulent misrepresentation (claim successfully struck out - *Sally Rosemary Noel v John Poland* [2002] Lloyd's Rep. IR 30). Also acted on behalf of Lloyd's brokers in Lloyd's disciplinary proceedings concerning the alleged payment of bribes to directors of Middle East insurance companies to secure business.

Commodity Disputes

Extensive experience acting for sellers and purchasers in relation to the sale and purchase of commodities and associated issues relating to contract terms and supply quality, and product liability for defective goods, as well as claims for commission by commercial agents and claims against commercial agents.

Recommended as a leading silk in Commodities by Legal 500 2010/2011 and in previous years. "*A commodities/insurance specialist whose advice and advocacy are excellent and whose work on written submissions is described as second-to-none*". His ability to handle complicated disputes has been described as "*first class*", and he has been referred to as "*a very sound tactician, alert to how an argument may be received*" who is "*very thorough but direct to the points that matters*".

Energy & Utilities

Advises on oil, gas and mining disputes (coal, base and precious metals), utility disputes including electricity and telecommunications (terrestrial and satellite), associated insurance and reinsurance disputes, and political risks cover associated with energy and utility projects worldwide.

Ranked as a leading silk in Energy by Chambers & Partners 2010 and in previous years, being described as "*one of the hardest working silks at the Bar... who generates unbelievable amounts of material in a very short time*". He has been described as "*an excellent advocate with wide energy knowledge*", "*impressive and bright*" and "*cerebral and effective in arbitrations*".

Also recommended as a leading silk in Energy by Legal 500 2010-2011 and in previous years. Described as a "*hardworking and detail-orientated*" silk who is "*experienced and responsive*" and "*extremely thorough and capable*".

Cases include representing the owner of the two largest jack up rigs ever constructed in relation to a multi-million dollar claim, representing a telecommunications company on rights relating to the use of Inmarsat satellite services, representing the reinsurers of copper mines in the Anglo American group in litigation in the Commercial Court following property damage and business interruption losses at Anglo American mines, representing an electricity supplier in relation to power station coal supply contracts, and advising on a claim under a political risk insurance policy relating to a major power station construction project.

Information Technology

Advises on all aspects of computer litigation and mediation, including the interpretation and enforcement of computer hardware and software development and maintenance contracts, functional specifications and the like. Particular experience in the enforcement/termination of software development contracts, including PFI contracts, and associated issues including standard terms, exclusion clauses, limitations of liability, entire agreement clauses, quantum issues and insurance related issues.

Recommended as a leading silk in Information Technology in Legal 500 2010/2011 and in previous years, with comments including, a “*very good grasp of the IT industry in terms of major project implementations*”, “*tenacious advocate*”, “*thinks quickly on his feet*”, and “*goes down well with the court*”.

Cases include acting for a computer game software developer in relation to an interactive game for launch on the PS3 and X-Box platforms, acting for a computer software developer in relation to claims arising out of a PFI contract for the supply of a replacement computer system for all magistrates courts in England and Wales and acting for a major insurance company on a claim against a software developer in relation to a failed software development program.

Insurance and Reinsurance

Includes marine and non-marine XL, facultative, quota share, pa spiral, political risks, energy and natural resources, satellite global property damage and business interruption policies, underwriting pools and binding authorities, bloodstock, P&I, D&O and E&O relating to various disciplines (solicitors, accountants, insurance brokers and merchant banks) as well as standard form drafting on behalf of London market companies, Lloyd's litigation (LMX and long tail/asbestosis, negligence of Managing and Member Agents), issues arising out of R&R and the Film Finance litigation. Extensive experience of coverage issues, avoidance issues and associated professional negligence issues against brokers and underwriters. Represented underwriters, members and managing agents and brokers at Lloyd's disciplinary hearings (including hearings in relation to compliance failures, breaches of trust and receipt of secret commissions).

Recommended as a leading silk in Insurance and Reinsurance by Legal 500 2009/2010, following previous entries over a number of years.

Cases include: *Coromin Limited v Axa Re & Others* [2008] Lloyd's Rep. IR 467; [2007] EWHC 2818 (Comm) (property damage and business interruption losses); *Konkola Copper Mines v Coromin* [2005] 2 Lloyd's Rep. 555 (conflict of laws and law applicable to reinsurance agreement); *Sally Rosemary Noel v John Poland* [2002] Lloyd's Rep. IR 30 (non-liability of directors of Lloyd's members agency for alleged fraudulent misstatements and deceit); *Colin Mander v Commercial Union*

[1998] Lloyd's Rep. IR 93 (policy construction); *Deeny & Others v Gooda Walker Limited* [1996] L.R.L.R. 168, [1996] 1 WLR HL (liability of Lloyd's members and managing agents); *Arbuthnott v Fagan* [1996] L.R.L.R. 143 (underwriting negligence); *Wyniatt-Hussey v R. J. Bromley (Underwriting Agencies)* [1996] L.R.L.R. 310 (underwriting negligence); *Barrow v Bankside Members Agency Limited* [1995] 2 Lloyd's Rep. 472, [1996] 1 Lloyd's Rep. 278 CA (estoppel); *Brown v KMR Services Limited* [1995] 2 Lloyd's Rep. 513 (Names' portfolio selection)

Multi-Party Commercial Disputes

Experience of large-scale multi-party commercial disputes, involving Group Litigation Orders (GLO's) and case management issues, including shipping, banking, professional negligence, civil fraud and reinsurance litigation involving multiple parties and active case management techniques including computerized documentation and evidence systems.

Disputes involved in include: The Lloyd's litigation (negligence of Lloyd's underwriters), the Atlantic Computers litigation (banking, take-overs and alleged negligence of accountants and merchant banks), the Film Finance litigation (alleged fraudulent misrepresentations in relation to placement of film finance insurance), the Re-Opened Formal Investigation into the loss of the M.V. Derbyshire (ship design, Class regulations, environmental conditions and cause of casualty), the MSC Napoli GLO and limitation proceedings (cause of loss and limitation issues) and the Fiona Trust litigation (alleged breach of fiduciary duty and conspiracy).

Professional Negligence

Includes solicitors, accountants, merchant banks, IT professionals, Lloyd's underwriters, underwriting agencies, brokers and agent's negligence together with associated regulatory work including Lloyd's disciplinary at LRB and Appeal Committee levels on behalf of Lloyd's Members and Managing Agents and Lloyd's brokers, FSA and compliance issues, takeover work.

Cases include: The Atlantic Computers Litigation 1994-1999 (alleged negligence of merchant banks and accountants); *Deeny & Others v Gooda Walker Limited* [1996] L.R.L.R. 168, [1996] 1 WLR HL (negligence of members and managing agents at Lloyd's); *Arbuthnott v Fagan* [1996] L.R.L.R. 143 (underwriting negligence); *Wyniatt-Hussey v R. J. Bromley (Underwriting Agencies)* [1996] L.R.L.R. 310 (underwriting negligence); *Barrow v Bankside Members Agency Limited* [1995] 2 Lloyd's Rep. 472, [1996] 1 Lloyd's Rep. 278 CA (liability of members agents); *Brown v KMR Services Limited* [1995] 2 Lloyd's Rep. 513 (Lloyd's names portfolio selection).

Shipping

Extensive experience acting for both owners and charterers including in relation to voyage charterparty and time charterparty disputes, bareboat charters, contracts of affreightment, off-hire disputes, termination of charterparties for repudiatory breach,

injunctions against withdrawal of vessels, ship finance issues, operation of shipping pools, liner services, arrest of vessels, claims in respect of dangerous cargoes, unsafe ports, cargo claims acting for/against the carrier (bulk cargoes, reefer cargoes, oil and gas cargoes), unseaworthiness, stowage, carriage and contamination issues, bill of lading issues including false/forged bills, title to sue and the Carriage of Goods by Sea Act 1992, laytime and demurrage disputes, speed and consumption disputes, and voyage reconstruction and weather related issues associated with structural failures and vessel losses.

Considerable experience of acting in high value shipbuilding and oil rig construction disputes for and against the yard, sub-contractors and purchasers and in ship sale and ship repair disputes as well as mega-yacht sale, purchase and repair. Represented shipbuilders at a public inquiry involving shipbuilders, shipowners, the Classification Society, the DETR and the families of crew members (Re-Opened Investigation into the loss of the M.V. Derbyshire).

Successfully represented Tagir Izmaylov, the President of Novoship in the Fiona Trust trial of 2009-2010, which was described by The Times as *"the shipping trial of the century"*. After a 76 day trial, with 51 days of factual evidence and 10 days of expert evidence all claims against Mr Izmaylov were dismissed in a 421 page judgment delivered in December 2010 (*Fiona Trust v Privalov & Others* [2010] EWHC 3199 (Comm)).

Currently representing the charterers in relation to the MSC Napoli casualty involving the loss of the container ship MSC Napoli off the South Coast of England, raising issues including the cause of the casualty and limitation of liability in relation to losses suffered by cargo owners.

Ranked as a leading silk in Shipping by Chambers & Partners 2010 and described as *"a fluent, captivating advocate"* with previous comments including *"able to present a lot of material quickly and efficiently"*, *"very good at getting things done"* and *"extremely conscientious and hard working"*.

Recommended as a leading silk in Shipping by Legal 500 in 2010/2011 and in previous years, with comments including, a *"tenacious advocate"*, *"thinks quickly on his feet"*, and *"goes down well with the court"*.

Cases include: *Fiona Trust v Privalov & Others* [2010] EWHC 3199 (Comm) (alleged bribery and corruption relating to charter of the Novoship fleet) (*Stellar Shipping Co LLC v Hudson Shipping Lines* [2010] EWHC 2985 (Comm) (jurisdiction of arbitrators in relation to alleged guarantee of charterparty); *Primetrade Ltd v Ythan Limited* [2006] 1 All ER 367 (jurisdictional issues, carriage of dangerous goods); *Lady Navigation Inc v LauritzenCool* [2005] 1 Lloyd's Rep. 260, [2005] 2 Lloyd's Rep. 63 CA (threatened withdrawal of vessels from shipping pool by owners); *Andrew Weir v Wartsila* (*"The Baltic Eider"*) [2004] 2 Lloyd's Rep. 377 (engine room fire and product liability); *Internaut Shipping v Sphinx Navigation* [2003] 2 Lloyd's Rep. 430 CA (demurrage); *ED&F Man v Patel & Another* [2003] EWCA Civ 472 CA (sale of goods), *The Re-*

Opened Formal Investigation into the loss of the MV Derbyshire Report ISBN No. 0117025305; [2003] 1 All ER (Comm) 784 (inquiry into loss of vessel).

Reported Cases

Fiona Trust v Privalov & Others [2010] EWHC 3199 (Comm)
Stellar Shipping v Hudson Shipping Lines [2010] EWHC 2985 (Comm)
Coromin Limited v Axa Re [2008] Lloyd's Rep. IR 467; [2007] EWHC 2818 (Comm)
Primetrade Ltd v Ythan Limited [2006] 1 All ER 367
London Arbitration 20/06 (2006) 705 LMLN 3
Konkola Copper Mines v Coromin [2005] 2 Lloyd's Rep. 555
Lady Navigation Inc v LauritzenCool [2005] 1 Lloyd's Rep. 260, [2005] 2 Lloyd's Rep. 63 CA
Andrew Weir v Wartsila ("The Baltic Eider") [2004] 2 Lloyd's Rep. 377
Internaut Shipping v Sphinx Navigation [2003] 2 Lloyd's Rep. 430 CA
ED&F Man v Patel & Another [2003] EWCA Civ 472 CA
Nagusina Naviera v Allied Maritime ("The Maria K") [2002] CLC 385; [2002] EWCA Civ 1147 CA
Sally Rosemary Noel v John Poland [2002] Lloyd's Rep. IR 30
The Re-Opened Formal Investigation into the loss of the MV Derbyshire Report ISBN No. 0117025305; [2003] 1 All ER (Comm) 784
Trasimex Holdings v Addax [1999] 1 Lloyd's Rep. 28 CA
Colin Mander v Commercial Union [1998] Lloyd's Rep. IR 93
Christopher Vickery v Modern Security Systems (1998) 1 BCLC 428 CA
Deeny & Others v Gooda Walker (No.2) [1996] 1 WLR 426 HL
Deeny & Others v Gooda Walker Limited [1996] L.R.L.R. 168
Arbutnott v Fagan [1996] L.R.L.R. 143
Wyniatt-Hussey v R. J. Bromley (Underwriting Agencies) [1996] L.R.L.R. 310
Barrow v Bankside Members Agency Limited [1995] 2 Lloyd's Rep. 472, [1996] 1 Lloyd's Rep. 278 CA
Brown v KMR Services Limited [1995] 2 Lloyd's Rep. 513
SCOR v ERAS International (The ERAS EIL Actions) [1995] 1 Lloyd's Rep. 64

If you require further information please contact
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