



**SARA COCKERILL QC**

Born 1968

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**Practice**

- Arbitration
- Banking
- Commercial Litigation
- Conflict of Laws
- Injunctions & Arrests
- Insurance & Reinsurance
- International Trade
- Procedural Law
- Professional Negligence
- Sale of Goods
- Shipping

Sara Cockerill QC specialises in all areas of commercial law, and in particular in shipping and international trade and insurance and reinsurance.

She is an experienced trial advocate, having appeared in proceedings and trials in the Commercial Court as well as numerous commercial arbitrations. She has appeared a number of times in the Court of Appeal (most recently in *Fortis & Stemcor v IOB (No 2)* [2011] 2 Llyd's Rep 33) and has also appeared in the House of Lords.

She is very experienced in large scale litigation requiring extensive factual and legal preparation, having been involved throughout her career in a number of major cases arising out of the most significant problems which have arisen in the insurance and reinsurance markets (from the Gooda Walker litigation, through Weavers pool reinsurance arbitrations, significant PA Spiral arbitrations, film finance disputes and to (more recently) US viatical insurance disputes). She also has considerable experience in complex shipbuilding disputes (including recently a \$30 million claim for breach of the obligation in the NSF to build to "first class" standards, involving evidence as to the technical aspects of the build process, and two cases involving allegations of repudiation of shipbuilding contracts, entitlement to accrued instalments and related payment guarantee issues).

Sara has also acted in a number of disputes as umpire/third arbitrator and sits as a member of the Chartered Insurance Institute's Disciplinary Committee. Advice on, preparation for and assistance at mediations is also an increasing part of her practice.

**Education/Awards**

1990	Call (Lincoln's Inn)
1989-1990	Inns of Court School of Law
1989	BA (Jurisprudence) (First Class Honours), St Anne's College, Oxford 1989

1989 Eldon Scholar (University of Oxford)

## Professional Associations

Commercial Bar Association (COMBAR)  
London Common Law and Commercial Bar Association  
London Maritime Arbitrators' Association (Supporting Member)  
LCIA Young International Arbitration Group

## Publications

["The Law and Practice of Compelled Evidence in Civil Proceedings"](#) (OUP 2011).  
Editor of the Arbitration section of the White Book from 2011.

## Specific Areas

### Arbitration

Instructed in a wide range of domestic and international arbitrations both of a general commercial nature (including ICC arbitrations) and more specialised arbitrations, particularly in the insurance/reinsurance and shipping fields but also under GAFTA and LME Rules.

Arbitration work currently accounts for more than 50% of her practice.

Also experienced in a range of related issues including appeals, applications under ss. 67 and 68 of the 1996 Act, ancillary orders including preservation of assets, delivery up of documents and witness summonses.

Recent work has included a range of LMAA, LCIA ICC and reinsurance arbitrations, advising on a substantial potential challenge under all of sections 67-69 Arbitration Act 1996 and *R v V* (2008) ) All ER (D) 111, 119 Con LR 73 a case concerning the possibilities of challenging arbitrators' findings on grounds of public policy where issues of illegality have been considered and rejected by the tribunal.

### Banking

Including confidentiality and negligence disputes, guarantee and loan transactions, constructive trusts and tracing of assets, letters of credit and bills of exchange.

Recent cases include *Fortis & Stemcor v IOB (No 1)* [2010] 1 Lloyd's Rep. 227 : a case raising a variety of issues under a number of letters of credit including the nature of "silent confirmation" and the meaning of "negotiation" in UCP 600 and *Fortis & Stemcor v IOB (No 2)* [2010] CLC 16, CA [2011] 2 Lloyd's Rep 33 concerning the ambit of the preclusion provisions of UCP 600 and the correct approach to construction of UCP.

### Commercial Fraud

International Commercial Fraud including claims in deceit and breach of fiduciary duty, constructive trusts and recovery of stolen assets.

### Conflict of Laws

Advice and interlocutory disputes relating to jurisdiction, stays, injunctions and proper law.

## **Injunctions & Arrests**

Injunctions including Mareva injunctions, anti-suit injunctions, injunctions to restrain share sales, delivery-up orders, inspection orders and injunctions to enforce restrictive covenants.

## **Insurance & Reinsurance**

This area has constituted a significant part of Sara's practice for some years and she has dealt with a wide range of cases raising very varied issues, including: fraud, misrepresentation, non-disclosure, "follow settlements" clauses, continuing duty of good faith, aggregation, coverage disputes, accounting obligations and claims investigation.

Sara has also acted in a large number of insurance disputes in relation to many types of insurance (marine, D&O, business interruption, liability, professional negligence, property, life assurance, protection and indemnity and fine art). In the last few years Sara has been heavily involved in a series of large disputes in arbitration concerning the insurance of US viatical business. Still more recently:

- *AXL Resources v Antares & Catlin* [2001] Lloyd's Rep IR 598 concerned the meaning of "mysterious disappearance" clause in an All Risks Policy and the burden of proof under an all risks policy.
- *Cx Re v IRB* [2010] LRLR 560: An arbitration and subsequently an appeal under a variety of reinsurance contracts dating from late 1970s and early 1980s involving issues as to the burden of proof under a "double proviso" follow settlements clause, the impact of the recent *Equitas v R&Q* decision on contracts outside the LMX spiral and issues on allocation of environmental claims.

Sara has also acted in numerous disputes relating to insurance intermediaries, as well as Lloyd's disciplinary proceedings, and currently sits on the Disciplinary Committee of the Chartered Insurance Institute. Sara is also a member of the Executive Committee of BILA.

## **Procedural Law**

Sara has extensive experience in this area and especially in the law and practice of witness summonses and letters of request including:

- Acting as examiner in depositions for the purpose of foreign proceedings.
- Acting as counsel at depositions or advising on the drafting and obtaining of letters of request in aid of foreign proceedings and challenging or seeking to uphold the grant or ambit of orders pursuant to letters of request. Appeared in *Smith v. Philip Morris* [2006] EWHC 916 (cited in the White Book as a leading case on the principles in this area).

Sara also has considerable experience of acting in proceedings to obtain pleadings, skeletons and witness statements in proceedings to which clients were not a party but whose subject

matter were of interest.

### **Professional Negligence**

Professional negligence actions in particular actions against insurance brokers and agents.

Extensively involved in the Lloyd's Names litigation (for Managing and Members' Agents) in High Court negligence actions and LAS arbitrations.

### **Sale of Goods/International Trade**

Advising on and acting in a variety of disputes relating to international contracts of sale and carriage of goods including commodity disputes.

Recent work includes:

- three cases involving contracts for sale of coal from Russia, involving issues of repudiation and waiver of breach of contract.
- a substantial arbitration between a major producer and a substantial trader concerning aluminium and hedging losses.
- a large arbitration concerning sale of coke and involving issues of market in India and Egypt.
- *Fortis & Stemcor v IOB* (see above, under Banking) and also *Fortis & Stemcor v IOB (No 3)* [2011] 2 Lloyd's Rep 190 dealing with the liability of a bank for consequential damages in the form of demurrage and container costs arising out of a wrongful failure to pay under a letter of credit, and related restitutionary claims including subrogation and contribution. (All the claims were dismissed).

### **Shipping**

In her shipping practice she has been involved with a wide range of disputes including cargo claims, disputes arising out of pro forma and "tailor-made" charterparty clauses, bill of lading issues, ship sale and purchase disputes, ship construction and management disputes, as well as the provision of opinions on English Law for foreign proceedings.

Dry shipping work includes: cargo claims, disputes arising out of pro forma and "tailor-made" charterparty clauses (including demurrage, responsibility for discharge of cargo, oil majors approval clauses, ice clauses), bill of lading issues, ship sale and purchase disputes, ship construction and management disputes, opinions on English Shipping Law for foreign proceedings.

Recent cases include:

- *Bunge v ADM and Others ("The Darya Radhe")* [2009] 2 Lloyd's LR 475, [2009] All ER (D) 174: a case which clarifies the meaning of "legal danger", confirms that the concept is confined to the common law and discusses the question of proof of breach (in this case against one out of a number of possible parties) in the absence of

- direct evidence.
- *Azimutt-Benetti v Healey* [2011] 1 Lloyd's Rep. 473: a yacht building dispute which raises the issue of the extent to which "commercial justification" can short circuit an argument that a liquidated damages clause is a penalty.
  - A substantial shipbuilding arbitration concerning a claim for US\$30 million for breach of the NSF provision requiring the vessels to be built in accordance with "first class" standards.
  - Two cases (referred to in the introduction above) involving issues of repudiation of shipbuilding contracts, entitlement to accrued instalments and related payment guarantee issues.

Other recent arbitrations include disputes raising issues including the Statute of Frauds, force majeure, Centrocon arbitration clause, Ice clause, dangerous cargo.

### Cases

Other reported cases include:

#### House of Lords:

*Dubai Aluminium v Salaam* [2002] UKHL 48 [2003] 2 AC 366, [2003] 1 AER 97, [2003] IRLR 608, [2003] 1 BCLC 32, [2003] 1 Lloyd's Rep. 65, [2003] 2 AER (Comm) 451: Contribution Act 1978; Vicarious liability under Partnership Act 1890, s.10; Ability of "innocent partners" to rely upon personal innocence in contribution proceedings.

#### Court of Appeal:

*Trafigura Beheer v Golden Stavraetos Maritime (The Sonia)* [2003] EWCA Civ 664 [2003] 1 WLR 2340, [2003] 2 Lloyd's Rep. 201, [2003] 2 AER (Comm.) 347: Arbitration Award - Human Rights Act, 1998 - Permission to appeal to High Court from arbitration award refused - Whether Judge had a duty to state reasons in full for that refusal - Application of Human Rights Act, 1998, art. 6.

*Petrotrade v. Texaco (No. 2)* [2002] 1 WLR 947 [2001] 4 AER 853: Part 36 and interest under Part 36.21; Inferring course of dealing; Incorporation of exclusion of set-off clauses.

*Dubai Aluminium v. Salaam* [2001] 1 QB 113, [2000] 2 Lloyd's Rep. 168 (see HL above).

*Lotus Cars v. Southampton Cargo Handling Services ("The Rigoletto")* [2000] 2 Lloyd's Rep. 532: Bailment, Himalaya clause, duty of port authority as bailee in relation to goods in common user compound.

*Tsakos Shipping v. Orizon Tanker Co ("The Centaurus Mar")* New Law 16<sup>th</sup> May 1998, (CA) 27<sup>th</sup> March 1998: Preservation of evidence under s. 44 Arbitration Act 1996; Use of evidence if

order discharged.

Colonia Versicherung AG v. Amoco Oil Co [1995] 1 Lloyd's Rep. 570: Marine Insurance, Cargo Damaged by Defendant sellers, buyers indemnified by Defendant sellers, whether sellers co-assured, whether sellers entitled to claim under policy as assignees.

Commercial Court:

Bunge v ADM and Others ("The Darya Radhe") [2009] 2 Lloyd's LR 475, [2009] All ER (D) 174: a case which clarifies the meaning of "legal danger", confirms that the concept is confined to the common law and discusses the question of proof of breach (in this case against one out of a number of possible parties) in the absence of direct evidence.

R v V [2008] EWHC 1531 (Comm), [2008] All ER (D) 111, 119 Con LR 73: Arbitration Award dispute re enforcement on grounds of Public policy – Consultancy agreement to be performed in Libya - Arbitrators giving award in favour of consultant rejecting illegality defence — Whether court entitled to inquire into issue of illegality – Arbitration Act 1996, sections 68(2)(g) and 81(1)(c).

National Insurance and Guarantee Corporation Ltd v M Young Legal Services Ltd [2004] EWHC 2972 [2005] 2 Lloyd's Rep 46: ambit of s 44 Arbitration Act, whether mandatory injunction available when contract contains arbitration clause.

Mousaka v Golden Seagull Maritime ("The Sonia" (No 2)) [2002] 1 WLR 395, [2002] 1 AER 726, [2001] 2 Lloyd's Rep. 567, 151 NLJ 1317: see CA above.

Mousaka v Golden Seagull Maritime ("The Sonia" (No 1)) [2002] 1 Lloyd's Rep. 797 Implied terms – Provision for security by bank guarantees - Application to vary or set aside - Whether implied term that bank guarantees would be returned / security would be reduced - Whether agreement to procure guarantees lacked consideration.

Monkton Court v. Perry Prowse Insurance Services [2002] Lloyd's Rep IR 408: Costs against Insurers under s.51 Supreme Court Act, defunct assured, control by insurer, relevance of mutual status.

Dubai Aluminium v. Salaam [1999] 1 Lloyd's Rep. 415: Fraud, constructive trust, Vicarious liability, Apportionment under Contribution Act 1978.

Sunrise Maritime v. Uvisco ("The Hector") [1998] 2 Lloyd's Rep. 287: Bills of Lading, validity; Owners' or Charterers' bills; Authorization of bills by Owners; Existence of contract of carriage.

Simportex v. SWIL New Law Fax 25 June 1996: Arbitrators' jurisdiction; existence of contract; imputation of knowledge to agent.

Wyniatt-Husey v. Bromley [1996] Lloyd's Rep. IR 310: Negligence of Managing Agents in underwriting of LMX business.

Deeny v. Gooda Walker [1995] 1 W.L.R. 1206: Negligence of Managing Agents in underwriting of LMX business; Principles of damages.

Saris v. Westminster Transports SA and another [1994] 1 Lloyd's Rep. 115: Period of validity of concurrent writ, Extension of writ.

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