



Barristers | Mediators | Arbitrators
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Francis Hornyold-Strickland

Call: 2012

Barrister

BPTC (College of Law);

GDL (City)

BA (hons) English Literature, St Cuthbert's Society, Durham University. First-class honours (third in year).

City University/Falcon Chambers essay prize for an essay on the inadmissibility of pre-contractual negotiations in contractual interpretation.

Hubert Monroe Scholar (The Honourable Society of the Middle Temple)

Blackstone Entrance Exhibitioner (The Honourable Society of the Middle Temple)

Testimonials

The team was impressed by Francis' insightful and value added support. Responsive, flexible and a pleasure to work with.

Joe Tirado. Global Co-Head of International Arbitration. Garrigues.

Francis is one of the most intelligent and skilled advocates that I have had the pleasure of working with. His written submissions and drafting are not only highly articulate, but also cut to the chase and are (in Francis' own words) extremely "punchy!" His confidence and ability come with a maturity beyond his years and my lay clients have been both impressed and persuaded by his advice, ability to cut through the chaff and abstract what he needs from the information and evidence

Areas of Experience

- Civil Fraud
- Commercial Litigation
- Commercial Mediation
- Commodities
- Conflict of Laws/Jurisdiction
- Insurance and Reinsurance
- International Commercial Arbitration
- Regulatory
- Shipping

Contact Clerks

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provided to him. He is also one of the most responsive lawyers that I have ever dealt with. Nothing has been too much trouble for him; even working in different time zones, and on different working days. I very much look forward to a long working relationship with him in the future.

Nichola Reece-Burton, Partner. James Berry & Associates. Dubai.

Practice Profile

Francis has a broad commercial and international arbitration practice, with a particular emphasis on private international law, shipping, commodities, energy, and civil & commercial fraud. He is co-author of the practitioner text *Debattista on Bills of Lading in Commodities Trade* and the lead author of the website [Strickland's Shipping Guide](#).

Francis acts in a wide range of commercial and trusts disputes, with experience including led and unled work, in high court and county court litigation, ad hoc and institutional arbitrations. Francis is familiar with all major international arbitration rules including: LCIA, DIFC-LCIA, ICC, UNCITRAL, SIAC, HKIAC, the Swiss Arbitration Rules, and LMAA rules. He is also a registered practitioner in the DIFC Courts in Dubai.

Prior to joining 36 Stone Francis worked for three years as an associate in the world-leading international arbitration practice of WilmerHale, where he worked on a range of high value, complex commercial arbitrations. This included a US\$1 billion civil fraud claim relating to the manufacture of potentially toxic baby-milk formula, and a US\$900m price-review arbitration relating a 20-year LNG supply contract. During this time Francis worked closely with some of the world's leading arbitration practitioners, including Gary Born and Franz Schwarz. Prior to joining WilmerHale Francis worked at a leading international shipping firm after completing pupillage at 7 King's Bench Walk.

Publications

English Court of Appeal refuses to enforce arbitration award – February 2020

In this article Francis Hornyold-Strickland discusses the recent Court of Appeal authority *Kabab-ji v Kout Food Group*, a decision which explains the correct approach to evaluating the governing law of an arbitration agreement.

Double-Recovery in Cargo Claims: are sales contracts truly res inter alios acta?

Quantum and causation—recoverable losses in a ship collision (*Nautical Challenge v Evergreen Ma...*)

Clarifying key points in relation to shipping law and arbitral procedure (*Dera Commercial Estate ...*)

"International Arbitration in the Financial Sector: Room to Grow?" Commercial Dispute Reso...

International Arbitration in the Financial Sector: Room to Grow?

What Law Governs the Separability of an Arbitration Agreement?

International Arbitration Review: England & Wales chapters

Trouble in the Caspian Sea: Clarification of the Breadth of the Word “Hereunder” in Arbitrati...

Civil and Commercial Fraud

Fraud disputes are a central and increasingly significant component of Francis' practice. His recent experience includes:

- Acting on behalf of the owner of a Bombardier 5000 jet for the recovery of monies earmarked for the reupholstery of the aircraft that were stolen by way of a push-payment invoice fraud. This includes applications for Norwich Pharmacal relief. (2020)
- Drafting a complex opinion for a £2m fraud and negligence High Court claim concerning a securitized bridging loan provided to a charitable trust, which was guaranteed by two of the trustees. The case concerned questions relating to: (1) trustees' want of authority; (2) solicitors' want of authority; (3) the Charities Act; (4) solicitor's negligence; (5) constructive trusts; (5) Quistclose trusts; (6) fraudulent and negligent misrepresentation; (7) negligent misstatement. (2018).
- A billion-dollar international arbitration, relating to the manufacture of potentially toxic baby milk-formula. The claim related to a supplier's alleged and continuing fraudulent misrepresentations that base powder for the manufacture of baby milk formula was safe, despite internal concerns it may concern toxic anaerobic bacteria. (2017).

Commercial Litigation & International Arbitration

Francis has developed an impressive and diverse practice in commercial litigation and international arbitration. He is familiar with both English High Court and County Court procedure as well as most major arbitration rules including among others: LCIA, ICC, UNCITRAL, SIAC, HKIAC, LMAA, and the Swiss Arbitration Rules. He is also a registered DIFC practitioner in Dubai.

Francis's notable experience includes:

- Sole counsel for the defendant, alongside a Band 1 Spanish law firm, in a EUR 4.5 million ICC arbitration concerning the manufacture of plastic drinking tumblers. (November 2019).
- Advising the former employee of an asset management company, regarding his entitlement to 15% of the company's gross performance and management fees for funds raised by the employee. Value: US\$14million – US\$37 million. (2019).
- Acting as sole counsel in a Dubai-based international arbitration under the DIFC-LCIA rules, relating to the sale and purchase of a wealth management company based in the UAE. Value: US\$4million. (2019).
- *Treefrog v (1) John Gillespie (2) Giorgio Vallesi*. Acting as sole counsel in DIFC Court litigation concerning a failed joint venture, governed by English law. The case involves questions of the validity of loan deeds, constructive, resulting and Quistclose trust, and unjust enrichment. The claim settled favourably towards the client. Value: AED600,000. (2019).
- Drafting a series of complex opinions for a US\$2.7million claim relating to the contracts for the sale and purchase of high sulphur fuel oil from a refinery in Lithuania. (2019).
- Acting as sole counsel in a three-day trial relating to an oral contract between sophisticated investors for the sale of the beneficial interest in shares in a property-development company. The case primarily involved questions of: (1) contract; and (2) breach of trust. (2018).

- Acting as junior counsel in a s.68 challenge and ancillary proceedings in relation to a US\$14m arbitral award. (2018).
- Acting as junior counsel on a behalf of a Claimant seeking an injunction in relation to the putative wrongful termination of a concession agreement for the provision of a beauty salon in one of London's most famous department stores. The case primarily concerns the law of misrepresentation of intentions. (2018).
- Advising on: (1) whether two contracts governed by Malaysian law could be enforced in England & Wales without a Malaysian court judgment; and (2) if so could the Defendant apply to set aside the registration of those judgments in the English courts. Question '1' turned on whether the contracts contained exclusive jurisdiction clauses; question '2' turned on an analysis of Pt II of the Administration of Justice Act 1920, CPR 40.8A and CPR 83.7. (2018).
- A billion-dollar ICC arbitration, defending an LNG merchant from a price review request brought by a supplier under a long-term supply contract. The case relied heavily on the correct interpretation of the relevant price review clause. It also involved questions of competition law, specifically whether an adjustment to the price under the contract would breach Article 101 TFEU by segmenting the European single market, through the introduction of a dual-pricing mechanism. (2016-2017).
- Francis acted as part of a team of co-counsel on behalf of a claimant pharmaceutical company in relation to a potential joint venture agreement, in an ICC arbitration. The case involved contractual claims for breach of confidence and exclusivity under a Memorandum of Collaboration, as well as non-contractual claims for negligence, fraud and unjust enrichment. (2017).
- Research for a US\$100million case, *Republic of Djibouti v Mr Abdourahman Mohamed Mahmoud Boreh*, pertaining to Mr Boreh's alleged tax evasion, his alleged support of a Somalian warlord and issues of sovereign immunity. (2013).
- Research for a US\$60million claim relating to damage to a North-Sea oil rig, by rising metaocean ceiling. The case turned on a dispute over the allocation of liability between the contractor and the purchaser of the rig for required upgrades. (2013).
- During pupillage Francis worked on one of the largest cases in the High Court that year, *Excalibur v Gulf Keystone Petroleum Limited*. The case concerned an alleged joint venture agreement between the two disputing parties over a highly profitable oil concession in Kurdistan, Northern Iraq. The claimant claimed to have been unfairly cut out from the joint venture, between the Defendant and the Kurdistan Regional Government ("KRG"), having introduced the Respondent to the ruling members of the KRG. (2013).

Insurance and Reinsurance

Francis has experience of insurance and reinsurance disputes across a range of industry sectors, including the maritime and cyber insurance sectors, involving both large and small claims. This includes experience of the Bermuda Form insurance contract. His recent experience includes:

- Advising on the likely recoverability under a business interruption policy in light of Coronavirus (2020).
- Advising on the likely chance of recovery for damage to a crane pursuant to a direct loss and physical damage policy; specifically whether the policy covered costs incurred for hiring a separate crane to lower the first crane's boom and whether such costs could be claimed under a sue & labour clause. (2020).
- Francis is currently acting for the insurers of a luxury yacht in relation to a claim for a full hull repaint, following damage after she was hit by another vessel. Value c.US\$600,000. (2020).
- Advising a company on the material differences between the state of English law, pre-the new

Insurance Act 2015 and subsequently; and advising a defendant reinsurer on its liability for physical breach of a waste facility located on a river in the US and subsequent downstream flooding and damage (2019);

- Acting for the insured, in an insurance claim made (in arbitration) under a Bermuda Form policy, in relation to pollution and physical damage in the United States.

Professional Negligence

Francis regularly advises on issues to do with professional negligence across a diverse range of industries, including in the financial, legal, property and shipping sectors. His experience includes:

- Acting as sole counsel in a Dubai-based international arbitration under the DIFC-LCIA rules, relating to the sale and purchase of a wealth management company based in the UAE. Part of the case turned on whether an in-house lawyer had negligently performed due diligence on a potential buyer before signing an SPA. Value: US\$4million. (2019).
- *Treefrog v (1) John Gillespie (2) Giorgio Vallesi*. Acting as sole counsel in DIFC Court litigation concerning a failed joint venture, governed by English law. The case involved questions of the validity of loan deeds, constructive, resulting and Quistclose trust, unjust enrichment and partner/director negligence. Value: AED 600,000. (2019).
- *Niaz Ahmad Rafique & Others -v- Blumarble Property Ltd*. Francis acted in a claim against a charitable trust for a £2m case concerning a securitized bridging loan, which was guaranteed by two of the school's trustees. The case concerned questions relating to: (1) trustees' want of authority; (2) solicitors' want of authority; (3) the Charities Act; (4) solicitor's negligence; (5) constructive trusts; (5) Quistclose trusts; (6) fraudulent and negligent misrepresentation; (7) negligent misstatement. (2018).

Regulatory

Francis has a growing practice in regulatory disputes. His experience includes a complex, billion-dollar international arbitration, relating to the manufacture of potentially toxic baby milk-formula. The case provided the opportunity to gain a forensic understanding of relevant Australian and New Zealand manufacturing and export regulations. (2017).

Francis is also familiar with the Data Protection Act 2018 (DPA) and the European General Data Protection Regulation (GDPR). Indeed, he has recently advised on the legality of installing facial recognition cameras in premises for the purposes of the prevention and detection of criminal activity in commercial premises. (2019).

Shipping, International Trade & Commodities

Shipping law is a central component of Francis's practice and he is currently co-authoring the latest edition of *Debattista on Bills of Lading in Commodities Trade* for release in early 2020.

Francis's shipping law experience includes bareboat, time and voyage-charterparty disputes (including late/early redelivery, laytime/demurrage disputes; NOR issues; and bunker disputes); cargo claims (including transshipment issues); and shipbuilding and/or insolvency disputes. Francis has worked with all the major charterparty and bills of lading standard forms including, among others: Gencon, Congenbill, NYPE, Synacomex, Supplytime, Tankervoy, and Towcon forms.

Francis's experience includes, among others:

- **Charterparty disputes:**
 - o Francis is currently working for the claimant in a USD1.95m claim relating to the unseaworthiness of a vessel under a voyage-charter. The case involved questions regarding: (1) recoverable damages under the second limb of *Hadley v Baxendale*; (2) the law regarding penalty clauses; (3) the inter-relationship between

an underlying sale contract and the voyage-charter. (2019)

o Francis advised on whether time-charterers had given legitimate orders to the master of a vessel, so that the vessel could complete the orders and meet its redelivery window in time. (2018).

o Francis was led by Elizabeth Blackburn QC in a successful application to the High Court under s.24 of the Arbitration Act 1996 to remove the arbitrator in the case on the basis of apparent bias. Such applications are rarely successful and the win marks a significant triumph for chambers and the team as a whole. The underlying dispute related to a dispute over breach of a charterparty. (2018).

o Drafting an opinion on whether Notice of Readiness had ever been properly given and whether demurrage could be claimed. Value US\$2million. (2019).

o An advice on whether receivers (purchasers), charterers (sellers) or shipowners were responsible for port tariffs levied against ammonium sulphate imported to Lobito, Angola. The Charter Party – which was on a Synacomex 90 form provided that all charges against cargo were for Charterers' account. Accordingly, prima facie charterers were liable for the import tariffs. The contract between the receivers and charterers was on a "LINER OUT" basis (i.e. the cost of discharge is included in the freight). Prima facie this kept liability with charterers for the tariffs. However, as the receivers had agreed to follow the outcome of the dispute between charterers and owners, they were estopped from denying liability. (2018).

o An advice on whether a contract governed by English law between charterer and owner of a vessel stipulated which party was required to pay a new tax levied by the People's Republic of China. (2013).

· **Cargo claims:**

o Drafting a defence to an EUR82,000 claim in relation to a high court dispute concerning the spoilage of a large cargo of blueberries during transit from Chile to Rotterdam. (2019)

o Drafting claim submissions for an ad hoc arbitration of a US\$ 165,000 claim for damage to rice cargo (mould, shortages, tearing of bags and empty bags) carried from India to Liberia, pursuant to Congenbill 1994 bills of lading, incorporating the terms of an amended GENCON Charter-Party plus additional riders. (2019).

o Advising on whether owners were liable for damage to rice cargo caused by mould during transit, due to a failure to make the vessel's holds cargoworthy; or, conversely, whether charterer's choice of route through hotter climates negated owners' liability. (2019).

o Drafting a claim issued in the English High Court for a declaration of non-liability in relation to a contract for multimodal carriage (road and sea) of pork products from Spain to China. The Defendant contractor alleged the pork products had been damaged by a sub-contractor responsible for the sea leg of the journey and that the sub-contractor was therefore liable for c.£ 101,000. (2018-2019).

o Drafting claim submissions for an ad hoc arbitration of a US\$ 93,000 claim for loss and/or damage to rice cargo carried from Bangkok to Angola, pursuant to Congenbill 1994 bills of lading, incorporating the terms of an NYPE 93 Charter Party. (2019).

o Drafting claim submissions for an ad hoc arbitration of a US\$ 139,000 claim for shortages and tearing of bags of rice cargo carried from Kakinda to Liberia, pursuant to Congenbill 1994 bills of lading, incorporating the terms of an amended GENCOM charter-party terms plus additional riders. (2018).

o Drafting claim submissions for an ad hoc arbitration of a US\$ 29,000 claim for shortages and tearing of bags of rice cargo carried from Pakistan to the Ivory Coast, pursuant to Congenbill 1994 bills of lading, incorporating the terms of an amended SYNACOMEX 90 form plus additional riders. (2018).

· **Shipbuilding:**

Drafting eighteen separate opinions on a Defendant Korean shipbuilder's potential liability for repudiatory breach of eighteen separate contracts, on the basis of its insolvency. This included questions regarding the enforceability of ipso facto clauses and the law regarding the impossibility of performance (a sub-species of

repudiation);

Seminars

- o Is the doctrine of “res inter alios acta” in cargo claims dead, following *Swynson v Lowick*? 2019.
- o “Lord Sumption’s Restatement of the SAAMCO principle in *Gabriel v Little*”. March 2018.
- o “The Rise of Arbitration in Smaller Scale Commercial Disputes” March 2018.
- o Claiming Lost Profits in Tort.” March 2018.