

Jonathan Nash QC

Email Address: jnash@3vb.com

Year Of Call: **1986**

Year Of Silk: **2006**



Jonathan Nash has a commercial practice specialising in banking and financial services law, restructuring and insolvency, civil fraud and commercial arbitration (both as counsel and arbitrator). He has considerable experience of conducting litigation in the Commercial Court in London and arbitrations both in the UK and abroad.

Jonathan's specialist experience and understanding of complex financial structures has involved him in advising on a wide range of issues arising out of the Global Financial Crisis. These have included valuation disputes following early termination of ISDA- documented derivatives and other credit structures; the recovery of margin security under repo agreements following the administration of Kaupthing in London and the Isle of Man; the setting up of multilateral netting arrangements in the forward freight swap market; and the closing out of positions in many different derivative instruments from "sleeve trades" in the energy derivatives market to "reverse knock-out options" in forex trades; and numerous credit default swaps.

Jonathan was retained as leading counsel by the Claimants in the RBS Rights Issue litigation, which was one of the most substantial and high-profile commercial cases to come before the English Courts in recent years. The case is notable for an important decision on the scope of legal professional privilege in the context of regulatory investigations of large corporations, where Jonathan argued successfully for disclosure of materials prepared to meet an investigation by the SEC in the United States.

More recently Jonathan has been acting on behalf of a large US insurance corporation in relation to its liabilities arising out of the PPI mis-selling compensation scheme.

In his insolvency and restructuring practice Jonathan has advised in relation to company administration applications; on security priorities in a winding up; and has conducted claims under section 423 of the Insolvency Act 1986 (transactions at an undervalue). He is currently advising a prominent UK property investor in relation to the insolvency aspects of a Spanish real estate acquisition, which raises complex issues of UK and cross-border insolvency regulation.

Jonathan has extensive experience of conducting claims based in civil fraud, including urgent applications for interim relief (freezing injunctions) and tracing remedies. He is currently advising in relation to a substantial fraud claim concerning a Russian banking institution and its former management.

Jonathan has conducted many arbitrations in the course of his commercial practice, both in London

and abroad and under institutional rules (ICC and LCIA), and ad hoc. He has also advised in relation to Energy Charter Treaty claims. He has particular experience in dealing with the enforcement, and resisting the enforcement, of foreign arbitration awards within the jurisdiction, having been retained in the long-running dispute between Yukos and its former shareholders, and by the Nigerian National Petroleum Corporation in connection with enforcement of an arbitration award alleged to have been procured by fraud.

His more general recent commercial practice has covered disputes in areas as diverse as the spread-betting industry, pharmaceuticals, mobile technology, Formula One, computer security software, and designer fashion.

What the directories say

"He displayed good advocacy and he had the ear of the judge." "He is always available and his responsiveness is outstanding. He is also very good in court - a calm, measured advocate who judges listen to." - **Chambers & Partners 2021**

"The ideal silk; he has almost superhuman response times and his advocacy is very calm and considered." "You never want him on the other side as he is terrifying to oppose and really good."- **Chambers & Partners 2021**

"Deserves his star status." - **The Legal 500 2020**

"Extremely capable and user friendly." - **The Legal 500 2020**

"He is an incredible silk." - **The Legal 500 2020**

"Superb - technically excellent, commercially astute and an absolute pleasure to work with." - **The Legal 500 2020**

"Jonathan is authoritative, calm and an excellent silk to have on your side." - **Chambers & Partners 2020**

"Delivers very smooth advocacy, is very persuasive and gives very conclusive advice to clients." - **Chambers & Partners 2020**

"An outstanding practitioner who does hardcore work. He is very good at being part of the team." - **Chamber & Partners 2020**

"Very calm in a storm, he is a first-rate advocate with vast experience." "He has a finely tuned legal mind and his analysis is always clear." - **Chambers & Partners 2018**

"Excellent on paper, very smooth in his advocacy, unflappable in court and a very quick thinker." "He is utterly calm and focused on the issues that really matter." - **Chambers & Partners 2018**

"Enjoys an outstanding reputation for his accomplished advocacy in a range of banking disputes, with a special focus on cases addressing issues arising from complex derivative transactions. He has frequently been instructed in valuation cases stemming from the collapse of Lehman Brothers." -

Chambers & Partners 2017

"Clients like him since he gives them a judge-led view and because he is also able to strategise beyond the scope of a single decision." "He can argue the inarguable because he is exceptionally eloquent." - **Chambers & Partners 2017**

Directory Quotes

"Superb - technically excellent, commercially astute and an absolute pleasure to work with."

Legal 500 2020

"Deserves his star status."

Legal 500 2020

Expertise

Arbitration

IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation [2015] All ER (D) 93 - enforcement of foreign arbitral award - allegations of fraud - whether enforcement should be adjourned pending trial in curial jurisdiction.

Yukos Capital SarL v OJSC Oil Company Rosneft [2014] 2 Lloyd's Rep. 435 - enforcement of foreign award in face of allegations of fraud in curial seat.

Yukos Capital SarL v OJSC Oil Company Rosneft [2014] QB 458 - Application of doctrine of Act of State to allegations that foreign state had improperly procured expropriation of assets and dismissal of challenges to arbitral award.

H J Heinz Co Ltd v EFL Inc [2010] All ER (D) 01 - enforcement of foreign arbitral award relating to manufacturing and distribution of baby food - allegations that foreign award procured by fraud.

IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation [2008] EWCA Civ. 1157 - application for enforcement of substantial foreign arbitration award under New York Convention - whether or not English court entitled to order part enforcement of Award.

2008 - counsel in pharmaceutical arbitration before the Court of Arbitration of the Bulgarian Chamber of Commerce in Sofia instructed by major international pharmaceutical company in dispute with local distributor.

2007 - Arbitrator under the London Maritime Arbitrators Association rules in disputes arising from CFR contract for sale of scrap metal.

Hilcourt (Docklands) Ltd v Teliasonera AB [2006] EWHC 508 (Ch) - application for stay of execution of arbitration award where tenant under long-term lease alleged that lease had been procured by fraud.

2005 - Counsel in major ad hoc railway arbitration between train operating companies in relation to responsibility for track upgrading works.

Banking & Finance

Re RBS Rights Issue Litigation [2017] 1 WLR 1991 - privilege in relation to documents produced internally for purposes of SEC regulatory investigation.

Brogden and anor v Investec Bank plc [2017] IRLR 90 - claim for substantial bonuses alleged to be due to structured equity derivative traders - how performance of trading desk to be measured.

LSREF II Wight Ltd v Millvalley Ltd [2016] All ER(D) 93 - claim for rectification of swap transaction executed on ISDA Master Agreement.

Fondazione Enasarco v Lehman Brothers Finance S.A. [2014] BCLC 662 - valuation dispute as to sums due upon close out of derivatives where no functioning market for replacement transactions.

Nomura International plc v Banca Monte dei Paschi Di Siena SpA [2014] 1 WLR 1584 - claim that complex derivative structure illegal and fraudulent under Italian law - jurisdiction dispute as to where allegations should be tried.

Lomas v JFB Firth Rixson & Ors [2013] 1 BCLC 27 - effect of Events of Default on continuing obligations under the 1992 ISDA Master Agreement - application of insolvency principles to suspended contractual obligations.

West LB v Nomura Bank International plc [2012] All ER (D) 116 - duties of a calculation agent in valuing reference funds.

NML Capital Limited v The Republic of Argentina (2008) - advising sovereign debt fund in enforcement proceedings against Argentina.

Kensington International Limited v Republic of Congo [2008] 1 Lloyds Rep. 161 - advising sovereign debt fund in enforcement proceedings against Republic of Congo and those who trade with it.

IFE Fund SA v Goldman Sachs International [2007] 2 Lloyds Rep 449 - claim by mezzanine investment fund against arranger of syndicated loan facility for misrepresentation and non-disclosure.

The Argo Fund Ltd v Essar Steel Ltd [2006] 2 Lloyds Rep. 134 - claim by hedge fund to enforce payment obligations under syndicated loan tranches - leading authority on the meaning of "financial institution" in loan documentation.

Commercial Litigation

Stokors SA v IG Markets Ltd [2013] All ER (D) 300 - claim for compensation for assistance in breach of fiduciary duty in connection with spread betting brokerage.

Bleasdale v Forster [2011] All ER(D) 181 - claim for compensation for dishonest appropriation of intellectual property rights to invention.

De Montfort Fine Art Ltd v Acre 1127 Ltd [2011] All ER (D) 111 - claim for damages for breach of contract in relation to provision of artworks to commercial art gallery.

Gumball 3000 Films Ltd v Revolver Films Ltd [2010] All ER (D) 122 - claim for damages in respect of breach of contract for marketing rights to the "Gumball Rally" franchise.

H J Heinz Co Ltd v EFL Inc (2010) - enforcement of foreign arbitral award - allegations that award procured by fraud.

Brave Bulk Transport v Spot On Shipping (2010) - enforcement of US Judgment debt arising under freight forward swap.

Kensington International Limited v Republic of Congo [2008] 1 Lloyds Rep. 161 - Whether third parties entitled to rely on privilege against self-incrimination - effect of Fraud Act 2006.

Pfizer Ltd. v Dainippon Sumitomo Pharma Co. Ltd [2006] All ER (D) 172 - jurisdiction application arising from dispute between pharmaceutical companies - considering the effect of a change of structure within licensee's corporate group.

Hilcourt (Docklands) Ltd v Teliasonera AB [2006] EWHC 508 (Ch) - application for stay of execution of arbitration award where tenant under long-term lease alleged that lease had been procured by fraud.

Kurt Geiger Ltd. v Italian Buying Office (2006) - acting for buying agent in shoe industry in commercial agency dispute arising from termination of agency.

Financial Services

LSREF II Wight Ltd v Millvalley Ltd [2016] All ER(D) 93 - claim for rectification of swap transaction executed on ISDA Master Agreement.

Fondazione Enasarco v Lehman Brothers Finance S.A. [2014] BCLC 662 - valuation dispute as to sums due upon close out of derivatives where no functioning market for replacement transactions.

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suspended contractual obligations.

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Education

1981-1984: Scholar of St John's College, Oxford; BA (Hons) (1984).

1986: Goldie Award (Gray's Inn); called to the Bar.

1987: Karmel prizewinner (Common Law) - Gray's Inn. Tenant at Chambers of Neville Thomas QC (now 3 Verulam Buildings).

2006: appointed Queen's Counsel.

Languages

French (fluent); Spanish (reading).

Talks & Articles

Further Assurance clauses in commercial contracts

Securities Litigation and claims under section 90A of FSMA

Trust Obligations and Remedies in Complex Financial Transactions

Jurisdiction in a Credit Crunch World

Recent Developments in Derivatives Litigation

Claims for "Loss of a Chance"

Indemnity Insurance: the Lessons from *Enterprise Oil v Strand Insurance Company Limited* [2006]

The Privilege against Self-Incrimination

Contributory Negligence in claims against insurance brokers