

Miriam Schmelzer

Email Address: mschmelzer@3vb.com

Year Of Call: **2010**



Miriam is an experienced commercial practitioner with a particular focus on arbitration. Her arbitration practice encompasses both international commercial arbitration and international investment treaty claims. She has also been appointed by the LCIA to act as arbitrator, both as co-arbitrator and as sole arbitrator.

Miriam's recent instructions include acting as junior counsel in an ICSID investment treaty arbitration arising out of a project in the renewable energy sector and in a USD 760 million LCIA arbitration arising out of the purchase of a privatised telecommunications provider. She also formed part of a counsel team challenging an arbitration award under section 68 of the Arbitration Act 1996 and successfully defending an award debtor in the Commercial Court against an application for security under section 70(7) of the Arbitration Act 1996

Before coming to the Bar, Miriam qualified as a solicitor at Freshfields Bruckhaus Deringer LLP (2003-2005). She practised as an associate in Freshfields' Dispute Resolution Group (2005-2008) and as a senior associate in the Commercial Litigation Department of Olswang LLP (2008-2010). In both roles she acted on a wide range of commercial disputes with a particular focus on banking (including structured finance and derivatives), insurance, financial services, technology and complex contractual disputes, with the majority of her work having an international element.

During this time Miriam also completed a seven month secondment to the in-house legal function of a leading international insurance company.

Directory Quotes

'a go-to set for arbitrations in the banking sector.'

Chambers & Partners UK 2015

3 Verulam Buildings provides a substantial roster of 'top-quality and commercial barristers'

Legal 500 UK 2014

Expertise

Commercial Arbitration

Current and recent instructions include:

Acting for the respondent in an LCIA Arbitration defending a claim for an anti-suit injunction aimed at restraining the pursuit of proceedings in another EU member state.

SCM Financial Overseas Ltd v Raga Establishment Ltd [2018] EWHC 1008 (Comm). Acting for an award debtor in seeking to set aside an arbitration award under section 68 of the Arbitration Act 1996 and successfully resisting an application by the award creditor for security in the amount of the award under section 70(7) of the Arbitration Act 1996. Part of a three counsel team with Jonathan Nash QC and Kate Holderness, instructed by White & Case.

Acting for the purchaser of a privatised telecommunications provider in an LCIA arbitration in respect of a dispute under the SPA. Part of a three counsel team with Ewan McQuater QC and Kate Holderness, instructed by White & Case.

Acting for a litigation funder in an ad hoc arbitration in respect of a dispute under a funding agreement. Led by Christopher Harris.

Acting as an arbitral secretary in an LCIA arbitration regarding an unfair prejudice claim under section 994 of the Companies Act 2006.

Advising a publishing house on the enforcement of a New York Convention award in England. Instructed by Stephenson Harwood.

Acting for a high-net-worth individual in an LCIA arbitration and related court proceedings concerning complex claims of fraud and breach of directors' duties arising out of failed investments in India. Part of a three counsel team with Richard Salter QC and Rajesh Pillai, instructed by DLA Piper.

Advising a publishing house on the enforcement of a New York Convention award in England. Instructed by Stephenson Harwood.

Acting for a high-net-worth individual in an LCIA arbitration and related court proceedings concerning complex claims of fraud and breach of directors' duties arising out of failed investments in India. Part of a three counsel team with Richard Salter QC and Rajesh Pillai, instructed by DLA Piper.

Investment Treaty Arbitration

Current and recent instructions include:

KLS Energy v Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/18/39) – Acting for the claimants in this ICSID investment treaty arbitration arising out of a project in the renewable energy sector. Led by Christopher Harris QC, instructed by Shearman & Sterling.

Advising an US investor on the merits of a potential investment treaty claim against the Czech Republic.

Arbitral Appointments

Appointed by the LCIA Court as sole arbitrator in a dispute arising under a Limited Partnership Agreement.

Appointed by the LCIA Court as co-arbitrator in a USD 185 million dispute arising under a loan agreement and associated finance documents.

Commercial Dispute Resolution

Current and recent instructions include:

Al-Dowaisan & Anor v Al-Salam & Ors [2019] EWHC 301 (Ch) - acting for both individual property developers and property development companies in a 3 week Chancery Division trial, successfully resisting a long running multi-million pound claim by Kuwaiti investors for an account in respect of 25 property investments in the UK and Morocco dating back to 1994. The judgment contains an up to date analysis of (1) when an *ad hoc fiduciary* duty may arise; (2) when a duty to account may arise (and associated issues of limitation and discretion); (3) the principle of rectification by construction; and (4) the defence of illegality (applying *Patel v Mirza*). Led by Matthew Hardwick QC, instructed by Lockett Loveday McMahan.

Axa S.A. v Genworth and others. Acting as junior counsel to Genworth in ongoing Commercial Court proceedings in a multi-party dispute relating to historic PPI mis-selling. Led by Jonathan Nash QC, instructed by Sidley Austin.

Acting for the holding company of an international energy group in relation to a contractual dispute in ongoing Commercial Court proceedings, instructed by Enyo Law.

Acting for the purchaser of a privatised telecommunications provider in an LCIA arbitration in respect of a dispute under the SPA. Part of the three counsel team with Ewan McQuater QC and Kate Holderness, instructed by White & Case.

Acting for a litigation funder in an ad hoc arbitration in respect of a dispute under a funding agreement. Led by Christopher Harris.

Fortress Value Recovery Fund & Ors v Blue Skye Special Opportunities Fund & Ors. Acting for the claimants in a complex €200m financial fraud claim with numerous defendants and causes of action, including an important interlocutory decision as to the application of the doctrine of collateral waiver of privilege at [2014] EWHC 1052 (Comm). Part of a four counsel team with Ewan McQuater QC, David Quest QC and Richard Hanke, instructed by Slaughter and May.

ETV Media Group Ltd v Bluelabel Ltd. Acting for a software development company in proceedings in the Technology & Construction Court in relation to a claim under a software development and hosting agreement. Instructed by Olswang.

Acting for a German distribution company in relation to a claim under the Convention on the Contract for the International Carriage of Goods by Road. Instructed by Hunters.

Past experience as a litigation solicitor, working under the supervision of the relevant partners, included:

Acting for Skype / eBay in a multinational software licensing and copyright dispute concerning the use of P2P technology at the core of the Skype application, including a successful application for an anti-suit injunction (*Skype Technologies S.A. v Joltid Ltd & ors* [2009] EWHC 2783).

Acting for an insured in proceedings against its insurer / reinsurers under a property damage and business interruption policy arising from the capsizing of a mining dredge in Sierra Leone.

Advising a major supermarket in relation to an incident giving rise to multiple product liability claims from its customers, with particular focus on potential recoveries from its suppliers and insurers.

Advising Eurotunnel in relation to various challenges by both shareholders and bondholders arising out of its 2007 restructuring.

Banking & Finance

Recent instructions include:

Axa S.A. v Genworth and others. Acting as junior counsel to Genworth in ongoing Commercial Court proceedings in a multi-party dispute relating to historic PPI mis-selling. Led by Jonathan Nash QC, instructed by Sidley Austin.

Acting as Legal Subject Matter Expert in the Appeal Process established by Sir William Blackburne as part of his independent third party review of the complaints made by customers of The Royal Bank of Scotland Plc regarding the practices of the bank's Global Restructuring Group.

Advising retail banks in connection with allegations of mis-selling of interest rate hedging products.

Appearing for various banks and other lenders in proceedings in relation to loan agreements, guarantees, possession claims, Consumer Credit Act 1974 and other retail banking issues.

Past experience as a litigation solicitor, working under the supervision of the relevant partners, included:

Advising Kaupthing Bank hf on the close-out of its derivatives portfolio governed by ISDA Master Agreements, analysing sophisticated financial instruments and structures and researching complex cross-border insolvency issues.

Conducting an internal investigation for a global insurance company in relation to a US regulatory enquiry into finite reinsurance.

Civil Fraud

Current and recent instructions include:

Acting for a former company director in respect of allegations of breaches of fiduciary duty and bribery. Led by Andrew Sutcliffe QC.

Fortress Value Recovery Fund & Ors v Blue Skye Special Opportunities Fund & Ors. Acting for the claimants in a complex €200m financial fraud claim with numerous defendants and causes of action, including an important interlocutory decision as to the application of the doctrine of collateral waiver of privilege at [2014] EWHC 1052 (Comm). Part of a four counsel team with Ewan McQuater QC, David Quest QC and Richard Hanke, instructed by Slaughter and May.

Acting for a high-net-worth individual in an LCIA arbitration and related court proceedings concerning complex claims of fraud and breach of directors' duties arising out of failed investments in India. Part of a three counsel team with Richard Salter QC and Rajesh Pillai, instructed by DLA Piper.

Acting for lending banks in specific disclosure and other interim applications associated with mortgage fraud.

Professional Memberships

Middle Temple

COMBAR

LCIA

Languages

Fluent German