Mark Jones: Shipping & Maritime Profile

Mark Jones

Call: 2000

BA (Hons) - Oxford University

Mark Jones has a broad commercial practice, with a particular focus on all matters relating to shipping (both dry and wet). His work covers all aspects of international trade, whether it be the carriage of goods, the sale of goods, or the related financial and insurance transactions. His expertise extends to all corners of the shipping industry, from charterparties to salvage, from cargo claims to collisions, from ship finance to performance guarantees, and from marine insurance to general average. He has a particular specialism in shipbuilding disputes and cases arising out of contracts for the sale and purchase of second hand tonnage, and the related finance, security and guarantee contractual arrangements.

He acts in arbitrations both in London and abroad, and appears regularly in the English Courts, including the specialist Commercial Court, Admiralty Court and the Court of Appeal. During the last year, he has been instructed to act for clients on appeals to the Court of Appeal on no less than 4 occasions: two of the cases settled before the appeals were heard, and in the other two Mark appeared alone against leading shipping and commodities silks (see Cosmotrade SA v Kairos Shipping Ltd, The “ATLANTIK CONFIDENCE”, and ED&F Man v Unicargo Transportgesellschaft GmbH and Polska Zeluga Morska PP, The “LADYTRAMP”, details of which can be found below).

In a great many of his cases, Mark is and has been pitted against leading shipping and commodities silks. He also provides expert evidence on English maritime and commercial law for use in foreign proceedings.

Before commencing his career at the Bar, Mark trained as a litigation solicitor at Ince & Co focusing on shipping and insurance matters.

Recommendations

Mark has been recommended in the principal legal directories for a number of years now, with the more recent editions commenting:

- ‘A respected barrister who handles a wide range of shipping matters, but who is particularly adept at shipbuilding and ship sale disputes. He has additional expertise carriage and sale of goods cases.’ (Chambers & Partners UK Bar 2016)
- ‘He is solid and reliable and a very sound practitioner.’ (Chambers & Partners UK Bar 2016)
- ‘He has a great deal of understanding of where a case is and how to deal with it from a practical point of view.’ (Chambers & Partners UK Bar 2016)
- ‘His advice is always very clear and precise.’ (Legal 500 2015)
- His experience as a solicitor helps in understanding the client’s perspective.’ (Legal 500 2015) He is particularly noted for his expertise in shipbuilding and marine insurance disputes. (Chambers & Partner UK Bar 2015)
- ‘He has been a solicitor before so he appreciates the client’s perspective more easily than barristers who don’t have the same experience.’ (Chambers & Partner UK Bar 2015)
- “He is very energetic and not in the least bit fazed by coming up against top QCs.” (Chambers & Partner UK Bar 2015)
- ‘Efficient and effective.’ (Legal 500 2014)
- ‘He is very friendly, and easy to deal with.’ ‘What we like about his work is that it is very well structured, science-based and thorough, but also intelligible and to the point.’ (Chambers & Partners UK Bar 2014)
Mark Jones is noted for his ‘great analytical mind’ (Legal 500 2013)

Mark Jones concentrates his commercial practice on both dry and wet shipping disputes. Before joining the Bar he was a solicitor at Ince & Co, and “because of that background he has a good understanding of front line litigation, which is invaluable.” (Chambers & Partners 2013)

Mark Jones is ‘a very knowledgeable, sharply minded and skilful barrister’ (Legal 500 2012)

Mark Jones joins the rankings this year following exceptional feedback from the market. Previously a solicitor with Ince & Co, he has valuable experience and a strong client base to draw from. Sources say: “He is an effective operator with a great sense of humour.” (Chambers & Partners 2012)

Mark Jones pays ‘phenomenal attention to detail and gives prompt and pragmatic advice’. (Legal 500 2011)

Mark Jones “is noted for his expertise in shipbuilding and ship purchasing disputes” (Legal 500 2010)

Shipping and International Trade:
- “Dry” shipping (inc bill of lading/charterparty disputes, time charter disputes, unseaworthiness claims, unsafe port disputes and other cargo claims).
- “Wet” shipping / Admiralty claims (including salvage, marine limitation of liability and pollution claims).
- Shipbuilding and Sale & Purchase (including guarantee wordings).
- Sale / Carriage of goods by air, road, rail and sea, including domestic and international commodity disputes.

General Commercial:
- All aspects of general commercial practice, both international and domestic.
- Conflict of laws / jurisdictional issues.
- Marine and non-marine.
- Disputes as to policy construction, coverage and non-disclosure.
- Brokers.

Banking:
- Surety, guarantee and performance bond disputes.
- Trade-related finance (including documentary credits and bills of exchange).
- Loan & other finance agreements.

Insurance and Reinsurance:
- Marine and non-marine.
- Disputes as to policy construction, coverage and non-disclosure.
- Brokers.

Berezovsky v Hine & Ors - in 2012 Mark was selected by Mr Justice Mann to act as his judicial assistant (to be funded by the parties) in the well-publicized and exceptionally high value ‘oligarch’ dispute between Boris Berezovsky and a number of others, including Vasily Anisimov and the estate of the late Arkadi Patarkatsishvili. It is thought that Marks’ role would have been unprecedented and wholly ground-breaking, had the parties not settled the actions during the 2-day pre-trial review shortly before the 6 month trial was due to begin in the Chancery Division.

Selection of Recent Shipping Cases of Note:

‘Dry’ Shipping
The core of Mark’s practice is dry shipping, and the breadth of that practice can be seen from the selection of recent and noteworthy cases that follows.

Charter Parties:-
- Acted for owners in significant unsafe port claim (circa US$6 million) concerning open water port in Indonesia – claim settled during arbitration;
CONFIDENCE”, and all her cargo, in April 2013, resulting in cargo claims in excess of US$30 million. To date, the case has involved various worldwide freezing orders against the vessel’s owners obtained in the Commercial Court and a limitation action commenced by those owners in the Admiralty Court. The case has been heard by the Court of Appeal, who overturned 30 years of practice and assumption among English shipping lawyers and academics, by ruling that a limitation fund may be constituted by guarantee.

Acted in multi-party Commercial Court proceedings (leading Henry Ellis also of Stone Chambers) concerning charterparty claims totaling over US$2 million arising out of a collision: the case threw up a very wide range of issues, including time bars, demurrage, seaworthiness, identity of contractual parties and more.

Advising major Korean owners in respect of their claim against an oil major for their wrongful cancellation of a charterparty: including the oil major’s counterclaim, the overall value of the case is about US$1.8 million.

Advised charterers regarding their escape from a very long term (in excess of 15 years to run) and very expensive charter (some US$10,000/day over the market rate at the relevant time) in the face of an aggressive stance taken by owners and their bank: the charterers were successful in escaping the charter without repercussions, and in doing so saved themselves in excess of US$50 million (subject to accelerated benefit adjustments).

Acted for two parties in multi-party arbitration involving difficult questions arising out of the misnaming of contractual parties in the chain of contracts concerned.

Advising shipowners faced with a claim under bills of lading regarding the carriage of a cargo of rice from Vietnam to Liberia: the case involves disputes as to jurisdiction and the possible application of a time bar extinguishing the claim in its entirety.

**Progress Bulk Carriers Ltd v Tube City IMS LLC, The “CENK KAPTANOGLU”** [2012] EWHC 273 (Comm), [2012] 2 All ER (Comm) 855, [2012] 1 Lloyd’s Rep. 501: Acted in this case about the negotiation of a settlement by an owner following its repudiatory breach of a charter – the case is one of the very rare reported cases on the doctrine of ‘lawful act’ economic duress.

Acted in well-known multi-faceted and multi-jurisdictional dispute arising out of the total loss of a bulk carrier and its cargo: Mark acted for the charterers in their arbitration against the owners concerning cargo claims worth in excess of US$14 million.

Acting in legally complex claim for compensation by charterers following the exercise of a contractual withdrawal clause by owners.

Acted for the owners in a dispute with charterers worth about US$2.75 million about the correct operation of a ‘substitution clause’ and the appropriate adjustment to be made to the hire rate under a long-term charterparty.

Advised charterers in a significant dispute arising out of the charter of a cruise ship, involving claims in the region of Euro 50 million.


**Edwinton Commercial Corp v Tsavliris Russ (Worldwide Salvage & Towage) Ltd, The “SEA ANGEL”** [2007] EWCA Civ 547, [2007] 2 All ER (Comm) 634, 2 Lloyd’s Rep 517 (Court of Appeal); [2007] 1 Lloyd’s Rep 335 (Commercial Court): Acted for successful sub-contracting salvors in claims arising out of the large scale “TASMAN SPIRIT” casualty in Pakistan in the Commercial Court and then in the Court of Appeal: the case involved novel and important issues relating to the doctrine of frustration of contract, and is the most recent appellate on that doctrine.

**Sale & Carriage of Cargo and Commodities:-**

Acting for a division of an oil major in its claim for approx. US$8.5 million against the operators of one of the World’s largest tanker fleets.

**ED&F Man v Unicargo Transportgesellschaft GmbH and Polska Zeluga Morska PP, The “Ladytramp”** [2013] EWCA Civ 1449 [2014] 1 Lloyd’s Rep 412 (Arbitration & Court of Appeal) Mark appeared for Polska Zeluga Morska PP in its intervention in this case before the Court of Appeal. The case concerned the carriage of a cargo of sugar in bulk under the industry standard Sugar Charter Party 1999 form, and in particular the correct interpretation of a clause in that form allocating risk of delays resulting from “mechanical breakdown” in the context of a fire at a cargo terminal. The case also raised important issues as to the proper and correct scope of an appeal on a point of law under section 69 of the Arbitration Act 1996 as the appellants had sought to raise ‘new’ points before the Court of Appeal that had not been taken in the underlying arbitration. Marks’ clients achieved their objective of preventing any such ‘new’ points being taken.
Acting for the sellers of a second-hand vessel in their defence of a claim brought by the buyers in arbitration on the basis of the AdSFA arbitration, and successfully obtained permission to appeal on a point of law to the Commercial Court. The case is important, as it is the first time in which the FOSFA Default Clause has been tested in a situation where a claimant was awarded substantial damages by arbitrators under that clause despite, on “Golden Victory” principles, having in fact suffered no loss. It also raised entirely novel questions about what points a respondent may take in response to an appeal under the Arbitration Act 1996. The appeal was heard in February 2013, and Mark and his clients were victorious. Permission to appeal to the Court of Appeal was granted, but the appeal was not pursued. The case was remitted to the FOSFA Board of Appeal, and is now the subject of a second appeal to the Commercial Court.

Acted for ship owners in defence of US$3.6m Commercial Court claim arising out of the carriage of a mobile drilling rig.

Acted for owners in dispute arising out of a Contract of Affreightment involving the carriage of pipes from China to Venezuela in which owners were defending claims made by the charterers for non-performance in excess of US$4.6 million.

Acted for shipowners and container lines in various major losses of containerized cargoes involving high value claims by multiple parties in multiple jurisdictions and raising complex issues of jurisdiction and marine limitation of liability.

Homburg Houtimport BV v Agrosin Private Ltd, The “STARSIN” [2004] 1 AC 715 (House of Lords): acted for the successful appellant shipowners / demise charterers on appeal to the House of Lords in one of the most important shipping cases of the last 10 years involving a wide range of issues relevant to the carriage of goods under bills of lading.

Ship Finance, Construction, and Sale & Purchase:

Mark has particular expertise in matters arising out of the construction and sale of ships, and the various contracts relating to ship finance (including loan facilities, guarantees, mortgages, assignments, and other securities). He has experience of working with all parties involved with the acquisition, management and financing of vessels, in both contentious and non-contentious situations – whether it be advising on contractual terms, advising on restructuring arrangements, enforcing lender’s securities, or acting for parties to newbuild and sale contracts in arbitration and Court proceedings.

By way of example:

Acting for buyers in 4 ongoing arbitrations arising out of the cancellation of 4 shipbuilding contracts for 4 multi-purpose container vessels each worth in excess of US$6million, Mark successfully steered the lead arbitration through two preliminary issues, and obtained a final award for over US$7.5 million enabling his clients to procure payment under the refund guarantee. Following the yard’s refusal to engage with the remaining 3 arbitrations, Mark successfully obtained final awards (having overcome numerous difficulties arising out of the yard’s refusal to cooperate with the arbitrations) – demands under the guarantees are pending.

Brought in for his arbitration expertise to handle a very rare challenge against one of the 3 arbitrators, a leading commercial QC, on the basis of apparent bias under section 24 of the Arbitration Act 1996 in the context of an arbitration concerning the construction of a super-yacht in which the claims made exceeded Euro 280 million. Mark drew up what is believed to be a unique form of arbitral agreement involving the appointment of a substitute arbitrator and the creation of hybrid arbitration tribunals to hear different aspects of the case

Advising the lead bank financing the owners of 8 VLCCs as to how best to protect its interests in relation to the restructuring of 8 long term charter parties (governed by English law) and the potential insolvency (in Germany) of various of the owners: the case involves complex issues, including the inter-relationship between English contract law and German insolvency rules and the operation of liens over sub-freights, with sums sin excess of US$40 million at stake.

Advised the banks financing the purchase of two LPG carriers (each worth over US$29 million), as to how best to protect their security interests during the shipbuilding projects.

Advised the Scottish buyers of two state-of-the-art freezer trawlers (each worth well in excess of US$30 million) to be constructed by a Turkish yard during the course of their negotiations with the yard and the parties’ respective banks about the wordings of the refund and payment guarantees required as the financial cornerstones of the project.

Acting for the sellers of a second-hand vessel in their defence of a claim brought by the buyers in arbitration on the basis of the vessel’s condition on delivery.
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- Advised the guarantors standing behind the buyers of two vessels (each worth over US$30 million) in circumstances where the two buyers (both BVI companies) had gone into liquidation and disclaimed the two shipbuilding contracts under BVI insolvency law: the case raised numerous very complex issues of law, and Mark was responsible for marshalling specialist advice from junior barristers on particular sub-issues (e.g. the cross-border impact of BVI insolvency rules).
- Advised in relation to the cancellation and renegotiation of 10 shipbuilding contracts for the construction of 10 chemical tankers in a project worth over US$260 million.
- Advised the bank standing behind the buyers of 8 newbuild chemical tankers, each with a price of US$26.6 million (total project value in excess of US$212 million), in the context of arbitrations between the buyers and sellers.
- Acted for the buyers (and their financial backers) of 2 newbuild bulk carriers, in 2 London arbitrations involving potential claims with a total value of US$70 million and raising difficult issues about guarantees, anticipatory breach and renunciation, and the scope of ‘without prejudice’ communications.
- Advised the buyers of 5 vessels as to their rights to cancel the 5 shipbuilding contracts and their prospects of recovering the substantial sums of money already paid under those contracts.
- Acted for sellers of a vessel in their defence of claims in excess of US$12.5 million brought by the buyers in London arbitration proceedings.
- Advised managers in dispute with owners about managers’ decision to acquiesce to charterers putting vessel off-hire at a loss of over US$1 million in earnings.
- Acted in various cases concerning substantial pleasure yachts (including for Russian owners of a super-yacht in a warranty claim for Euros 1.75 million).

Marine Insurance:

Mark provides advice and appears in arbitration and Court in marine insurance matters. By way of example:

- Advising cargo underwriters in respect of a general average claim, the payment of a ransom to pirates in excess of US$7 million, and the impact of ‘waiver of subrogation’ clauses
- Acting for cargo underwriters in a claim involving alleged breach of Class warranties, s.39(5) of the MIA 1906, and alleged breach of associated/affiliated company warranty
- Acted for the London underwriters in their defence of an insurance claim for in excess of US$5.6 million by the owners of the ‘HANDY V’ relating to the failure of the vessel’s main engine; the case involved highly technical expert evidence on various engineering matters, and difficult questions of law concerning the scope of the Inchmaree Clause.
- Advising hull underwriters in their ongoing London arbitration claim for the recovery from their insured of some US$1,750,000 paid out following the grounding of a vessel: the position in the London arbitration under the insurance policy is complicated by concurrent Chinese proceedings regarding general average.
- Advised charterers of vessel which suffered significant damage caused by a chemical cargo, involving claims of circa US$12 million made under the relevant charterparties and insurance policies and raising difficult questions about (i) the inter-relationship between dangerous cargo and seaworthiness obligations, and (ii) the application of the doctrine of inherent vice.
- Acted for insurers in a claim arising out of the loss of a significant cargo of livestock following the capsize of the carrying vessel.
- Advised owners in relation to claim for $2.4 million under P&I cover, and in particular as to the operation of the “pay to be paid” clause and the proposed structure of the underlying settlement.

Wet Shipping:

Mark has extensive experience on ‘wet’ shipping matters, including collisions, general average, and salvage. He is familiar with the law and practice of Admiralty Court, and has acted in numerous cases involving the arrest of vessel in the English jurisdiction (and the fall out of such arrests). His ‘wet’ work is wide-ranging, but includes:

- Currently (2014) acting in 4 collision cases
- Advising leading cargo recovery agents concerning standard form general average bonds and guarantees, and potential revision of the same
- Acting in proceedings in the Admiralty Court arising out of a collision involving multiple parties and claims totaling circa US$19 million.
Acting in the Admiralty Court proceedings following the grounding of the “MSC NAPOLI” for well-known charities seeking to recover pollution clean-up costs.

Acting in the Commercial Court for the guarantors in a general average claim.

Acted for owners in arbitration arising out of the collision between their vessel, a fully laden container ship, and a laden oil tanker at Mumbai.

Acted in various LOF and ad hoc salvage arbitrations for both ship and cargo interests.

Acted for ship respondents in their appeal to the Lloyds Appeal Arbitrator, successfully reducing the salvage award from US$2.75 million to US$2.2 million.

Law of the Sea & Maritime Crime & Regulations:
Mark also has a niche practice in the field of the Law of the Sea and maritime crime & regulations. For example:

Advised one of the World’s leading marine exploration companies, Odyssey Marine Exploration Inc, in relation to the exploration and exploitation of the 18th Century wreck of HMS Victory, believed to hold gold bullion worth some £600 million. The case involved the as yet untested jurisdiction of the Marine Management Organization under the Marine & Costal Access Act 2009 as regards the regulation of the activities of so-called ‘treasure hunters’ in respect of the exploration, preservation, recovery and exploitation of wrecks and underwater cultural heritage located on the seabed outside UK territorial waters but within the UK’s Exclusive Economic Zone. (The work of Odyssey Exploration Inc was the subject of the Channel 5 documentary series, ‘The Billion Dollar Wreck Hunt’)

Advising and defending owners, managers and officers in various prosecutions brought by the UK authorities / the Maritime and Coastguard Agency (having formerly acted as prosecuting counsel for the MCA on various occasions).

Education & Qualifications
1988-1993 Winchester College (Scholar)
1994-1997 Oxford University: BA (Hons) Jurisprudence
1997-1998 College of Law (London): Legal Practice Course
1998-2000 Ince & Co
2000 Called to the Bar (Lincoln’s Inn, Kennedy Scholar)
2001 + Stone Chambers

Mark was a scholar at Winchester College before going on to study Law at Oxford University (St Edmund Hall), graduating in 1997. He completed the Legal Practice Course at the College of Law in London, and then spent 2 years training as a solicitor at Ince & Co, London, specialising in shipping, trade, insurance and general commercial litigation. Mark moved to the Bar in 2000, and was awarded a Kennedy Scholarship by Lincoln’s Inn. He completed his 1st 6 months of pupillage at Essex Court Chambers (Gordon Pollock QC) and his 2nd 6 months at Stone Chambers (Steven Gee QC). He joined Stone Chambers as a tenant in 2001.

Professional Memberships & Affiliations
Chartered Institute of Arbitrators – Member (MCIArb)
London Court of International Arbitration (LCIA), Young International Arbitration Group and European Users’ Council
London Maritime Arbitrators’ Association (LMAA), Supporting Member
Commercial Bar Association (COMBAR)
London Common Law and Commercial Bar Association (LCLCBA)
British Maritime Law Association (BMLA)
London Shipping Law Centre (LSLC)
Association of Average Adjusters (AAA)