

Henry Phillips

Called to the Bar 2008

+44 (0)20 7696 9900

henryphillips@southsquare.com



Henry specialises in domestic and cross-border insolvency/restructuring, banking and financial services, commercial litigation, company law and offshore work.

As well as appearing on a wide range of applications under the Insolvency Act and Rules at all levels, Henry has significant restructuring experience. He regularly advises in relation to IVAs and CVAs and has appeared in many high-profile hearings to convene and complex sanction schemes of arrangement.

Outside of an insolvency context, Henry has substantial experience in financial and commercial work. He frequently advises on securitisations and has particular expertise in the ISDA Master Agreement (1992 and 2002 forms), having appeared in a number of trials concerning its terms. Henry is used to working with large counsel and solicitor teams and has experience in working on multi-week fraud trials.

Insolvency and Restructuring

Recently instructed in a variety of administrations and liquidations in respect of financial institutions (*MF Global, LBIE*), offshore SPVs (*Oscatello Investments Limited (BVI)*), insurers (*Hill Insurance Company Limited (Gibraltar), British American Insurance Company Limited (Bahamas, Trinidad & Tobago)*), large retailers (*Toys "R" Us Limited*); construction firms (*Carillion*) and football clubs (*Portsmouth City FC (advising former directors), Luton Town FC (advising former directors)*)

Recent cases include:

- **Re Carillion** (involvement ongoing): Acting on behalf of the Special Managers of the Carillion group of companies.
- **Re Toys "R" Us Limited** (involvement ongoing): Acting for Toys "R" Us in connection with a CVA and subsequent administration.
- **Re DTEK Finance Plc** [2017] B.C.C. 165: Junior counsel (led by Daniel Bayfield QC). Acting for a Ukrainian energy company in connection with a successful scheme of arrangement.
- **Shlosberg v Avonwick Holdings Ltd** [2017] Ch 210: Junior counsel (led by Tom Smith QC) in the Court of Appeal. The leading decision on the vesting of rights of privilege in trustees in bankruptcy
- **Waterfall II Application** [2017] EWCA Civ 1462; [2017] 2 All E.R. (Comm) 275; [2017] B.C.C. 1; [2015] B.P.I.R. 1162; [2016] B.C.C. 239 (involvement ongoing): Junior counsel (led by Robin Dicker QC and Richard Fisher). Acting for the Senior Creditor Group of unsecured creditors in the ongoing LBIE Waterfall II application, involving the resolution of various novel legal questions relevant to the distribution of a multi-billion pound surplus from the LBIE estate.
- **Re Guardian Digital Communications Limited** [2014]: Junior counsel (led by David Allison QC) on a successful application to sanction a multi-billion pound Scheme of Arrangement.

- ***Isis Investments v Oscatello Investments*** [2013] EWHC 7 (Ch): Junior counsel (led by William Trower QC and David Allison) resisting an application to stay proceedings pending in the Commercial Court in favour of proceedings in the Isle of Man.
- ***Re Metrovesca*** [2011] EWHC 1014 (Ch): Junior counsel (led by William Trower QC). Acting for a Spanish company in connection with a successful scheme of arrangement.

Commercial Litigation and Arbitration

Recent cases include:

- ***Robert Tchenguiz and Ors v Grant Thornton UK LLP and Ors*** (involvement ongoing – 8 week trial listed for October 2018): Junior counsel (led by David Allison QC). Acting for the defendant BVI companies in proceedings for unlawful means conspiracy brought by Robert Tchenguiz.
- ***Avonwick Holdings Limited and Ors v Castle Investment Fund Limited and Ors*** (involvement ongoing – 4-5 week trial listed for 2019): Junior counsel (led by Tom Smith QC). Acting for the claimants in proceedings against two Russian businessmen claiming significant damages (in excess of £150m) for unlawful means conspiracy.
- ***AC Scout Trading LLC v Ebulio Capital Management LLP and Ors*** (involvement ongoing): Junior counsel (led by Anthony Zacaroli QC). Acting for the defendants to a claim for unlawful means conspiracy involving trading in tin forwards contracts on the London Metal Exchange.
- ***Murray Holdings Limited v Oscatello Investments Limited*** (Judgment pending): Junior counsel (led by David Allison QC). Acting on behalf of the defendant (formerly an investment vehicle for Robert Tchenguiz) against a subsidiary of Kaupthing Bank, resisting an application for rectification of a framework agreement entered into in 2007.
- ***Lehman Brothers Finance A.G. v Klaus Tschira Stiftung*** (Judgment pending): Junior counsel (led by Robin Dicker QC). Important decision on the calculation of “Loss” under the 1992 ISDA Master Agreement.
- ***Fondazione Enasarco v Lehman Brothers Finance*** [2015] EWHC 1307 (Ch): Junior counsel (led by Jeremy Goldring QC). Important decision on the calculation of “Loss” under the 1992 ISDA Master Agreement.
- ***US Bank Trustees Ltd v Titan Europe 2007-1 (NHP) Ltd*** [2014] EWHC 1189 (Ch): Junior counsel (led by William Trower QC) in a part 8 claim involving a determination of the rights of junior noteholders under a servicing agreement entered into in connection with a £1.1 billion loan agreement.
- ***Landesbank Hessen-Thüringen Girozentrale v Bayerische Landesbank (London Branch)*** [2014] EWHC 1404(Comm): Junior counsel (led by Mark Phillips QC) in a part 8 claim concerning the construction of a waterfall provision in a £369 million loan facility in relation to the financing and purchase of “the Gherkin” building in London.
- ***Tchenguiz v Director of the Serious Fraud Office*** [2013] EWHC 2297 (QB): Junior counsel (led by William Trower QC and David Allison QC) opposing an application for third party disclosure on the grounds of privilege.
- ***National Westminster Bank v Gaetano Alfano*** [2012] EWHC 1020 (QB); [2013] EWCA Civ 1703: Junior counsel (led by David Alexander QC) in four day trial to set aside four guarantees alleged to be subject to a condition precedent and / or not to have been effectively delivered as deeds due to certain representations allegedly made by the bank.

- ***Standard Chartered Bank v Ceylon Petroleum Corporation*** [2011] EWHC 1785: Junior counsel (led by Robin Dicker QC and Jeremy Goldring) for the claimant bank seeking payment under two oil derivative contracts.
-

Banking and Finance

Recent cases include:

- ***Lehman Brothers Finance A.G. v Klaus Tschira Stiftung*** (Judgment pending): Junior counsel (led by Robin Dicker QC). Important decision concerning the calculation of “Loss” under the 1992 ISDA Master Agreement following the early termination of collared hedges.
 - ***Lehman Brothers International (Europe) (In Administration) (Waterfall IIC)*** [2017] 2 All ER (Comm) 275: Acting on behalf of the Senior Creditor Group of unsecured creditors in proceedings concerning, among other things, the meaning of the definition of “default rate” in the 1992 and 2002 ISDA Master Agreements and the scope of the interest provisions in a German law governing master agreement for financial derivatives.
 - ***Fondazione Enasarco v Lehman Brothers Finance*** [2015] EWHC 1307 (Ch): Junior counsel (led by Jeremy Goldring QC). Important decision on the calculation of “Loss” under the 1992 ISDA Master Agreement following the early termination of a put option.
 - ***US Bank Trustees Ltd v Titan Europe 2007-1 (NHP) Ltd*** [2014] EWHC 1189 (Ch): Junior counsel (led by William Trower QC) in a part 8 claim involving a determination of the rights of junior noteholders under a servicing agreement entered into in connection with a £1.1 billion loan agreement.
 - ***Landesbank Hessen-Thüringen Girozentrale v Bayerische Landesbank (London Branch)*** [2014] EWHC 1404(Comm): Junior counsel (led by Mark Phillips QC) in a part 8 claim concerning the construction of a waterfall provision in a £369 million loan facility in relation to the financing and purchase of “the Gherkin” building in London.
-

Civil Fraud and Asset Recovery

Recent cases include:

- ***Robert Tchenguiz and Ors v Grant Thornton UK LLP and Ors*** (involvement ongoing – 8 week trial listed for October 2018): Junior counsel (led by David Allison QC). Acting for the defendant BVI companies in proceedings for unlawful means conspiracy brought by Robert Tchenguiz.
- ***Avonwick Holdings Limited and Ors v Castle Investment Fund Limited and Ors*** (involvement ongoing – 4-5 week trial listed for 2019): Junior counsel (led by Tom Smith QC). Acting for the claimants in proceedings against two Russian businessmen claiming significant damages (in excess of £150m) for unlawful means conspiracy.
- ***AC Scout Trading LLC v Ebulio Capital Management LLP and Ors*** (involvement ongoing): Junior counsel (led by Anthony Zacaroli QC). Acting for the defendants to a claim for unlawful means conspiracy involving trading in tin forwards contracts on the London Metal Exchange.
- ***In the Matter of Lehman Re*** (Bermuda), instructed for a 3 week trial as Richard Sheldon

QC's junior by a major creditor of Lehman Re in Bermuda bringing multi-million dollar tracing claim.

Offshore

Recent cases include:

- **Re E-House (China) Holdings Limited** (Cayman Islands) (involvement ongoing): instructed on behalf of dissentient shareholders in an application pursuant to s.238 of the Cayman Islands Companies Law.
 - **Re SPHINX** (Cayman Islands), 4 week trial in the Cayman Islands as Richard Sheldon QC's junior acting on behalf of DPM Mellon in a dispute concerning the amount of reserves to be set under a proposed scheme of arrangement.
 - **Re Hill Insurance Company** (Gibraltar), advising the liquidators of a Gibraltar insurance company.
 - **Re British American Insurance Company** (Bahamas, Trinidad & Tobago), advising the Judicial Managers of BAICO, once the largest insurance company in the Caribbean.
 - **Re SO Finance** [2011] JCA 189A, appeal against dismissal of a winding up petition in the Jersey Court of Appeal.
-

Career

2008 Called to the Bar of England and Wales

Memberships

Financial Markets Law Committee working group on FSA reform 2010
Commercial Bar Association

Publications

Contributor to **Rowlatt on Principal and Surety** (Moss, Sweet and Maxwell)
Contributor to **Totty and Moss on Insolvency** (Totty, Moss and Segal, Sweet and Maxwell)
Contributor to **R3 Recovery**
Contributor to **Insolvency Intelligence**
Contributor to **International Corporate Rescue**

Education and Qualifications

2009 Oxford University, BCL, Distinction (second in the University)

2008 Inns of Court School of Law, Bar Vocational Course

2007 City University, GDL, Distinction

2005 Worcester College, Oxford University, BA English, First Class

Prizes and Scholarships

- Vinerian Scholarship, Proxime Accessit (Oxford University)
 - Bruce Reynolds Prize for best performance in the BCL (Worcester College, Oxford University)
 - Wigglesworth Scholarship (Lincoln's Inn)
 - Worshipful Company of Arbitrators Prize for commercial law and civil procedure (ICSL)
 - College Award for Outstanding Academic Achievement (Worcester College, Oxford University)
 - Worcester College Scholarship (Worcester College, Oxford University)
-

Interests

Travel and reading