Richard Fisher KC

KC 2020, Called to the Bar 2000

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Richard was called to the Bar in 2000, and took silk in 2020. He has a commercial dispute focused practice with a particular specialism in restructuring and insolvency, banking, fraud and financial products litigation. He regularly acts in relation to multi-jurisdictional and complex commercial disputes.

A material part of Richard's practice involves overseas work. Richard is a member of the BVI bar, and frequently appears before the Courts of the Cayman Islands and the BVI. He has significant experience of acting for and against officeholders.

In recent years Richard has appeared in various substantial and high-profile cases in England and abroad, at all levels of tribunal up to the Supreme Court, including almost all of the disputes arising out of the Lehman Brothers insolvency. He has acted in relation to many of the major UK and international insolvencies and restructurings (including, for example, Three Arrows Capital Limited, Cafe Nero, Arcadia, House of Fraser, Debenhams, Primeo, International Bank of Azerbaijan), and has been involved in numerous long commercial trials.

Richard is recommended in Chambers and Partners/the Legal 500 as a leading silk for work in the following areas: Chancery/commercial, Insolvency and Restructuring, Commercial Dispute Resolution. Recent comments have included: "Richard is an exceptional barrister. He is technically brilliant but also very user-friendly. Judges like and respect him." "Richard has really come into his own as a silk" "Richard is clearly on top of his game and the field. When you have him on the team, judges listen."

Insolvency and Restructuring

Richard has extensive experience of both contentious and non-contentious corporate insolvency work. Recent instructions include leading the team advising Arcadia and its administrators, defending the Pizza Express and YO! Sushi CVAs, acting for Debenhams (and then its administrators), and advising and acting for various banks and hedge-funds involved in the *Lehman Waterfall I and II, and LBHI2*, proceedings. Richard has a particular specialism in domestic and international corporate reconstructions (involving the use of schemes of arrangement, CVAs and restructuring plans), and the application of the EC Regulation on Insolvency Proceedings/the Uncitral Model Law (including *Re OJSC International Bank of Azerbaijan*).

Other notable matters in which Richard has been instructed include *House of Fraser*, *MF* Global, the

Motlyev bankruptcy, *Four Seasons Group,* the *Noble Group*, *Codere SA*, the *IMO/Bluebrook Group, the Federal Mogul Group,* the *Cattles Group* and the *Telecolumbus Group*, and the *Co-Operative Bank.* Richard acts both for companies and creditors (supporting and opposing/challenging restructurings).

Reported cases include:

- ***Discovery (Northampton) Ltd v Debenhams Retail Ltd*** [2020] BCC 9 and [2020] BPIR 1378; unfair prejudice challenge to use of a CVA to restructure leasehold estates.
- ***Re Debenhams Retail Ltd*** [2020] BUS LR 788; consideration of whether contracts of employment of employees placed on government furlough scheme were adopted by the administrators for the purpose of Schedule B1 of the Insolvency Act 1986.
- ***Re OJSC International Bank of Azerbaijan*** [2019] Bus LR 1130; potential use of the Uncitral Model Law to seek to give effect to a foreign restructuring of English law governed debt
- ***Lehman Bros Scheme*** [2019] BCC 115; scheme of arrangement used to effect final compromise of creditor claims against LBIE
- ***Re MF Global (German Tax issues***) [2020] 1 BCLC 649); disputed stay application raising difficult issues relating to the scope and application of the rule against double proof
- ***House of Fraser*** [2018] EWHC 1906 and 2663 (Ch); use of schemes and CVA to restructuring landlord portfolio
- ***Waterfall I*** [2016] Ch 50, concerning whether currency conversion claims rank as non-provable claims in an insolvency
- ***Waterfall II*** [2016] Bus LR 17 and [2015] BPIR 1162, concerning various issues relating to the interpretation of the interest provisions in the Insolvency Rules 1986, and the effect of post-administration agreements entered into by the Lehman administrators with creditors on claims to interest/non-provable claims
- ***Kemsley v Barclays Bank*** [2013] BPIR 839, concerning the availability of anti-suit injunctive relief in support of domestic insolvency proceedings
- ***BNY Corporate Trustee Services v Euosail-UK 2007-3BL*** [2013] 1 WLR 1408 (SC), meaning of balance sheet insolvency for the purpose of section 123(2) of the Insolvency Act 1986
- ***Mills v HSBC*** [2012] 1 AC 804 (SC), interplay between the rule against double proof and the rule in ***Cherry v Boultbee Re Kaupthing Singer and Friedlander*** [2010] BPIR 539 (CA), correct interpretation and application of the Insolvency Rules relating to set-off in respect of future liabilities
- ***Re IMO/Bluebrook*** [2010] 1 BCLC 338, contentious scheme involving valuation issues and the acquisition of the debtor's business by senior creditors using a debt for equity swap
- ***Hague and Pricewaterhousecoopers v Nam Tai Electronics*** [2008] UKPC 13, ability of dissatisfied creditors to bring claims directly against office holders
- ***Re Cheyne Finance*** [2008] 2 All ER 987, meaning and scope of commercial insolvency within section 123 of the Insolvency Act 1986
- ***Re Cape*** [2007] 2 BCLC 546, whether schemes of arrangement can include self-amendment provisions
- ***Re T&N*** [2006] 1 WLR 1728, ability of schemes and CVAs to bind contingent creditors in the context of large scale asbestos liabilities

Banking and Finance

Richard regularly advises on and conducts litigation in relation to issues arising from structured finance documentation, and disputes between different classes of noteholders. He has acted in all of the Lehman disputes regarding ranking/priority and proof issues. Having acted in the consolidated *Firth Rixson* appeal concerning the ISDA master agreement, Richard has increasingly been instructed in relation to general derivative disputes and, in particular, close-out calculations. He regularly appears in the Commercial Court or Financial List dealing with commercial disputes between funds and banks.

Recent cases include:

- ***Re Lehman Brothers Holdings Plc/LBHI2*** [2020] EWHC 1681: disputed claim regarding ranking, rectification and proof of future debts.
- ***Cyrus v Oceanwood* (2019)***:* derivatives dispute raising significant issues regarding the meaning and application of the Market Abuse Regulation
- **Re LBHI2 (2019):** ranking dispute relating to various debt instruments issued by the Lehman estate
- ***Re Lehman Brother International Europe*** [2012] Bus LR 667, correct interpretation of CASS 7 (client money protection) rules
- ***LB RE Financing No 3 v Excalibur Funding No 1*** [2011] EWHC 2111 (Ch), correct construction of the terms of issue of a series of CDOs, and whether an event of default had occurred
- ***Lomas v JRF Firth Rixson*** [2012] 2 Lloyd's Rep 548, interpretation of section 2(a)(iii) of the ISDA Master Agreement, and infringement of the anti-deprivation principle
- ***Re Cattles*** [2010] 2 BCLC 712, proper interpretation of a non-compete clause within a corporate group cross guarantee ***Mills v HSBC Trustee (CI)*** [2012] 1 AC 804, proper interpretation of a multi-party guarantee and subordination agreement, and the application of the rule in ***Cherry v Boultbee***
- ***Bank of New York v Montana*** [2008] EWHC 1594 (Ch), correct construction of security documentation relating to the *Orion* SIV
- ***Re Save Group Robinson v AIG*** [2005] 1 BCLC 1, enforceability of multi-party subordination agreements and their effect on inter-company proofs

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Commercial Litigation and Arbitration

Richard continues to be involved in substantial commercial litigation and asset recovery proceedings, with litigation taking place in various jurisdictions. Richard regularly acts for the Society of Lloyd's in relation to disputes with members and others. Having acted for the *Brunei Investment Agency* for many years in relation to its disputes with Prince Jefri, he spent large periods of time acting in relation to the *IPOC litigation*, the *Tchigirinsky v Sibir* Energy dispute and aspects of *BTA Bank v Ablyazov*. Richard has spent a significant period of time engaged in litigation in off-shore jurisdictions such as the Cayman Islands and BVI. Current instructions include a Cayman Islands $2b claim being brought by liquidators of a Madoff feeder fund for breach of duty against its former custodian and administrator (*Primeo v HSBC*), and the *SFO v Smith* fraud claim, where Richard acts for the Viscount of Jersey in significant litigation before the English Commercial Court.

Richard's instructions frequently involve obtaining or defending injunctive relief, the appointment of inspectors/receivers and judgment enforcement issues (including sovereign immunity).

Significant cases include:

- ***SFO v Litigation Capital Ltd*** [2020] EWHC 788 (Comm); fraud and tracing claims pursued by various parties against assets located in the UK and Jersey.
- ***Primeo v HSBC*** (2019): $2b claim against HSBC for breach of duty acting as administrator and custodian of a Cayman Islands investment fund placing funds with Madoff in New York.
- ***Cyrus v Oceanwood*** (2019)*:* derivatives dispute raising significant issues regarding the meaning and application of the Market Abuse Regulation. 4 month trial in 2016/2017, 2 week appeal 2018
- ***SerVaas Incorporated v Rafidain Bank*** [2013] 1 AC 595 (SC), judgment enforcement and state immunity
- ***Snoras Bank v Antonov*** [2013] EWHC (Comm) 131, freezing orders, compelled information and the right to silence
- ***Lomas v JRF Firth Rixson*** [2012] 2 Lloyd's Rep 548, interpretation of Section 2(a)(iii) of the ISDA Master Agreement, and infringement of the anti-deprivation principle
- ***BNY Corporate Trustee Services v Euosail-UK 2007-3B*** [2013] 1 WLR 1408 (SC), construction of terms and events of default in a CMBS transaction
- ***Brunei Investment Agency v Bolkiah*** [2007] UKPC 62, construction/enforcement of settlement agreements

Company

Richard undertakes general company law advice and has particular experience in respect of domestic, Cayman, BVI and Bermudian shareholder disputes, including unfair prejudice petitions, just and equitable winding-up petitions, redemption issues and the appointment of company inspectors.

Significant offshore litigation in respect of which Richard has been instructed includes ***Re Fortuna Development Corporation*** (Cayman Islands), regarding the stay/strike out of a just and equitable winding-up petition and subsequent satellite litigation, and ***Primeo v HSBC*** *(Cayman Islands),* regarding the duties of fund administrators and custodians.

Awards and Recommendations

Chambers & Partners	Leading junior for Commercial Chancery, Insolvency/Restructuring and Banking/finance
Legal 500	Leading junior for Commercial Chancery, Insolvency, and Banking/finance

Career

2020	Appointed King's Counsel

2009	Called to Bar of the Eastern Caribbean Supreme Court
2002-2007	Tutor in Insolvency Law, University of London LLM
2000	Called to Bar of England and Wales

Publications

Contributor to ***Cross-Border Insolvency Fourth Edition*** (Sheldon, Bloomsbury, 2015)

Contributor to ***Mortimore, Directors Duties, Fourth Edition (forthcoming)*** (Arnold, OUP)

Education and Qualifications

1999 Oxford University, BCL, First Class
1998 University College London, LLB, First Class