

Richard Fisher

Called to the Bar 2000

+44 (0)20 7696 9900

richardfisher@southsquare.com



Richard has a commercial dispute focused practice with a particular specialism in domestic and cross-border reconstruction and insolvency, banking, fraud and financial products/derivatives litigation. He regularly acts in relation to multi-jurisdictional and complex commercial disputes, and is a member of the BVI bar.

In recent years Richard has appeared in various substantial and high-profile cases in England at all levels of tribunal up to the Supreme Court, including disputes arising out of the Lehman Bros insolvency (*Waterfall I and II* proceedings, and *Firth Rixson*), *Eurosail*, *Snoras Bank*, *Federal Mogul* (reinsurance recoveries) and the *Servaas* state immunity litigation.

He has acted in relation to many of the major recent UK and international insolvencies/restructurings, including *Lehman Brothers*, *House of Fraser*, *Debenhams*, *Noble Group*, *Codere SA*, *Co-Op Bank*, *Deutsche Annington*, *Telecolumbus* and *Cattles*, and has been involved in several long commercial trials in the UK and Cayman Islands (including the *Federal Mogul*, *Primeo v HSBC* and the *Fortuna* shareholder disputes).

Richard is regularly recommended by the legal directories as a leading junior in the fields of commercial chancery, insolvency/restructuring and banking and finance. Recent comments describe him as “one of the best juniors in the city”, “bright cheerful, forthright and unflappable”, “fantastic on his feet and never one to be ruffled”, “a go to junior”, “someone who has the ability to deal with judge’s questions in a very assured manner” and a barrister who “is extremely thorough and doesn’t miss a thing”.

Richard was nominated for the Chambers UK Company/Insolvency Junior of the Year Award in 2014 and 2016. He is a member of the Attorney General’s A-Panel of senior juniors for civil work.

Insolvency and Restructuring

Richard has extensive experience of both contentious and non-contentious corporate insolvency work. Recent instructions include advising and acting for various hedge-funds involved in the *Lehman Waterfall I and II proceedings*. He has also been involved in various domestic and international corporate reconstructions, involving the use of both schemes of arrangement and CVAs (*House of Fraser*, *Debenhams*), and the application of the EC Regulation on Insolvency Proceedings/the Uncitral Model Law (including *Re OJSC International Bank of Azerbaijan*).

Experience includes acting for the companies in relation to the restructuring of *House of Fraser*, *Debenhams*, *MF Global*, the *Four Seasons Group*, the *Noble Group*, *Codere SA*, the *IMO/Bluebrook Group*, the *Federal Mogul Group*, the *Cattles Group* and the *Telecolumbus Group*, as well as the *Co-Operative Bank* in relation to its £1.5 billion recapitalisation. Richard acts both for companies and creditors (supporting and opposing/challenging restructurings).

Recent cases include:

- **Re OJSC International Bank of Azerbaijan** [2019] 1 BCLC 1; 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)** [2019] EWHC 705 (Ch); 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 Boulton 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. 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:

- **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 Boulton**
- **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

Commercial Litigation and Arbitration

Richard continues to be involved in substantial commercial litigation and asset recovery proceedings, with litigation taking place in various jurisdictions. 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. 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*).

This litigation frequently involves obtaining or defending injunctive relief, the appointment of inspectors/receivers and judgment enforcement issues (including sovereign immunity).

Equally, Richard also acts in relation to general commercial disputes such as the *Federal Mogul* reinsurance declaratory action before the Commercial Court.

Significant cases include:

- **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 Bolkihah** [2007] UKPC 62, construction/enforcement of settlement agreements

Company

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

Significant 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.

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

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

Consultant Editor of **Halsbury's Laws**
Contributor to **Totty and Moss on Insolvency**
Contributor to **Cross-Border Insolvency Fourth Edition** (Sheldon, Bloomsbury, 2015)
Contributor to **Insolvency Intelligence**
Contributor to **International Corporate Rescue**

Education and Qualifications

1999 Oxford University, BCL, First Class

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