

commercial and construction law



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NEW YORK

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LONDON

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DUBAI

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HONG KONG

The Team

Thirty Nine Essex Street is a leading commercial and construction set described by Chambers & Partners 2009 as “Its client-friendly manner is backed up by a genuinely impressive level of knowledge and expertise applied to a wide variety of cases...”, “extremely professional outfit, with strong practitioners who offer a good service... especially renowned for its ongoing involvement in environmental law” and “an excellent reputation for construction law...”.

The commercial and construction team at Thirty Nine Essex Street offers a broad spread of experience, from leading practitioners widely recognised as experts in the field, combining strong analytical, advisory and advocacy skills with pragmatism and approachability.

We are committed to understanding the needs of each client and place considerable emphasis on client care. Our approach is to work with our instructing solicitors and clients rather than seek to dispense advice from an ivory tower.

We can provide a comprehensive advisory and advocacy service in relation to a wide range of commercial and construction disputes, covering the traditional types of commercial and construction dispute but also offering expertise in other related areas such as PFI, public procurement, environmental issues, and commercial public law. We are well placed to deal with disputes that do not fall into a neat category and can put together a team to deal with all aspects of a dispute.

We have experience of and expertise in handling substantial, and legally and factually complex cases. Members of Thirty Nine Essex Street have experience in litigation, arbitration and alternative dispute resolution in this jurisdiction and in international jurisdictions. A number of members of Chambers are called to the Bar in international and off-shore jurisdictions including California, Dubai, Hong Kong, New South Wales, South Africa and Queensland. Members of Chambers are also instructed as English law experts in arbitrations and litigation around the world including China and the USA.

Members of Chambers are regularly instructed in public inquiries and related prosecutions such as those arising out of the Southall and Ladbroke Grove train crash and the Hatfield train crash.

“Highly responsive, client-focused and easy to work with”

Chambers & Partners 2009



Areas of Work

Banking, securitization, futures and derivatives

Members of Thirty Nine Essex Street have experience in all aspects of the banking sector – including securitisation of debts and mortgages, syndication of loans financial instruments, AML and POCA, CMI and pool facilities and letters of credit. Chambers has a particular expertise in financing structures for large scale developments (residential and commercial) and infrastructure works – whether it be by way of insurance, bonds or guarantees. Members of Chambers have acted in many of the significant cases that arose out of the collapse of securitisation and pool facilities in the last property crash – as well as the associated derivative claims. With its in-depth knowledge of the financial services regime, Chambers is well placed to deal with the regulatory aspects of the industry.

Recent significant cases:

- advising on a \$1bn offshore credit card debt securitization
- advising and acting in an ICC Arbitration over a US\$10m letter of credit
- advising and acting for a private equity fund over a £20m facility dispute
- acting and advising in a dispute over the financial restructuring of South African telecoms infrastructure improvements

Commercial contracts

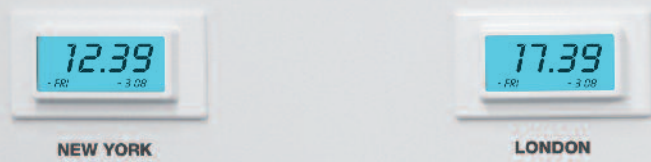
Chambers' commercial work usually has a contract at its centre, dealing with many different arrangements including agency, franchising and licensing, guarantees and indemnities, joint ventures, partnership, sale of goods, share purchases and supply of services.

Chambers has advised and represented clients from a vast range of commercial markets and business sectors, including banking and finance, construction and engineering, energy, infrastructure provision, aviation, manufacturing, entertainment and leisure as well as public sector bodies.

Members of Thirty Nine Essex Street bring a sound knowledge of legal principles, ability to master facts and an understanding of the relevant industry sectors and commercial background in advising in this area. We recognise that clients need and expect clear advice as to the available remedies and quantum.

Recent significant cases:

- Thames Water Utilities Ltd v Heathrow Airport Ltd and BAA [2009] EWHC 407 (Comm) advising and representing the defendants on the construction of the sale contract for the land on which Terminal 5 was built
- Clyde & Co LLP v New Look Interiors of Marlow Ltd [2009] EWHC 173 (QB) advising and representing the defendant contractor in a claim brought to recover substantial sums paid for work done at offices in London and Guildford
- Lively v Lively (CA) [2008] EWCA Civ 904 advising and representing the claimant in long running Chancery litigation about the allocation of milk quotas
- Daniels v Deville, Daniels v Samuel Beadie (Properties) Ltd, Pickenham Homes Ltd v Pickenham Estates Ltd [2008] EWHC 1810 advising a property developer and builder and his companies in four actions concerning the end of a substantial property development joint venture and the taking of a global account
- Haven Insurance Co Ltd v Marketbalance advising in a £1m claim over the termination of an insurance brokerage with associated freezing and delivery up injunctions
- Balcombe Group Plc v London Development Agency [2008] EWHC 1392 (TCC) and [2007] EWHC 106 (QB) representing and advising the London Development Agency in the first High Court trial arising out of the London Olympics
- Advising and representing in the successful defence of a £12m claim involving the painting of aircraft belonging to a major low cost airline
- Advantage Business Systems Ltd v James Hopley [2007] EWHC 1783 (QB) representing the suppliers of financial management software and related services in a dispute arising out of post-termination restrictive covenants



Thirty Nine Essex Street Commercial and Construction Law

Construction and Engineering

Members of Thirty Nine Essex Street act in a wide range of matters from factories, housing estates, oil platforms and refineries, ports and dry docks, schools and universities, tunnels and viaducts to small domestic conversions.

We work for all sides of the industry: for employers, contractors, and the professional team working on such schemes, funders, insurers and the public sector. We act for and against national and state governments.

We have experience in the typical issues involved in construction disputes: defects, design, delay, extensions of time and liquidated damages, disruption and prolongation, ground conditions, certification, payment, performance bonds, guarantees, letters of credit and other forms of security.

Our work has involved all the major contract forms such as FIDIC, ENAA, Orgalime, the MF/1, IChem E, NEC, JCT and ICE forms as well as misrepresentation, mistake and rectification of contract claims.

We are also able to provide specialist advice and advocacy in relation to environmental, health and safety, insurance, procurement and regulatory issues. We are familiar with the funding and partnering arrangements that have developed around large-scale projects and regularly advise in relation to bonds, guarantees and indemnities.

Members of Chambers have been heavily involved in the litigation arising out of the fire at Buncefield Oil Storage Depot.

Recent significant cases:

- *RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG* [2009] EWCA Civ 26 (Court of Appeal) representing the manufacturer of packaging and product handling machines in the food and consumer goods industry in a dispute as to whether a new contract had come into existence after the expiry of a letter of intent
- *Adams v Scottish and Southern Energy Plc* [2008] EWHC 1926 (TCC) representing the electricity supply company in a dispute about the installation of cabling and liability for damages caused by a fire
- *Persimmon Homes (South Coast) Ltd v Hall Aggregates (South Coast) Ltd* [2008] EWHC 2379 (TCC) representing the property developer claimant in a dispute as to whether it was entitled to recover the cost of carrying out work from the party who was contractually obliged to carry it out
- *J.S.Bloor Ltd v Pavillion Developments Ltd* [2008] 2 EGLR 85 (TCC) representing the contractor seeking restitutionary recompense from the developer in respect of a road the contractor had mistakenly built, thereby discharging one of the developer's obligations
- *Drake v Harbour* [2008] EWCA Civ 25 (Court of Appeal) representing the homeowner in a case that settled important questions of causation and burden of proof
- Advising and representing a party in an ICC arbitration over the interpretation of a US\$10m letter of credit financing infrastructure works in Egypt
- *Charles Church Developments Ltd v Stent Foundations Ltd* (2007) 1 WLR 1203 (TCC) representing defendant structural engineers in a dispute about the making of a new claim after the expiry of the limitation period
- *Felton Construction v Liverpool City Council* [2007] EWHC 3049 (TCC), representing the contractor on a school construction project seeking additional payment on a quantum meruit basis
- Acting in an ICC arbitration concerning claims arising out of the design, construction and procurement of offshore facilities

“an excellent reputation for construction law...”

Chambers & Partners 2009

Thirty Nine Essex Street Commercial and Construction Law

Adjudication

Adjudication has become a key element of the resolution of construction and engineering Disputes. We can put together a team quickly to act in an adjudication. Thirty Nine Essex Street can also provide specialist advice and representation in relation to enforcement procedures. Members of Chambers also act as adjudicators through the TECBAR Panel of Adjudicators.

Recent significant cases:

- London Borough of Camden v Makers UK Ltd [2009] EWHC 605 (TCC) advising and representing a building contractor in a dispute as to the power of a court to impose conditions preventing a company from pursuing its statutory right to institute further adjudications in proceedings against a local authority
- Makers UK Ltd v London Borough of Camden [2008] EWHC 1836 (TCC) advising and representing a building contractor in a dispute as to the validity of the appointment of an adjudicator in a case where the court set out some guidance designed to be of practical help to parties involved in the adjudication process
- RC Pillar and Son v The Camber [2007] EWHC TCC 1626 advising and representing a party in a dispute about the Adjudicator's jurisdiction

Insolvency, Company Law, Corporate restructuring and M&A

Chambers has extensive experience in corporate restructuring, mergers and acquisitions, demergers, company and insolvency law. Chambers has advised across the board on corporate restructuring deals from major demergers – for example the Centrica demerger – to numerous smaller internal and group restructurings.

Chambers' M&A experience includes all types of warranty claims, funding disputes, MBOs, hostile takeovers with the associated regulatory issues.

Further general corporate and insolvency work includes: advice and representation on securitization and funding issues, bank syndications, share options, derivative actions, section 994 petitions, director's disqualification proceedings, director's duties, actions for misfeasance, fraudulent preferences, liquidator's recovery actions, liquidator's and administrator's duties and winding up. From Chambers' experience with and involvement in the Accounting Standards Board, Chambers is well placed to assist with associated auditing and accounting issues.

From its role in numerous development, funding, insurance and insolvency cases in the 1990's, Chambers has extensive experience in advising on and representing in cases and the large scale litigation that arises from constricting property and finance markets as a result of over-exposure to sub-prime and short money.

Chambers is also well placed to provide advice and representation in all aspects of professional negligence claims arising in this area whether it be solicitors', auditors' or advising bankers.

“a colossally talented set”

Legal 500 2007

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Recent significant cases:

- a £1bn securitization in the Channel Islands, shareholders' disputes relating to internet start-ups
- a £50m restructuring of charitable companies, the consequences of telecoms and IT demergers in Southern Africa
- derivative claims associated with companies in the UK and Russia
- RWE Nukem Ltd v AEA Technology Plc [2005] EWCA Civ 1192 a case on the true construction of indemnities given by the vendor of a business

Employment

Chambers has a team of employment practitioners who regularly appear in employment tribunals covering all aspects of employment law including unfair dismissal, discrimination, wrongful dismissal/breach of contract, transfer of undertakings, parental leave and redundancy. Clients include both claimants and defendants from all areas of industry and members have particular expertise in matters involving transport undertakings such as train operating companies and rail infrastructure companies. Public sector clients include NHS trusts, local authorities and government departments. In addition, the employment team are able to give advice on post-termination contractual matters such as disputes over garden leave, restrictive covenants and compromise agreements.

Energy and utilities

Experience is critical when advising in these technologically and commercially complex industries. We have represented clients across the energy industry from electricity, oil and gas to nuclear fuels. Our clients include oil exploration and refining companies, governments, the Nuclear Decommissioning Authority and oil and gas commodity traders as well as their financiers and insurers/reinsurers.

Thirty Nine Essex Street have been involved in the drafting of, and dispute resolution associated with, long term commodities contracts involving the North Sea, the former Soviet Union, USA, Australia and Far East. Our multi-national experience also includes field development and financing disputes as well as field infrastructure disputes involving oil rigs, hulls, pipelines, tenders and power stations. In each case, our practitioners combine detailed knowledge of the legal issues involved (from public international law to conflicts of law to contract interpretation to environmental law) as well as in depth awareness of the practical difficulties that can arise in such cases.

Recent significant cases:

- Dana Petroleum v Woodside Kenya Ltd advising in a multi-million US dollar claim over the development of oil and gas fields in East Africa
- Advising in a UNCITRAL arbitration arising out of an oil and gas joint venture agreement in Indonesia
- Acting and advising in a US\$29m UNCITRAL Arbitration over the development of oil and gas fields in Egypt
- Acting and advising in an UNCITRAL arbitration over the construction of oil facilities in the Middle East
- Advising and acting in a potential insurance/reinsurance claim triggered by radioactive leaks at and the closure of THORP



Thirty Nine Essex Street Commercial and Construction Law

Water Utilities

We have represented clients across a wide range of the water utilities industry dealing with issues from drought orders to sewage discharge and water infra-structure projects. Our clients include major utility companies.

Recent significant cases:

- Dwr Cymru Cyfyngedig (Welsh Water) v Corus UK Ltd [2007] EWCA Civ 285 Court of Appeal, acting for Welsh Water in a dispute about the setting of water prices in the supply contract with Corus
- Thames Water Utilities Ltd v Ministry of Defence [2006] EWCA Civ 1620 acting for Thames Water in a dispute about the recovery of charges for metered sewerage services

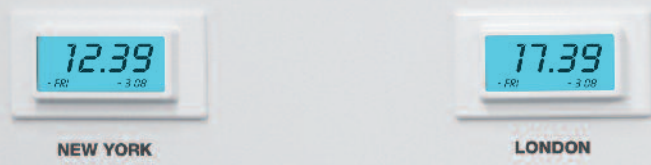
Environmental

Thirty Nine Essex Street is highly regarded for its environmental work. Members of Chambers have a deep knowledge of the subject, and how it operates in the commercial context. There has been a significant increase in the scope and complexity of regulations covering all aspects of the environment and members of Chambers regularly advise on corporate environmental governance and due diligence issues. Members of Chambers are involved in *Motto v Trafigura*, a 30,000 claimant class action seeking damages against a commodities trader for alleged environmental contamination in the Ivory Coast.

Numerous members of Chambers have acted on projects for renewable energy, in particular wind energy, on some of the biggest and most controversial onshore and offshore schemes in the UK.

Recent significant cases:

- United Utilities PLC: acting for UU on test case appeals involving long inquiries into the reduction of storm water sewage discharges to inland and coastal waters
- R (Maile and Hardy) v Pembrokeshire County Council [2006] EWCA Civ 240 (Court of Appeal): acting for the developer of the LNG terminal at Milford Haven in a JR challenging the consents for the project.
- R (Cemex UK Cement) v DEFRA (Admin Court and EC CFI): acting for Cemex in litigation concerning allocation of allowances under the EU Emissions Trading scheme
- Under the same legislation, acting for clients involved in the first appeal against administrative penalties (the Alphasteel case)
- *Motto & Ors v Trafigura*



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Fraud

Commercial fraud is big business. Whatever the scale of the fraud, litigating in this field requires mastery of diverse areas of law such as deceit, restitution, breach of contract and fiduciary duty, an ability to marshal complicated facts, knowledge of the available remedies and control of the important procedural steps. Fraud cases often require quick and decisive legal action. Thirty Nine Essex Street advises on all aspects of fraud, and acts for both claimants and defendants. We have substantial experience in tracing and freezing misappropriated assets and securing important evidence through disclosure orders.

Recent significant cases:

- Advising and acting in an LCIA arbitration in which the claimants sought anti-suit relief in relation to fraud claims being litigated in Germany
- HMRC v Egleton [2007] BCC 78 (ChD) acting for the defendant in freezing order application where winding up petitioner asserted no claim
- Softwarecore Ltd v Pathan [2006] All ER (D) 05 (ChD) acting for the defendant in continuation of a freezing order application in an alleged missing trader intra community VAT fraud case

Information and communications technology

Members of Chambers have been involved in all types of hardware and software disputes. In the telecommunications sector Thirty Nine Essex Street advises on and acts in relation to emergent and convergent telecoms systems as well as local, national and international telecoms supply contracts and telecom infrastructure disputes. Thirty Nine Essex Street has experience of the regulatory issues including pricing structures, long term contracting and unbundling, competition and anti-trust legislation in this area. We also advise on freedom of information and data protection laws.

Recent significant case:

- Digby-Cameron v. IC [2009] UKIT EA 2008 0023 acting in an application under the FOIA for a transcript of a coroner's hearing

Insurance and re-insurance

We advise on coverage and claims arising out of a wide range of insurance policies, such as business interruption, contractors' risk, employers' liability, environmental risk, financial and credit risk, fire, flood, life, permanent health, professional indemnity, public liability and war and terrorist risk. Many of the claims involve allegations of material non-disclosure and fraud.

Construction

Members of Chambers regularly advise both insurers and the insured in relation to coverage disputes arising out of construction and engineering projects, dealing with issues such as aggregation and non-disclosure.

Property damage

Members of Chambers are regularly instructed in relation to substantial and complex claims arising out of property damage caused by fire, flood, pollution and other risks. These claims arise in a variety of ways. Often brought by owners against contractors, sub-contractors and construction professionals, they may also be made against the manufacturers and suppliers of equipment or products said to be implicated in the fire or flood and against adjoining landowners or utilities companies. Chambers has experience of all of these types of claim.

“phenomenal strength, depth and breadth”

Chambers & Partners 2008

Thirty Nine Essex Street Commercial and Construction Law

Recent significant cases:

- *Laker Vent Engineering Ltd v Templeton Insurance Ltd* [2009] EWCA Civ 62, Court of Appeal, advising and representing the insured in a dispute over the insurer's claim to avoid a legal expenses insurance policy for material non-disclosure and that the claim was notified late
- *McCall v Poulton* [2009] 1 CMLR 45 advising and representing insurers in a reference to the European Court concerning payment of subrogated claims under the Second Motor Insurance Directive
- *Field v CSI and Phoenix Life Limited* ET 2317956/2007 representing a respondent in the first substantive case concerning the interpretation of the Disability Discrimination Act 1995 as regards the provision of group income insurance
- *Shepherd & Neame v EDF Energy Networks (SPN) Plc* [2008] Bus LR D43 (TCC) advising in relation to the use of the disclosed experts reports of another party that withdrew from the proceedings
- *Kajima UK Engineering Ltd v Underwriter Insurance Company Ltd* [2008] EWHC 83 (TCC) advising and representing underwriters in a dispute as to whether notification had been given to professional indemnity insurers under a “claims made policy”
- Advising in a £150m insurance and reinsurance dispute arising from incidents of radioactive contamination at Thorp nuclear plant
- *Bee v Jenson (No 1)* [2007] Lloyd's Rep IR 451 (Comm) and (No 2) [2008] Lloyd's Rep IR 221. Advising and representing insurers in long running dispute dealing with the capacity of legal expenses insurers to act as agents for receipt of global offers of amends and insurers obligation in making subrogated claims to give credit for commission payments from suppliers
- *Board of Trustees of the Tate Gallery v. Duffy Construction Ltd & another* (2007) BLR 216 advising and representing the contractors in a dispute about co-insurance and the meaning of “flood” and “burst” in the insurance policy

Professional Negligence and Regulation

We have experience in a wide range of commercial and construction professional negligence claims and the associated regulatory issues: accountants and auditors, construction professionals, financial practitioners, insurance brokers, solicitors, barristers and surveyors. A core team at Thirty Nine Essex Street represented the claimant insurers (Winterthur/NIG) dealing with the ground-breaking professional negligence litigation arising out of the collapse of The Accident Group.

Accountants and auditors

Instructions are regularly received to advise and act in disputes involving due diligence, tax and business advice/professional services. Our auditors' work includes failure to detect corporate/management fraud, over-valuation of assets, understatement of liabilities and breaches of corporate governance. Members of Thirty Nine Essex Street act and have acted in disputes concerning the full range of accountancy firms - from the Big Four firms and the large London and nationally represented accountancy firms right down to the high street practice. Our experience extends to accountancy advice provided to clients in all commercial and construction industry sectors and includes claimant as well as defendant work. In addition to mainstream negligence actions, our team provides advice and representation in relation to related professional indemnity insurance issues and regulatory and disciplinary proceedings.

Construction professionals

Thirty Nine Essex Street has a longstanding reputation in the field of construction law and members of this team are also recognised as leaders at the Bar in the related area of professional negligence claims against construction professionals. Members of Chambers are regularly instructed to advise and act for both claimants and defendants in disputes involving alleged professional negligence on the part of architects, engineers, project managers, designers and surveyors in the construction, engineering, information technology, mining and energy sectors.

“an admirably forward-thinking set”

Chambers & Partners 2009

Thirty Nine Essex Street Commercial and Construction Law

Financial practitioners

The financial services sector is subject to a comprehensive and detailed regulatory regime. The relationship between that regime and civil claims for loss incurred by deficient advice on investments, pensions, tax, product mis-selling or other financial matters is an area requiring sophisticated legal advice and a sound knowledge of the sector. The regulatory framework of financial services gives those who believe that they have suffered loss in consequence of the failings of their financial advisers the opportunity to seek redress from the FSA rather than embarking on litigation. Members of Thirty Nine Essex Street have extensive experience in advising on all aspects of such claims and drafting representations to the FSA. They have also appeared before disciplinary committees of the ICAEW and the British Insurance Brokers Association. We believe that experience of the inter-relationship between the regulatory framework and the outcomes afforded by litigation/arbitration is critical to ensure the best route to obtain the most advantageous redress or defence for the client. In addition to mainstream negligence actions, our team provides advice and representation in relation to related professional indemnity insurance issues and regulatory and disciplinary proceedings.

Solicitors and barristers

Members of Chambers are instructed by professional indemnity insurers including the BMIF and claimants in many disputes involving barristers and solicitors, particularly those arising from failed or settled litigation.

Significant recent cases dealing with professional negligence matters:

- Acting for London Underground and Kajima in negligence actions prompted by the Chancery Lane derailment
- Advising and representing a defendant firm of quantity surveyors facing a £12 million claim stemming from cost overruns in a large commercial development
- Advising and representing defendant engineers in the sprawling railway infrastructure case, Secretary of State for Transport v Pell Frischmann Consultants Ltd
- Advising and acting for the defendant engineers on the Thelwall Viaduct refurbishment – Secretary of State v Mott Macdonald Ltd
- Landfast (Anglia) Ltd v Cameron Taylor One Ltd (2008) 117 Con LR 53 (TCC) advising and representing consulting engineers and building surveyors in a dispute about an alleged failure to advise on the amount of site preparation needed
- Lingfield Properties (Darlington) Ltd v Padgett Lavender Associates [2007] EWHC 2989 (QB) advising in a dispute about Architects' negligence in relation to the use of fire-retarding materials

Procurement

In the last few years public procurement law has become a mainstream area of legal practice. At one time it was regarded as a highly specialised type of non-contentious work, handled by transactional lawyers, but public procurement work has now expanded into an important and flourishing area of litigation. Procurement law combines an unusual skill set requiring expertise in public law, European Community law and contractual principles. Thirty Nine Essex Street with its unique strengths in public, commercial, construction and EU law has the relevant know-how on procurement issues, such as public procurement, the private finance initiative and public-private partnership.



Recent significant cases:

- Advising a foreign government department as to whether a contract was formed during the tender process of a multi million pound construction project
- Advising on and acting in relation to the procurement issues associated with the 2012 Olympics
- Advising on a £0.5bn city centre reconstruction PFI project
- Advising on and acting in respect of the procurement issues in relation to the provision (under a Framework Agreement) of IT and management services for local authorities across SW England
- Advising on and acting in relation to the procurement issues in relation to the managing and decommissioning of nuclear facilities
- R (Law Society) v Legal Services Commission and Secretary of State for Justice (CA) [2008] 2 WLR 803

Project financing and PFI

Thirty Nine Essex Street's involvement in the funding of major capital investment under PFI or other more traditional arrangements is at the front end contract drafting stage as well as dispute resolution.

Recent significant cases:

- Moduleco v Carillion [2009] EWHC 250 (TCC) advising and acting for tenderers seeking recovery of their costs from a series of abortive hospital PFI projects
- Advising an infrastructure operator on various projects arising under the London Underground PPP arrangements
- Tramtrack Croydon Ltd v London Bus Services Ltd [2007] EWHC 107 (Comm) and [2006] EWCA Civ 1743, Court of Appeal, advising and representing Tramtrack Croydon in the major PFI-related litigation relating to the operation of the Croydon Tramlink

Sports and Media

Sport

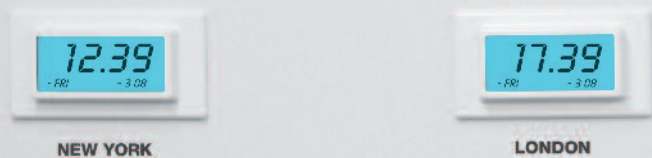
Thirty Nine Essex Street regularly advises and represents clients in sports contract disputes. Members of Chambers also have experience at the highest level as advisers, advocates and tribunal panel members in all the principal sectors of sports regulatory and disciplinary work before a wide range of tribunals including the Court of Arbitration for Sport in Lausanne, Sports Law Dispute Resolution Panel, British Olympic Appeals Tribunal, Football League Disciplinary Commission, World Snooker Disciplinary Hearing Board, Horse Racing Authority and the Australian Jockey Club. The team's experience includes doping infringements, eligibility, selection and discrimination issues and rules and conduct infringements.

Recent significant cases:

- Mykhaylo Zubkov v Federation Internationale de Natation CAS 2007/A/1291 representing a father/swim coach before the Court of Arbitration for Sport in Lausanne
- Sevdalin Marinov v Australian Sports Anti-Doping Authority advising on costs in the CAS jurisdiction

Media

Thirty Nine Essex Street regularly advises and represents clients in media and entertainment contract disputes. Members of Chambers have advised and represented household-name performers, writers and groups, record companies, film distributors and managers. Thirty Nine Essex Street also advises in media law cases involving issues of freedom of expression. The broadcasting, communications and media sector has experienced a dramatic growth in size and regulatory complexity in the last decade. Members of Thirty Nine Essex Street have extensive experience in advising on all aspects of the regulation of the sector including drafting representations to OFCOM. The team also has considerable experience relating to the regulation of cross-border satellite broadcasting within the EU. Since 2005 Thirty Nine Essex Street has advised broadcasting organisations in Eire, Sweden, Luxembourg and the UK on the regulation of cross-border broadcasting.



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Recent significant cases:

- *Mersey Care NHS Trust v Ackroyd* [2008] EMLR 1 representing the NHS trust responsible for Ashworth secure hospital in obtaining an order against a journalist to disclose the source of medical information he had been given about Ian Brady, who was then suing the hospital for assault and on hunger strike
- *Harbottle & Lewis LLP v Creative Design Art, Inc* [2007] EWHC (QB) representing an independent Hollywood film producer in a dispute over solicitors fees incurred in defending a copyright claim over the film *Chopin*

Tax: direct and indirect

Tax is a very good example of the particular ability of Thirty Nine Essex Street's commercial lawyers to advise in relation to disputes that do not fall into a neat category, for example primarily contractual disputes which tangentially raise considerations of VAT law, or cases where direct tax legislation forms part of the factual matrix within which a commercial contract must be construed. Where more detailed tax advice is required, particularly in relation to VAT, that specialist expertise is available and easily accessible within Chambers.

Recent significant cases:

- *Michael Fleming (t/a Bodycraft) v Customs & Excise Commissioners* [2008] UKHL 2 [2008] 1 WLR 195, House of Lords, representing the Government in a case dealing with national legislation and transitional arrangements necessary under European law in relation to the limitation period
- *Shell UK Ltd v Revenue & Customs Commissioners* (2008) STC (SCD) 91 dealing with petroleum revenue tax on gas sold and the Oil Taxation Act 1975
- *Mayflower Theatre Trust Ltd v Revenue & Customs Commissioners* [2006] EWHC 706 (Ch) (2006) STC 1607 dealing with VAT on programmes, drinks, sponsorship and corporate entertainment provided by a theatre trust

International

Thirty Nine Essex Street has a number of members who have been called to the Bars of various international and offshore jurisdictions including California, France, Hong Kong, New South Wales, South Africa and Trinidad and Tobago. We also have experience of acting in disputes in various foreign jurisdictions including Western and Central Europe, Africa, the USA, India, China and Hong Kong SAR, Malaysia, Singapore, the Gulf and the Caribbean.

Recent significant cases:

- *Arabtec v Ultra Fuji* [2009] advising and appearing on behalf of a contractor in the middle-east in a two-week trial at the Dubai International Financial Centre's Court of First Instance. This was the first construction trial at the DIFC and one of the first disputes over a contract governed by DIFC Law
- *National Insurance Property Development Company Limited v NH International (Caribbean) Limited*, advising and representing NIPDEC, in relation to disputes arising out of the construction of a new hospital in Tobago being resolved in arbitration and litigation before the High Court in Trinidad and Tobago
- Advising and acting for Belize Bank Ltd in a series of challenges to the actions of the Belize government and authorities

“this set offers barristers of varying experience and can always be relied upon to deliver the goods”

Chambers & Partners 2008

Thirty Nine Essex Street Commercial and Construction Law

Arbitration

Members of Chambers have substantial experience in resolving commercial, construction and engineering disputes under most forms of arbitration rules, both domestic and international, including the rules of the AAA, CIETAC, DIAC, HKIAC, ICC, LCIA, SIAC, UNCITRAL and WIPO. Thirty Nine Essex Street has appeared before arbitral tribunals round the world including the Middle East, the Far East, India, Southern Africa, Europe (Eastern and Central) and the Caribbean.

Recent significant cases:

- Representing the employer in a prolongation claim/LAD counterclaim before an ICC Arbitral Tribunal sitting in Dubai
- Acting in three large international arbitrations on behalf of the world's leading manufacturer of military flight training equipment, against the UK government, the most recent of which, conducted under LCIA rules, involved a \$15m claim for damages for breach of a government procurement contract for the design and supply of both hardware and software for aviation maintenance trainers
- Acting for a Chinese contractor in its claim for delay and disruption costs arising from an extensive housing refurbishment contract for the Hong Kong government
- Acting for a Chinese investor in an ICC arbitration concerning a joint venture project in a copper mine in Spain
- Advising and representing a major Turkish government agency in arbitration proceedings concerning an EPM contract for a combined cycle gas power station in Turkey
- Advising and representing a Caribbean government agency in ICC arbitration proceedings in a dispute concerning claims brought by a main contractor in connection with a major infrastructure project
- Acting in an LCIA arbitration for a large metals producer and trader in relation to world wide anti-suit injunctions

- Acting in an UNCITRAL Arbitration over the development of oil and gas fields in Egypt
- Acting in an ICC arbitration over a US\$10m letter of credit supporting infrastructure works in the Middle East
- Acting in an UNCITRAL Arbitration over the construction of oil and gas facilities in the Middle East

Alternative Dispute Resolution

We know that clients are usually looking for a cost efficient, commercially attractive and speedy resolution of their disputes. Our aim is to understand the client's commercial objectives from the beginning and to identify a strategy to achieve those objectives in an economic and expeditious manner. Our experience covers all forms of ADR including dispute resolution boards, expert determination, early neutral evaluations and mediation. Many members of the commercial and construction team are experienced accredited mediators.



Thirty Nine Essex Street Commercial and Construction Law

Publications

The team has produced a number of leading publications including:

- Tackaberry (co-author), Bernstein's Handbook of Arbitration and Dispute Resolution Practice, Sweet & Maxwell
- Wilmot Smith, Construction Contracts, OUP
- Wilken, The Law of Waiver, Variation and Estoppel, OUP

Members of Chambers also contribute to:

- Bernstein's Handbook of Arbitration and Dispute Resolution Practice
- Cordery on Solicitors
- Croner's Law for Construction Professionals
- Encyclopaedia of Environmental Law
- Halsbury's Laws
- Local Government Contracts and Procurement, Tottel
- Nelson's Law of Entertainment and Broadcasting, Sweet & Maxwell

Training and Seminars

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For more information please contact

Chief Executive and Director of Clerking

David Barnes
+44 (0)20 7832 1115
david.barnes@39essex.com

Senior Clerk

Alastair Davidson
+44 (0)20 7832 1181
alastair.davidson@39essex.com

Practice Manager

Owen Lawrence
+44 (0)20 7634 9016
owen.lawrence@39essex.com

ThirtyNine

ESSEX STREET

London

39 Essex Street London WC2R 3AT
tel +44 (0)20 7832 1111 fax +44 (0)20 7353 3978

Manchester

82 King Street Manchester M2 4WQ
tel +44 (0)161 870 0333 fax +44 (0)20 7353 3978

email clerks@39essex.com dx London/Chancery Lane 298
www.39essex.com

Chief Executive and Director of Clerking David Barnes

Senior Clerk Alastair Davidson

Practice Manager Owen Lawrence

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