

RPC

High value commercial disputes capability

Overview

RPC have a number of partners and lawyers who have significant experience of high value and ultra-high value disputes in and out of a (re)insurance context; whether in court, in the UK or abroad, and in various forms of arbitration (including Bermuda Form, LCIA, ICC, LMAA, ARIAS, and ad hoc). Many of our lawyers have gained experience of these disputes at the Bar, from sitting as an arbitrator, from practising at Magic Circle firms, and bring genuine insight and knowledge into the complex dynamics of disputes, and the underlying industries in which these happen, from pharmaceuticals to telecoms to shipbuilding

In this document we provide details of the partners and lawyers who specialise in high value, complex insurance disputes with an overview of their experience. We also provide an overview of some of the ultra-high value matters RPC has assisted (re) insurers with.

“The team at RPC is always available to talk about complex matters and give advice. They are happy to talk on a wide variety of issues and to a number of different audiences. They also provide expertise on wordings and relevant legal developments.”

Legal 500

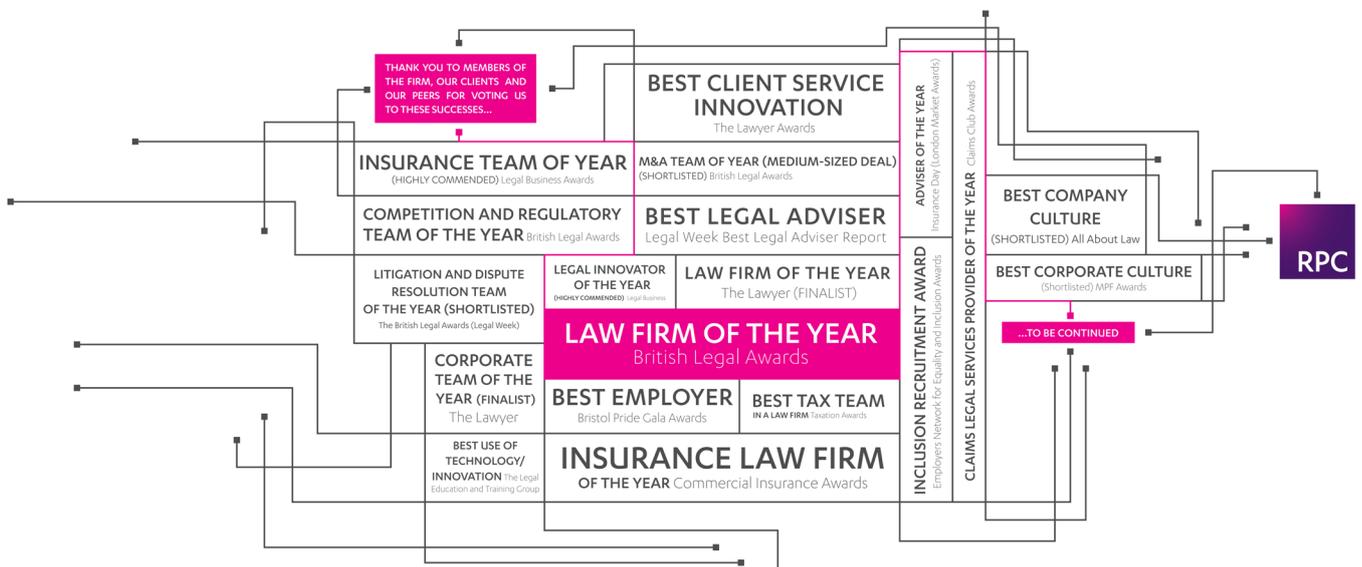


RPC's experience of high value disputes

Some of RPC's recent high value disputes experience includes:

- **SBM v Zurich & Ors, Yme MOPUstor (Commercial Court)**
 - we advised excess layer CAR insurers in respect of \$1.3bn constructive total loss claim by SBM arising out of abandonment of a production platform in the Norwegian sector of the North Sea
- **Pharmaceutical patent infringement insurance arbitrations**
 - we acted for an insurer against the world's largest generic drug manufacturer in two arbitrations:
 - matter 1 was a \$50m arbitration concerning insurance coverage for US/Canadian patent infringement liabilities. The generic drug manufacturer sought to recover \$100m to settle patent infringement litigation in New Jersey concerning their generic version of the drug
 - matter 2 concerned insurance coverage for US/Canadian patent infringement liabilities. The arbitration arose out of a \$1.6bn settlement paid by the drug manufacturer to a pharmaceutical group to settle patent infringement litigation in New Jersey concerning its generic version of a brand "blockbuster" drug. The generic drug manufacturer sought to recover \$660m from its insurance programme
 - we achieved favourable settlements for the insurer in both of the above arbitrations, under which the multi-million dollar claims were settled. The insurer client was able to take advantage of the powerful defence case formulated by RPC on its behalf in both arbitrations, in order to negotiate a policy buy-back deal whereby it settled all outstanding claims

- **Pharmaceutical product liability (Bermuda Form arbitration)** – we acted for an insurer against a household name pharmaceutical company in a major Bermuda Form arbitration concerning insurance coverage for US class action liabilities. The pharmaceutical company sought to recover under its excess liability insurance programme in respect of US class action liabilities arising from alleged side effects associated with a contraceptive product. The insurer's total exposure was c \$200m, and we helped the insurer achieve a commercially favourable settlement
- **Pharmaceutical product liability (Bermuda Form arbitration)** – we acted for an insurer against a subsidiary of a major pharmaceutical group in a significant Bermuda Form arbitration concerning insurance coverage for US class action liabilities. The subsidiary sought to recover under its excess liability insurance programme in respect of US class action liabilities running into the hundreds of millions of dollars arising from alleged side effects (specifically breast cancer) associated with a "blockbuster" hormone replacement drug. The arbitration was settled by the insurer on favourable commercial terms



Key contacts



Jonathan Wood
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With over 30 years' experience of international arbitration and mediation both as counsel and arbitrator, Jonathan has been appointed in over 30 arbitrations (ICC, LCIA, DIFC, ASA, AAA, WIPO and ad hoc) and handed down 14 final awards, including:

- sole arbitrator in a derivatives claim between banks in an ICC Arbitration
 - party arbitrator in a dispute between credit card franchisees in a Middle Eastern county and the US franchisor in an ICC arbitration, sitting with Lord Browne-Wilkinson (House of Lords Judge)
 - sole arbitrator in relation to construction of settlement agreement following English Commercial Court proceedings between a Middle Eastern Bank and its customer (ad hoc)
 - sole arbitrator in joint venture dispute in relation to energy interests (ad hoc)
 - party arbitrator in political risk insurance dispute between major commodity dealer and insurers (ad hoc)
 - five day mediation between Turkish Government and insurers arising out of construction contract dispute (claim \$450m)
 - awards written in relation to international sales/commodity disputes, marine policy coverage disputes, transport disputes and termination of commercial agency agreements
 - advising in relation to *Biwater v Republic of Tanzania* BIT arbitration
- He also has significant experience working on high value disputes, including:
- enforcing ICSID award against Republic of Georgia for over \$100m against Bonds issued in London
 - representing Russian Issuers in dispute with Bondholders and private equity interests involving over £250m (LCIA arbitration)
 - representing Tillman and Hartlepool, BVI companies involved in major LCIA arbitration and commercial litigation in relation to Ukrainian Oblenergos (Power Companies) and associated corporate disputes arising out of the "Orange Revolution" in the Ukraine
 - represented the Turkish government and Italian contractors in the recovery of \$115m as a result of earthquake damage to the Ankara/Istanbul Highway in 1999, and acted in associated ICC arbitration proceedings in Zurich concerning a joint venture dispute, and parallel Commercial Court proceedings
 - *Accentuate v Asigra Inc* [2009] EWHC 2655 (QB) – acting for a Canadian software supplier in relation to Canadian arbitration and the mandatory effect of the Commercial Agents Directive
 - *London Underwriters v General Dynamics Corporation, Lloyd Thompson & Willis Corroon* – acting for London market underwriters in US proceedings involving approximately \$100m relating to alleged fraudulent placing of aggregate excess of loss of US workers' compensation insurance and coverage issues relating to occupational disease claims
 - *Credit Lyonnais Bank Nederland v Export Credits Guarantee Department (House of Lords)* [1999] 2 WLR 540 – acting for ECGD, a government department providing credit and political risk insurance to British exporters. The case involved a £20m trade finance fraud and issues of vicarious liability of an employer for an employee's fraud, and bribery of a government official
 - *Formica Limited v ECGD* – acting for ECGD on a credit risk coverage case involving issues of waiver of legal professional privilege
 - *ANZ Grindlays v Fattah* – acting for the Bank and its insurers in relation to a £30m banking fraud in the UAE, involving advice on liability and recovery action in the UAE, Canada, Australia and Jordan
 - *Midland International Trade Services v Prince Ahmed Bin Sudairy (Commercial Court)* (FT LR 2/5/90) – acting for banks and insurers in relation to a claim against a Saudi Prince involving jurisdiction disputes and recovery action in England, Switzerland, Greece and the Middle East
 - *National Bank of Sharjah v Dellborg (Court of Appeal)* [1993] 2 Bank LR 109 – acting for NBS in a foreign currency trading dispute involving proceedings in UAE, Jersey, Isle of Man and England. Leading case on freezing orders. Advising on coverage issues under banker's blanket bond insurance
 - ICC arbitration relating to the construction of a Port facility in the Dominican Republic
 - representing a commodity trader in relation to a \$20m dispute relating to the performance of palm oil shipments under FOSFA
 - acting in relation to numerous FOSFA/GAFTA arbitrations relating to quality disputes, cargo damage and shortage claims and claims for non-payment



Naomi Vary
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Naomi has 16 years' experience working on high value complex disputes at Herbert Smith, Clyde & Co, Sedgwick Detert Moran & Arnold, and RPC. Her experience includes:

- *Premier Profiles v Tioxide Europe* – Defence of the Insured, Tioxide Europe, in a substantial claim brought by manufacturers of uPVC window frames, claiming that the titanium dioxide pigment manufactured by the Insured caused the window frames to turn pink. The case involved long running litigation before the courts in London, in parallel with the expert procedure in France
- *Royal Hotel v ICCI* – acting for underwriters in defence of a fraudulent business interruption claim brought following a fire at the Royal Hotel in the Channel Islands
- *Messier Dowty v Sabena* – acting for Messier Dowty in litigation in France and England arising from the collapse of the landing gear of an A340 on touchdown at Brussels airport, including application to English courts for a negative declaration
- *ICI v Kvaerner* – recovery action against Kvaerner following payment of a material damage claim arising from disintegration of a gas turbine at the Insured's premises
- *Commercial Union Assurance plc v Simat Helliesen & Eichner and others* – representing Commercial Union in relation to proceedings commenced by its Insured arising out of misuse of public pension funds in Oregon, including obtaining an anti-suit injunction prohibiting continuation of litigation commenced in Oregon
- *Gerling General Insurance v Canary Wharf Group* – Commercial Court litigation concerning the scope of a project insurance policy following the collapse of a self-climbing crane on the Canary Wharf development
- *Ace Capital v CMS Energy Corporation* – representing underwriters in successful application for claim for anti-suit injunction, in a case in which the court determined the relationship between the arbitration agreement and the US service of suit provisions in the policy
- *EQT v Nokia* – defending Nokia in the Commercial Court in relation to claims for (a) failure to deliver a fully separated IT system and (b) breach of contract warranties following Nokia's sale of the Vertu business to Swedish fund EQT
- *National Petrochemical v UOP LLC and UOP Ltd* – representing market insurers in recovery proceedings before the Commercial Court following payment of a claim arising from fouling of turbine equipment, and associated damage, at a propane dehydrogenation plant in Saudi Arabia
- *Standard Bank v Via Mat* – defending a warehouse operator against allegations of disappearance of silver held on behalf of the claimant as part of its metal trading arrangements
- *Emma Blundell v Brit and another* – defending underwriters in litigation arising out of loss of use claim under bloodstock policy for high value dressage mare

Arbitration work

- Representing underwriters in arbitration on trade credit claim arising from default by olive oil producer
- Assisting NY office in relation to arbitration arising from the Agrenco default in relation to a Brazilian soybean business
- Representing a US insurer in arbitration arising from alleged expropriation of oil equipment in Venezuela
- Representing London market and other insurers in arbitration arising from alleged export embargo against shipments of Egyptian LNG
- Representing London market insurers in trade credit claim brought by bank following default by its fraudulent borrower in relation to a construction project in Morocco



Leigh Williams

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Leigh has 25 years' experience working on high value disputes in many industrial sectors at 7 King's Bench Walk, Slaughter and May, Barlow Lyde & Gilbert, Clyde & Co and RPC. Selected experience includes:

- *Kuwait Airways Corp & The Minister of Finance of the State of Kuwait v Kuwait Insurance Company et ors* [2000] 1 Lloyd's Rep 252. Acted on behalf of Kuwait Airways Corporation in their successful judgment/interim payment application for \$150m pertaining to loss of aircraft spares which were taken by the Iraqis during the invasion of Kuwait in August 1990. Led by Jonathan Gaisman QC
- Charman Whole Account Marine Reinsurance Treaty disputes. Various disputes at reinsurance and retrocession level pertaining to a very large marine reinsurance treaty protecting the Charman Syndicate's whole account. Instructed by BLG for the brokers, Aon Group Ltd. Led by Mark Howard QC of Brick Court Chambers. Subsequently reported as *Charman v Gordian Run-Off Limited and Another and Conjoined Cases* [2002] EWHC 2290 (Comm)
- *MAN and ERF v Freightliner v Ernst & Young* (Commercial Court) – claim by German Truck Manufacturer for damages in deceit and breach of contract for an amount in excess of £350m against Freightliner Ltd (US subsidiary of DaimlerChrysler) in connection with MAN's purchase of the English truck manufacturer, ERF in March 2000. Six month Commercial Court Trial – which the clients, MAN, won comprehensively
- *Willis: PA LMX* (Commercial Court) – advising world's third largest reinsurance brokers in relation to their involvement in the personal accident reinsurance market of the 1990s. This market dispute, which involved US, UK and Bermudan carriers, agents and brokers was one of the largest reinsurance disputes in world
- *Vivendi SA v Elektrim SA* (LCIA arbitration) – advising and acting for Polish conglomerate, Elektrim, in relation to a €2bn dispute with Vivendi of France over ownership of the Polish mobile telephone network company, PTC (LCIA arbitration, London) and subsequent €1.4bn global settlement entered into in December 2010
- *Elektrim SA v Vivendi* (Commercial Court and Court of Appeal) – Arbitration Act section 67 and 68 challenges
- *Vivendi v T-Mobile and Solorz-Zak* (Federal Court, Seattle, Washington, USA) – advising the principal shareholder of Elektrim in relation to his successful defence of RICO proceedings brought by Vivendi in the US
- *Law Debenture Trust Corporation plc v Elektrim SA* (High Court (Chancery Division), Court of Appeal) – €750m dispute over bond issue by Elektrim. Case involved issues of contractual construction and complex asset valuation (mobile phone network companies, energy companies and development land. The clients, Elektrim, successfully eliminated the bulk of the claim
- Advising a major Russian oil company in relation to a crude oil sale/purchase dispute with major European oil company (ad hoc arbitration under LCIA rules). Settled December 2009
- Dispute over oil tanker sale/purchase (LMAA arbitration). Won comprehensively, established fraud on part of seller and obtained multi-million damages award (was co-counsel with Tim Hill QC)
- Advising Big 4 Accountant's captive insurer (Bermuda Form Arbitration) in relation to reinsurance recoveries arising out of its exposure in respect of its development and implementation of generic tax strategies in the US
- Advising private equity company (ICC arbitration, Vienna) in relation to joint venture dispute concerning Bulgarian manufacturing company. Won comprehensively and obtained multi-million final award
- Advising and conducting defence of major reinsurance carrier in reinsurance dispute (Bermuda Form arbitration) with US defence contractor in relation to \$1bn property damage and business interruption claim following damage to its Gulf Coast shipyards and 15 US naval vessels under construction caused by Hurricane Katrina. Settled November 2011
- *Nestor Maritime v Sea Anchor, mv VEMACAPE* (Commercial Court) – successfully defeated a s.68 arbitration award challenge. Acted as junior counsel to Tim Hill QC
- Saudi Arabian petrochemical refinery – advising liability insurers in respect of property damage and business interruption claims by oil and gas refinery against insured power plant arising out of a series of black-outs
- *SBM v Zurich & Ors*. Successfully resolved on behalf of a global market of insurance carriers a \$1.3bn CAR insurance claim in the English Commercial Court arising out of the abandonment of an offshore production and storage unit being built in the Norwegian sector of the North Sea. Claim settled in September 2018
- *Manek v IIFL UK & Ors*. Currently acting for the defendants in English Commercial Court proceedings brought in relation to an alleged fraudulent conspiracy concerning the sale of shares in an Indian fintech company
- Successfully resolved a multi-hundred million dollar claim arising out the seizure of a turret bearing on an FPSO offshore Ghana on behalf of a global market of (re)insurance carriers. Claim settled in December 2019



Iain Anderson
Partner

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A marine and offshore energy specialist, Iain Anderson centres his practice on every type of related insurance problem that can arise.

Hull, cargo, war, construction, loss of hire – these are all marine insurance problems that regularly crop up for those in the business. Iain, who started his career as a marine claims adjuster in London, understands and can help. And when a casualty strikes, Iain has extensive experience acting on collisions, groundings, and salvage.

He also focuses a part of his practice on offshore energy risks, including WELCAR, COW, OEE/EED problems - both coverage and subrogation. In the PRI and trade credit sector he works with the Asia market to assist in coverage and recovery issues and to help the market raise its regional profile.

In recent years Iain has resolved a number of large and high-profile insurance and reinsurance claims and commercial disputes.

Recent examples include:

- investigating, resolving and settling USD1bn+ PD/BI claims brought by an oil major following an incident during rig moves in Nigeria
- implementing emergency casualty response and incident investigations in respect of both marine craft and offshore energy unit, including fire, salvage, wreck removal and total loss problems
- responding to cross-border commodity trading losses/ defaults and extensive claims under trade credit insurance and reinsurance programmes and managing insolvency/ restructuring recovery efforts across Asia.



Mark Errington
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Mark has been based in Singapore for 20 years working on high value disputes previously at Clyde & Co, Barlow Lyde & Gilbert and now RPC. He specializes in insurance and reinsurance dispute resolution, with a particular focus on property, engineering, construction and associated business interruption claims. Most of the claims and issues Mark advises upon arise under either facultative or treaty reinsurance and/or retrocession contracts.

Selected experience includes:

- Advising treaty reinsurers on coverage and policy validity issues in relation to claims brought under a Surety and Guarantee treaty relating to underlying performance bonds and advance payments bonds with a quantum in excess of USD 600 million
- Advising one of the world's largest reinsurers in relation to the settlement of claims and commutation of entire treaty relationship with a key cedant in Asia
- Advising facultative reinsurers on a wide range of claims under property, engineering, construction, terrorism, professional indemnity reinsurance and/or retrocession contracts in relation to losses in many jurisdictions across Asia and the Middle East
- Thai floods – advising treaty and facultative reinsurers on a wide range of coverage issues including aggregation; reinstatement; cession language; follow provisions and underlying BI and CBI issues/exposures
- Japan earthquake – advising treaty and facultative reinsurers on a wide range of issues
- Hong Kong civil unrest; Thai civil unrest – advising reinsurers on a range of issues
- Defending treaty reinsurers in relation to claims brought under underlying policies arising out of third-party fraud
- Advising various reinsurers on inspections of records and audits pursuant to treaty provisions in the context of active claims



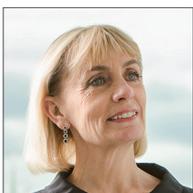
Toby Savage
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Toby has 14 years' experience working on high value disputes at Holman Fenwick Willan and RPC.

Selected experience includes:

- Polish mining company – advising reinsurers in defence of a high value claim brought in the Polish courts in relation to various property damage and business interruption insurance claims arising from a series of underground fires and explosions at the insured's mines in Poland
- International oil major/Nigerian oil company – advising insurers and reinsurers in defence of an ultra-high value claim brought in the Nigerian Courts following alleged damage to an major export pipeline
- Thai petrochemical refinery – advising reinsurers in relation to a claim brought in the Thai courts for USD170 million following property and business interruption at a Thai petrochemical refinery
- Thai power plant – advising reinsurers in relation a claim brought in the Thai courts following property damage and business interruption a power plant in Bangkok, Thailand
- South African mining company – advising reinsurers in respect of property damage and business interruption claims by a South African mine following an underground fire
- Various disputes at reinsurance and retrocession levels pertaining to workers compensation reinsurance treaties protecting a US insurer's whole account



Dorothy Flower
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Dorothy has 25 years' experience working on high value disputes, including:

- Metal-on-metal hip litigation – group litigation and related UK and overseas litigation involving hundreds of claimants
- Ian Paterson litigation – defending claims brought by around 800 claimants in relation to treatment they received from one surgeon
- PIP breast implant litigation – multiple claimant litigation involving contribution claims from clinics and surgeons re supply of PIP breast implants
- *Young v Anglo American South Africa* 2014 – significant Court of Appeal victory on jurisdiction in litigation involving multiple claimant litigation in South Africa
- numerous high value claims resulting from brain injuries or congenital causes



Richard Breavington
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Richard has 15 years' experience working on high value disputes at Herbert Smith and RPC, including:

- *Coles v Hetherton* [2013] EWCA Civ 1704 – acting for RSA in a seminal case on the level of recoverable repair costs in motor cases. The case affected the way numerous insurers accounted for repair costs across the motor insurance industry. The Court of Appeal found in RSA's favour in a preliminary issue trial of the points of principle
- acting for Winterthur Swiss Insurance in a publicised expert determination concerning the value of a disposed book of business. The contractual provisions for the expert determination were unusual in that they involved a "baseball arbitration". Under this process, each party put in a "bid" as to the payment to be made in respect of the book of business. An expert then made a determination of the correct value. Crucially, the bid which was closest to the expert's valuation was then accepted to be the correct value. There was around \$1bn between the bid amounts



Peter Rudd-Clarke
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Peter has 14 years' experience working on high value disputes at Linklaters, Clyde & Co and RPC.

His experience includes:

- Metal-on-metal hip litigation – group litigation and related UK and overseas litigation involving hundreds of claimants
- medical devices litigation – multiple claimant litigation involving implantable devices
- industrial diseases coverage litigation



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