
James MacDonald KC

Barrister

Call 2005 Silk 2022



Scope of Practice

• Arbitration • Aviation • Banking and Financial Services • Commercial Litigation • Company / Shareholder Disputes • Economic Torts • Jurisdiction and Conflict of Laws • Private Equity / Venture Capital • Professional Negligence and Liability • Restructuring / Insolvency • Enforcement of Judgments • Injunctions • Technology / Energy • Norwich Pharmacal and Enforcement

Overview

James is a leading commercial silk. Described in the directories as “*phenomenal*”, “*exceptional*”, “*supremely talented*”, “*incredibly intelligent*”, “*wonderful to work with*” and “*one of the stars of his generation*”, James’ “*superb reputation and first-class abilities*” see him regularly instructed in many of the most high-profile and valuable commercial disputes and appeals.

James regularly appears in the largest and most valuable Commercial Court cases and appeals. Current or recent instructions include, amongst others, the €18bn *Magomedov v FESCO* litigation, the *Mozambique 'Tuna bonds'* litigation, the *PIFFS v Al-Rajan* litigation, *ENRC v Gerrard/Dechert/SFO*, acting for various banks in the *Vestia* litigation, and the long-running *DB v Vik* litigation. Many of his cases have set new legal precedent. A significant number have featured in the Lawyer Top 20 for the relevant year. He has extensive experience of leading teams of juniors as well as appearing as sole advocate.

In addition, James has extensive arbitration experience under LCIA, ICC, DIAC and/or ICSID rules. He is currently acting in several substantial arbitrations. He also advises on private law matters relevant to substantial tax disputes.

James is presently recommended by C&P and L500 as a leading silk in commercial dispute resolution, banking and finance and commercial fraud. Prior to taking silk, James was a star commercial junior, one of the small handful ranked in C&P band 1 for both commercial litigation and banking and finance. He was nominated for numerous awards and appeared in various articles as a future ‘star at the bar’.

James’ practice encompasses all major areas of commercial law. His experience covers general commercial litigation,

fraud, banking and finance, aviation, private equity/venture capital, group litigation, energy, technology, professional negligence, shareholder disputes and restructuring/insolvency. He has extensive experience of jurisdiction disputes, injunctions and enforcement-related matters (such as *Norwich Pharmacal* applications, committal applications, CPR 71 examinations, receivership appointments and related matters).

James works actively to support diversity and retention. For many years he has been involved in mentoring programmes and various COMBAR diversity initiatives. He currently sits on COMBAR's EDI committee. He is also committed to pro bono work, with his recent pro bono work including an important Administrative Court decision setting new legal precedent as regards the powers of the financial ombudsman to re-open complaints.

Examples of Recent Cases

Banking and Finance

James is ranked as a new silk in banking and finance. Prior to taking silk, James was one of the small number of juniors ranked in Band 1 for banking and finance (C&P/L500).

- *A v B* (2022) James is currently acting for a major investment bank (instructed by Clifford Chance) in a substantial arbitration involving a dispute over a note issuance.
- *PIFSS v Al-Rajaan* (2019-2022): James acted in this major multi-party fraud litigation (instructed by Slaughter and May) involving various banks. The banks' jurisdiction challenges succeeded: see [2022] EWCA Civ 29.
- *Lex v Citibank* (2021-2022): James is acting for Citibank (instructed by Clifford Chance) defending a claim against it for €10bn said to arise from uncredited SWIFT transfers.
- *Helix v Bank of Cyprus* (2020-21): James acted for Bank of Cyprus (instructed by Allen & Overy) in a multi-million-£ breach of warranty claim relating to the sale of a substantial loan portfolio.
- *Vestia v BNPP* (2020-2022): James is acting for BNPP (with Sonia Tolaney KC) instructed by HSF in this c. €300mn claim arising out of derivative transactions entered into by a Dutch social housing association.
- *Mozambique/Credit Suisse litigation* (2020-2022): James is acting for various funds (instructed by Pallas Partners) in this widely-publicised multi-party combined US\$2bn litigation involving allegations that substantial loans made by Credit Suisse to Mozambique to fund a tuna fishing protection fleet were procured by bribes.
- *Alte Leibe v Windpark Fonds* (2020-2021): James acted for the claimant note issuer (instructed by Allen & Overy) in a claim relating to sums due under a complex refinancing arrangement.
- *Deutsche Bank v Vestia* (2016-2019): James acted for DB (with Robin Dicker KC), instructed by Clifford Chance, in this widely publicised 10-week €850m Financial List trial concerning derivative transactions entered into by a Dutch social housing association with DB. Vestia alleged that it lacked capacity to enter into the transactions and/or that they were allegedly procured by the bribery of its agent by an intermediary. The case settled on week 9 of the trial.
- *Dove v HBOS* (2019-2020): James acted for HBOS (with Sonia Tolaney KC, instructed by HSF) in connection with this £45m claim relating to HBOS's impaired lending division.

- *Deutsche Bank v Sebastian Holdings/Vik* (2013-2022): James is acting for Deutsche Bank (instructed by Freshfields, with Sonia Tolaney KC) in these proceedings, in which, following a 16-week trial, DB defeated US\$8bn counterclaims by a Turks & Caicos SPV for alleged breach of contract arising out of FX and equities trading and obtained a US\$300m judgment. James has continued to act thereafter, led and unled, in a number of market leading cases at first instance and on appeal concerned with Deutsche Bank's attempts to enforce its substantial judgment against the SPV and its beneficial owner, Mr Vik, in multiple jurisdictions, as well as to recover substantial expert costs incurred by it in the proceedings.
- *A v B* (2018): James acted (unled) for a major financing company in a proposed claim for c. £69m (instructed by Allen & Overy)
- *Golden Belt v BNP Paribas* (2017-2018): James acted (with Robin Dicker KC and Sonia Tolaney KC) for BNP Paribas, instructed by Clifford Chance, in this €650m Financial List case concerning a complex Islamic law financing transaction, and the appeal from that case.
- *DB v Bittar* (2017-2018): James acted unled for DB (instructed by Slaughter & May) in this high-profile Upper Tribunal claim concerning the identification of individuals referred to in FCA Decision Notices relating to alleged EURIBOR and Libor manipulation.
- *VR Partners v Exotix v CVI* (2016-2017): James acted unled for an investment fund (instructed by Freshfields), in an eight-day Commercial Court trial concerning a back-to-back sale of valuable Ukrainian loan interests.
- **LSREF III Wight Ltd v Millvalley Ltd (2016)**: James acted (with Jonathan Nash KC) for the claimant in this important dispute concerning rectification of an ISDA long form confirmation and payment of an early termination amount (instructed by Sidley).
- *McGraw-Hill International (UK) Limited v Deutsche Apotheker-Und Artzebank EG & Ors* (2014-2015): This litigation concerned the duties owed by the rating agencies (Standard & Poor and Moody's) when rating financial products. James acted (with Sonia Tolaney KC) for the Rating Agencies (instructed by King & Wood Malleson).
- *Barclays v DST and ors* (2015): James acted for Barclays (with Adrian Beltrami KC, instructed by Clifford Chance) in a number of LIBOR/EURIBOR related misselling cases.
- *Insured v National Australia Bank* (2015): James acted unled for the defendant bank in this 5-day High Court trial concerning a bank's alleged liability for alleged insurance mis-selling (instructed by DLA Piper).
- *Clydesdale Bank Plc v Duffy* (2013-2014). James acted unled for the claimant bank in the High Court and Court of Appeal; the case concerned an alleged agreement to discharge substantial guarantee liabilities (instructed by Addleshaw Goddard).
- *Intesa SanPaolo S.p.A; Dexia Crediop S.p.A v Regione Piemonte* (2012-2013): James acted (with Sonia Tolaney KC) for Intesa Sanpaolo S.p.A. and Dexia Crediop S.p.A in the appeal concerning proceedings against Regione Piedmont concerning the enforceability of derivative transactions entered into between the parties in connection with Piedmont's bond issues. Instructed by Cleary Gottlieb.
- *Deutsche Bank v Babis Vovos* (2012): James acted for Deutsche Bank (instructed by Clifford Chance) in this claim for substantial sums due upon early termination of an ISDA Master Agreement.
- *SCB v CPC / Citibank v CPC* (2010-2012): This was a \$160m claim relating to oil derivative transactions. The case involved questions of capacity, authority, allegedly negligent advice and alleged misrepresentation. The case went to appeal on the question of capacity in May 2012. Led by Ali Malek KC.
- *Excalibur Funding No. 1 Plc v LB Re Financing No. 3 Ltd* (2011): James acted for Excalibur Funding (with Ewan

McQuater KC) in this application in the Lehmans insolvency for permission to sue administrators of insolvent Lehmans SPV in relation to transfer of €722m subordinated note position in major securitisation.

- *JP Morgan v Springwell* (2007-2008): James acted for JP Morgan (instructed by Clifford Chance, with Mark Hapgood KC) in this high profile and precedent setting claim of c. \$700m for negligent advice and misrepresentation in relation to the sale of various Russian bonds and pass-through notes.

James is also currently acting in several other major banking matters which are confidential.

Commercial Dispute Resolution

James is ranked as a new silk in commercial litigation. Prior to taking silk, James was widely acknowledged as one of the leading commercial juniors at the commercial bar (he was for many years one of the small handful of juniors ranked Band 1 in C&P for commercial dispute resolution).

Notable examples of James' commercial cases include:

- *BM Brazil & Ors v Sibanye* (2022-) James is acting for the defendants, instructed by Clifford Chance, in this major commercial claim relating to a >US\$1bn Brazilian mine acquisition. The case concerns whether the defendants were entitled to invoke a MAE clause to terminate the acquisition contracts following the occurrence of a geotechnical event at one of the mines subject to the acquisition.
- *ENRC v Dechert/SFO* (2019-2022): James is acting for ENRC, instructed by Hogan Lovells, in this high-profile litigation in which ENRC is seeking substantial damages from Dechert and the SFO in connection with an investigation into alleged fraud. Following a 12 week trial, the judge held that ENRC had succeeded in substantially all its claims against Dechert, including allegations that Dechert's lead partner, Neil Gerrard, had leaked ENRC's privileged and confidential information to the press on the three occasions and made multiple unauthorised disclosures to the SFO in order to expand the scope of Dechert's investigation.
- *Mozambique/Credit Suisse litigation* (2020-2022): James is acting for various funds (instructed by Pallas Partners) in this widely-publicised multi-party combined US\$2bn litigation involving allegations that substantial loans made by Credit Suisse to Mozambique to fund a tuna fishing protection fleet were procured by bribes. The case is due for a 13 week trial next year.
- *Deutsche Bank v Sebastian Holdings Inc & Vik* (2013-2022): James is acting for Deutsche Bank (instructed by Freshfields) in this long-running and high-profile litigation. Following a 14-week trial, DB defeated US\$8bn counterclaims by a Turks & Caicos SPV for alleged breach of contract arising out of FX and equities trading and obtained a US\$300m judgment. Thereafter James has been involved in numerous follow on matters relating to Deutsche Bank's attempts to enforce its substantial judgment against the SPV and its beneficial owner, Mr Vik, in multiple jurisdictions. Many of these matters have set market leading precedent. DB recently succeeded in obtaining a 20 month committal sentence against Mr Vik following his breach of an order requiring him to provide information and documents in connection with the judgment debt.
- *PIFSS v Al-Rajaan* (2019-2022): James acted for a group of banks in this major multi-party fraud litigation (instructed by Slaughter and May). The banks' jurisdiction challenges succeeded: see [2022] EWCA Civ 29.
- *Travelport v WEX* (2020): James acted for WEX, instructed by Freshfields, in this claim concerning a US\$1.7bn corporate acquisition in which WEX has invoked a material adverse effect clause following the Covid-19 pandemic. Following an expedited trial of preliminary issues this summer, this is now the leading case on MAC clauses in this jurisdiction.

- *DP World v MSC Shipping* (2019-2021): James acted for DP World (instructed by Quinn Emanuel) in this US\$27mn dispute relating to the non-payment of shipping terminal advanced rebates. Case settled.
- *AVX v TTE* (2019-2020): James acted for TTE in this substantial multi-£m claim relating to alleged breaches of warranty in connection with automotive technology (instructed by Allen & Overy)
- *Alafco v Hong Kong Airlines* (2019-2020): James acted in this multi-£m Commercial Court claim concerning aircraft leasing contracts (instructed by Milbank).
- *Force India v Diageo* (2018-2019): James acted for Diageo, instructed by Slaughter & May, in this \$45m claim for sums allegedly due under a Formula 1 sponsorship agreement.
- *William Hill v NYX Gaming* (2019): James acted for NYX (instructed by Simmons & Simmons), in connection with a major corporate acquisition which led to a contested anti-suit injunction.
- *Tchenguiz v Grant Thornton* (2014-2018): James acted for Grant Thornton, instructed by Simmons & Simmons, in the 12-week commercial court trial concerning the SFO investigation into Robert and Vincent Tchenguiz's business affairs. Robert Tchenguiz discontinued the case 1 week into trial.
- *Edgeworth v Aabar* (2016-2018): James acted for Aabar, instructed by Freshfields, in the 5-week commercial court trial concerning Robert Tchenguiz's claims that his investment vehicle had entered into oral contracts with Aabar in relation to the ownership of the headquarters of Santander Bank in Spain. Edgeworth's claims were dismissed by Popplewell J with indemnity costs
- *Chamonix v Caledonia* (2015): James acted for a private equity house, instructed by Freshfields, in a substantial Commercial Court dispute concerning a multi-million £ investment.
- *Centrica v Accenture* (Commercial Court, 2010-2011). James acted for British Gas in its widely-publicised dispute with Accenture, in respect of the British Gas customer billing system (instructed by Linklaters). The claim was for over £100m and involved issues of contractual construction, notification and IT and systems issues. The litigation settled just before the main trial.
- *ALS v Honeywell* (2008-2009): James acted for Honeywell in this £multi-billion claim concerning an automotive technology product.
- *Donegal International Ltd v Republic of Zambia & Anr; Zambia v Meer Care & Desai* (2005-2007): James acted for the Republic of Zambia in several claims concerning the Republic of Zambia, including Zambia's claim to recover millions of dollars in assets and funds expropriated from the country by its former president.

Arbitration

James has significant experience of substantial ICC, LCIA and ICSID arbitrations. Notable examples of his arbitration experience include:

- *LCIA proceedings*: James is acting in substantial related LCIA proceedings relating to commodities agreements.
- *DIFC-LCIA proceedings*: James is acting in a substantial DIFC-LCIA arbitration relating to franchising arrangements.
- *ICC Proceedings*: James is acting in ICC proceedings relating to a substantial aviation dispute
- *LCIA proceedings*: James is acting for a major investment bank in a substantial LCIA arbitration relating to a dispute over a substantial Eurobond issuance.

- *DIFC-LCIA proceedings*: James acted in substantial DIFC-LCIA arbitration concerned with Middle Eastern franchising arrangement.
- *LCIA proceedings*: James acted in LCIA arbitration concerned with dispute over solicitors' fees payable by engineering conglomerate.
- *LCIA proceedings*: James acted in a substantial LCIA arbitration concerned with a corporate restructuring.
- *ICSID proceedings*: James acted in a major ICSID arbitration concerned with alleged state expropriation of financial investments.
- *LCIA proceedings*: James acted in a US\$250m LCIA arbitration concerned with complex derivative transactions.
- *ICC proceedings*: James acted for a major bank in an ICC arbitration relating to the sale of a subsidiary.

Civil Fraud

James has extensive experience of substantial civil fraud work. Notable examples of James' current and recent civil fraud cases include:

- *PIFSS v Al-Rajaan* (2019-2022): James acted for a group of banks in this major multi-party fraud litigation (instructed by Slaughter and May). The banks' jurisdiction challenges succeeded: see [2022] EWCA Civ 29.
- *ENRC v Dechert/SFO* (2019-2022): James is acting for ENRC, instructed by Hogan Lovells, in this high-profile litigation in which ENRC is seeking substantial damages from Dechert and the SFO in connection with an investigation into alleged fraud. Following a 12 week trial, the judge held that ENRC had succeeded in substantially all its claims against Dechert, including allegations that Dechert's lead partner, Neil Gerrard, had leaked ENRC's privileged and confidential information to the press on the three occasions and made multiple unauthorised disclosures to the SFO in order to expand the scope of Dechert's investigation.
- *DuPont & Ors v Yuksel & Ors*: James acted for Yuksel (instructed by QE) in this substantial multi-part claim relating to alleged fraudulent inducements to enter into loan note restructuring arrangement.
- *Deutsche Bank v Vestia*: James acted for DB (with Robin Dicker KC), instructed by Clifford Chance, in this widely publicised 10-week €850m Financial List trial concerning derivative transactions entered into by a Dutch social housing association with DB. Vestia alleged that the transactions were allegedly procured by the bribery of its agent by an intermediary. The case settled on week 9 of the trial.
- *Tchenguiz v Grant Thornton*: James acted for Grant Thornton (with Adrian Beltrami KC), instructed by Simmons & Simmons, in the 12-week commercial court trial concerning the SFO investigation into Robert and Vincent Tchenguiz's business affairs. Robert Tchenguiz discontinued the case 1 week into trial.
- *McGraw-Hill International (UK) Limited v Deutsche Apotheker-Und Artzebank EG & Ors*: James acted for the rating agencies (with Sonia Tolaney KC, instructed by KWM) in this case concerning allegations relating, amongst other things, to alleged fraud and negligence in the rating of financial products.
- *AG Zambia v Meer Care & Desai*: James acted for the Republic of Zambia in this substantial and high-profile fraud claim concerning US\$ multi-million funds embezzled from Zambia by its former president and other senior officers.

Professional Negligence and Liability

James has acted in some of the largest and most substantial professional negligence claims in recent years. Notable examples include:

- **ENRC v Dechert/SFO**: James is acting for ENRC (with Laurence Rabinowitz KC and Anna Boase KC), instructed by Hogan Lovells, in this high-profile litigation in which ENRC is seeking substantial damages from Dechert for the SFO. The claims are due to go to trial for eight weeks next year and involve allegations of negligence by Dechert in their conduct of an internal fraud investigation.
- **Golden Belt v BNP Paribas (2017-2018)**: James acted (with Robin Dicker KC and Sonia Tolaney KC) for BNP Paribas, instructed by Clifford Chance, in this €650m Financial List case concerning a complex Islamic law financing transaction, and the appeal from that case. The case concerned allegations of negligence by the bank advising the issuer to the transaction.
- **McGraw-Hill International (UK) Limited v Deutsche Apotheker-Und Artzebank EG & Ors**: James acted for the rating agencies (with Sonia Tolaney KC, instructed by KWM) in this case concerning allegations relating, amongst other things, to alleged fraud and negligence in the rating of financial products.
- **SCB v CPC**: substantial claim relating to oil derivative transactions and allegedly negligent advice given by the bank.
- **JP Morgan v Springwell**: James acted for JP Morgan (instructed by Clifford Chance, led by Mark Hapgood KC) in this high profile and precedent setting claim of c. \$700m for negligent advice and misrepresentation in relation to the sale of various Russian bonds and pass-through notes.

Insolvency and Restructuring

James has significant insolvency and restructuring experience, typically in an advisory context. Examples include:

- Advising advisor to security agent on proposed complex corporate restructuring.
- Acting in claims involving recovery of distressed debt.
- Advising a significant organisation on corporate restructuring.
- Advising a sovereign nation on a potential restructuring / rescheduling of debt.
- Advising on potential insolvency and enforcement remedies in connection with the recovery of assets of insolvent estates.
- James was also involved in an action in the Lehmans insolvency (*Excalibur Funding No. 1 Plc v LB Re Financing No. 3 Ltd*) for permission to sue administrators of an insolvent Lehmans SPV in relation to the transfer of a €722m subordinated note position in a major securitisation.

Norwich Pharmacal and Enforcement

James has substantial experience of *Norwich Pharmacal* and enforcement related matters such as committal, CPR 71 examinations and related matters. Examples include:

- 2022: Acting for fund in *Norwich Pharmacal* application related to payment fraud
- 2022: Advising major conglomerate on response to potential *Norwich Pharmacal Application*

- 2022: Acting for bank in substantial 3-week committal application, resulting in a 20 month suspended sentence for the contemnor
- 2021: Advising corporation on substantial CPR 71 examination
- 2020: Acting for a corporation in *Norwich Pharmacal* application related to online fraud
- 2016-2017: Acting for bank in substantial *Norwich Pharmacal* application related to misappropriated judgement funds; also acting in relation to application for appointment of equitable receivers over judgment assets;
- 2015: Acting for bank in substantial CPR 71 examination

What the Directories Say

"an exceptional advocate" (Chambers & Partners 2024)

“
*a
 future
 star
 who
 produces
 exceptional
 work*
 ”
 (
**Chambers
 &
 Partners
 2024**
)
 “
*an
 encyclopaedia
 of knowledge
 and
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(
Chamber
and
Partners
2024
)

*"cerebral,
user-
friendly,
accessible
and
a
true
strategic
thinker."*

(
Chamber
&
Partners
2024
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*"his
written
advocacy
is
a
pleasure
to
read,
especially
the
way
he
can
distil
an
argument.
(
Chamber
&
Partners
2024
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*"extremely
hard
working
and
diligent."
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Chamber
&
Partners
2024)*

*"absolutely
stellar
across
the
board"
(Chamber
&
Partners
2023)*

“
one
of
the
stars
of
his
generation
”

(Legal
500
2023)

“an excellent lawyer, who is extremely smart and great on his feet” (Chambers & Partners 2023)

“a
fantastic
communicator
both
orally
and
in
terms
of
his
written
work”

(Chambers
&
Partners
2023)

“calm
in
a
storm...con
minded
and
extremely
client
friendly”

(Legal
500
2023)

"a
phenomen
barrister...
a
terrific
legal
mind,
phenomen
work
ethic
and
also
incredible
caseload
of
work."
**(Chamber
&
Partners
2022)**

"calm,
collected
and
supremely
talented.
Wonderful
to
work
with,
and
charming
with
clients.
Intellectua
excellent."
**(Legal
500
2022)**

*"lovely
to
work
with
and
an
excellent
advocate.
He
is
intelligent
and
pragmatic
when
giving
advice,
and
persuasive,
calm
and
collected
when
in
court."*

**(Legal
500
2022)**

"highly
respected
for
his
handling
of
complex
banking
and
finance
disputes...
MacDonal
superb
reputation
and
first-
class
abilities
see
him
regularly
instructed
in
the
most
high-
profile
of
matters"
**(Chamber
&
Partners
2021)**

*"Obviously
clever,
as
well
as
measured
and
strong,
but
he
does
it
with
real
style
and
panache
and
understan
of
the
issues."
"He
is
incredibly
intelligent,
very
responsive
and
practical.
He
is
also
very
dependabl*

**(Chamber
&
Partners
2021)**

Education

BA History, Oxford - double-first
MA in Philosophy, King's College, London
CPE, BPP Law School, London - distinction
BVC, Inns of Court School of Law - outstanding

Awards/Nominations

2021 – nominated for commercial junior of the year (Chambers & Partners)
2017 – nominated for banking junior of the year (Chambers & Partners)
2015 – nominated for banking junior of the year (Chambers & Partners)
2013 – nominated for commercial junior of the year (Chambers & Partners)
2010 – identified as “future star of the bar” (Times Online)
2009 – identified as “future star of the bar” (Legal Week)
2005 – Inner Temple prize for outstanding performance on the BVC
2005 – Barstow Scholarship, Inns of Court School of Law
2003-2005 – Princess Royal CPE and BVC Scholarships, Inner Temple
1999-2001 – Academic scholarship, Magdalen College, Oxford

Professional Memberships

Inner Temple
COMBAR

Publications

James is a regular contributor to Butterworths' Journal of International Banking & Financial Law and contributed to the recent 14th edition of Paget's Law of Banking.

Awards



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