



Ben Elkington QC

Education

M.A. (Cantab.) LL.M. (Virginia)

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Year of Call: 1996

Year of Silk: 2012

Profile



"Intellectually brilliant, approachable, charismatic and always commercial"
(Legal 500 2017, Commercial Litigation).

"He is one of those people who's got a brain the size of a planet. He is assured, user-friendly and makes a real difference to the outcome of cases."
(Chambers and Partners 2017, Insurance).

Since taking silk in 2012, Ben has been kept busy with high quality instructions. The focus of his practice is on commercial litigation, including insurance and professional liability disputes, frequently with an international dimension. He is consistently ranked in the directories as a leading silk in the fields of commercial dispute resolution, insurance, professional negligence, and property damage.

A modern approach: Ben is rightly described as a "new-style silk" who has an "unstuffy approach" and is "personable" and "down to earth." He is reported to be "very user-friendly" and "fantastic to work with." He aims to understand his clients and their needs, and to provide them with clear and comprehensible advice. The directories state that he is "very good with clients" and that he "understands what commercial clients need, and can speak their language in a non-patronising way."

In depth analysis: Ben has an outstanding academic background: he took a Double First in Law at Cambridge and, after completing a Masters in Law in the USA, was the top ranked student in his year at Bar School. He brings intellectual vigour to his cases. Comments in the directories include "intellectually brilliant"; "fantastically intellectually able"; "brain the size of a planet"; an "excellent academic" and "incredibly bright."

First rate advocacy: Ben is not afraid to back his judgment and run matters to trial if necessary. The list of his reported cases (over 45) is testament to his advocacy experience. This is acknowledged in the directories, which report that he is "fantastic on his feet", "has the complete confidence of the bench" and "has judges eating out of the palm of his hand." He has been described as "a very good and dangerous opponent."

What he adds: Ben brings enthusiasm, insight, determination and sound judgment to his work. In each case he strives to achieve the best possible outcome for his clients. He acts for claimants and defendants in equal measure, which gives him a real advantage. The directories report that he is "a man of great strategic insight" who "offers commercial, practical and strategic advice" and is "a great asset to have on your side."

As well as acting as an advocate and adviser, Ben acts as an arbitrator and he has also accepted instructions to act as an expert on English law. He has been called to the New York Bar and (ad hoc) to the Bar of the Cayman Islands.

Professional Background

Ben was previously admitted to the New York Bar and worked for Sullivan & Cromwell in Manhattan. He was a judicial assistant to the Court of Appeal. He has been an editor of Jackson & Powell on Professional Liability since 2002. He is a committee member of COMBAR, and a member of the PNBA, LCLCBA and BILA. He is an adviser to the Insurance Brokers' Standards Council.

Ben was top of his year in Bar Finals in 1996. Before that he took a First in Law from Cambridge University, followed by a Masters in Law from the University of Virginia. He is a scholar of each of (i) Cambridge University; (ii) Trinity

College, Cambridge; (iii) Gray's Inn; and (iv) the Inns of Court School of Law. He was one of the first of his year of call to take silk. He has a diploma in International Arbitration (CI Arb).

Personal

Ben lives in London with wife and 4 young children. When not at work he can usually be found with his family on the Isle of Mull making camp fires in the rain, walking, and trying (and generally failing) to catch fish.

Professional Liability

Ben has 20 years' experience of dealing with professional liability disputes. The quality of his work is acknowledged in the directories as follows:

"Ben is always on top of the finer details while keeping in mind the bigger picture. He's very engaged, reliable and personable, a fantastic asset on your side." (Chambers and Partners 2017, Professional Negligence).

"Very hands on, hardworking and responsive" (Legal 500 2017, Professional Negligence).

"Precise, thorough and provides a strong analysis." "Very engaged, reliable and approachable. A pleasure to work with and a great asset to have on your side." - Chambers & Partners, 2016 Professional Negligence

"Very engaged, reliable and approachable." - Legal 500, 2016 Professional Negligence

"He is professional, incredibly bright and offers commercial, practical and strategic advice." "Fantastic to work with; he's very reliable and down to earth." - Chambers & Partners, 2015 Professional Negligence

"Praised as a new-style silk, he's particularly praised for his insurance-related work. 'Very good with clients and a man of great strategic insight', he 'understands the issues that come hand in hand when you work for insurers.' Impresses solicitors with the way he gets buried into the fundamentals without getting distracted by the window dressing when handling multiparty claims." - Chambers & Partners, 2014 Professional Negligence.

"Outstanding" - Legal 500, 2013 Professional Negligence

"Handles negligence claims against all professions, and is noted for his 'measured and realistic' advice which looks at both the commercial and legal implications of a case. Sources were keen to point out his particular expertise in claims against insurance brokers, and attest to the value they place upon his 'great strategic insight'" - Chambers & Partners 2013, Professional Negligence

In one case (in which Ben gave evidence) the trial judge stated: *"it is beyond dispute that Mr Elkington [was] highly experienced and competent in the field [of professional liability]"* [2013] EWHC 3008 (Ch).

Ben's experience spans the entire range of professions, but he has particular expertise in claims against insurance brokers, financial services professionals, lawyers, accountants and valuers.

Notable Cases

Sagir v E.Surv Ltd B30MA230 (HHJ Pelling QC) (valuers – Ben acted for a valuer who admitted liability, but successfully defended the claim at trial on the basis that the claimant's case on causation was flawed).

Geraint Thomas v Ian Albutt [2015] EWHC 2187 (Ch); LTL 31/7/2015 (barristers – following a 3 week trial Ben secured the dismissal of this multi-million pound claim against his client, who was alleged to have acted negligently when giving advice in relation to an application for judicial review against a planning decision).

Ground Gilbey Limited v Jardine Lloyd Thompson UK Limited [2012] Lloyd's Rep IR 12 [2011] PNLR 15; [2011] Lloyd's Rep IR Plus 41 (insurance brokers – Ben acted for the successful claimant in its claim for damages against its broker arising out of a devastating fire at Camden Market).

Andrews v SBJ Benefit Consultants Limited [2011] PNLR 29 (financial advisers – Ben appeared for the claimant pensioner in this important test case about the effect of a complainant's acceptance of an Financial Ombudsman's award).

Synergy Health (UK) Ltd v CGU Insurance Plc [2011] Lloyd's Rep. IR 500; [2010] EWHC 2583 (Comm); LTL 29/10/10 (insurance brokers - Ben appeared with Graham Eklund QC for the successful claimant insured).

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) 2009] PNLR 20; [2009] EWHC 254

(Comm); [2010] 1 WLR 258; [2009] 1 Lloyd's Rep 447; [2009] 2 All E.R. (Comm) 715; [(valuer and solicitor – Ben appeared for the successful claimant lender).

Shore v Sedgwick Financial Services Ltd [2008] PNL 37; [2008] EWCA Civ 863; [2009] Bus LR 42; Times, August 12, 2008 (financial adviser – Ben appeared with Michael Soole QC for the claimant investor).

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm); [2008] PNL 19; [2008] NPC 4; [2008] 4 EG 169 (CS) (valuer and solicitor – Ben appeared with Sue Carr Q.C. for the claimant lender which obtained summary judgment in deceit against the valuer).

Awoyomi v Radford & Postill [2007] EWHC 1671 (QB); [2008] QB 793; [2008] 3 WLR 34; [2007] PNL 34; Times, July 23, 2007 (lawyers – Ben appeared with Justin Fenwick Q.C. for the defendant barristers in their successful defence of this multi-million pound claim).

Shore v Sedgwick Financial Services Ltd [2007] EWHC 2509; [2008] PNL 10 (financial advisers – Ben appeared with Michael Soole Q.C. for the claimant investor).

Newline Corporate Name Ltd v Morgan Cole (A Firm) [2007] EWHC 1628 (Comm); [2008] PNL 2 (solicitors – Ben appeared with Justin Fenwick Q.C. for the defendant solicitors).

Arbory Group Ltd v West Craven Insurance Services (A Firm) [2007] Lloyd's Rep I.R. 491; [2007] PNL 23 (insurance brokers – Ben appeared for the defendant broker).

Walker v Chruszcz & Irwin Mitchell [2006] EWHC 64 (QB) (lawyers – Ben appeared for the defendant solicitors in their successful defence of this "under-settlement" claim).

Finocard International Ltd v Urganhart Dyke & Lord (A Firm) & Michael Ajello [2006] PNL 16; [2005] EWHC 2481 (Ch) (patent agents – Ben appeared with Roger Stewart Q.C. for the successful claimant in its claim against its patent agent).

AMB Generali Holding AG v SEB Trygg Liv Holding AB [2005] EWHC 35; [2005] 2 Lloyd's Rep 129 (lawyers – Ben appeared with Nicholas Davidson Q.C. for one of the solicitor defendants).

Clifford Harris & Co v Solland International Ltd [2004] EWHC 2488; (2004) 148 S.J.L.B. 1400 (lawyers – Ben appeared with Philip Marshall Q.C. for the solicitors).

Day v Cook [2001] EWCA Civ 592; [2001] PNL 32; [2002] 1 BCLC 1; [2003] BCC 256 (lawyers – Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

Thomson Snell & Passmore (A Firm) v Rose (CA) [2000] PNL 378 (lawyers - Ben appeared for the solicitors).

Day v Cook [2000] PNL 178; [2000] Lloyd's Rep PN 551 (lawyers – Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

J W Bollom v Byas Mosley & Co [1999] Lloyd's Rep PN 598; [2000] Lloyd's Rep IR 136 (insurance brokers – Ben appeared with Iain Hughes Q.C. for the defendant broker).

Accountants, Auditors & Actuaries

Ben is regularly instructed to act in relation to claims against accountants, auditors and actuaries. His clients include individuals, partnerships and companies, and he defends companies large and small. The claims he handles cover a wide range: inadequate preparation of management and company accounts; negligent tax advice relating to IHT, CGT, income tax, corporation tax or tax planning; inadequate preparation of reports for lenders; allegations relating to audits, etc.

Financial Services Professionals

For many years Ben has had an interest in and been involved in claims against financial services professionals, particular IFAs. He was the author of the chapter on claims against IFAs in Jackson & Powell: Professional Liability Precedents.

Ben acts for both investors, advisers and product providers. He is often asked to assist with complaints to the Ombudsman, as well as litigation in the courts. He has experience of a wide range of claims – from mis-selling of pensions, endowments, etc; poor investment advice; inadequate exercise of discretionary powers; penny shares; spread betting; Alpha funds; tax-saving schemes (including film finance, charity shell and SDLT avoidance schemes); collective investment schemes, etc.

Ben has been involved in some of the leading decisions relating to claims against financial advisers, namely: *Andrews v SBJ Benefit Consultants Limited* [2011] PNL 29 (financial advisers – Ben appeared for the claimant

pensioner in this important test case about the effect of a complainant's acceptance of an Financial Ombudman's award).

Shore v Sedgwick Financial Services Ltd [2008] PNL 37; [2008] EWCA Civ 863; [2009] Bus LR 42; Times, August 12, 2008 (financial adviser – Ben appeared with Michael Soole QC for the claimant investor in this leading decision on limitation).

Shore v Sedgwick Financial Services Ltd [2007] EWHC 2509; [2008] PNL 10 (financial advisers – Ben appeared with Michael Soole Q.C. for the claimant investor).

Insurance Brokers & Agents

Ben is rightly regarded as one of the leading experts in the field of claims against insurance brokers. For many years he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability, and he has been invited to speak to the PNBA, COMBAR, conferences, law firms and groups of insurance brokers on the topic. He is an adviser to the Insurance Brokers' Standards Council.

Ben acts for both claimants and defendants. His cases cover the whole spectrum of claims: failures to effect insurance; misrepresentations and non-disclosures by brokers; inadequate sums insured; inadequate scope of cover; inadequate advice on policy terms; failures to renew; failures to notify insurers; etc.

As well as having a heavy paper practice, Ben often goes to court. He has been involved in several of the important cases involving insurance brokers, including:

Ground Gilbey Limited v Jardine Lloyd Thompson UK Limited [2012] Lloyd's Rep IR 12 [2011] PNL 15; [2011] Lloyd's Rep IR Plus 41 (insurance brokers – Ben acted for the successful claimant in its claim for damages against its broker arising out of a devastating fire at Camden Market).

Synergy Health (UK) Ltd v CGU Insurance Plc [2011] Lloyd's Rep. IR 500; [2010] EWHC 2583 (Comm); LTL 29/10/10 (insurance brokers - Ben appeared with Graham Eklund QC for the successful claimant insured).

Arbory Group Ltd v West Craven Insurance Services (A Firm) [2007] Lloyd's Rep I.R. 491; [2007] PNL 23 (insurance brokers – Ben appeared for the defendant broker).

J W Bollom v Byas Mosley & Co [1999] Lloyd's Rep PN 598; [2000] Lloyd's Rep IR 136 (insurance brokers – Ben appeared with Iain Hughes Q.C. for the defendant broker).

Lawyers

Since the first day of his pupillage Ben has enjoyed a steady diet of claims against lawyers, both solicitors and barristers. He acts for both claimants and defendants across the whole spectrum of claims: disputes arising out of inadequately drafted commercial agreements; inadequate conveyancing; mishandled litigation; mortgage fraud, etc.

Ben's reported decisions relating to claims involving solicitors or barristers include the following:

Geraint Thomas v Ian Albutt [2015] EWHC 2187 (Ch) (barristers – following a 3 week trial Ben secured the dismissal of this multi-million pound claim against his client, who was alleged to have acted negligently when giving advice in relation to an application for judicial review against a planning decision).

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) 2009] PNL 20; [2009] EWHC 254 (Comm); [2010] 1 WLR 258; [2009] 1 Lloyd's Rep 447; [2009] 2 All E.R. (Comm) 715; [(valuer and solicitor – Ben appeared for the successful claimant lender).

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm); [2008] PNL 19; [2008] NPC 4; [2008] 4 EG 169 (CS) (valuer and solicitor – Ben appeared with Sue Carr Q.C. for the claimant lender which obtained summary judgment in deceit against the valuer).

Awoyomi v Radford & Postill [2007] EWHC 1671 (QB); [2008] QB 793; [2008] 3 WLR 34; [2007] PNL 34; Times, July 23, 2007 (Ben appeared with Justin Fenwick Q.C. for the defendant barristers in their successful defence of this multi-million pound claim).

Newline Corporate Name Ltd v Morgan Cole (A Firm) [2007] EWHC 1628 (Comm); [2008] PNL 2 (Ben appeared with Justin Fenwick Q.C. for the defendant solicitors).

Walker v Chruszcz & Irwin Mitchell [2006] EWHC 64 (QB) (Ben appeared for the defendant solicitors in their successful defence of this "under-settlement" claim).

AMB Generali Holding AG v SEB Trygg Liv Holding AB [2005] EWHC 35; [2005] 2 Lloyd's Rep 129 (Ben appeared with Nicholas Davidson Q.C. for one of the solicitor defendants).

Clifford Harris & Co v Solland International Ltd [2004] EWHC 2488; (2004) 148 S.J.L.B. 1400 (Ben appeared with Philip Marshall Q.C. for the solicitors).

Day v Cook [2001] EWCA Civ 592; [2001] PNLR 32; [2002] 1 BCLC 1; [2003] BCC 256 (Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

Thomson Snell & Passmore (A Firm) v Rose (CA) [2000] PNLR 378 (Ben appeared for the solicitors).

Day v Cook [2000] PNLR 178; [2000] Lloyd's Rep PN 551 (Ben appeared with Iain Hughes Q.C. for the defendant solicitors).

Patent Agents

Ben is one of a small band of barristers who regularly handles claims against patent agents, acting for both claimants and defendants. He appeared in one of the few reported cases relating to such a claim: *Finocard International Ltd v Urguhart Dyke & Lord (A Firm) & Michael Ajello* [2006] PNLR 16; [2006] FSR 27; [2005] EWHC 2481 (Ch).

Surveyors & Valuers

Ben is regularly instructed to advise and act on behalf of banks, special purpose lenders, borrowers, valuers and surveyors in claims relating to dishonest or negligent advice given in relation to commercial or residential properties and property portfolios. He has successfully surfed the waves of claims arising out of the property crash in the late 1980s and the more recent credit crunch. His depth of experience means that he is fully familiar with the key issues of scope of duty, breach, reliance, contributory fault, assignments, securitisation and limitation that such claims typically give rise to. He acts for both claimants and defendants, and in relation to claims arising out of advice given regarding both commercial and residential properties and property portfolios. The claims often involve allegations of fraud against the valuer.

Examples of Ben's recent instructions include:

- Acting on behalf of a specialist mortgage lender against a valuer in proceedings arising out of allegedly negligent valuations of over 100 properties.
- Acting on behalf of a well known valuer in £70m proceedings arising out of an allegedly negligent valuation of one of the largest distribution warehouses in Europe.
- Acting on behalf of a leading valuation expert in proceedings in which it is alleged he acted negligently when acting as an expert in underlying £500m proceedings.
- Acting on behalf of a valuer defending proceedings brought by a trustee alleging negligence in respect of the valuation of a portfolio of commercial properties.
- Acting on behalf of a high street lender in proceedings against a top tier valuer arising out of an allegedly negligent valuation of substantial commercial premises.
- Acting on behalf of a lender in an appeal to determine whether or not a lender's claim was barred as a result of the appropriation of proceeds of sale.

Ben is not afraid to back his own judgment, and successfully took the following cases to trial:

Sagir v E.Surv Ltd B30MA230 (HHJ Pelling QC) (valuers – Ben acted for a valuer who admitted liability, but successfully defended the claim at trial on the basis that the claimant's case on causation was flawed).

Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) 2009] PNLR 20; [2009] EWHC 254 (Comm); [2010] 1 WLR 258; [2009] 1 Lloyd's Rep 447; [2009] 2 All E.R. (Comm) 715; [(valuer and solicitor – Ben appeared for the successful claimant lender).

Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm) [2008] EWHC 51 (Comm); [2008] PNLR 19; [2008] NPC 4; [2008] 4 EG 169 (CS) (valuer and solicitor – Ben appeared with Sue Carr Q.C. for the claimant lender which obtained summary judgment in deceit against the valuer).

International Arbitration

Having obtained a Masters in Law from the University of Virginia in 1995 (specialising in international commercial disputes), Ben joined the international litigation team at Sullivan and Cromwell in New York (where he was admitted to the New York Bar). Having returned to England and been admitted to the Bar of England and Wales, Ben built on the experience he obtained in New York. Both before and after being appointed Queen's Counsel in 2012 he has regularly been involved in domestic and international arbitral disputes.

As well as acting as an advocate in arbitrations, Ben also accepts appointments to act as sole arbitrator, party-nominated arbitrator or chair.

Examples of arbitral disputes in which Ben has been or is currently involved include the following:

- Acting for claimants in an LCIA arbitration against a Swiss company arising out of the alleged breach of an exclusive distributorship agreement.
- Acting for a UK company in an ICC arbitration arising out of the allegedly wrongful termination of a supply agreement with a Taiwanese telecommunications company.
- Acting for an insurer in an ad hoc arbitration seeking a declaration that the insurer had no liability to provide an indemnity in respect of proceedings against its insured in France.
- Acting for an insured in an arbitration governed by the LCIA rules in which the quantum of the insured's claim for business interruption losses fell to be determined.
- Acting for the claimant, a manufacturer of aircraft interiors, in an ICC arbitration against a leading airline arising out of a dispute over the re-fitting of 747 aircraft.
- Acting for primary layer insurers in an ad hoc arbitration to determine whether those insurers were obliged to compensate a third party in respect of liabilities arising out of the allegedly negligent design of waste recycling facilities by their insured.
- Acting for insured directors in an ad hoc arbitration to determine whether their insurer was obliged to indemnify them in respect of the costs of disqualification proceedings.
- Acting for a polymer supplier in an ad hoc arbitration relating to the quality of goods supplied to its commercial customer.
- Acting for a construction company in an ad hoc arbitral dispute with its employer arising out of the allegedly defective installation of a sewage treatment facility.
- Acting for a jeweller in an ad hoc arbitration to determine whether it was entitled to an indemnity for the losses it suffered following a theft of diamonds at a trade fair

Commercial Dispute Resolution

Ben has a strong commercial practice and regularly appears in the Commercial Court and Mercantile Courts. He is instructed to act on behalf of clients in a wide range of commercial disputes, many of which have an international dimension. He is used to having to act quickly on behalf of his clients, including obtaining appropriate injunctive relief (including freezing orders) in appropriate cases.

The quality of Ben's commercial work is recognised in the directories which report:

"Intellectually brilliant, approachable, charismatic and always commercial" (Legal 500 2017, Commercial Litigation).

"He is very responsive and experienced. He's able to bring together complex cases and steer them to successful conclusions" (Chambers & Partners 2017, Commercial Dispute Resolution).

"He is fantastically intellectually able and enormously charismatic. He has judges eating out of the palm of his hand." "He is utterly and disarmingly charming, and an extremely bright guy." (Chambers & Partners, 2016: Commercial Litigation).

'Fantastic on his feet and with clients who value his concise, unstuffy approach.' - Legal 500, 2016: Commercial Litigation

"An exceptionally able, persuasive and always reliable commercial silk." "He understands what commercial clients need, and can speak their language in a non-patronising way. His attention to detail is excellent and he comes up with curveball ideas that actually work." - Chambers & Partners, 2015: Commercial Litigation

'Commercial, approachable and very good with clients.' (Legal 500 2015, Commercial Litigation).

"Has firmly established a solid reputation in the commercial litigation arena. He has strong insurance, professional negligence and property damage experience. Responsive, intelligent and very user-friendly." (Chambers & Partners 2014, Commercial Dispute Resolution).

Examples of his on-going and recent instructions include the following:

- Representing an international airline association in Part 8 proceedings concerning the construction of a long term IT contract.
- Acting on behalf of a US insurer in the defence of proceedings brought against it in the Grand Court of the Cayman Islands arising out of the seizure of an aircraft in Brazil.
- Obtaining a freezing order on behalf of the UK's largest independent estate agency following the discovery of dishonesty by one of its senior employees.
- Acting on behalf of an Irish oil trader in the defence of a claim brought against it in the Commercial Court by a US company arising out of derivative trading.
- Advising a tobacco manufacturer on a multi-million pound contractual dispute with a US company relating to the sale of a tobacco manufacturing business in Georgia.
- Representing a UK manufacturer in Commercial Court proceedings in a multi-million sale of goods claim.
- Acting on behalf of a leading insurer in arbitral proceedings in order to obtain a declaration of non-liability in relation to proceedings against its insured in France.
- Representing UK's largest independent estate agent in its contractual dispute with Tesco regarding the launch of an on-line estate agency.
- Advising an individual in his £3.5m dispute over the meaning of an LLP agreement, and whether or not it could be rectified for common mistake.
- Representing a telecoms supplier in a contractual dispute about the supply of VOIP services which customer alleged were inadequate.
- Acting on behalf of a South African distributor of sulphur in Commercial Court proceedings relating to its US\$ 10m dispute with an English company arising out of the supply of sulphur to Zambia, Malawi and the DRC.
- Acting on behalf of a Japanese company in defence of a damages claim arising out of a SPA relating to the sale of shares in a Swiss company.
- Representing a Taiwanese mobile phone manufacturer in a substantial dispute with an American software licensor arising out of alleged breaches of a license agreement.
- Acting (with Justin Fenwick QC) on behalf of Irish oil tank manufacturers in a £100m claim against a Danish supplier of polymers (*Kingspan Environmental & Others v Borealis A/S & Another* [2012] EWHC 1147 (Comm)).
- Representing a vehicle manufacturer in its £2m damages claim against a vehicle distributor arising out of a breach of a dealership agreement.
- Acting (with Roger Stewart QC) in the defence of a claim for rectification and damages arising out of an alleged breach of a shareholders agreement (*Hawksford Trustees Jersey Ltd v Stella Global UK Ltd* [2011] EWHC 503; [2012] EWCA Civ 55).
- Acting for a Delaware company which leases aircraft engines in its dispute with an Iranian company following the breach of an aircraft lease agreement.

Ben has completed trials before many of the current and former Judges of the Commercial Court, and Mercantile Court including the following:

- *Kingspan Environmental & Others v Borealis A/S & Another* [2012] EWHC 1147 (Comm). 12 week product liability trial (led by Justin Fenwick QC) before Clarke J., which raised issues of choice of law, contractual application and construction, and misrepresentation.
- *Hawksford Trustees Jersey Limited v Stella Global UK Limited* [2011] EWHC 503 (Ch) (HHJ Stephen Davies)..
- *Ground Gilbey Limited v Jardine Lloyd Thompson UK Limited* [2011] EWHC 124 (Comm): 2 week trial before Blair J.
- *Synergy Health (UK) Ltd v CGU Insurance Plc* [2010] EWHC 2583 (Comm); 3 week trial (led by Graham Eklund QC) before Flaux J.
- *Yeganeh v Zurich Plc* [2010] EWHC 1185 (QB): 1 week trial of an insurance dispute before HHJ Mackie QC.
- *Nationwide Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm)* EWHC 254 (Comm): assessment of damages hearing before Clarke J.
- *Cheshire Building Society v Dunlop Haywards (DHL) Ltd & Cobbetts (A firm)* [2008] EWHC 51 (Comm): claim in deceit before Steel J.
- *Newline Corporate Name Ltd v Morgan Cole (A Firm)* [2007] EWHC 1628 (Comm): 2 week trial before Simon J.
- *Anders & Kern UK Ltd v CGU Insurance Plc* [2007] EWHC 377 (Comm); [2007] 2 All E.R. (Comm) 1160; [2007] Lloyd's Rep I.R. 555. 1 week trial of an insurance dispute before HHJ Mackie QC.
- *DRC Distribution Ltd v Ulva* [2007] EWHC 1716: 1 week trial before Flaux J.
- *AMB Generali Holding AG v SEB Trygg Liv Holding AB* [2005] EWHC 35 (Comm): 3 week trial before Gloster J.
- *Normhurst Ltd v Dornoch Ltd* [2004] EWHC 567 (Comm); [2004] All ER (D) 459; [2005] Lloyd's Rep IR 27. Trial of preliminary issue before HHJ Chambers QC.

Insurance & Reinsurance

Ben regularly advises and represents insurers, reinsurers and insureds in the full range of non-marine insurance disputes. He also acts as an arbitrator of such disputes. He has a strong market following and is recognised in both Chambers & Partners and Legal 500 for his insurance and re-insurance work:

"He is one of those people who's got a brain the size of a planet. He is assured, user- friendly and makes a real difference to the outcome of cases." (Chambers and Partners, 2017, Insurance).

"Recognised for his 'insightful' counsel" (Who's Who Legal 2016, Insurance & Reinsurance).

"He is an excellent advocate with a great eye for detail." (Chambers and Partners 2016, Insurance).

"He is very well regarded within the market and is viewed as a rising star within the Bar. He's very good with clients and has great strategic insight" (Chambers and Partners 2015, Insurance).

"Impresses barristers and instructing solicitors with his skill in insurance and reinsurance matters. He is well versed in a wide variety of claims, including those related to brokers' negligence and property damage. He's very good with clients, and has great strategic insight" (Chambers & Partners 2014, Insurance).

"The always impressive Ben Elkington is an excellent academic, and practical" (Legal 500 2014, Insurance).

"Receives praise for his 'deft handling of clients and enviable strategic insight.' He acts for both insurers and insureds on a variety of big- ticket cases" (Chambers & Partners 2013, Insurance).

"very good with clients" (Legal 500 2013, Insurance).

Ben is not afraid to stand by his judgment. In the past few years he has been involved in the following insurance disputes which have gone to trial:

- *Western Trading Ltd v Great Lakes Reinsurance (UK) SE* [2016] EWCA Civ 1003 (Ben acted for the successful respondent insured in a dispute over the proper measure of loss following the destruction of a listed building).
- *Western Trading Ltd v Great Lakes Reinsurance (UK) Plc* [2015] EWHC 103; LTL 2/2/2015 (Ben acted for the insured, whose insurer alleged misrepresentation, non-disclosure, breach of warranty and absence of insurable interest. Following a 2 week trial judgment was given for the insured).
- *Pooja Rai (Representative of the Estate of Gautam Rai, Deceased) v Legal & General Assurance Society Ltd* [2015] EWHC 170 (Comm); LTL 9/2/2015 (Ben acted for the wife of the deceased in a claim under a group life assurance policy).
- *William McIlroy Swindon Ltd & Rannoch Investments Ltd v Quinn Insurance Ltd* [2011] Lloyd's Rep IR 697; [2011] EWCA Civ 825; (Ben acted for the successful appellant in this appeal regarding the proper interpretation of a time bar provision in an arbitration clause in a liability policy).
- *Yeganeh v Zurich Plc* [2011] Lloyd's Rep IR 540; [2011] EWCA Civ 398; [2011] 1 Lloyd's Rep IR 540 (arson, fraudulent claim: Ben acted for the successful appellant insured).
- *Synergy Health (UK) Ltd v CGU Insurance Plc* [2011] Lloyd's Rep. IR 500; [2010] EWHC 2583 (Comm); LTL 29/10/10 (non-disclosure and misrepresentation, Ben acted with Graham Eklund QC for the successful insured).
- *William McIlroy Swindon Ltd & Rannoch Investments Ltd v Quinn Insurance Ltd* [2011] Lloyd's Rep IR 407; [2010] EWHC 2448 (TCC); LTL 18/10/10 (breach of condition, Ben acted for the claimant insured, whose appeal against this decision was successful (see above)).
- *Yeganeh v Zurich Plc* [2010] EWHC 1185 (QB); LTL 27/5/2010 (arson, fraudulent exaggeration: Ben acted for the insured, whose appeal against this decision was successful (see above)).
- *Lewis v Norwich Union Healthcare Ltd* [2010] Lloyd's Rep IR 198; (2009) 21 ILM 71; LTL 31/3/2009 (non-disclosure in relation to a PHI policy: Ben acted for the successful insured).
- *US Trading v AXA Insurance Co Ltd* [2010] Lloyd's Rep. I.R. 505; (2009) 21 ILM 82; LTL 18/6/2008 (fraud, breach of warranty: Ben acted for the successful insured).
- *Osman v Norwich Union* (HHJ Behrens) (26/3/09; unreported) (fraudulent devices, Ben acted for the successful insurer).
- *Anders & Kern UK Ltd v CGU Insurance Plc* [2007] EWCA Civ 148; [2008] Lloyd's Rep. I.R. 460; [2008] 2 All E.R. (Comm) 1185 (breach of condition precedent, Ben acted for the successful insurer).
- *Anders & Kern UK Ltd v CGU Insurance Plc* [2007] EWHC 377 (Comm); [2007] 2 All E.R. (Comm) 1160; [2007]

Lloyd's Rep I.R. 555 (breach of condition precedent, Ben acted for the successful insurer).

- *Normhurst Ltd v Dornoch Ltd* [2004] EWHC 567 (Comm); [2004] All ER (D) 459; [2005] Lloyd's Rep IR 27 (preliminary issue relating to recoverability of consequential losses).

Disputes between insured and insurer frequently give rise to claims against the insured's broker, and Ben is recognised as one of the leading practitioners handling such claims. Since 2002 he has been the editor of the chapter on claims against insurance brokers in Jackson & Powell on Professional Liability.

He regularly acts for the insured, insurer or broker in such 3 way disputes, and he particularly enjoys the tactical issues that such disputes give rise to.

In addition to coverage disputes, Ben also regularly acts on behalf of insurers in subrogated recovery actions. Over the past few years he has assisted insurers in recovering millions of pounds that they have paid out following fires, floods, explosions, etc.

Property Damage

Much of Ben's work arises out of damage to property. He has handled multi-party claims arising out of damage to property caused by fire, flood, riot, explosion, impact, subsidence, heave and hurrincance. He acts for a wide range of clients, including insurers pursuing subrogated claims or disputing coverage; companies and individuals pursuing claims against their insurer or against third parties for uninsured losses; and companies and individuals who are alleged to be responsible for damage to property.

Ben's experience in the fields of insurance, product liability and commercial disputes means that he is ideally placed to handle property damage claims and to advise on the issues that they commonly give rise to. He acted for the largest group of claimants in the Buncefield litigation, and acted for the Mayor's Office for Policing and Crime in relation to several multi-million pound claims arising out of the London Riots. Over the last few years he has helped insurers recoup millions of pounds by way of subrogated claims against third party tortfeasors.

Ben is ranked in Band 1 of leading silks in the field of property damage in Chambers & Partners 2017. Current and previous entries are as follows:

"Very engaged, reliable and approachable, he's a pleasure to work with and a great asset to have on your side. Commercially aware, he's really nice to work with and really concise in his advice"(Chambers & Partners 2017, Property Damage).

"He's very quick and very smooth. He has the complete confidence of the bench and of clients." - Chambers & Partners, 2016 Property Damage

"Ben is professional and incredibly bright, and offers commercial, practical and strategic advice. He is also very responsive and an excellent team player."(Chambers & Partners 2015, Property Damage).

"Has a broad practice that encompasses professional negligence, insurance and professional liability cases. His adroit handling of all three types of claims leads sources to highlight him as a great choice for property damage work. 'He's very personable and gets on well with his clients.' 'In court he is particularly sensitive to the needs of judges, but he can also be quite tenacious with witnesses.'"(Chambers & Partners 2014, Property Damage).

Examples of Ben's recent and ongoing instructions include the following:

- Representing for the Mayor's Office for Policing and Crime in the defence of multi-million pound claims for compensation arising out of the London Riots.
- Acting for a high-tech manufacturer seeking compensation in arbitral proceedings for the business interruption losses it suffered following a devastating fire at its manufacturing site.
- Acting for a timber frame supplier in the defence of a multi-million pound claim arising out of a fire at a new housing development.
- Representing one of the country's leading WEEE recyclers in its claim for compensation from its insurance broker following a devastating fire at its recycling plant.
- Acting for a property developer in its multi-million pound dispute with its insurer arising out of a fire which destroyed a listed building.

- Acting for a business seeking to recover the business interruption losses it suffered as a result of the devastating fire at the iconic Mackintosh building in Glasgow.
 - Representing the insurers of a Wagamama restaurant in a subrogated claim against various parties following a fire which destroyed the Wagamama restaurant in Richmond.
 - Acting for a manufacturer in its multi-million pound claim against its insurer and insurance broker following the destruction of his manufacturing facility.
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