



NEW SQUARE

## Charles Douthwaite

### Education

M.A. (Cantab.)



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### Languages

French

## Profile

**Charles has a broadly based practice covering professional liability, insurance, property and commercial disputes.**

In professional liability, for many years his work has focussed particularly on lender's claims against both lawyers and surveyors and valuers, much of it arising from fraud or suspected fraud. He has substantial experience in insurance and reinsurance, advising both insurers and insured on coverage. He acts regularly in landlord and tenant matters as well as other property disputes. Recent commercial dispute resolution has involved freezing and tracing orders, claims for breach of fiduciary duty and asset recovery as well as contractual disputes.

Over the years, Charles has had wide experience in numerous fields including construction and engineering claims, computer contracts, sports law, personal injury, costs, planning, environmental matters, civil actions against the police and misfeasance in public office.

Charles carries out public access work.

Charles is a Bencher of Gray's Inn and is also an advocacy trainer for the Inn.

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## Commercial Dispute Resolution

Charles has a broad and varied experience of commercial matters including banking, sale of goods, freight forwarding, shareholders' agreements and partnership disputes, directors' duties, personal and corporate insolvency as well as straightforward contractual disputes.

Reported cases include:

- **BELCO TRADING CO v KORDO & ANOR [2008] EWCA Civ 205** - Dispute over underpayment of profit share arising from the production in Russia and eastern Europe of the well known and long running TV show "Who Wants To Be A Millionaire".
- **FOSTER BRYANT SURVEYING LTD v (1) BRYANT (2) SAVERNAKE PROPERTY CONSULTANTS LTD [2007] EWCA Civ 200** - Breach of fiduciary duties of directors; duty to account; breach of restrictive covenant.
- **GETRONICS HOLDINGS EMEA BV AND ANOTHER v LOGISTICS AND TRANSPORT CONSULTANCY CO AND OTHERS [2004] EWHC 808 (QB)** - Major logistics fraud involving €28 million. Obtaining and extending worldwide freezing orders. Successfully resisting challenges to jurisdiction of the UK courts. Obtaining summary judgment for part of the claim.
- **MCNICHOLAS CONSTRUCTION (HOLDINGS) LTD v ENDEMOL UK PLC [2003] EWHC 2472 (Ch)** - Dispute over agreement to use a property for the purposes of making a television programme.

**Recent and current cases include:**

- Advising and acting for the vendors of an insurance brokerage on claims for breaches of the sale agreement and "earn-out" provisions.
- Advising and acting for a defrauded investor in tracing claims against a national bank.
- Advising a UK company on freezing orders against French companies in the UK and tracing orders.
- Acting in a dispute between two Russian businessmen concerning a property joint venture and an agreement to

- pursue the recovery of monies lost in an off-shore investment.
- Acting for several investors in Technology Partnerships defending claims from associated lenders (*Chancery Lane Finance Limited v Crothers [2007] CA*).
- Advising and acting for a substantial independent dairy on numerous matters over several years including distribution agreements and disputes, supply agreements and disputes, financing and property disputes and matters with The Intervention Board.
- Advising several companies in connection with contracts for the supply of oil from the former USSR on the effect of UK law for the purposes of arbitration in Moscow.
- Advising and representing manufacturers and suppliers of CNC machine tools in claim by the purchaser alleging malfunction etc. of the tools supplied.
- Acting for an importer on CMR contracts.
- Acting for the claimant in a claim between intermediaries for commission on multi-million pound oil contracts.
- Acting for the purchaser on quality claims arising out of a contract for the supply of reclaimed coke breeze.
- Resisting a claim by a finance company under a leasing agreement for a fleet of commercial vehicles.
- Advising and acting over many years for a national double glazing company on a wide range of matters.
- Acted for a garment manufacturer and distributor in dispute with a German fabric supplier and the ultimate purchasers of (defective) goods.
- Acted for the hirer of vending machines in connection with several hire disputes.
- Acting for a dealer in claims arising out of a guarantee given (secured on property) against liabilities arising under a merchant services agreement.

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## Construction & Engineering

Although not now a major part of his practice, Charles has carried out much construction and construction related work over many years.

Recent and current cases include:

- Advising and acting for a public access client in a dispute against the supplier of a timber framed house.
- Acting for the house owner in claims against a builder for defective works and abandoning the contract.
- Acting for the management company of a leasehold development comprising 16 flats and 9 houses on numerous claims arising from its defective construction (public access).
- Advising a substantial public transport utility on contractual disputes.
- Representing the employer on a claim by the contractor on a design and build contract for a major leisure development.
- Representing the purchasers of a property against the developers and structural engineers on claims arising out of inadequate foundations.
- Acting for a gas utility on a claim alleging the escape of mains gas causing delays to a major commercial construction project and substantially increasing its costs, owing to installation of protection against and venting of ground gases. Dispute as to whether the source of underground gases was the mains, landfill or a disused coal mine.
- Acting for sub-contractors against the main contractors on a dispute arising out of the installation of conveyors, gantries and support trestles at a colliery.
- Numerous claims for and against architects and engineers.

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## Chancery

The greater part of Charles' Chancery work is property related.

Reported cases include:

- **PULVERS (A Firm) v NEVIL CHAN & 16 ORS [2007] EWHC 2406 (Ch)**. Mortgage fraud arising from split property transactions; knowing receipt; liability as between defendants.
- **CHRISTOS SAVVA & ORS v PHILIP GALWAY-COOPER [2005] EWCA Civ 1068**. Tenants' rights of first refusal; service of notices.
- **ARUNDEL CORPORATION V MOHAMMED RAMZAN KHOKHER [2003] EWCA Civ 491 and 1784**. Agency; implied knowledge of agency; whether notice served at former registered office valid (when not known to the claimant).
- **CHRISTOS SAVVA V (1) ROSEMARY ISHRANI JAIKARAN (2) HENRY NSIRIM [2005] EWHC 891 (Ch)**. Assignment of a contract of sale.
- **BENEDICTUS V JALARAM [1989] 58 P&CR 330, [1989] 1 EGLR 251**. Business tenancy; estoppel.

Recent and current cases include:

- Advising the purchaser and developer on claims against the Chief Land Registrar following rectification of the Land Register owing to fraud of third parties.

- Advising and acting for lenders in split property frauds on rectification of the Land Register.
- Advising tenants on leasehold enfranchisement claims.
- Advising and acting for mortgagors on claims against mortgagees for sales at an undervalue.
- Acted for tenants under a mining lease resisting forfeiture and claims for unpaid royalties
- Acted for the landlord on a claim for forfeiture against brewery mortgagees who were unable to fulfill the personal covenants under a lease.
- Advising and acting for a landlord threatened by major breaches of covenant by the tenant of an anchor unit in a city centre shopping development.
- Advised and acted for the service company of a large residential development seeking rectification and amendment of several hundred leases and service agreements so as to recover 100% of service charges and avoid insolvency.

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## Insurance & Reinsurance

Much of Charles' work has an insurance connection. He regularly advises on policy construction and on claims.

Recent and current cases include:

- Advising and acting for the insurer on a claim by a structural engineer for indemnity under a professional indemnity policy. There was a substantial claim against the engineer for negligence on a major development project for a retail park. Policy voidable through non disclosure and fraud/corruption in procuring the building contract giving rise to the claim. Solicitors (third party and second defendant) nominated by insurers allegedly negligent in failing to appreciate and advise on non disclosure and fraud and on conflict of interest between insurer and insured.
- Advising underwriters on the avoidance of a professional indemnity policy covering design engineers for the design of a ride at a major entertainment centre/theme park and advising on the merits of the claim.
- Advising a training organisation on the interpretation of a fidelity policy.
- Claim against insurers under the business interruption section of a commercial policy following fire at a supplier's factory and subsequent discontinuation of raw material supplies.
- Advising and acting for a non policy holder in a claim against insurers who had treated the claimant as insured.
- Several matters both for and against insurers in relation to claims arising out of fire damage.
- Acted for the widow on a claim under a life policy repudiated by insurers for alleged material non-disclosure.
- Acted for the insured on a claim for total loss by fire of aero engines during transit.
- Acted for motor insurers (exercising subrogated claims) against third party insurers in road a traffic accident in circumstances where fixed damage clauses operated.
- Advised and acted for insurers against brokers on claims for breach of agency agreement, unpaid premiums, negligence etc.
- Acting for insurers and insureds on PHI claims.
- Acting for a substantial importer of fruit and vegetable against insurers and brokers on claims arising out of goods in transit insurance avoided by the insurers.

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## Professional Liability

At least 50% of Charles' practice is in the field of professional indemnity in which he acts for both claimants and defendants.

## Accountants, Auditors & Actuaries

Reported cases include:

- **William Cook Ltd and Another v Pannell Kerr Forster [2001] CA.** Acted for the Claimant foundry owners in a claim arising from a substantial company takeover and the subsequent failure to arrange for carrying forward of tax losses for relief. Whether "major change" in the nature or conduct of the trade. Whether "trade" actually transferred to and carried on by successor company, "predecessor" and "successor" for the purposes of s.252 ICTA 1970.
- **Berg Sons & Co. Ltd v Mervyn Hampton Adams [1993] BCLC 1045.** Acted for the Defendant auditors who were alleged to have acted negligently in failing to qualify accounts.

Recent and current cases include:

- Acted for the defendant accountant/auditor [QB Nottingham] in an action brought by the company's liquidator (funded by a bank) for the accountant's alleged failure to qualify accounts in respect of stock alleged to be held elsewhere, in the absence of which the company was alleged to have been insolvent. Liability for ongoing trading losses.
- Acted for defendant accountant/auditor [QB Commercial Court] in an action brought by a company (insurance

- brokers) arising from the accountant/auditor's alleged fraud and/or failures to comply with regulations of the IBRC, and a failure to qualify the accounts together with negligent management accounting advice.
- Acted for claimants (company and family directors) in claim against accountant/auditors [Bristol Mercantile Court] in respect of interest and penalties arising from the late filing of accounts, a failure to apply for Industrial Buildings allowance, incorrect calculations and claims for Capital Allowances and Capital Gains Tax, under-declarations on P11D returns for the directors and incorrect pension calculations for the directors.
  - Acted for companies in connection with claims against accountants arising out of negligent advice given in connection with a company flotation.
  - Acting for the claimant in a claim by a company director against his accountant for negligent advice in connection with the setting up of a deferred share scheme and the application of Business Asset Taper Relief.
  - Acting for company promoters and directors against both auditors and accountants who advised on incorporation of an investment company and who failed to advise that the company's activities were unlawful.

## Construction Professionals

- Advising and acting for the insurer on a claim by a structural engineer for an indemnity under its professional indemnity policy. Substantial claim against the engineer for negligence on a major development project. Policy voidable through non disclosure and fraud/corruption in procuring building contract giving rise to the claim. Solicitors (third party and second defendant) nominated by insurers allegedly negligent in failing to appreciate and advise on non disclosure and fraud and on conflict of interest between insurer and insured.
- Acting for an architect on claims by the building owner arising out of a major extension to a nursing home.
- Representing the purchasers of a property against developers and structural engineers on claims arising out of inadequate foundations.
- Acted for cement manufacturers on claims for breach of contract arising out of a design and build contract for cement works.
- Numerous claims against architects.

## Surveyors & Valuers

Charles has substantial experience over many years of acting for banks, building societies and other lenders.

Reported cases include:

- **SOUTH AUSTRALIAN ASSET MANAGEMENT CORPORATION V YORK MONTAGUE LTD [1997] AC 191 H.L.**
- **RAJA V AUSTIN GRAY [2003] PNLR 5 (CA)**
- **WESTERN TRUST & SAVINGS LTD V STRUTT & PARKER (A FIRM) [1999] PNLR 154**

Other cases include:

- Advised and acted for numerous syndicate banks in actions arising out of and connected with the transactions in Banque Bruxelles Lambert v Eagle Star Ins Ltd. [1994] 2EGLR 108.
- Advised and acted for the Bristol & West Building Society in 50/60 cases forming part of the main Bristol & West litigation.
- Advised and acted for South Australian Asset Management Corporation in claims against solicitors and valuers for fraud and negligence arising out of numerous mortgage transactions.
- Advised and acted for a large number of lenders over many years.
- Acting for numerous lenders in claims arising from split property frauds and other negligent valuation claims.

## Lawyers

Reported cases include:

- **(1) FONEXCO GROUP LTD (FORMERLY FONEXCO LTD) (2) FONTEL ITALIA PLC (3) BYRON ROSE v (1) MANCHES (A Firm) (2) MANCHES LLP [2010] EWHC 493 (QB).**
- **(1) FRANCIS JOEL AARONSON (2) LINDA FRANCES AARONSON v DRIVERS SOLICITORS (A Firm) [2010] EWHC 1361 (QB).**
- **WESTOAK HOLDINGS LTD v (1) MICHAEL DEMETROUDI (2) ELIAS DEMETROUDI (3) LANDLORDS' PROPERTY INVESTMENTS LTD (A company incorporated under the laws of the Bahamas) (4) GEORGIU NICHOLAS SOLICITORS (A Firm) [2008] EWHC 2924 (QB).**
- **PULVERS (A Firm) v NEVIL CHAN & 16 ORS [2007] EWHC 2406 (Ch).** Mortgage fraud arising from split property transactions; knowing receipt; liability as between defendants.
- **PATRICIA DIXON V CLEMENT JONES (A FIRM) [2004] EWCA CIV 1005; [2004] EWHC 379 (QB).**

Recent and current cases include:

- Acting for solicitors who had failed to advise the purchasers of a substantial former rectory on the existence of a restrictive covenant which prevented their intended use as bed and breakfast accommodation and professional offices.

- Acting for the builder/developer in a claim against solicitors for failure to report on the refusal of building regulation consent on the purchase of a site for development.
- Acting for a developer against solicitors for negligent conduct of litigation over rights of access to a development property.
- Acting for the partners against solicitors and counsel for negligent advice in a partnership dispute and conduct of an arbitration.
- Acting for the claimants in a claim against counsel for negligently drawing up an order in settlement of a boundary dispute (public access).
- Acting for the claimants in a claim against solicitors for the incompetent conduct of an immigration application.
- Acted for a substantial state bank in a multi-million pound claim for fraud and professional negligence against its solicitors.
- Acted for the creditor, chargee and would be purchaser on a claim against solicitors arising out of the failure to conclude a contract which secured the debtor's land and (most importantly) its milk quota.
- Acted for the leaseholder of a restaurant in a claim against his solicitor for failure to advise on the exercise of an option to purchase the freehold of the premises.
- Acting against solicitors for several disappointed purchasers of Spanish property.
- Acting for the claimant in a claim against solicitors for negligent advice in connection with the "right to buy" scheme and abortive litigation.
- Acting for solicitor defendants in connection with a lost litigation claim arising from a diving accident.
- Acting for the trustees of a repertory company against solicitors who had failed to apply to renew their lease of a theatre, rehearsal rooms and storage facilities under Part II of the Landlord and Tenant Act 1954.
- Acting for the insured building contractor in a claim against the solicitors nominated to act by the contractor's insurers on a fatal accident claim. Insurers went into run off and then became insolvent before the claim settled. The contractor sought reimbursement of the damages paid to the widow of the deceased owing to the negligence and delay of the solicitors.

## Insurance Brokers & Agents

Recent and current cases include:

- Acting for a substantial importer of fruit and vegetables against insurers and brokers on claims arising out of goods in transit insurance avoided by the insurers.
- Acting for the building owner in a claim against brokers for the failure to advise on policy limitations resulting in irrecoverable losses following a serious fire and avoidance by insurers.
- Acting for brokers in a claim by footwear manufacturers and importers following a fire and subsequent avoidance by the insurers.
- Acting for a Premiership footballer in a claim against brokers after avoidance by the insurers of a personal accident policy for £1 million following a career ending injury.

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## Sports Law

Reported cases include:

- **JOHN BURRIDGE v AIRWORK LTD [2004] EWCA Civ 459** - Injury to a former Premiership goalkeeper.
- **HASTIE & JENKERSON V MCMAHON - THE TIMES 3RD APRIL 1990** - Acted for a former European Champion show jumper on a claim arising from the negligent pre-purchase examination of a horse.

Recent and current cases include:

- Advising and acting for a former international and Premiership footballer on claims against insurers, insurance brokers and his former club following a career ending injury.
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