

## Neil Hext QC

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*Highly analytical, very bright and a great asset for the most complex of cases.*

- The Legal 500

**Neil Hext QC specialises in Insurance / Reinsurance, Professional Negligence, Construction and Commercial Law.**

Recognised in the directories as a leading Silk in Insurance and Professional Negligence, he has been described as "*incredibly talented and great to work with*", "*ferociously bright, with an excellent eye for detail*", "*an excellent analyst of claims*" and "*a very effective advocate*" who "*provides clear and business-focused advice*".

Neil is a highly respected trial advocate with an increasing appellate practice. He is at home in arbitration as he is in court, and also sits as an arbitrator. He is instructed in international arbitration.

His insurance/reinsurance practice covers the full range of coverage and policy issues, from material damage and business interruption claims, to public and professional liability and D&O claims. He has a particular interest in construction related insurance, including coverage under design and build policies for contractors and contractors all risks cover. He has significant experience in advising on coverage for historical abuse claims.

In construction and engineering, Neil's recent experience includes a dispute arising out of the construction of a residential tower block in Canary Wharf, a claim arising out of the construction of a international sports stadium, and an adjudication relating to the joint insurance provisions of the NEC3 contract.

Neil's professional negligence practice encompasses insurance brokers, lawyers, construction professionals, accountants, surveyors and other disciplines. He has been in a number of the recent important broking cases. He edits the chapter on surveyors in Jackson & Powell on Professional Liability.

In the commercial field he has particularly expertise in commercial fraud cases, including misappropriation of corporate assets and tracing claims. His practice encompasses the obtaining of urgent interlocutory relief, including freezing injunctions, *Norwich Pharmacal* orders and *Bankers Trust* applications.

### Privacy Policy

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## Areas of Expertise

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### Commercial Dispute Resolution

Neil's experience includes disputes arising out of share sale agreements, breach of warranty, commercial property transactions, development agreements, loan agreements, insurance and reinsurance, partnerships, joint ventures, guarantees and performance bonds, contractual construction, breach of fiduciary duty, director's duties, constructive trusts, and misrepresentation.

He has a particular interest in commercial fraud litigation and asset tracing claims, having appeared in \_\_\_\_\_

His practice includes an expertise in urgent interlocutory relief, including freezing injunctions, *Norwich Pharmacal* and *Bankers Trust* orders.

He has been described in the directories as "*ferociously bright, with an excellent eye for detail*", his "*judgment is very good in difficult situations,*" and he "*provides clear and business-focused advice*".

His cases include:

- *A v. B* (2019) (Dubai International Arbitration Centre; claim by contractor for wrongful termination of contract in context of IT systems integration project)
- *Campbell v. Campbell* (2019) (partnership dispute relating to international jewellery business; action for account)
- *Velocity Composites Plc v. Bridges* [2019] EWHC 907 (Ch) (resisting injunction to prevent shareholders from voting against re-appointment of director at company's AGM; construction of restrictive terms in shareholder agreement)
- *Millharbour Investments Ltd v. Caddick (Mill Harbour) Ltd* (2018) (dispute between developer, purchaser and sub-purchaser relating to construction of residential apartment block in Canary Wharf; whether latent defects cover complied with contractual requirements; operation of long-stop termination provisions)
- *Grenda Investments Ltd v. Barton* [2017] EWHC 2371 (Comm) (£20m claim under loan agreements; oral set-off agreement between related parties; summary judgment application dismissed; case to be managed as part of the multi-party SFO v. Litigation Capital Ltd litigation)
- *Hexglade Ltd v. Cooper* (2017) (£3m fraud allegedly perpetrated by finance director of travel agency business; freezing injunctions and tracing of proceeds into assets in hands of defendant and recipients; section 423 claim in respect of transferred assets)
- *Rollerteam Ltd v. Riley* [2016] EWCA 1291 (CA); [2015] EWHC 1545 (Ch); *Sherlock Holmes International Society Ltd v. Aidiniantz* [2013] EWHC 1381 (Ch) (claim against shadow director for misappropriation of gate proceeds of museum; issues included directors' powers and duties, breach of fiduciary duty, freezing injunctions and misappropriation of corporate assets; dispute subsequently arising out of settlement agreement; applicability of s. 2 Law of Property (Miscellaneous Provisions) Act 1989).
- *Re TPD Investments Ltd* [2016] EWHC 507 (Ch) (third party disclosure application arising from s. 994 petition relating to joint venture company alleging that ownership of company had been wrongly removed from company's control; dilution of applicants shareholding; and debts wrongly allocated to the company).
- *Zurich Insurance plc v. Asons Solicitors Ltd* (2016) (QB) (freezing injunction against solicitors firm arising out of alleged misrepresentation relating to costs claims; claim in deceit, unlawful means conspiracy and restitution).
- *Ambey Capital Private Ltd v. Virgin Infra Asia Investments Inc* [2014] EWHC 3345 (QB) (freezing injunction arising out of cross-border advanced fee fraud via Cypriot bank accounts allegedly perpetrated by BVI company against Indian conglomerate in relation to funding for Nepali construction project; issues include conspiracy to defraud, misrepresentation, guarantees and restitution).
- *Barclay Pharmaceuticals Ltd v. Waypharm LP* [2012] EWHC 306 (Comm) (a £9m letter of credit fraud arising out of presentation of false invoices and freight forwarder's certificates of receipt; issues included tracing of payments through French SAS, conspiracy to defraud, unlawful means conspiracy, unlawful interference, inducing breach of contract, breach of fiduciary duty, secret profits and restitution).
- *Wirecard Bank AG v. Scott* (2009) (claim by banks for alleged conspiracy to defraud in relation to the supply of Olympic tickets; issues included deceit, conspiracy, constructive trusts, freezing injunctions and a claim under section 15 of the Company Directors Disqualification Act 1986).



## Insurance & Reinsurance

**“He’s very sharp and very good on coverage matters.” “Neil is highly intelligent and analytical with an eye for detail. He is an excellent advocate, extremely knowledgeable and a pleasure to work with.” “He’s exceptionally good and is very commercial.”** –*Chambers & Partners, 2021*

**“Neil has a finely tuned intellect, is logical and calm, and his judgement is excellent. He is also very down to earth and engaging, and his manner inspires confidence and respect in equal measure.”** – *Legal 500, 2021*

**“A very impressive and compelling advocate. Voraciously intelligent but nevertheless able to explain complex points clearly.” “Clear thinking and decisive with a good grasp of strategy and commercial outcomes.”** – *Chambers & Partners, 2020*

**“Straightforward, highly analytical and impressive on his feet.”** – *Legal 500, 2020*

**“Fantastically detailed and very diligent.” “He has a great eye for detail and is able to drill down to the heart of the most complex of cases. Highly intelligent and analytical.”** – *Chambers & Partners, 2019*

Neil acts for both insurers and insureds dealing with the entire range of coverage issues. He has experience that is both broad and in depth, encompassing issues of non-disclosure and misrepresentation, breach of warranty, application of conditions precedent, as well as aggregation, the Third Parties (Rights Against Insurers) Acts, subrogation and notification of circumstances in claims made policies. His experience includes public liability policies, material damage/business interruption, directors & officers insurance, construction/erection all risks, employers’ liability, jewellers block policies and professional indemnity. He regularly advises both insurers and insureds on policy response, including on questions of fraud, and has also advised insurers on drafting of policy terms.

Neil has a particular interest in construction related insurance and advises on design and build cover and contractors all risks policies. He has expertise in the effect of the joint insurance provisions in the standard construction forms and significant experience in the issues that frequently arise as to the width of cover for construction defects following a notification.

He has acted in a number of cases involving claims on financial advisers’ liability policies arising out of FCA mandated remediation schemes, dealing with coverage issues, and in particular the threshold for notification of circumstances.

He has particular experience in relation to the arguments that commonly arise in relation to the solicitors’ minimum terms, including the meaning and effect of the aggregation clause, and its application to bulk retail practices. He also advises on public/employer’s liability cover for historical abuse claims.

Neil regularly acts in insurance broking cases and has appeared in a number of the recent important cases in this area.

He is recognised in Chambers & Partners as a leading Silk in Insurance, *“a silk known for the quality of his advice”, “gets to the nub of things very quickly”, “he delivers robust, comprehensive and well-formulated commercial advice and products exceptional advocacy”* (Chambers & Partners, 2018); *“technically excellent and a real fighter”, “Incredibly bright and hard working, and particularly good on highly technical insurance issues”*, *“he’s an absolutely brilliant teamworker and someone who looks at the detail and picks up points other people would miss“* (Chambers & Partners, 2017); *“ferociously bright, with an excellent eye for detail”* (Chambers & Partners, 2016).

His important cases in this field include:

- *Dalamd Ltd v. Butterworth Spengler Commercial Ltd* [2019] Lloyd’s Rep IR 295 (claim against insurance broker arising out of fire at waste recycling facility; effect of non-disclosure on variation of composite policy; test for causation in broker’s claims; whether balance of probabilities or loss of a chance)
- *Pakeezah Meat Supplies Ltd v. Total Insurance Solutions Ltd* [2019] Lloyd’s Rep IR 137 (assessment of damages in brokers claim)
- *Channon v. Ward* [2017] EWCA Civ 13 (Court of Appeal; representing broker in £1.8m claim arising out of failure to place accountants’ PI cover; whether notional policy would have paid out)

- A £30m claim against insurers arising out of dispute between design and build contractor and employer for alleged defects in the design of a waste processing plant; alleged failure of process to pass reliability testing; whether contractually waste was “acceptable waste”; cause of catastrophic failure of one of main structural members in composting hall (2015)
- *Ocean Finance & Mortgages Ltd v. Oval Insurance Broking Ltd* (2015) (acting for brokers in the context of an £4m claim arising out of alleged failure to make a block notification in respect of sale of PPI products)
- Acting for the Claimants in an arbitration brought under the Third Parties (Rights against Insurers) Act 1930 concerning the aggregation provisions of the solicitors’ minimum terms (2015)
- *Homeserve plc v. RSA* (2014) (claim against insurers by financial services provider for costs of remediation exercise mandated by FCA)
- *Jones v. Environcom Ltd* [2010] Lloyd’s Rep IR 676 (claim against brokers arising out of fire at waste processing facility; scope of broker’s duty to explain duty of utmost good faith; whether insured insurable); [2010] Lloyd’s Rep IR 190 (whether insurers seeking negative declaration in relation to cover can obtain security for costs against counterclaiming insured)
- *Dedames v. NFU Mutual* [2009] EWHC 2805 (non-disclosure and affirmation)
- *Mopani Copper Mines plc v. Millennium Underwriting Ltd* [2009] Lloyd’s Rep IR 158 (significance of deletions to construction of reinsurance slip)

## Professional Liability

**“He is incredibly calm, drafts beautifully and has a very good way with the judges. A very balanced advocate.” “Neil is highly intelligent and has an analytical eye for detail. He is an excellent advocate who is extremely knowledgeable and a pleasure to work with.”** – *Chambers & Partners, 2021*

**“He is highly intelligent and analytical, and has a keen eye for detail.”** – *Legal 500, 2021*

**“Tackles difficult issues and difficult clients with aplomb.”** – *Legal 500, 2020*

Neil’s practice in this area focuses on lawyers, brokers, construction professionals, accountants and surveyors. He deals with all aspects of lawyers’ liability, from solicitors’ negligence to vicarious liability for fraud. He has been instructed on a number of high value and complex cases, including claims arising from the purchase of a football club, an alleged conspiracy to appropriate copyright material, and a US hedge fund’s finance of a property development in Pakistan.

His work in the context of brokers dovetails neatly with his insurance practice, with claims frequently being brought against both insurers and the brokers. His experience here encompasses the brokers’ duty to obtain insurance that meets the insured’s needs, to ensure that the insured understands its duty of utmost good faith, and to explain relevant exclusions, warranties and conditions precedent. It also includes the difficult causation and scope of duty issues that can arise where breach of duty is established. He has acted in a number of the recent important cases in this area.

He has considerable expertise in relation to disputes arising from tax mitigation schemes, having been involved in litigation over the Evolution and other film finance schemes. He has dealt with numerous professional liability cases with a tax element, acting for or against lawyers, accountants and financial advisers. He has also had significant experience in the management of group litigation.

Neil’s practice also includes claims against construction professionals and accountants. He recently acted for the Claimants in a €40m claim against accountants and solicitors. He acted for actuaries in a €30m claim arising out of the purchase of a pension fund.

He edits the chapter on surveyors in Jackson & Powell on Professional Liability.

His cases include:

- *Jago v. Mortgage4You Ltd* [2019] EWHC 533 (QB) (claim against mortgage advisers arising out of re-mortgage to finance foreign property investment; limitation and application of knowledge provisions under s. 14A of the Limitation Act 1980)
- *Dalamd Ltd v. Butterworth Spengler Commercial Ltd* [2019] Lloyd’s Rep IR 295 (claim against insurance broker arising out of fire at waste recycling facility; effect of non-disclosure on variation of composite policy; test for causation in broker’s claims; whether balance of probabilities or loss of a chance)

- *Pakeezah Meat Supplies Ltd v. Total Insurance Solutions Ltd* [2019] Lloyd's Rep IR 137 (assessment of damages in brokers claim)
- *Channon v. Ward* [2017] EWCA Civ 13 (Court of Appeal; representing broker in £1.8m claim arising out of failure to place accountants' PI cover; whether notional policy would have paid out)
- *Ocean Finance & Mortgages Ltd v. Oval Insurance Broking Ltd* (2015) (acting for brokers in the context of an £4m claim arising out of alleged failure to make a block notification in respect of sale of PPI products)
- acting for the Claimants in group litigation brought against a firm of solicitors, and subsequently in arbitration against insurers, alleging failures in the advice given regarding an equity release scheme (2015)
- *AW Group Ltd v. Taylor Walton* [2014] EWCA Civ 592 (Court of Appeal; solicitors: acting for respondent solicitors in appeal against dismissal of claim arising out of purchase of industrial estate)
- *Community Gateway Association Ltd v. Beha Williams Norman Ltd* [2011] EWHC 2311 (TCC) (defending housing consultant in £16m claim arising out of transfer of local authority housing stock)
- *Jones v. Environcom Ltd* [2010] PNLR 27 (brokers: claim for failure of broker to explain duty of utmost good faith; whether insured insurable)
- *Berry v. Laytons* [2009] EWHC 1591 (solicitors: claim for negligent advice on Commercial Agents Regulations)

## Construction & Engineering

Neil is frequently instructed in cases that have a construction or engineering element. He has significant experience of mastering the technical issues that arise, and quickly assimilates the detail. He is used to dealing with the complex contractual arrangements that apply, such as those relating to delay, variation, termination, completion and acceptance standards.

His experience includes litigating and advising upon the effect of the joint insurance provisions in both the JCT and NEC standard forms.

He has significant experience in arbitration (both as advocate and arbitrator) and is instructed in international arbitration.

His cases include:

- *A v. B* (2019) (Dubai International Arbitration Centre; claim by contractor for wrongful termination of contract in context of IT systems integration project)
- Advising on dispute arising out of EPC contract for the construction of a power plant in the Middle East (2018)
- Acting in dispute relating to insurance cover of subcontractor in £multi-million claim arising out of defective construction of stands at sports stadium (2018)
- *Millharbour Investments Ltd v. Caddick (Mill Harbour) Ltd* (2018) (dispute between developer, purchaser and sub-purchaser relating to construction of residential apartment block in Canary Wharf; operation of long-stop contractual termination provisions; effect of alleged defects on right to insist on completion; whether latent defects cover complied with contractual requirements)
- Adjudication arising out of the joint insurance provisions of the NEC 3 sub-contract (2018)
- A £30m claim against insurers arising out of dispute between design and build contractor and employer for alleged defects in the design of a waste processing plant; alleged failure of process to pass reliability testing; whether contractually waste was "acceptable waste"; cause of catastrophic failure of one of main structural members in composting hall (2015).
- Advising building owners on defects alleged in design, specification and installation of heat exchanger units in air conditioning system in office buildings (2015).
- *Gondola Holdings v. Mersh* (2014). Claim arising from flood damage to computing equipment caused by allegedly defective design and installation of air conditioning equipment in ceiling void; HVAC engineering evidence and analysis of design of a/c drainage system.
- A multi-million pound claim by a large construction company against solicitors instructed to advise on amendments to DOM/2 and NEC3 forms of subcontract; pay-when-paid provisions in standard contractual terms
- Claim by specialist concrete contractor against insurers arising out of alleged defects in certain structures at Wembley stadium; allegations of failure of design and construction management (2011).

## Property Damage





Neil has expertise both in breadth and in depth in relation to property damage cases. Many of his cases relate to fires or floods, whether they be claims brought against a defendant alleged to be responsible for starting a fire, or ancillary claims on an insurance policy or against a broker. He has significant experience of the technical issues that commonly arise, including investigation of the cause of the fire, issues relating to fire detection, prevention and spread, architectural/engineering questions arising out of the design of properties, compliance with building regulations, and product liability claims.

His cases in this field include:

- *Dalamd Ltd v. Butterworth Spengler Commercial Ltd* [2019] Lloyd's Rep IR 295 (claim against insurance broker arising out of fire at waste recycling facility; whether insured had breached external storage condition at time of fire)
- *Bacup Holding Co Ltd v. Navigators* (2015) (claim against insurers and brokers arising out of flooding of warehouse as a result of river breaking its banks during storm);
- acting for defendant contractors in claim arising out of flood at office premises (2015);
- claim arising out of fire at factory; issues included causation of fire; whether device controlling heater defective or negligently designed (2013)
- *Jones v. Environcom Ltd* [2010] Lloyd's Rep IR 676 (claim against insurers and broker re fire at waste processing plant; issues included causation of fire; whether insured's processes in breach of health and safety regulations)
- *Mopani Copper Mines plc v. Millenium U/W Ltd* [2009] Lloyd's Rep IR 158 (preliminary issues relating to significance of deletions to construction of reinsurance slip arising out of damage done to an electrostatic precipitator in smelting plant in Zambia)
- *Bartoline v. RSA* [2007] Lloyd's Rep IR 423 (whether expenses arising out of environmental clean-up following fire covered under public liability insurance policy)
- acting for subcontractor in relation to claim arising out of significant fire at a superstore; issues included causes of fire-spread, and compliance with building regulations (2003).

## Information Technology

Neil has significant experience in the context of information technology cases. He has recently acted for an IT contractor in a DIAC arbitration. He acted in two major insurance claims arising out of IT projects that have failed and is familiar with the complex issues arising out of delay in the context of a development programme and alleged failures to meet specification.

His cases include:

- *A v. B* (2019) (Dubai International Arbitration Centre; claim by contractor for wrongful termination of contract in context of IT systems integration project)
- Acting for resellers of telephone and broadband services in respect of the sale of a book of business (2018).

## Qualifications & Memberships

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Neil is a member of COMBAR, BILA and the London Common Law and Commercial Bar Association.

LLB (Bristol) European Legal Studies

## Insights

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### The COVID-19 challenge: insurance coverage in the time of lock-down

1 April 2020

In this article written for Thomson Reuters Practical Law, Neil Hext QC and Mark Cullen of 4 New Square provide guidance on the main types of insurance cover that are potentially relevant in relation to losses resulting from COVID-19. In particular, they consider whether insurance cover might be available under business interruption, event cancellation, employer's liability, D&O, credit and travel insurance policies.

### Whose knowledge counts? *Singularis v. Daiwa* and Attribution



6 November 2019

Last week, the Supreme Court handed down its decision in *Singularis Holdings Ltd v. Daiwa Capital Markets Europe Ltd* [2019] UKSC 50. That case got the attention that it did because of the tension with the result in *Stone & Rolls Ltd v. Moore Stephens*. Others have dealt with the detail of the decision in *Singularis* (including an excellent article by my colleague, Mark Cannon QC – see <https://www.linkedin.com/pulse/stone-rolls-rolled-away-auditors-singularis-holdings-v-mark-cannon-qc/>). I want to look more generally at the issues created by attribution in a corporate context, and how the courts in recent years have approached them.

## **Liquidated Damages after Termination: Triple Point Technology v. PTT**

5 March 2019

What happens to liquidated damages when a contract is terminated? Does the clause apply? If so, is the employer entitled to payment up until the point of termination, or beyond? These questions were addressed by the Court of Appeal in today's decision in *Triple Point Technology v. PTT*. Neil Hext QC considers the implications of the judgment.

## **Professional Negligence Claims arising out of GDPR**

14 May 2018

The penultimate instalment in 4 New Square's GDPR series- what happens when professionals get their GDPR advice wrong? Inevitably it will transpire that mistakes will have been made by professionals giving (often very expensive) guidance on GDPR compliance. Their clients will want to consider whether a claim for professional negligence can be made. In this article Neil Hext QC, Stephen Innes and Helen Evans of 4 New Square discuss some of the issues which are likely to arise in such claims.