



## Andrew Thompson QC

Call: 1991 Silk: 2014

Andrew is a sought-after, specialist commercial litigator, with particular expertise in: corporate litigation and arbitration (including shareholders' disputes, joint venture disputes, claims against directors and constructive trust claims); LLP and partnership disputes; corporate insolvency; commercial litigation (including large-scale contractual disputes, fraud and breach of warranty claims); and professional negligence claims (including lawyers, accountants, valuers and management consultants).

Andrew has been involved in a series of leading cases in these areas. He has specific expertise in litigation in the fund management industry. He has extensive trial experience in the Chancery Division and the Commercial Court and extensive appeal experience in the Court of Appeal. Andrew also undertakes advisory work in the same fields.

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### Litigation & Arbitration

- Commercial litigation
- Shareholders' disputes
- LLP / partnership disputes
- Joint venture disputes
- Arbitration
- Fund management / private equity disputes
- Professional negligence
- Insolvency
- Contractual claims
- Warranty claims

### Shareholders' disputes and other company litigation:

#### **Charterhouse Capital**

Unfair prejudice petition in a leading private equity business arising out of alterations to the articles to allow the expropriation of a minority stake by the majority stakeholders, raising complex issues of company law and valuation. Leading case on the alteration of articles. 6 week trial in 2014 and Court of Appeal in 2015. [2015] BCC 574.

#### **BAT Industries v Sequana**

Court of Appeal hearing June 2018. Judgment awaited. Will be the leading case on directors' fiduciary duties where the company is at risk of insolvency. First instance decision on the lawfulness of dividends, the compliance of accounts with the statutory and accounting rules as regards provisions and the effect of the rules regarding out of court reductions of capital and solvency statements. See also under Commercial Litigation below.

#### **Asa Group Plc**

Ongoing dispute between a minority shareholder and the board and administrators in a listed mining company, involving issues of company and insolvency law and allegations of fraud.

#### **Interactive Technology Corporation v Ferster**

Unfair prejudice petition involving allegations of blackmail and raising issues of 'clean hands'. See also under Commercial Litigation below.

### **Bankside**

Unfair prejudice claim against a trustee of a family discretionary trust holding shares in the company. Successful strike out of the claim.

### **Confidential arbitration**

London arbitration of dispute in foreign holding company in fund management structure, including derivative claims.

### **Edwardian Group**

Shareholders' dispute in a family owned private company which owns a highly valuable hotel group. Unfair prejudice petition under s.994 Companies Act 2006 involving allegations of quasi-partnership and breaches of fiduciary duty.

### **Guidezone**

Shareholders' dispute in a family owned private company. Unfair prejudice petition. Allegations of quasi-partnership.

### **SABMiller**

October 2016 scheme of arrangement as part of the acquisition of the then second largest brewer in the world.

### **Mwana Africa plc**

Shareholders' and boardroom dispute in listed mining company.

### **Bravepoint**

Dispute as to the authority of the directors of an English company to sell its main asset and wind down its business, arising out of a ruptured US joint venture.

### **Stimpson v Southern Private Landlords Association**

Early leading case on the statutory derivative claim. Successfully knocked out a derivative claim against the National Landlords Association by members of a regional landlords' association which had been taken over by the NLA in a strategic move, seeking to un-do the takeover or claim £5m. [2010] BCC 387.

### **Teighmore**

High value shareholders' dispute litigated in Jersey in 2005 in relation to the company then owning the Shard project. Acting for Sellar Property Group.

### **Konamaneni v Rolls-Royce**

Derivative claim in relation to foreign company, raising conflicts of laws issues. Underlying claim of bribery. Still the leading case on conflicts issues on derivative claims. [2002] 1 WLR 1269.

### **Confidential matters**

A huge variety of very high value confidential shareholders' disputes resolved by arbitration or early settlement.

### LLP and partnership disputes:

Andrew has a well-established practice in LLP law, particularly internal disputes within LLPs, which requires expertise in both company law and traditional partnership law, although LLP law is a distinct area of its own. He

brings his vast experience of shareholders' disputes in the company context to this new area. LLPs are to a large extent in this context 'companies in disguise'.

### **F&C v Barthelemy**

Dispute within an LLP hedge fund management vehicle, including a trial spanning 9 months in 2010-11, resolving contractual issues and claims under s994 Companies Act 2006. The leading case on rights and duties within LLPs. [2012] Ch 613.

### **Ilott v Bluecrest Capital Management**

A claim by a member of an LLP on the termination of his membership, and also a claim in partnership, in relation to a fund management business. Trial in 2012, Court of Appeal 2013.

### **Flanagan v Liontrust**

Claims for breaches of an LLP agreement via a petition under s994 Companies Act 2006, following expulsion from a fund management business, raising the novel and important issue of whether such agreements can be terminated for repudiatory breach. Leading case on the effect of LLP agreements. Tried January-February 2015. Appeal June 2017.

### **Confidential arbitration**

Arbitration of members' dispute in highly valuable fund management business.

### **Kennedy McKeand**

Claim against a member of an LLP by other members, strike out on the basis of the reflective loss principle applied to LLPs.

### **Halliwells LLP**

Technical issues arising in the high profile administration of this legal services LLP. See restructuring and insolvency below.

### **Confidential matters**

A huge variety of very high value confidential disputes within different fund management businesses (private equity, hedge funds and long only) resolved by arbitration or settlement short of court.

Recent multiple disputes in a high profile international law firm using traditional partnership structures.

Regular advice on LLP structures.

## Commercial Litigation:

### **BAT Industries v Sequana**

Acting for BAT Industries in a multi-party, multi-jurisdictional commercial dispute concerning liability for environmental pollution of rivers in the United States, and a claim in Chancery Division for over US\$800 million in respect of dividends paid out by a company in the face of a contingent indemnity liability in respect of such pollution, allegedly unlawfully, in breach of fiduciary duty and as a transaction defrauding creditors under s423 Insolvency Act 1986. Trial 2016. Court of Appeal June 2018.

### **Interactive Technology Corporation v Ferster**

Claim for fraud and breach of fiduciary duty, with freezing and search and seizure orders, with a related claim for unfair prejudice alleging blackmail. Court of Appeal May 2016. Trial June-July 2016.

### **MIG v Serco**

Claim relating to consultancy services provided to an Indian outsourcing company acquired by the Serco Group.

### **DEG-Deutsche Investitions (“DEG”) v Koshy and Gwembe Valley Development Co v Koshy and related actions**

Acted for a state-owned German bank in a long running dispute arising out of an investment in Zambia, involving originally insolvency issues and claims in fraud and for breach of director’s fiduciary duties. Trial in 2001 and Court of Appeal in 2002-3 ([2004] 1 BCLC 131 (CA)); which were then the subject of fresh actions by the original defendant seeking to set aside orders in the original actions on grounds of alleged fraud, which were successfully struck out at first instance, upheld in the Court of Appeal [2008] EWCA Civ 27. Additional reported decisions include [1999] BCC 953 (Park J), [2000] 2 BCLC 705 (Rimer J), [2001] 3 All ER 878 (CA), [2002] 1 BCLC 478 (Rimer J), [2005] 1 WLR 2434 (Hart J).

### **Professional Negligence:**

#### **BAT Industries v PwC**

Auditors’ negligence claim related to BAT Industries v Sequana. See Commercial Litigation above. Concerning payment of alleged unlawful dividends of over \$800m.

#### **AIB v Brabners**

Solicitors’ and valuers’ negligence claims.

#### **Scottish & Newcastle v PwC**

Unusual £80 million professional negligence claim in the Commercial Court arising out of management consultancy services provided in relation to the redesign of the claimant’s supply chain.

#### **Confidential matters**

Cases involving advice on corporate transactions affected by professional negligence, such as defective reductions of share capital.

## **Restructuring & Insolvency**

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‘Very good on the corporate side of insolvencies.’ – Legal500 (Insolvency)

#### **BAT Industries v Windward Prospects**

Application by BAT for the appointment of receivers over a claim by a debtor for \$800m in relation to unlawful dividends (November-December 2013); as part of an ongoing multi-headed series of commercial disputes in the Commercial Court and the Chancery Division.

#### **BAT Industries v Sequana**

See Commercial Litigation above. Claims for over US\$800 million in respect of dividends paid out by a company in the face of a contingent indemnity liability including claims for breach of fiduciary duty in an insolvency context and as transactions defrauding creditors under s423 Insolvency Act 1986. Trial 2016. Court of Appeal June 2018.

#### **Damovo**

A €50 million commercial dispute in relation to a multi-jurisdictional IT services group in administration. Claims for breach of duty against former directors of the group, arising out of a failed fundraising to stave off insolvency immediately prior to the administration and accounting practices in the Italian subsidiary in the group.

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### Halliwells LLP

Acted for the Administrators on the successful transition from administration to liquidation in 2011-12 – a legally complex and very sensitive case.

### Administration and liquidation disputes

Numerous applications for administration and disputes in administrations and liquidations.

## Memberships and publications

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Chancery Bar Association

COMBAR

Contributor to FromCounsel online company law service

Author of chapter on “Disputes arising from the ownership of the private equity house” in Private Fund Dispute Resolution, PEI 2014.

Contributor to “Company Directors: Law and Liability” Ed Sinclair, Vogel and Snowden.

## Ranked in

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### Chambers & Partners –

Company, Partnership, Commercial Dispute Resolution

### Legal 500 –

Company & Partnership, Insolvency