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## Nigel Dougherty

Call: 1993

Nigel is a highly regarded senior junior. He is particularly sought-after in complex corporate and commercial litigation, often involving an international element.

His main areas of practice are company and corporate insolvency advice and litigation, in particular, minority shareholder disputes, directors' duties, takeovers and mergers, directors' service contracts, shareholder agreements and business/share acquisition agreements and claims.

He has extensive experience of general Commercial Law particularly banking and sale of goods; and professional negligence – in particular, involving solicitors and accountants/auditors.

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### Litigation & Arbitration

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- Shareholder disputes
- Commercial disputes
- Professional negligence
- Warranty claims
- Joint venture disputes
- Fraud and asset recovery
- Fiduciary obligations
- Interim remedies

### Significant cases include:

#### **JKX Oil & Gas Plc v Eclairs Group Ltd [2015] UKSC 71**

Acted for successful party in relation to the leading Supreme Court judgment on whether the proper purpose test for the exercise of directors' duties applies to the operation of Part 22 of the Companies Act 2006 and disenfranchisement provisions in a public company's articles of association.

#### **Barclays Bank plc v Nylon Capital LLP Ref: [2011] 2 Lloyd's Rep 347**

Acted for successful bank at first instance and on appeal on the proper construction of an expert determination clause. Summer 2010 – Undertook the lead advocacy role on hearing of a complicated international arbitration under LCIA Rules, involving claims for misrepresentation and breach of fiduciary duty, as well as issues of Russian, Cypriot, BVI and English law.

#### **Kiani v Cooper Ref: [2010] 2 BCLC 427**

Acted for successful applicant in the first reported case of the Court granting permission, following a contested hearing, for a shareholder to continue a derivative claim under the Companies Act 2006.

#### **Investment Dar Co KSCC v Blom Development Bank SAL Ref: [2009] EWHC 3545 (Ch)**

Acted for the defendant investment company in a case that established the defendant's arguable right to rely upon a breach of Sharia law as a defence to a claim in England.

### **FanmailUK.com Limited v Robert Cooper Ref: (2008) BCC 877**

Acted for the respondent in successfully resisting an application for permission to continue a claim as a derivative claim under the Companies Act 2006.

### **Irvine v. Irvine Ref: [2007] 1 BCLC 445**

Acted for successful majority shareholder in establishing that a minority shareholder's interest in a non quasi-partnership company was to be valued on a discounted basis for the purposes of an order under section 461 of the Companies Act 1985.

### **Re Servacomm Redhall Ltd, Cunningham v. Secretary of State for Trade and Industry Ref: [2006] 1 BCLC 1**

Acted for successful applicant on a complicated application for permission to act as a director of two companies notwithstanding the making of a disqualification order.

### **Ultraframe (UK) Limited v. Fielding Ref: [2005] EWHC 1638 (Ch); [2006] EWCA Civ 1133**

Acted for the successful defendants in a 7-month trial involving allegations of breach of directors' duties, the alleged misappropriation of businesses and the question of an alleged knowing assister's liability to account for profits made by another.

### **BWE International Ltd v. Jones Ref: [2004] 1 BCLC 406 (Court of Appeal)**

Acted for the successful appellant on an appeal concerning the proper construction of pre-emption articles.

### **Rose v. Lynx Express Limited Ref: [2004] 1 BCLC 455 (Court of Appeal)**

Acted for the successful appellant on an appeal concerning the appropriate test for a Court to order pre-action disclosure.

### **Sutton v. GE Capital Finance Limited Ref: [2004] 2 BCLC 662 (Court of Appeal)**

Acted on a successful appeal concerning the duties of a receiver to his appointor and the proper exercise of powers under Section 236 of the Insolvency Act 1986.

### **Folkes Group plc v. Alexander Ref: [2002] 2 BCLC 254**

Acted for a company on the construction and effect of a resolution seeking to alter its Articles of Association.

### **Re Pimlico Capital Limited Ref: [2002] 2 BCLC 544**

Acted for the company on a successful strike-out application concerning the entitlement of a contributory to maintain a winding-up petition in respect of a company incorporated abroad.

### **Scotto v. Petch: Re Sedgefield Steeplechase Company (1927) Limited**

#### **Ref: [2000] 2 BCLC 211 (Lord Hoffmann at first instance); [2001] BCC 889 (Court of Appeal)**

Acted for the company at first instance and on appeal in a case concerning questions of whether the entry by shareholders into agreements concerning their shares activated pre-emption provisions in the company's Articles of Association.

### **Re Howglen Limited Ref: [2001] 1 All ER 376**

Acted for the successful clearing bank in responding to an application for the production of documents under the Bankers' Books Evidence Act 1879. The case also considered the principles to be applied by the Court in ordering the production of documents by third parties under the Civil Procedure Rules.

### **Platt v. Platt Ref: [1999] 2 BCLC 745 (first instance); [2001] 1 BCLC 698 (Court of Appeal)**

Acted at first instance and on appeal for the successful former shareholders in an action against a director who purchased their shares on the basis of misrepresentations and/or non-disclosure and/or in breach of his fiduciary duty.

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### **Vision Express (UK) Ltd v. Wilson Ref: [1998] BCC 173**

Acted for successful applicant to enforce terms of a Tomlin Order involving a company's purchase of its own shares not previously authorised in accordance with the Companies Act 1985.

### **Secretary of State for Trade and Industry v. Cleland Ref: [1997] BCC 473**

Acted for successful second respondent in proceedings to resist the issue of directors' disqualification proceedings out of time.

### **Tam Wing Cheun v. Bank of Credit and Commerce Hong Kong Ltd Ref: [1996] BCC 388**

Acted for successful respondents to Privy Council appeal raising issues of insolvency set-off and the effect of a charge over a bank deposit by a depositor in respect of a company's indebtedness.

## Restructuring & Insolvency

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### Significant cases include:

#### **Re Hycarbex-Asia (2014)**

Cross-border insolvency litigation. Application by the Singaporean liquidators of Hycarbex-Asia for UK recognition of Singaporean liquidation proceedings as a means of achieving a stay of pending ICC arbitration proceedings.

#### **Sutton v. GE Capital Finance Limited Ref: [2004] 2 BCLC 662 (Court of Appeal)**

Acted on a successful appeal concerning the duties of a receiver to his appointor and the proper exercise of powers under Section 236 of the Insolvency Act 1986.

#### **Re Pimlico Capital Limited Ref: [2002] 2 BCLC 544**

Acted for the company on a successful strike-out application concerning the entitlement of a contributory to maintain a winding-up petition in respect of a company incorporated abroad.

#### **Tam Wing Cheun v. Bank of Credit and Commerce Hong Kong Ltd Ref: [1996] BCC 388**

Acted for successful respondents to Privy Council appeal raising issues of insolvency set-off and the effect of a charge over a bank deposit by a depositor in respect of a company's indebtedness.

## Memberships and publications

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Chancery Bar Association

COMBAR

Contributor to "Company Directors: Law and Liability" (1998).

Author (with Anne Fairpo) of "Company Acquisition of Own Shares" (6th ed), Jordan.

## Ranked in

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**Chambers & Partners –**

Company

**Legal 500 –**

Insolvency, Company & Partnership, Commercial Litigation