



Caroline McColgan



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"She expertly deals with particularly difficult and robust challenges to her position, whilst maintaining a cool, pragmatic and commercial head."  
(Legal 500, 2020)



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Caroline McColgan joined chambers in October 2011 following successful completion of her pupillage. Since then she has been developing a practice which is strongly focused on insurance, property damage, professional negligence and construction law. Caroline is a confident advocate and regularly appears in the High Court as well as before the Court of Appeal.

This year Caroline has been instructed to act for Zurich Insurance PLC in the FCA Test Case litigation, a landmark insurance claim concerning the response of various policies of business interruption insurance to the Covid-19 pandemic which has now been considered by the Supreme Court.

Caroline's current caseload also includes: 2 Entertain & Ors v Sony DADC, an £8m insurance dispute arising out of the London Riots in 2011; TRW v Whirlpool & Ors, a £9m product liability claim on foot in the TCC; a £115m fire claim arising out of the destruction of a stately home and a £4m construction claim raising an important question as to the validity of the 'complex structure theory'.

Early in her practice, Caroline was instructed on the major reinsurance case of Amlin Corporate Member Ltd & Ors v Oriental Assurance Company [2013] EWHC 2380 (Comm), appearing as junior counsel for the defendant at trial in the commercial court and on appeal to the Court of Appeal (see Amlin Corporate Member Ltd & Ors v Oriental Assurance Company [2014] EWCA Civ 1135).

Before coming to the Bar, Caroline read history at Magdalen College Oxford and then undertook the law conversion course in which she received a distinction. She is a contributing editor to *Emden on Construction Law*, co-authoring Chapter Two: "Formation and Validity of Contract".

## Commercial

Caroline has wide ranging experience of commercial litigation. She frequently deals with matters concerning the sale of goods and supply of services, breach of contract, misrepresentation, bailment, conversion, mortgages, estoppel, credit hire, corporate and personal insolvency.

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## Selected Cases

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- Acting for a major UK reinsurance broker in a dispute over unpaid commission.
- Acting for insurers in a claim for policy indemnity despite failure to comply with a condition precedent.
- Acting for a private company in a breach of contract claim concerning an automatic renewal clause in a supply agreement.
- Acting for a private individual in relation to a contract for the installation audio-visual services that were not provided. The claim made involved restitution for monies had and received.
- Acting for wholesalers in a claim for defective goods supplied to the prison service.
- Acting for the owner of a wind farm in a claim arising from failure of the electronics system installed.
- Acting for petitioners and creditors in bankruptcy and/or winding up proceedings. Acting for a well-known estate agent in claims for unpaid commissions.
- Acting for the defendants, a partner and the company he had established, in a dispute within a limited liability partnership. After a breakdown in relations between the partners, the company was set up and carried on the same business. An account of profits was sought under Reg.7(9) and (10) of the Limited Liability Partnerships Regulations 2001. The case was successfully resolved after a day's mediation.
- Advising in a claim for breach of duty by a mortgagee in possession. The case involved questions of the complex duties, which were owed to the mortgagor.

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## Construction & Engineering

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Caroline is regularly instructed in construction disputes. She has experience of dealing with claims for delay and disruption, loss and expense and defective works. She acts for employers, contractors, sub-contractors, insurers and individuals. In addition to her court practice, Caroline has been involved in a number of high value adjudication and arbitration matters. She frequently advises in claims for negligence and/or breach of contract against construction professionals.

Caroline has acted in several energy and natural resources matters, and previous instructions include multi-million disputes relating to works at power stations utilising alternative and emerging energy resources (notably wind and biomass). She is familiar with the issues that commonly arise in the context of such projects, including issues as to completion of works against contractual milestones, and is adept at handling the technical evidence required to resolve such arguments.

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## Selected Cases

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- Acting for a plumbing contractor in respect of defects in the soil stack system at a block of flats which raises important issues of limitation and complex structure theory. Caroline is being led by Daniel Shapiro QC.
  - Acting for a contractor in its defence and claims in contribution against the project engineerings in relation to defects in a warehouse. Damages are yet to be quantified but may exceed £20m+. Caroline is being led by Andrew Rigney QC;
  - Acting for a major UK contractor in its defence to a £12m claim alleging defects in the construction
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of a leisure centre. Part 20 proceedings have been brought against the architect, the structural engineer and a subcontractor. Caroline was led by Andrew Rigney QC.

- Acting for the Defendant in a £25m+ arbitration concerning defective microtunneling works on a major engineering project in Bahrain.
- Acting for the developer of a prestigious development in Belgravia in connection with a nuisance and party wall dispute. Caroline was led by Michael Curtis QC and instructed together with Crispin Winser and Michele de Gregorio.
- Acting for the Respondent in confidential adjudication proceedings concerning the electronics system installed at a Wind Farm. Caroline was led by Daniel Shapiro.
- Acting for the Defendant, a major national piling company, in a £6m claim for defective piling works. Caroline was led by Julian Field.
- Advising a contractor in a claim for unpaid fees where there were no formal contractual arrangements in place.
- Assisting with investigations into the Lakanal House Fire, which occurred in 2009. Caroline was particularly concerned with the buildings / structural issues which were raised and became very familiar with the provisions of the Building Regulations 2010.

## Insurance & Reinsurance

Caroline has substantial experience of insurance and reinsurance disputes.

She is presently instructed on behalf of Zurich in the FCA Test Case litigation about Covid-19 and whether various sample policies of business interruption insurance which are not contingent on material damage are triggered by the pandemic.

Other recent instructions include *2 Entertain Video Ltd & Ors v Sony DADC Europe Limited*, an £8m claim for loss following the destruction of a Sony Warehouse in North London during the 2011 riots in which Caroline was led by Ben Quiney QC. She is being led by Andrew Rigney QC in subrogated recovery proceedings arising out of a devastating fire at a Grade-I listed mansion house where the damages claimed exceed £115m. Early on in her practice, Caroline was instructed with Roger ter Haar QC to represent the Defendant in the major reinsurance case *Amlin Corporate Member Ltd & Ors v Oriental Assurance Company* [2013] EWHC 2380 (Comm). She acted as junior counsel at trial in the commercial court and on appeal to the Court of Appeal (see *Amlin Corporate Member Ltd & Ors v Oriental Assurance Company* [2014] EWCA Civ 1135).

## Selected Cases

- Advising on coverage issues (including Business Interruption) and generally in relation to the COVID-19 pandemic.
- Acting for a major UK reinsurance broker in a high value dispute over unpaid commission following a mid-term change of broker. The Claim settled shortly after Caroline prepared draft proceedings.
- Acting for a claimant policy holder in a £multi-million coverage dispute following a fire at a warehouse.
- Acting for insurers in one of the first direct claims under the Third Parties (Rights against Insurers) Act 2010
- Acting for claimant policy holders in a fire claim where insurers are attempting to defend

- proceedings for declaratory relief/damages on grounds of arson and other technical defences.
- Acting for the Defendant in a complex claim by an insurance broker against its principal (the insured) for an adjustment premium fee said to be due to an insurer. The matter raised difficult questions of agency and brokers' duties. It was settled on very favourable terms.
  - Advising an insured who had been declined cover on grounds of material non-disclosure.
  - Advising on the effect of the Third Parties (Rights against Insurers) Act 1930 and whether it could be relied upon to require an insurer to meet a set of personal injury claims directly.
  - Drafting a defence to a claim for declaratory relief (confirmation of cover) in a claim for consequential losses arising from storm damage;
  - Advising in an insurance brokers' dispute concerning the broker's right to sue the insured for an alleged breach of the insurance contract.

## Professional Liability

Caroline is regularly instructed in professional negligence matters. She has experience of dealing with a broad range of professions, including solicitors, managing agents and insurance brokers. She frequently acts in high value matters on her own account.

### Selected Cases

- Acting in confidential arbitration proceedings against an architect in relation to the development of a grade II listed property in Central London. Caroline is being led by David Sears QC.
- Acting for the defendant in a high value accountants' negligence action arising out of complex investment schemes. Caroline was led by Ben Quiney QC.
- Acting for the defendant firm in a claim for solicitors' negligence alleging a failure to identify Japanese Knotweed during a property conveyance.
- Acting for several firms of managing agents said to have breached their duty to manage commercial properties adequately, resulting in claims by third parties.
- Acting for a solicitor-executor in a very complex contentious probate dispute in which it was alleged he had breached his duty to manage the estate. Caroline was led by Dermot Woolgar.
- Acting for a provider of social housing in a brokers' negligence claim. The broker had failed to notify insurers of a high-value claim for tree-root induced subsidence, leaving it uninsured. Caroline was led by Michael Curtis QC and Andrew Davis.

## Property Damage

Caroline has extensive experience of Property Damage matters. She regularly advises on issues of subrogation and/or policy coverage and accepts instructions from both claimants and defendants. A number of the claims she has handled have involved defective electrical or plumbing products, which have resulted in fire and flood damage to premises. Caroline is comfortable in dealing with complex expert evidence and handling increasingly high value claims.

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## Selected Cases

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- FCA Test Case [2020] Commercial Court – acting for Zurich as 8<sup>th</sup> Defendant to the FCA’s claim to test the response of certain policies of non-damage business interruption insurance to Covid-19. Caroline is being led by Andrew Rigney QC;
- A v B & Anor [2020], TCC – Acting for the Claimant property owner and its insurers in a subrogated recovery for losses arising out of the destruction of a stately home.
- 2 Entertain & Ors v Sony DADC [2019], TCC – Acting for the Defendant warehouse-owner in this claim for damages following a catastrophic fire set during the London Riots. Caroline was led by Ben Quiney QC and represented Sony at all stages of proceedings, culminating in a 14 day trial in the TCC.
- TRW & Anor v Whirlpool & Ors [2019], TCC – Acting for a freehold owner of premises destroyed by a fire caused by a defective white goods product. Quantum exceeds £9m. Caroline is being led by Andrew Rigney QC.
- C v D [2019] – Acting for the Respondent in confidential arbitration proceedings concerning a large fire at industrial premises in the UAE. Caroline is being led by Andrew Rigney QC.
- X v Y [2017] – Acting for the Claimant in confidential arbitration proceedings arising out of a residential development in central London where damage had occurred as a result of basement excavation works at a neighbouring property.
- Tideland Ltd v Westminster City Council [2015], TCC – A £multi-million claim for tree root induced subsidence and raising difficult issues of quantum as well as liability. Caroline was led by Muhammed Haque QC.
- Chliaifchtein v Wainbridge Estates Belgravia Ltd [2015], TCC – Acting for the Defendant in a claim for nuisance and also involving complex issues under the Party Wall etc Act 1996. Caroline was led by Michael Curtis QC and instructed with Crispin Winser and Michele de Gregorio.
- Various Claimants v Lancashire County Developments Limited [2014], TCC – Acting for the defendant in several £multi-million claims arising from a catastrophic fire at a business park. Caroline was led by Graham Eklund QC and instructed with Miles Harris.
- Amlin Corporate Member Ltd & Ors v Oriental Assurance Company [2014] EWCA Civ 1135 – Acting for the Defendant at trial and on appeal in this major international reinsurance case concerning the correct interpretation and application of a typhoon warranty. Caroline was led by Roger Ter Haar QC and was sole junior.

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## Qualifications

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- Major Scholar, Inner Temple (2009 – 2010)
- BVC, BPP Law School (Very Competent) (2009 – 2010)
- Exhibitioner, Inner Temple (2008 – 2009)
- GDL, BPP Law School (Distinction) (2008 – 2009)
- Demyship, Magdalen College, Oxford (2006 – 2008)
- BA (Hons) University of Oxford (2005 – 2008)



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## Memberships

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- LCLCBA
- PNBA
- TECBAR

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## Recommendations

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"She is brilliant – extremely bright, immensely hardworking and very pragmatic. Nothing is too much trouble for Caroline and she is perfectly happy to roll up her sleeves and get stuck in."

Legal 500, 2021

"Quickly assimilated large amounts of information and provided succinct advice. She was prepared, stuck to her guns under pressure, and artfully deflected some of the more difficult issues we faced."

Legal 500, 2021

"She expertly deals with particularly difficult and robust challenges to her position, whilst maintaining a cool, pragmatic and commercial head."

Legal 500, 2020