



CONSTRUCTION, ENGINEERING AND
INFRASTRUCTURE
PROFESSIONAL NEGLIGENCE
JURISDICTION DISPUTES AND CONFLICT OF LAWS
GENERAL COMMERCIAL

David Johnson

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PRACTICE

David practises in the fields of domestic and international construction, engineering, energy, and information technology. David has been involved in numerous transport and infrastructure disputes, including several UK and international railway and urban railway projects. He is also acting as sole counsel in multiple disputes in relation to the capital expenditure (CAPEX) expansion programme at an international airport. In addition to these specialist areas he also advises and appears in respect of a range of other general commercial matters, both domestically and overseas, principally in the Far East and the Middle East.

He is instructed either as junior counsel or as sole acting counsel. David has also worked on-site with clients around the world where extensive on-the-ground support has been required. David has recently spent time working with a law firm in Singapore and has acted in disputes in the Philippines, Taiwan and Korea.

David is experienced in dealing with all major standard form building contracts (JCT, FIDIC, NEC3, ICE) and has appeared in numerous interim and final hearings, as well as project phase advisory and pre-action work. David has recently appeared successfully as junior counsel in the Court of Appeal and is currently acting as sole counsel in multiple international arbitration proceedings in the Middle East. David is also an accredited adjudicator.

CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

INTERNATIONAL ARBITRATION

- Acted as sole Counsel for an Omani contractor in £14m proceedings relating to a waste water network. Appeared in a 3-day arbitration hearing in Muscat, Oman in November 2018.
- Acting as sole Counsel in a £7m dispute concerning the construction of a desalination plant in Sohar, Oman.

- Acted in a \$1.4bn electricity transmission and distribution dispute in the Philippines in SIAC arbitration proceedings.
- Acted for a Singapore shipyard as sole counsel in relation to a termination dispute concerning the construction of a luxury 'superyacht' in China.
- Advised and prepared submissions on behalf of a Vietnamese employer concerning English law assignment and on demand bond issues in injunctive relief proceedings before the Korean courts, in support of arbitration proceedings between the employer and a consortium of Korean contractors.
- Acting as sole Counsel in relation to the construction of a wastewater disposal plant in Muscat, Oman.
- Acted as junior counsel on behalf of the employer in a dispute relating to the construction of a skyscraper in Dubai (ADCACC Rules; UAE law). The dispute, which related to delay and disruption claims and a claim for an extension of time, settled just prior to the final hearing.
- Acting as junior counsel for a Japanese client in relation to a £700m termination dispute on an information technology project which culminated in a six-week hearing on quantum in 2017.
- Carried out advisory work on behalf of a Taiwanese client in relation to the construction of an offshore wind farm.
- Carried out advisory work and drafted pleadings in proceedings concerning the construction of a Mass Rapid Transit (MRT) rail station in Singapore.
- Advised a Nigerian client in relation to the operation and termination of a Concession Agreement for the production and supply of explosives in Liberia.
- Acting as sole counsel in a £1m claim relating to negligent design of a data centre cooling system in the South East of England.
- Acted on behalf of a Singapore company as junior counsel in £2.5 million Final Account proceedings in respect of mechanical and piping works on a steam turbine project in the United Kingdom.
- Drafting pleadings relating to a claim for damages following the refurbishment and operation of an offshore drill ship.

LITIGATION

- **Bennett (Construction) Ltd v. CIMC (MBS) Ltd (formerly Verbus Systems Ltd) [2019]** EWCA Civ 1515: Appeared in the Court of Appeal as junior counsel (with Chantal-Aimée Doerries QC) for the successful Appellant in proceedings before Longmore LJ, Coulson LJ and Snowden J. The Court (overturning HHJ Waksman QC at first instance) concluded that certain Milestone payment provisions in a sub-contract did provide an adequate payment mechanism for the purposes of the Housing Grants Construction and Regeneration Act 1996 (as amended). The Court also addressed the operation of the Scheme for Construction Contracts, noting the lack of existing judicial guidance on its application, and observed that, save in exceptional circumstances, it did not exist to replace a workable payment regime that the parties had agreed with one based on a radically different set of parameters.
- **Clancy Docwra Ltd v. E.ON Energy Solutions Ltd [2018]** EWHC 3509 (TCC): Appeared as

junior counsel (with Steven Walker QC) in Part 8 proceedings before Jefford J. The proceedings concerned the interpretation of a sub-contract for the installation of an underground district heating network and responsibility for various ground conditions.

- **Portsmouth City Council v. Ensign Highways Ltd** [2015] EWHC 1969 (TCC): Appeared as junior counsel (with Peter Fraser QC, now Fraser J) for the successful claimant in Part 8 proceedings before Edwards-Stuart J. The claimant was held not to be under a duty to operate a service point regime in a 25-year PFI highways contract in accordance with express or implied duties of good faith, fairness or mutual co-operation.
- **Vivergo Fuels Ltd v. Redhall Engineering Solutions Ltd** [2013] EWHC 4030 (TCC): Appeared as junior counsel (with Stephanie Barwise QC) for the successful defendant. The claimant's termination of a mechanical and piping contractor on a biofuel plant was held to be a repudiatory breach of contract. The defendant successfully avoided the claimant's threatened £20m claim as a result. David acted in all stages throughout from disclosure up to and including appearance and cross-examination in trial before Ramsey J.
- **Walter Lilly & Co. Ltd v. DMW Developments Ltd** [2012] EWHC 1773 (TCC): Appeared as part of the counsel team. Akenhead J made a number of wide-ranging pronouncements on the law relating to global claims, delay and disruption, and claims for loss and expense, concurrent design liability and the operation of third-party settlement agreements.
- Appeared as sole counsel in Part 8 proceedings on behalf of Surrey County Council in respect of limitation period issues and claims under the Late Payment of Commercial Debts (Interest) Act 1998. David obtained an award of indemnity costs on behalf of his client and resisted enforcement of an adjudicator's decision in parallel proceedings (**Surrey County Council v. Chris Wheeler Construction Ltd**, unreported).
- Successfully acting as junior counsel for an international airport in claims against a D&B contractor, its insurer and broker for £10m damages claims arising out of design issues and defective construction of a multi-storey car park. The dispute involved extensive expert structural engineering evidence and insolvency, notification and insurance coverage issues.
- Acted as junior counsel on behalf of the employer in relation to a £200m dispute over an NEC3 contract concerning the construction of a metropolitan railway, including a pre-action application for specific disclosure.
- Acted as sole counsel in a dispute concerning the conversion works at the London Stadium in Stratford following the London 2012 Olympics.
- Acted as sole counsel on behalf of a supermarket roofing sub-contractor defending and bringing multiple contract, tort and restitutionary cross-claims against the main contractor, employer and specialist designer. David also advised on a number of complex limitation issues throughout.

ADJUDICATION

- Defending and subsequently commencing proceedings on behalf of an international airport in relation to a £36m dispute over an interim account on an NEC3 project concerning the construction and refurbishment of a crew reporting facility and coaching route.
- Advising and acting on behalf of an employer in respect of a £12m NEC3 contract dispute.
- Successfully defending a £5 million claim for wrongful termination brought against a managed

services contractor by a number of housing trusts.

- Acting as junior counsel for a joint venture PFI contractor in multiple linked adjudications concerning fire-stopping measures at a hospital.
- Acting for the employer in a claim against an architect concerning design and contract administration issues. David appeared at the hearing and conducted cross-examination of the defendant and its expert witnesses.

DELAY AND DISRUPTION

- Advising on the construction of the extension of time and loss and expense provisions in the JCT DB 2011 contract. David subsequently drafted adjudication submissions and provided tactical advice, running the case until settlement.
- Acting for a Singaporean employer in defending claims for extensions of time and prolongation/disruption costs in respect of multiple cladding and glazing projects.
- Advising on the merits of claims by an employer against a project manager and structural engineer arising out of the delayed completion of a supermarket.

ASBESTOS DISPUTES

- Acting in £3.5m arbitration proceedings involving allegations of defective construction and asbestos mismanagement in a luxury residential property in Warwickshire.
- Acting as sole counsel in claims against an asbestos removal contractor and building contractor in relation to asbestos discoveries in a school.
- Acting as junior counsel in defending a claim for fees by and bringing a counterclaim in professional negligence against an asbestos consultant in respect of asbestos surveys conducted at over 500 properties across the United Kingdom.

PROFESSIONAL NEGLIGENCE

- Advising on the merits and on quantum in relation to proposed claims in negligence and associated limitation issues against a litigation solicitor.
- Defending a claim involving the provision of architectural services in relation to a residential care home.
- Advising on contribution proceedings and limitation issues in a claim arising out of the defective design of a warehouse floor.
- Advising on quantum in relation to a claim against a residential property surveyor.
- Preparing responses to requests for further information in a claim relating to the construction of a visual arts facility.

JURISDICTION DISPUTES AND CONFLICT OF LAWS

David has experience of a number of cases involving issues of private international law.

Recent examples include:

- Advising on serving proceedings on a number of defendants residing in Austria, Switzerland and Liechtenstein, involving issues of private international law under the Brussels Regulation, the Lugano Convention and the English common law.
- Advising on service of proceedings, enforceability of judgments and cross-border insolvency issues between English, Jersey and Cayman Islands jurisdictions.

GENERAL COMMERCIAL

- Advising on the assignment of a number of bonds and guarantees from a Cambodian contractor on behalf of a Japanese bank.
- Advising on the drafting of board resolutions for a joint venture Indian property development company relating to the proposed sale of a number of assets.
- Advising on and drafting particulars of claim in a claim against a developer of software and hardware for use in biomedical equipment.
- Advising on the construction of a membership agreement subject to a group litigation order (GLO).
- Advising on the recovery of fees paid in respect of a bespoke aquarium and issues under the new Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- Advising on the construction of a supply agreement relation to charges incurred under the EU Emissions Trading Scheme.

In addition to all major standard contract forms, David has experience of numerous bespoke contracts in the construction, shipping and energy industries.

NOTABLE REPORTED CASES

Bennett (Construction) Ltd v. CIMC MBS Ltd (formerly Verbus Systems Ltd) [2019] EWCA Civ 1515

Clancy Docwra Ltd v. E.ON Energy Solutions Ltd [2018] EWHC 3509 (TCC)

Portsmouth City Council v. Ensign Highways Ltd [2015] EWHC 1969 (TCC)

Vivergo Fuels Ltd v. Redhall Engineering Solutions Ltd [2013] EHCW 4030 (TCC)

Walter Lilly & Company Ltd v. (1) Giles Mackay & (2) DMW Developments Ltd [2012] EWHC 1773 (TCC)

LEGAL TEXTS

Contributing editor to *'Hudson's Building and Engineering Contracts'*, 14th Edition (2020)

"Contractual Interpretation After Arnold v. Britton: What Does It All Mean?" ADR Digest, Issue 21, Autumn 2016

"Looking in the Right Direction? The Philosophy of NEC3" ADR Digest, Issue 19, Winter 2016

Contributing editor to *'Hudson's Building and Engineering Contracts'*, 13th Edition (2015)

"Security of Payment and Adjudication in Hong Kong" ADR Digest, Issue 18, Spring 2015

"Defective Premises Law: Time for Remedial Works?" published by the Society of Construction Law, June 2011; (2012) 2 Construction Law Journal 131

David edits a regular column in Building magazine with Sir Robert Akenhead, former Judge in Charge of the Technology and Construction Court.

QUALIFICATIONS AND AWARDS

2015	TECBAR accredited adjudicator
2011	Hudson Prize, Society of Construction Law, Joint Prize-Winner
2010	Called to the Bar of England and Wales
2009 – 2010	BVC, City Law School London - Outstanding Astbury Scholarship, Middle Temple
2005 – 2009	Bachelor of Civil Law, St Peter's College, Oxford University
2005 – 2008	BA (Jurisprudence), Mansfield College, Oxford University BCL – Distinction Finals – 1 st Class Law Moderations – Distinction College Scholarship (Mansfield College)

ADDITIONAL INFORMATION

David is a member of TECBAR, COMBAR and the Society of Construction Law. He was a member of the TECBAR Committee for a number of years.

David gives talks and seminars at solicitors' firms and to lay clients. He has recently given talks in Madrid, Seoul, Singapore and Dubai on subjects of contractual interpretation, concurrent delay, remoteness, liquidated damages, global claims and arbitration procedure. He has also given talks on topics including contractual and common law termination, adjudication enforcement, costs budgeting, design liability in construction contracts, and legal professional privilege.

RECENT RECOMMENDATIONS

"He is an exceptional barrister - hard-working with exceptional advocacy skills." "He is able to get up to speed quickly when dumped with documents; he is clearly a silk in the making."

Construction, Chambers & Partners UK Bar 2021

AtkinChambersBarristers

"He is tenacious, highly intelligent, and drafts with fine style. He is culturally adept, grasps concepts quickly, gets across vast swathes of material with skill, speed, and stamina."

Construction, The Legal 500 2021

"Shows strong knowledge and great attention to detail when handling complex construction disputes."

Construction, Chambers & Partners UK Bar and Global 2020

"He is able to identify the legal issues and come up with innovative solutions to complex problems in the case. He is not afraid to take on difficult points."

Construction, The Legal 500 2020

"Super pragmatic, very knowledgeable and approachable. He gets things done quickly and is years ahead of his call." "Very helpful, proactive and keen to help out. I was always impressed by how thorough he was in a short period of time."

Construction, Chambers UK Bar 2018

"He is a pleasure to work with and his drafting is always impressive." "He is proactive, practical and gets to grips with the details of complex matters extremely quickly."

Construction, Chambers UK Bar 2017

David Johnson is one of the standout construction juniors at the set under 10 years of call. Peers describe him as "an excellent junior, tenacious, charming and thoughtful with strong advocacy skills for his young call".

Who's Who Legal 2017