

TIM KILLEN

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"...simply superb knowledge of the law"

(Chambers UK)

Practice Overview

Tim has a busy commercial practice, with a focus on disputes with an international element. Tim has particular experience of actions in the insurance, construction, and financial sectors.

Many of Tim's cases involve issues of jurisdiction and choice of law arising out of cross-border litigation. Tim has particular experience of actions in the DIFC Courts in Dubai, and of claims and arbitrations involving GCC countries.

Before coming to the Bar Tim taught law at university level, first as a seminar tutor in tort law at the University of Birmingham and later as a sessional lecturer at Birkbeck College, University of London and a visiting lecturer at the University of Osnabrück in Germany. In the 2014/5 academic year Tim was a Tutor (Non-Stipendiary College Lecturer) in Tort at Hertford College, University of Oxford.

Commercial Dispute Resolution & Arbitration

Tim's commercial practice encompasses a wide variety of complex contractual claims, cases involving share purchase agreements, the securitisation of mortgage debt, the alleged mis-selling of structured financial products, the enforcement of sole agency agreements, international contracts for construction projects and the sale of goods, issues of jurisdiction and choice of law, and claims arising out of and in support of arbitration and adjudication proceedings.

Tim also acts as counsel in domestic and international arbitration proceedings, and has experience in both institutional and ad hoc arbitrations.

Practice areas

Commercial Dispute Resolution & Arbitration
Commercial Fraud
Construction
Insurance & Reinsurance
Private International Law
Professional Negligence
Property Damage

Memberships

COMBAR
TECBAR
LCLCBA

Qualifications

MA (Oxon) (Hertford College, Oxford University – Law (Jurisprudence) with German Law)

Education

University of Oxford



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Current and Recent Work

Arbitrations

Acting in linked LCIA arbitrations concerning the construction of a gas-fired power plant (Zurich seat)

Acted in Court proceedings in support of an arbitration concerning long-tail reinsurance contracts (Commercial Court, London)

Acted in Court proceedings in support of an ICC arbitration (Paris seat) concerning the construction of a biomass power station (TCC, London)

Acted (as sole counsel) in an ad-hoc London-seated arbitration under the IBA Rules (English and Israeli company dispute over exclusive supply agreements)

Acted (as sole counsel) for German, Luxemburg, Delaware and English companies in a multiparty ICC Arbitration arising out of a large property investment scheme

Acted (led by Neil Moody QC) for a business interruption insurer in an ad-hoc arbitration (UNCITRAL rules) concerning coverage under a manufacturing policy.

Acted (as sole counsel) for a consortium of investment banks in an emergency application for injunctive relief in support of a DIFC-LCIA Arbitration arising out of security taken over an oil rig (DIFC Courts, Dubai)

Acted (as sole counsel) for a major department store in a dispute concerning shop fit-out works (JCT/CIMAR)

Court Work

Acting for a major Middle Eastern Insurance company in a US\$30m dispute concerning an alleged agreement for third party administration services (DIFC Courts, Dubai)

Acted for a telecommunications equipment supplier in a claim for breach of contract against a supplier of electricity cables (TCC, London)

Acted (led by Neil Moody QC) in a dispute concerning the adequacy of a traffic deck coating system supplied for use in the Dubai Mall, UAE (TCC, London)

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Acted for a German reinsurer in a claim against a Swiss loss adjuster for breach of contract, unjust enrichment, breach of fiduciary duty and breach of trust in respect of services carried out in relation to the Christchurch earthquakes in New Zealand in 2010/11 (London Mercantile Court)

Acted (as sole counsel) for a Singaporean jeweller in a c. US\$2.8million claim for breach of consignment agreements by a London-based jeweller (Commercial Court, London)

Acted (as sole counsel) for a South African investment bank in an \$11million claim for breach of sale and purchase agreements arising out of a skyscraper development in Dubai (DIFC Courts, Dubai)

Acted (as sole counsel) for insurers of a large oil refinery in a £1.5million claim concerning the quality of gas oil

Obtained summary judgment, following 4 days of hearings, on a c. £570,000 loan agreement, which was alleged by the Defendants to be a gift (QBD)

Acted (as sole counsel) for the successful Respondent Bank in an appeal relating to the strike out of costs proceedings and the scope of the grant of relief from sanctions (DIFC Courts, Dubai)

Acted (led by Alexander Layton QC) in a contractual dispute between a German supplier of raw materials and an English manufacturer, featuring a challenge to a purported agreement as to jurisdiction (Commercial Court, London)

Commercial Fraud

Tim's commercial fraud practice complements his commercial practice and he has experience of actions involving allegations of inducing a breach of contract, unlawful interference with economic interests, deceit unlawful means conspiracy and breach of confidence. Tim has particular expertise in cases involving alleged fraudulent activity with an international element.

Current and Recent Work

Acting (led by Mark Vanhegan QC) in a £100m breach of confidence claim concerning allegations of misuse of confidential trade secrets (Chancery Division)

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Acting in a claim by a large manufacturing company against a former manager for breach of fiduciary duty arising out of invoicing processes (Chancery Division)

Acting for a former CEO of an international energy company in a claim for unpaid bonus, concerns allegations of breach of fiduciary duty (ADGM Courts, Abu Dhabi)

Acting for Russian Individuals in an alleged fraud concerning Russian company formation (Commercial Court, London)

Acted for a German reinsurer in a claim against a Swiss loss adjuster for breach of contract, unjust enrichment, breach of fiduciary duty and breach of trust in respect of services carried out in relation to the Christchurch earthquakes in New Zealand in 2010/11 (London Mercantile Court)

A claim by a company against former auditors for allegedly failing to spot a VAT fraud

A claim by an engineering company against a former employee and a potential competitor for the alleged unauthorised use of commercial software licences held on a central computer network (Mercantile Court)

Advice and representation in various cases involving obtaining and resisting freezing injunctions and other emergency interim orders, including Norwich Pharmacal relief and non-party disclosure orders

Construction

Tim has a busy construction practice with experience of construction arbitrations (JCT/CIMAR, LCIA, ICC and ad hoc), adjudications (both statutory and contractual), and numerous claims in the TCC. Many of Tim's cases involve consideration of standard form construction contracts, including JCT, ICE, NEC and FIDIC. Tim's experience in property damage and insurance claims means he is particularly well-placed to deal with complex issues of technical evidence and issues concerning the insurance of construction projects.

Current and Recent Work

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Acting in linked LCIA arbitrations concerning the construction of a gas-fired power plant (Zurich seat)

Acted in Court proceedings in support of an ICC arbitration (Paris seat) concerning the construction of a biomass power station (TCC, London)

Acting (led by Neil Moody QC) in a dispute concerning the construction of a large residential development (TCC, London)

Acted in a statutory adjudication concerning milestone payments for the construction of a power plant

A preliminary issue trial concerning the proper interpretation of a modified JCT contract, raising issues of joint insurance (TCC, London)

Acted (led by Neil Moody QC) in a dispute concerning the adequacy of materials supplied to construct the car parks of the Dubai Mall, Dubai UAE (TCC, London)

Acted (led by Neil Moody QC) on behalf of a main contractor against a civil and structural engineer sub-contractor concerning allegations of professional negligence in the design of underpinning works during the construction of a hotel. Included a substantial delay claim (TCC, London)

Acted in an arbitration (JCT/CIMAR) on behalf of a luxury department store regarding the adequacy of store fit-out works

Acted (led by Neil Moody QC) for the successful main-contractor respondents in a statutory adjudication relating to the construction of a flood management scheme

Insurance and Reinsurance

Tim has experience in both insurance and reinsurance matters, particularly in relation to issues of policy coverage and interpretation.

Current and Recent Work

Acted in Court proceedings in support of an arbitration concerning long-tail reinsurance contracts (Commercial Court, London)

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Acted for CAR insurers in proceedings concerning issues of joint insurance of a large construction project in central London (TCC, London)

Acted (with Neil Moody QC) in an arbitration (UNCITRAL Rules) concerning coverage under a manufacturing policy.

Acted (as sole counsel) for insurers in a coverage dispute concerning insurers' liability under a marine trades policy (Mercantile Court)

Acted for a German reinsurer in a claim against a Swiss loss adjuster for breach of contract, unjust enrichment, breach of fiduciary duty and breach of trust in respect of services carried out in relation to the Christchurch earthquakes in New Zealand in 2010/11 (Mercantile Court)

Acted as junior counsel (with Neil Moody QC and Sonia Nolten) in a multi-million pound fire claim, which raised issues of policy coverage, misrepresentation, material non-disclosure, waiver and the operation of the FSMA and ICOBS Rules (Commercial Court, London)

Acted (as sole counsel) on behalf of a leading insurance and reinsurance company in the Middle East in a c. US\$2million claim relating to issues of jurisdiction arising out of potential liabilities under six quota share reinsurance treaties (DIFC Courts, Dubai)

Defended a claim on behalf of an insurer on the basis that the insured used fraudulent means or devices in the claims process (Chancery Division)

Advice and representation relating to the coverage of a pollution legal liability policy, CAR policies, a jewellers' block policy, trade credit policies and various business interruption, commercial risk, motor and home insurance policies

Private International Law

The international nature of many of Tim's cases often lead him to deal with issues of jurisdiction and choice of law in the context of both arbitration and court proceedings.

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Tim has particular experience of actions in, and involving, the Middle East and has appeared on a number of occasions before the Courts of the Dubai International Financial Centre (DIFC). Tim is also one of the few practitioners to have appeared before the Courts of the Abu Dhabi Global Market (ADGM).

Tim frequently acts in cases concerning provisions of foreign law, and has experience of cases governed by the law of Belgium, Denmark, Finland, France, Germany, Ireland, Israel, Luxemburg, Norway, Pakistan, Russia, Singapore, Switzerland, the UAE, and the USA (Delaware, New York, Texas).

Current and Recent Work

Acting for a major Middle Eastern Insurance company in a US\$30m dispute concerning third party administration services (UAE governing law, DIFC Courts, Dubai)

Acting for a former CEO of an international energy company in a claim for unpaid bonus, concerns allegations of breach of fiduciary duty (ADGM Courts, Abu Dhabi)

Acted (as sole counsel) in an ad-hoc London-seated arbitration under the IBA Rules (English and Israeli company dispute over exclusive supply agreements, concerning issues of applicable law)

Acted (as sole counsel) for German, Luxemburg, Delaware and English companies in a multiparty ICC Arbitration arising out of a large property investment scheme (raised issues of applicable law, and choice of law rules applicable in arbitrations)

Acted for a German reinsurer in a claim against a Swiss loss adjuster for breach of contract, unjust enrichment, breach of fiduciary duty and breach of trust in respect of services carried out in relation to the Christchurch earthquakes in New Zealand in 2010/11. Considered issues of incorporation of jurisdiction clauses from a master contract and the requirement of "evidenced in writing" for the purposes of Article 23 of the Lugano Convention (Mercantile Court)

Acted (as sole counsel) for a Singaporean jeweller in a c. US\$2.8million claim for breach of consignment agreements by a London-based jeweller; raised issues of jurisdiction and applicable law (Commercial Court)

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Advising a German private bank on the recovery of money paid in error to a London-based bank via a multibanking payment system

Acted (led by Alexander Layton QC) in a contractual dispute between a German supplier of raw materials and an English manufacturer, featuring a challenge to a purported agreement as to jurisdiction (Commercial Court, London)

Professional Negligence

Tim has experience in actions involving a wide range of professionals including accountants/auditors, surveyors, loss adjusters, architects, builders and other construction professionals, solicitors, bankers and insurance brokers.

Current and Recent Work

Acted (led by Neil Moody QC) on behalf of a main contractor against a civil and structural engineer sub-contractor concerning allegations of professional negligence in the design of underpinning works during the construction of a hotel (TCC, London)

Claim against a tax adviser for failing to advise on US tax liabilities under a personal investment scheme.

A multi-million pound claim, (led by Daniel Crowley), against an insurance broker for a negligent failure to advise on insuring a commercial risk following a company restructure (Mercantile Court)

Various surveyors' negligence cases, including an action involving arguments of undisclosed agency arrangements and corporate banking structures (Chancery Division)

Various solicitors' negligence actions, including allegations of failures to advise, failures to secure easements and failures to secure good title in a property conveyance

Cases of accountants'/auditors' negligence, including allegations of a failure to spot a fraud allegedly carried out by company directors

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Property Damage

Tim has acted and advised in numerous cases concerning property damage caused by alleged breaches of construction contracts, fires, flooding, building work and subsidence. Tim is ranked as a leading junior in Chambers & Partners for Property Damage work, where he is recognised as having “expertise in fire and flood disputes” and for being “particularly good at construction-related matters [and being] known for the strong technical knowledge he brings to cases”.

Current and Recent Work

Acted (led by Neil Moody QC) in a dispute concerning a catastrophic fire in a shopping centre, alleged to have been caused by faulty electrical installations. (TCC, London)

Acted (led by Neil Moody QC) in a dispute concerning the adequacy of materials supplied to construct the car parks of the Dubai Mall, Dubai UAE (TCC, London)

Acted (led by Neil Moody QC) on behalf of a main contractor against a civil and structural engineer sub-contractor concerning allegations of professional negligence in the design of underpinning works during the construction of a hotel. Included a substantial delay claim (TCC, London)

Acted (led by Neil Moody QC) for the successful main-contractor respondents in a statutory adjudication relating to the construction of a flood management scheme

Acted for household insurers in a 2 day trial against a major computer manufacturer, where it was found that a fire was caused by a defective laptop battery (Recorder Hancock QC)

Acted for a local authority in a claim arising out a fire which started in a timber-framed building which was under construction (TCC, London)

Acted (led by Neil Moody QC) in a £12million claim arising out of the installation of an external wall insulated render system on multiple council-owned blocks in Glasgow (TCC, London)

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Various flooding claims for and against water companies and local authorities

A claim for losses arising out of the collapse of a marine crane (TCC)

A claim (led by Andrew Miller QC) concerning damage caused to a solvent processing plant following a crane collapse

Recommendations

"Very user-friendly, very attentive and very bright." **Chambers UK 2019**

"He gives clear, articulate pleadings and has an approachable and friendly manner." **Chambers UK 2019**

"He has quite simply superb knowledge of the law, and is both very commercially minded and extremely responsive." **Chambers UK 2018**

"Very hard-working and very bright, he gets involved in a case quite quickly and is willing to help with all stages of it." **Chambers UK 2018**

Significant Cases

Berardo v Stumpf Energy Ltd [2018] ADGM CFI 1 – Acted for the Claimant, former CEO of an international energy company in a claim before the Courts of the Abu Dhabi Global Market. Hearing concerned application brought by the Defendant to stay proceedings before the ADGM Courts pending the resolution of a criminal trial before the onshore courts in Abu Dhabi.

ADVA Optical Networking Ltd v Optron Holding Ltd [2018] EWHC 852 (TCC) – Acted for Claimants in a claim relating to the supply of allegedly defective electrical cables. Successfully opposed an application to amend a defence and resile from an admission six weeks before a five day trial.

Al Nahda Insulation Contracting LLC & Anor v Tremco Illbruck Export Ltd [2017] EWHC 956 (TCC) – Acted for the supplier of a car park surfacing system used in the construction of the Dubai Mall. Installation sub-contractor brought a £16m claim, but subsequently consented to strike out of the majority of shipments as breach of contract occurred on the dates of the bills of lading. The sub-contractor subsequently made an application to amend its pleading to attempt to circumvent issues of

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limitation. Supplier successfully opposed the application on the basis that the causation argument pleaded in response to limitation had no real prospect of success, and the application was made late. (Led by Neil Moody QC).

GB Building Solutions Ltd v SFS Fire Services Limited [2017] EWHC 1289 (TCC); 172 Con. L.R. 18 Preliminary issue trial considering the interpretation and effect of joint insurance provisions and modified terms of a JCT Sub-Contract relating to practical completion. Issue concerned whether the Main Contractor was able to maintain a claim against the Sub-Contractor for loss.

R + V Versicherung AG v Robertson and Co SA [2016] EWHC 1243 (QB); [2016] 4 WLR 106; [2017] 2 All ER 676; [2017] 1 All E.R. (Comm) 995; [2016] Lloyd's Rep I.R. 612 – Acted for the successful German reinsurer in a jurisdiction challenge brought by a firm of Swiss loss adjusters. Considered issues of incorporation of jurisdiction clauses from a master contract and the requirement of "evidenced in writing" for the purposes of Article 23 of the Lugano Convention. (Led by Charles Dougherty QC).

Bailey and Others v Glaxosmithkline (UK) Ltd [2016] EWHC 178 (QB), [2016] All ER (D) 44 (Feb) – Acted (with Jacqueline Perry QC and Niazi Fetto) for group action claimants under a Group Litigation Order against the pharmaceutical company responsible for producing the antidepressant drug "Seroxat" in a claim under the Consumer Protection Act 1987. Considers the extent of the court's case management powers following a lengthy *ad hoc* stay.

Firstrand Property Holding (Middle East) Limited v DAMAC Park Towers Company Limited CFI 030/2014 – Dubai International Financial Centre Court claim in deceit and breach of contract against a property developer in relation to the off-plan purchase of commercial units.

Bate v Aviva Insurance UK Limited [2013] EWHC 1687 (Comm); [2013] Lloyd's Rep IR 492; [2013] All ER (D) 138 – Multi million pound claim arising out of a fire at a large domestic property (with Neil Moody QC and Sonia Nolten); concerned issues of policy coverage and interpretation, alleged misrepresentation, material non-disclosure and alleged waiver by insurers.

Tradebe Solvent Recycling Limited v Coussens of Bexhill [2013] EWHC 3786 (QB); [2013] All ER (D) 10 – Action for business interruption and property damage losses arising out of a crane collapse at a solvent recycling plant. Concerned issues of causation and mitigation of loss. (Led by Andrew Miller QC)

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AAM Holding Limited and Others v First Capital of Switzerland Investment Bank Limited and Others CFI 044/2012 – Claim brought in the Courts of the Dubai International Financial Centre relating to various cross border investments. Considered the applicability of injunctive proceedings in relation to cheques issued in onshore Dubai and the relevance of pre-existing arbitration proceedings.

Mana v Clariden Leu Asset Management (Dubai) Ltd CFI 030/2011 – Represented the Dubai International Financial Centre registered investment Bank in an appeal brought by investors relating to the alleged mis-selling of structured financial products; issues of relief from sanctions and the strike out of detailed costs assessment proceedings.

Publications

“Can only two play that game? Interim measures and non-parties to arbitrations: A comparative analysis of the approach of the English and DIFC Courts”, *The Oath*, Issue 75, June 2018 (With Daniel Crowley)

“Business interrupted: matters to consider in BI disputes” *Lloyd’s List Insurance Day*, L.L.I.D. 2017, Nov 30, 7.

“Theoretical Justifications for the ‘Reliance Bar’” *Construction Law Journal* (2017) 33 Const. L. J. Issue 1 (Thompson Reuters) (With Neil Moody QC)

“Stigma Damages in Contracts of Sports Sponsorship” *Law in Sport*, 22nd November 2013 (with Stuart Benzie)

“Religious Discrimination: Opening a Pandora’s Box” *Issue 2*, 2010, *Gray’s Inn Student Law Review*

Case Comment: *Sanoma Uitgevers BV v The Netherlands* (Art 10 and Journalistic Privilege) *Issue 4*, 2009 of the *European Human Rights Law Review*

“Legality and Morality: Partners in Crime? – Self Interest and a Moral Ultra Vires” *The Cambridge Student L. Rev.* 1 (2007)) (Cambridge University Press/Heinonline)

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