

James Lockhart SC

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Admitted to the bar in 1996.

Appointed silk in 2009.

Entitled to practice in all Australian jurisdictions.

James Lockhart has a wide ranging practice involving the following disputes: general commercial, competition and regulatory, corporations, arbitration, insolvency, general equity, real property, professional liability and inquiry work. He also has extensive experience in representative (class) actions, acting for the lead class applicant and for defendants.

He regularly appears in the Federal Court of Australia, the Supreme Court of New South Wales, the High Court and various regulatory tribunals including the Australian Competition Tribunal conducting cases both at trial and on appeal.

Listed in the Litigation category of the Australian Financial Review's survey of best Australian lawyers (2008-2017). He is listed in Doyles Guide in Leading Commercial Litigation and Disputes Silks – Sydney. He is also listed in Chambers Global.

Selected recent cases

General commercial disputes

- *Swiss Re v Simpson [2018] NSWSC 233*. Defended claim brought against former CEO alleging misleading conduct in connection with the financial state of an ASX listed company, Forge Group prior to issue of project bonding in excess of \$100 million.
- *Popeye Holdco Pty Ltd v Intermediate Capital Asia Pacific 2008 GP Ltd (no 2) [2018] FCA 408*. Successfully defended an application for an injunction and damages brought by a management shareholder group against a private equity syndicate. The issues concerned misleading conduct at the time of a private equity buy out of management shareholders.
- *KPMG v de Groot Eylandt Trust*. Acted for KPMG in proceedings brought by a trust constituted for the benefit of indigenous Australians, against KPMG among others.
- *Kerr v AET*: Claim brought by unitholders against trustee for breaches of trust concerning forestry timber covenants. James is defending the professional trustee in NSW Supreme Court proceedings.

- *Grant-Taylor v Babcock & Brown Ltd*: shareholder groups alleging fraud on the market concerning misleading statements to market (2015) 322 ALR 723; [2015] FCA 149. Appeal to Full Court (2016) 113 ACSR 362.
- *HIH Limited*: shareholder groups alleging fraud on the market concerning misleading statements to market. (2016) 335 ALR 320, and ongoing.
- *Brewer v AAL Ltd*: successfully defended proceedings brought against Qantas by former employees of TAA concerning alleged superannuation entitlements. [2016] FCA 93; on appeal [2017] FCAFC 202.
- *Gunns Group*: proceedings brought by liquidator of Gunns group against KPMG (2016 – ongoing).
- Acting for syndicate of lenders in connection with New Royal Adelaide Hospital in SA proceedings (2016-ongoing).
- *Tamaya Resources/HFPS Ltd*: acted for directors in breach of duty proceedings: [2016] FCA 442.
- *International Petroleum Investment Corporation v IPBC (New Guinea)*: contractual dispute concerning valuation of listed shares: [2014] NSWSC 1289; on appeal [2015] NSWCA 363.
- *Korda ats Australian Executor & Trustees*: dispute over existence of trust over timber sale proceeds [2015] HCA 6; 317 ALR 225; [2014] VSCA 65, (Court of Appeal, Victoria).
- *MFS (Octaviar) v KPMG & ors*: Acted for KPMG defending NSW Supreme Court proceedings concerning allegations of audit negligence arising out of the MFS/Octaviar group collapse (2013-2106).
- *Goldie Marketing Pty Ltd v Financial Ombudsman Services Ltd*: proceedings against Financial Ombudsman Service (FOS) seeking review of decision: [2015] VSC 292.

Competition and consumer

- *CPDD v Nippon Yusen Kabushiki Kaisha* [2017] FCA 876. This was the first price fixing cartel case brought in Australia under the criminal cartel legislation. James acted for the respondent, Nippon Yusen Kabushiki Kaisha (known as NYK).
- *Australian Competition and Consumer Commission v Ramsay Health Limited*. Proceeding brought against a major hospital operator in Australia. The ACCC alleges that Ramsay misused its power in the market in an attempt to deter the competitive entry of another hospital services supplier. The case is ongoing.

- *Sea Swift Ltd*: Acted for Toll Holdings Ltd in Competition Tribunal proceedings for approval of merger with Sea Swift [2016] ACOMPT 9.
- Acting for various organizations assisting with current trade practices investigations/proceedings. (confidential).
- Frequently advising organizations concerning competition and consumer law issues across a variety of industries.
- *United Energy, CitiPower, PowerCor & Ors* Acted for Citipower and Powercor Limited, two Victorian electricity distributors in a dispute in the Competition Tribunal against the Australian Energy Regulator concerning Victorian 2011-2016 pricing determination.
- *Country Energy v. Australian Electricity Regulator*: Acted for Country Energy Limited in a dispute in the Competition Tribunal against the Australian Energy Regulator concerning NSW 2011-2016 pricing determination.
- Advised telecommunications providers concerning NBN access rights (ongoing)

Corporations Law

- Schemes of arrangement: James frequently appears in applications for court approval of corporate schemes of arrangement, usually involving mergers and takeovers. Recent examples include (i) *Westfield re Unibail -Rodamco* (the \$24 billion acquisition of Westfield by Unibail -Rodamco) [2018] NSWSC 584; (ii) *Billabong International Ltd* [2018] FCA 106; [2018] FCA 496 (iii) *SAI Global Ltd* [2016] FCA 1312; (iv) *OntheHouse Holdings Ltd* [2016] FCA 1167; [2016] FCA 1242; (v) *Re Novion* [2015] NSWSC 1295.
- Receiver's examinations into Dick Smith collapse (2016).
- Representing liquidators of Babcock & Brown and HIH Ltd in shareholder claims (2014-ongoing) – see above.
- *Swiss Re/QBE re Forge Group*: Representing directors in breach of duty suits: *Forge group (Swiss Re/QBE and class action proceedings)*
- *Tamaya Resources Ltd* [2016] FCA 442: represented directors in proceedings alleging breach of directors duties.

Insolvency

- Conducted numerous liquidator's examinations and bankruptcy examinations.
- Recent and ongoing briefs in various liquidations, including: Babcock and Brown, HIH Insurance Limited; Gunns group (for KPMG), Octaviar (MFS) group; Forge group (see above)

- *Shaolin Temple Foundation v Street Quinn: statutory demand proceedings, service requirements*: [2016] NSWSC 1766; [2016] NSWSC 1232.
- Acted for ANZ in Victorian proceedings involving Heavy Plant Leasing group (in liq) and Egans Mining services concerning bailment, liens and ownership of chattels (2013-2014).

Representative proceedings (class actions)

- A number of the proceedings above are class (representative) actions including: Forge group; Babcock & Brown; HIH Limited
- *Mercedes Holdings Pty Ltd v. Waters*: class action claim arising out of the failure of the MFS premium income fund. [2011] FCA 236; (2010) 186 FCR 450.
- *Auskay International Manufacturing & Trade Pty Ltd v Qantas Airways Ltd & Ors* Acted for Qantas in international freight cartel case (class action) [2010] FCAFC 129; [2009] FCA 1464.
- *Oasis Limited v ABN AMRO Limited* [2010] NSWSC 584; [2009] NSWSC 967. Acting for Oasis Limited and a representative class in Supreme Court proceedings against ABN AMRO alleging misleading conduct concerning investment in financial products.
- *Leonie's Travel Pty Ltd v Qantas Airways & Ors* (2010) 183 FCR 246; [2010] FCAFC 37; [2009] FCA 280 (2007-2010). Acted for Qantas Airways in a class action dispute brought by travel agents concerning contractual arrangements between airlines and travel agents.

Arbitrations

- *Inpex v JKC*. This is a long running private arbitration brought in the Singapore ICC. It concerns a large EPC contract for construction works for an LNG project. Ongoing.
- *Coeclerici v Gujarat NRE Coke*: proceedings to enforce international commercial arbitral award, at first instance and on appeal: appeal [2013] FCAFC 109; first instance [2013] FCA 882, and [2013] FCA 918 (stay application).
- *Traxys Europe v Balaji Coke*: application to enforce international arbitral award [2012] FCA 1416; and proceeding to appoint receiver: (2014) 318 ALR 85.

Inquiry work

- *Royal Commission into Trade Unions*.