

Curriculum Vitae James Lockhart SC

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James Lockhart SC

Admitted to the bar 1996.

Appointed silk in 2009.

Entitled to practise in all Australian jurisdictions.

Areas of Practice:

Commercial Professional Negligence

Trade Practices and competition Wills and Trusts

Corporate law/insolvency Appellate

Bankruptcy

Equity

Administrative Law

James Lockhart commenced practice at the bar in 1996. He took silk in 2009. He regularly appears in the Supreme Court of New South Wales and the Federal Court of Australia, conducting cases both at trial and on appeal. For each of the years 2008 to 2011 he was named in the Litigation category of the Australian Financial Review's survey of best Australian lawyers.

James has over 20 years of experience in commercial law. He was admitted as a solicitor in 1989 and gained his early years of experience working with Allens Arthur Robinson in their Sydney and Hong Kong offices.

James has a wide ranging commercial practice involving disputes of the following type: general commercial, competition and regulatory, corporate/ insolvency, personal insolvency, general equity disputes and professional liability. He also has extensive experience in representative (class) actions, acting for the lead class applicant and for defendants.

QUALIFICATIONS

Bachelor of Arts (University of Sydney) and Bachelor of Laws (University of Sydney).

SELECTED CASE EXPERIENCE

Some examples of James' case experience are as follows below. Further information about experience in particular areas may be obtained by contacting James' clerk, Dianne Strathdee: strathdee@tenthfloor.org

General commercial disputes

- *Weston v PBL and News Limited* [2011] NSWSC 433: Acting for New limited and directors in defending proceedings brought by special purpose liquidator of OneTel Limited.
- *Mercedes Holdings Pty Ltd v. Waters* [2011] FCA 236; (2010) 186 FCR 450. Acting for KPMG in defending class action claim arising out of the failure of the MFS premium income fund.
- Acting for KPMG and officers in connection with liquidators examinations arising out of the MFS/Octaviar group collapse (2010, 2011).
- *Symbion Medical Centre Operations Pty Ltd v Healthscope & Ors* [2011] NSWSC 701, and presently on appeal. Acting for major health services company in a restraint of trade dispute against Symbion Health.
- *Diageo Limited v Vok Beverages* (2011) Supreme Court: Acting for beverage distributor in a dispute concerning alleged breach of competition clause.

- *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.
- *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.
- *George Chapman & ors v ANZ Banking Group Limited (2007-2010)*. Federal Court proceedings alleging the making of misleading statements in contravention of the Trade Practices Act, arising out of sale of a business.
- *Healthscope Ltd v Symbion Health Ltd [2009] NSWCA 191*. Commercial proceedings against Primary Healthcare for recovery of break fee (2008) and on appeal (2009).
- *Dal Broi Family Wines Pty Limited v Australian Vintage Limited & Ors (2010)*. Senior counsel for McGuigan interests in Supreme Court proceedings concerning allegations of misleading conduct in connection with sale of a winery.
- *Woods v Qantas Airways Limited (2008-9)*. Senior counsel for Qantas Airways in proceedings concerning operation of Jetstar and Qantas Sale Act (2008-9).
- *Challenger Limited v MFS Limited & Ors (2008)*. Commercial proceedings brought by Challenger against MFS Limited (Octaviar Limited) and Stella Group (2008) concerning misleading statements made in contravention of the Trade Practices Act.

Competition and TPA regulatory matters

- *Citipower and Powercor Limited v. AER (2011)*. Acting for two Victorian electricity distributors in a dispute against the Australian Energy Regulator concerning 2011 pricing determination
- *ACCC v April Fine Paper & ors [2010] FCA 17* (international paper cartel case – penalty hearing). Senior counsel for two corporate and three individual respondents.
- *Country Energy v. Australian Electricity Regulator [2009] ACOMPT 8* (Competition Tribunal case). Lead counsel for one of a number of applicants in an electricity pricing case.

- *Auskay International Manufacturing & Trade Pty Ltd v Qantas Airways Ltd & Ors* [2010] FCAFC 129; [2009] FCA 1464. Appearing for Qantas in international freight cartel case (class action).
- *Australian Competition and Consumer Commission (ACCC) v Qantas Airways Ltd* (2008) 253 ALR 89. Price fixing case (penalty hearing).
- *Sydney Airport Corp Ltd v Australian Competition Tribunal* (2006) 155 FCR 124; (2007) ATPR 42-142. Appeared for Qantas in the Full Federal Court and High Court (special leave application). Involved access provisions under Part IIIA of the TPA.
- *Australian Competition and Consumer Commission v PRK Corporation Pty Ltd* (2009) (the “ports” case; acted for an individual respondent).
- *Seven Network News Ltd v News Ltd* (2007) ATPR (Digest) 42-274: (the “C7” case; appeared for Network Ten).
- *Application by Services Sydney Pty Ltd* (2006) ATPR 42-099. Junior counsel for Services Sydney in its application to Competition Tribunal for access to Sydney Water’s sewer systems.
- *Australian Competition & Consumer Commission v D M Faulkner Pty Limited & Ors* [2004] FCA 1666. Lead counsel for two respondents (price fixing case).
- *Qantas Airways Ltd* (2005) ATPR 42-065. Junior counsel for Qantas Airways in application to Competition Tribunal for authorization of merger arrangements with Air New Zealand.
- *Reading Entertainment Australia Pty Ltd v Birch Carroll & Coyle Ltd* (2002) ATPR (Digest) 46-220. Acted for Village and Greater Union cinema chains in misuse of market power dispute in the Federal Court (2002).
- *Seven Network Ltd (No 3)* (2004) 187 FLR 351 and *Seven Network Ltd (No 4)* (2005) ATPR 42-056. Junior counsel for Channel 7 in application to Competition Tribunal concerning access to Telstra cable and Foxtel set top units.
- Acted in a number of telecommunications matters against Telstra
- *Australian Competition and Consumer Commission v SIP Australia Pty Ltd* (2002) ATPR 41-877 (price fixing case; 6 day hearing and 1 day penalty hearing).
- *Sydney Airports Corp Ltd* (2000) 156 FLR 10. Acted for Sydney Airport defending application for access to terminal and freight facilities, brought under Trade Practices Act (2000).

Corporations Law, including breaches of directors obligations, takeover related disputes

- *Offstage Support Association v Time of My Life Pty Ltd* [2011] FCA 378. Acting for companies associated with the Colin Jacobsen family interests in various corporations list proceedings, including winding up applications.
- *AIM Resources v Flory & ors.* Supreme Court proceedings alleging breaches of directors duties. Senior counsel for two director respondents (2010).
- *Weston v PBL and News Limited* [2011] NSWSC 433: Acting for New limited and directors in defending proceedings brought by special purpose liquidator of OneTel Limited.
- Acted in various applications challenging Takeovers Panel decisions: *Australian Pipeline Ltd v Alinta Ltd* (2006) 24 ACLC 1207 and on appeal to Full Federal Court (2007) 159 FCR 301; and *High Court Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542; (2008) 82 ALJR 382; *CEMEX Australia Pty Ltd v Takeovers Panel* (2008) 68 ACSR 318; 106 ALD 5 and on appeal (2009) 177 FCR 98; *Glencore International AG v Takeovers Panel* (2005) 23 ACLC 1781; and *Glencore International AG v Takeovers Panel* (2006) 151 FCR 77.
- *Ho v Akai Pty Ltd (in liq)* (2006) 24 ACLC 1526; [2006] FCAFC 159. Lead counsel for Hong Kong based corporations. Proceedings including appeal concerned setting aside service outside Australia, shadow directors, breach of directors duties and insolvent trading.
- *OzEcom (in liq) v Hudson Investment Group Ltd [2007] NSWSC 719.* Counsel for one respondent in proceedings concerning breach of directors duties.
- Appeared and advised on various schemes of arrangement

Insolvency

- Conducted numerous liquidator's examinations and bankruptcy examinations.
- Acting for KPMG and officers in connection with liquidators examinations arising out of the MFS/Octaviar group collapse (2010, 2011).

- *Offstage Support Association v Time of My Life Pty Ltd* [2011] FCA 378. Acting for companies associated with the Colin Jacobsen family interests in various corporations list proceedings, including winding up applications.
- Appeared in various Federal Magistrate Court proceedings concerning personal bankruptcy and debtor's agreements (e.g. *Robertson & Anor v Moran & Anor* [2011] FMCA 496 and *Commonwealth Bank of Australia v Toma* [2009] FMCA 846).
- *Seeto v Bank of Western Australia* [2010] NSWSC 922. Acted for Bank of WA in defending action by owner of hotels to restrain sale of assets by mortgagee

Professional liability/responsibility

- *Mercedes Holdings Pty Ltd v. Waters* [2011] FCA 236; (2010) 186 FCR 450. Acting for KPMG in defending class action claim arising out of the failure of the MFS premium income fund.
- Acting for KPMG and officers in connection with liquidators examinations arising out of the MFS/Octavia group collapse (2010, 2011).
- Acted for solicitor in disciplinary proceedings in Fiji: (2010).
- *Graham v Hall* (2006) 67 NSWLR 135; Aust Torts Reports 81-857. Court of Appeal case establishing precedent concerning duty of care owed by justices of the peace and others in witnessing documents and the scope of such duty.
- General advice work concerning professional disciplinary matters including solicitors and dentists

Representative proceedings (class actions)

Of the above matters, a number have been representative proceedings:

- *Mercedes Holdings Pty Ltd v. Waters* [2011] FCA 236; (2010) 186 FCR 450. Acting for KPMG in defending class action claim arising out of the failure of the MFS premium income fund.
- *Auskay International Manufacturing & Trade Pty Ltd v Qantas Airways Ltd & Ors* [2010] FCAFC 129; [2009] FCA 1464. Appearing for Qantas in ongoing international freight cartel case (class action).

- *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.