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Kenneth MacLean KC

Barrister
Call 1985 Silk 2002



Scope of Practice

• Arbitration • Banking and Financial Services • Civil Fraud and Investigations • Commercial Litigation • Competition and EU Law • Employment • Energy and Natural Resources • Insurance and Reinsurance • Jurisdiction and Conflict of Laws • Professional Liability • Sports, Gaming and Licensing • Media, Entertainment and Broadcasting

Overview

Kenneth MacLean is a highly experienced advocate and adviser practising across a broad range of commercial litigation and arbitration disputes. Practice includes shareholder disputes, civil fraud claims, banking and finance litigation, jurisdiction challenges, competition claims and high profile professional negligence disputes.

He is a registered Foreign Lawyer of the Singapore International Commercial Court and is admitted as a member of the bars of Anguilla and the British Virgin Islands. He has also practised as a member of the Bar of the State of New York. He is a member of the ICC and the Premier League Disciplinary Panel. Kenneth is recommended in Chambers UK and The Legal 500. He is fluent in French and has a working knowledge of German.

CURRENT AND RECENT CASES INCLUDE

Standard Chartered plc v Guaranty Nominees Limited [2024] EWHC 2605 (Comm)
Successfully representing Standard Chartered at trial under the Financial Markets Test Case Scheme to determine the effect of the cessation of the publication of the London Interbank Offered Rate (LIBOR) on perpetual preference shares which provided for the payment of dividends by reference to that rate. The Divisional Court concluded that it was an implied term of the securities that on cessation of LIBOR publication, dividends should be calculated by Standard Chartered using a reasonable alternative rate.

BNP Paribas Trust Corporation UK Limited v Uro Property Holdings S.A.
Acting for Uro Property Holdings (which held a substantial portfolio of Santander's bank premises in Spain) in a claim brought by Bond Trustees for a Bond Make Whole Premium payment following the acquisition by Santander of Uro and Uro's resultant loss of special tax status under Spanish law. See also [2024] EWHC 2542 (Comm).

Republic of Mozambique v Credit Suisse International and others [2024] EWHC1957
Acting on behalf of Credit Suisse in claims brought by the Republic of Mozambique arising out of the so-called Tuna bonds affair.

ECU Group v HSBC

Acting for the defendant bank in Commercial Court proceedings involving allegations of foreign exchange rate manipulation and front running.

The Public Institution for Social Security v Al-Rajaan and others [2020] EWHC 2979
For the Pictet Defendants, defending claims exceeding US$850 million against more than 30 defendants in respect of alleged unlawful payments by financial institutions and intermediaries of unauthorised secret commissions to the First Defendant, Mr Al-Rajaan, the former Director General of the Claimant, a Kuwaiti public institution who operates Kuwait's social security system and pension scheme.

Emmerson International Corporation & Ors v. Mikhail Abyzov & Ors;
Acting on behalf of a number of defendants purportedly joined to and served with claims in this very heavy litigation. The underlying dispute relates to an alleged joint venture between Mikhail Abyzov and Viktor Vekselberg, in relation to power generation assets in Russia. Mr Abyzov's primary claim is for c.$900 million.

Phones 4U Ltd (in administration) v EE Limited & Ors
For the Claimant in an Article 101 TFEU claim against EE, Vodafone and O2 and their parent companies arising from alleged cartel conduct between those companies that caused the claimant to cease trading.

Bilta (UK) Ltd & Ors v (1) RBS plc and (2) Mercuria Energy Europe Trading Ltd [2020] EWHC 546 (Ch)
For Defendants in a 6-week trial of dishonest assistance claims arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader.

Tatneft v Bogolyubov & Ors [2016] EWHC 2816 (Comm) [2020] EWHC 623 (Comm), [2019] EWHC 1400 (Comm), [2018] 4 W.L.R. 14, [2017] 1 All E.R. (Comm) 833
For the Defendants on successful applications for reverse summary judgment and the discharge of a $380 million worldwide freezing order. The claim was brought by a major Russian oil company against four high-profile Ukrainian individuals and involved allegations of fraud and breaches of the Civil Code of the Russian Federation. Leading judgments have been handed down on matters including strike out / summary judgment, security for costs and amendments.

Re Charterhouse Capital Limited, Arbuthnott -v-Bonnyman & Ors [2014] EWHC 1410 (Ch)
Kenneth MacLean Q.C successfully defended the respondent members of the leading private equity specialists Charterhouse Capital against the Petition brought under section 994 Companies Act 2006 by a former partner who alleged that amendments to the company's articles to introduce a drag right over his shares was unfairly prejudicial conduct and sought an order that his shares be purchased for tens of millions more than the existing offer price. Following a 27 day trial, the Judge rejected the petitioner's complaints that the amendments to the company's articles were invalid either under the common law principle of Allen v Gold Reefs of West or on the basis of the statutory jurisdiction. The court also followed the approach of the Privy Council in Citco v Pusser's Limited and rejected the approach of the High Court of Australia in Gambotto v WCP Limited in considering the validity of amendments to articles which introduced drag rights.

Alfa Telecom Turkey v Cukurova Finance International
Kenneth MacLean Q.C. acted for Cukurova throughout its marathon and ultimately successful seven-year multi-billion dollar battle for control of Turkcell, the largest mobile phone company in Turkey in which Cukurova was opposed by the Alfa Group of Russia. The action has resulted in six decisions of the Privy Council ([2009] UKPC 19, [2012] UKPC 20, [2013] UKPC 2, [2013] UKPC 20, [2013] UKPC 25, [2014] UKPC 15). The case concerned Alfa's attempts to rely on the novel remedy of appropriation over financial collateral introduced into English law by the Financial Collateral Arrangements (No2) Regulations 2003 and Directive 2002/47/EC on financial collateral arrangements so as to secure a controlling interest in Turkcell on Cukurova's default under a loan agreement in 2007.

In January 2013 [2013] UKPC2 the Privy Council allowed Cukurova's appeal from the decision of the Eastern Caribbean Court of Appeal (July 2011) and held that Cukurova was entitled to recover its shares from Alfa on compliance with terms to be set by the Board for relief from forfeiture. This was an important and ground-breaking decision on the extent of the equitable jurisdiction to relieve against the forfeiture of property in the context of

secured lending and the novel remedy of appropriation over financial collateral. In a follow-up decision [2013] UK PC 20 the Privy Council has set the financial terms on which Cukurova was entitled to relief from the appropriation of its shares by Alfa. Shortly afterwards, the Privy Council issued a further order varying the terms of relief in Cukurova's favour in response to attempts by Alfa to thwart redemption by Cukurova.

This decision represents the most in-depth examination of the principles concerning the equitable jurisdiction to relieve against forfeiture of mortgaged property and the effect of tender of payment by a debtor on a creditor's entitlement to interest for at least 50 years. The result of the Board's judgment on the terms of relief was that Cukurova was permitted to reacquire its shares at a price more than US$1 billion more favourable to it than the result contended for by Alfa.

McKillen -v- Misland & Ors [2013] EWCA Civ 781
This case concerns a dispute between Mr Paddy McKillen and companies associated with Sir Frederick and Sir David Barclay over the ownership and control of Claridge's, the Connaught and Berkeley hotels. Kenneth MacLean Q.C. successfully defended the Barclay interest companies against proceedings brought by Mr McKillen under section 994 of the Companies Act 2006 alleging that his rights as a 36% shareholder of the hotels' holding company, Coroin, had been unfairly prejudiced and seeking buy-out relief against the Barclay interests and the other shareholder, Mr Derek Quinlan. Following an expedited trial lasting 30 days David Richards J dismissed Mr McKillen's claims under the section 994 Petition and a related action for damages for conspiracy and procuring breach of contract [2012] EWHC 2343.

The Court of Appeal unanimously upheld the trial Judge's dismissal of Mr McKillen's section 994 Petition in its judgment dated 3 July 2013. The Court held that Mr McKillen had failed to establish any of the cumulative requirements of a section 994 petition and that the Barclay interests had not acted in violation of Mr McKillen's pre-emption rights nor in breach of an express obligation of good faith. As in the court below, Kenneth MacLean Q.C. led the respondents' successful opposition to Mr McKillen's claims [2013] EWCA 781.

Examples of Recent Cases

Arbitration

- Acting in a shareholder dispute concerning a satellite Pay-Tv broadcaster (LCIA)
- Defending a claim by a hedge fund for sums in excess of USD100m in relation to alleged negligence by the Respondent fund administrator in valuing the fund assets. (LCIA)
- Representing a US oil company in connection with a claim for breach of contract (including for interim measures) against a Nigerian oil company (LCIA).
- Acting in a dispute concerning valuation of hedge funds investing primarily in credit default swaps (LCIA).
- Acting in a dispute concerning the operation of the national railways of 2 major East African States (LCIA).
- Acting in a dispute concerning a shipbuilding contract with an East African state (ICC).
- Acting for a major telecoms company in connection with an arbitration in Zurich over control of a European subsidiary (ICC).

Banking and Financial Services

- ECU Group v HSBC
  Acting for the defendant bank in Commercial Court proceedings involving allegations of foreign exchange rate manipulation and front running.
- Bilta (UK) Ltd & Ors v (1) RBS plc and (2) Mercuria Energy Europe Trading Ltd [2020] EWHC 546 (ChFor the Defendants in a 6-week trial of dishonest assistance claims arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader.
- McKillen -v- Misland & Ors [2012] EWHC 2343; [2013] EWCA Civ 781
  Kenneth MacLean Q.C. successfully defended the Barclay interest companies against proceedings brought by

Mr McKillen under section 994 of the Companies Act 2006 alleging that his rights as a 36% shareholder of the hotels' holding company, Coroin, had been unfairly prejudiced and seeking buy-out relief against the Barclay interests and the other shareholder, Mr Derek Quinlan.

- **Alfa Telecom Turkey Limited v Cukurova Finance International [2013] UKPC2, [2013] UKPC 20**
  Kenneth MacLean Q.C. has acted for Cukurova throughout this six year multi-billion dollar battle for control of Turkcell, the largest mobile phone company in Turkey being fought between the Alfa Group of Russia and the Cukurova Group of Turkey. The action has so far involved 3 decisions of the Privy Council. In particular, the case concerns Alfa's attempts to rely on the novel remedy of appropriation introduced into English law by the Financial Collateral Arrangements (No2) Regulations 2003 and Directive 2002/47/EC on financial collateral arrangements to secure a controlling interest in Turkcell on Cukurova's default under a loan agreement.
- **Alliance Bank v Aquanta & ors [2012] 1 Lloyd's Rep. 181**
  Appearing for Alliance, one of Kazakhstan's largest banks, in a very large (US$1bn+) fraud claim against its former controlling shareholders and their related entities.Three week jurisdiction hearing in the Commercial Court in 2011 ([2012] 1 Lloyd's Rep. 181) and one week appeal in 2012.
- **Kaupthing HF v Deutsche Bank AG**
  Kaupthing (in liquidation in Iceland) has brought a series of claims in Iceland and England seeking to recover 500 million euros. The claims involve Icelandic bankruptcy claims and equitable claims based on English law arising out of a series of credit instruments known as credit linked notes. Kenneth MacLean Q.C. is representing Deutsche Bank in the English proceedings which have given rise to a dispute about the forum and the appropriateness of parallel proceedings in England and Iceland.
- Acting for a major bank in London in connection with claims brought by Kaupthing relating to a series of credit linked notes.
- **International Finance Corporation v DSNL Offshore Ltd [2007] 2 All ER (Comm)-**
  Acting on behalf of a major international oil company in a dispute concerning the remedies available to a judgment creditor. The case established for the first time in English law the availability of an equitable lien in connection with a contract for work and materials.
- Advising property investment funds in the context of the 'credit crunch'
- Representing and advising a wide range of clients (both institutional and private) in connection with claims for damages for breach of duty against pension fund and asset managers, including appearing at trial for the Trustees of the **Unilever Pensions Fund Trust** in their claim for damages against Merrill Lynch Investment Managers, formerly **Mercury Asset Management**.
- Advising in connection with the defence to a claim for alleged negligence by pension fund trustees against a fund actuary and consultant.

Civil Fraud and Investigations

- **ECU Group v HSBC**
  Acting for the defendant bank in Commercial Court proceedings involving allegations of foreign exchange rate manipulation and front running.
- **The Public Institution for Social Security v Al-Rajaan and others [2020] EWHC 2979**
  For the Pictet Defendants, defending claims exceeding US$850 million against more than 30 defendants in respect of alleged unlawful payments by financial institutions and intermediaries of unauthorised secret commissions to the First Defendant, Mr Al-Rajaan, the former Director General of the Claimant, a Kuwaiti public institution who operates Kuwait's social security system and pension scheme.
- **Bilta (UK) Ltd & Ors v (1) RBS plc and (2) Mercuria Energy Europe Trading Ltd [2020] EWHC 546 (Ch)**
  For Defendants in a 6-week trial of dishonest assistance claims arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader.
- **Tatneft v Bogolyubov & Ors [2016] EWHC 2816 (Comm) [2020] EWHC 623 (Comm), [2019] EWHC 1400 (Comm), [2018] 4 W.L.R. 14, [2017] 1 All E.R. (Comm) 833**
  For the Defendants on successful applications for reverse summary judgment and the discharge of a $380 million worldwide freezing order. The claim was brought by a major Russian oil company against four high-profile Ukrainian individuals and involved allegations of fraud and breaches of the Civil Code of the Russian Federation. Leading judgments have been handed down on matters including strike out / summary judgment, security for costs and amendments.
- **Alfa Telecom Turkey Limited v Cukurova Finance International (see above)**

Commercial Litigation

- ECU Group v HSBC
  Acting for the defendant bank in Commercial Court proceedings involving allegations of foreign exchange rate manipulation and front running.
- The Public Institution for Social Security v Al-Rajaan and others [2020] EWHC 2979
  For the Pictet Defendants, defending claims exceeding US$850 million against more than 30 defendants in respect of alleged unlawful payments by financial institutions and intermediaries of unauthorised secret commissions to the First Defendant, Mr Al-Rajaan, the former Director General of the Claimant, a Kuwaiti public institution who operates Kuwait's social security system and pension scheme.
- Bilta (UK) Ltd & Ors v (1) RBS plc and (2) Mercuria Energy Europe Trading Ltd [2020] EWHC 546 (Ch)
  For Defendants in a 6-week trial of dishonest assistance claims arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader VAT fraud.
- Phones 4U Ltd (in administration) v EE Limited & Ors
  For the Claimant in an Article 101 TFEU claim against EE, Vodafone and O2 and their parent companies arising from alleged cartel conduct between those companies that caused the claimant to cease trading.
- Tatneft v Bogolyubov & Ors [2016] EWHC 2816 (Comm) [2020] EWHC 623 (Comm), [2019] EWHC 1400 (Comm), [2018] 4 W.L.R. 14, [2017] 1 All E.R. (Comm) 833
  For on the Defendants on successful applications for reverse summary judgment and the discharge of a $380 million worldwide freezing order. The claim was brought by a major Russian oil company against four high-profile Ukrainian individuals and involved allegations of fraud and breaches of the Civil Code of the Russian Federation. Leading judgments have been handed down on matters including strike out / summary judgment, security for costs and amendments.
- (1) Cephalon Inc (2) Teva Pharmaceuticals USA Inc - v - (1) C P Pharmaceuticals Limited (2) Wockhardt UK Holdings Limited (3) Wockhardt Limited (a company incorporated in India) [2017] For Defendants in a 5 week Commercial Court trial of claims of economic duress, intimidation and conspiracy relating to the manufacture of an anti-cancer drug.
- Matchbet v Openbet [2013] EWHC 3067
  Successfully defending the defendant company against a claim for 10s of millions of damages for alleged loss of profits relating to a software development and licensing agreement for an online betting exchange and then securing an award of costs of the trial on the indemnity basis.
- RTS Flexible Systems v Molkerei Alois Mueller [2010] 1 WLR 753.
  Appearing in the Supreme Court for the successful Appellant in a dispute concerning the formation of a contract for the supply of engineering equipment and services [2010] 1 WLR 753.
- Skype Technologies SA v Joltid and Others (2009)
  Representing third parties in dispute concerning software license agreement.
- Leofelis SA v Lonsdale Sports Ltd [2008] EWCA Civ 640
  Representing the claimant in its dispute with its licensor concerning exclusive European license arrangements for the Lonsdale trademark.
- Central African Mining & Exploration Company plc v Bell Pottinger Corporate & Financial Ltd [2007]
  Acting for the respondent in resisting a Norwich Pharmacal application in the context of a failed takeover bid raising issues of justiciablity of the acts of a foreign sovereign state in relation to its natural resources.
- Acting in Motorola v Uzan [2004] 1 WLR 113
  Representing one of the Defendants in a leading case on worldwide freezing orders, disclosure, civil contempt and the court's powers under s 25 Civil Jurisdiction and Judgments Act 1982 (in proceedings ancillary to Motorola's US RICO claim).

Competition and EU Law

- Phones 4U Ltd (in administration) v EE Limited & Ors
  For the Claimant in an Article 101 TFEU claim against EE, Vodafone and O2 and their parent companies arising from alleged cartel conduct between those companies that caused the claimant to cease trading and enter into administration in 2014. The claim involves contemporaneous evidence of allegedly collusive agreements between the network operators and expert evidence from competition economists as to the independent irrationality of refusals to supply in an oligopoly with only two major retail intermediaries.
- Emerald Supplies Ltd v British Airways Plc
  Acting for Defendant airline in a claim by claimants seeking collective redress on behalf of a class allegedly

damaged by alleged price fixing agreements. Successfully resisted an attempt to bring a representative claim on behalf of alleged victims of an airfreight cartel at first instance [2010] Ch. 48 and on appeal in the Court of Appeal [2011] Ch. 345.

Jurisdiction and Conflict of Laws

- Conway v Ratiu [2006] 1 AER 487
  Representing the successful appellants in a libel appeal which raised questions concerning a solicitor's duty, conflicts of interest and confidentiality.
- Marks & Spencer Group plc v Freshfields Bruckhaus Deringer (Ch & CA) [2004] 1 WLR 2331
  Representing Marks & Spencer Group in its successful application for an injunction to restrain solicitors from acting for a proposed bidder on grounds of conflict of interest and protection of confidential information, a case with important implications for takeovers and City practice generally. (As junior counsel he also appeared in the Mannesmann v Goldman Sachs case which raised related issues of confidential information in the context of a contested takeover bid).
- Advising foreign central bank in connection with worldwide freezing order.
- Alfa Telecom Turkey Limited v Cukurova Finance International (see above)
- Congo Mineral Developments Limited v Highwind Properties
  Appearing for the Defendant in the High Court in Tortola on a claim alleging tortious conspiracy in connection with the transfer of mining rights in the Democratic Republic of Congo. Successfully applied for part of the claim to be struck out on grounds of act of state and non-justiciability
- Sonera Holding BV v Cukurova Holding AS
  Acting for the respondent to an action to enforce an arbitration award which raises issues of Swiss contract law and the jurisdiction of arbitrators acting in relation to a share purchase agreement.
- De Joria v Osco Bingemann [Civil Appeal No 4 2005]
  Appearing in the Eastern Caribbean Court of Appeal in an appeal concerning the interpretation of a shareholders' agreement concerning a group responsible for a world-leading brand of tequila.
- United States v Philip Morris [2004] EWCA Civ 330
  Representing the United States of America in connection with the United States' successful application to take evidence in England under the 1975 Evidence (Proceedings in Other Jurisdictions) Act from a solicitor for use at trial in the United States' RICO claim against leading tobacco companies.

Sports, Gaming and Licensing

- Advising a Premier League Football Club on Media Rights contract.
- Advising in connection with branding rights at the national football stadium.
- Representing an Independent Television company in connection with a dispute with regional television companies.
- Representing a Formula 1 driver in connection with a dispute with his team.

What the Directories Say

"Ken is always a great choice. So seasoned, he knows the game inside out and plays it well." (Chambers UK 2027 - Commercial Dispute Resolution)

"He is clever and brilliant at cross-examination." (Chambers UK 2027 - Commercial Dispute Resolution)

"Ken is always immaculately prepared. Great with judges, he uses strong and assertive arguments to win them over." (Chambers UK 2027 - Commercial Dispute Resolution)

"A superstar silk - incredibly clever, with superb strategic sense. Fantastic on his feet. A pleasure to work with." (Legal 500 2027 - Commercial Litigation)

"Kenneth MacLean is the person I'd least like to be cross-examined by." (Chambers UK 2026 - Commercial Dispute

Resolution)

"He is a very experienced, street-smart advocate who is a real trial lawyer and a good cross-examiner. He is robust but has a nice style with judges and is a good man to have on your side." (Chambers UK 2026 - Commercial Dispute Resolution)

"He is an excellent advocate with integrity." (Chambers UK 2026 - Commercial Dispute Resolution)

"Kenneth MacLean is an extremely thorough advocate. He is always very well prepared." (Chambers UK 2026 - Commercial Dispute Resolution)

"Superb cross-examiner with a laser-like focus on the case strategy. One of the best senior silks in London." (Legal 500 2026 - Commercial Litigation)

"Kenneth is a thumping good cross-examiner. He is also extremely bright and a good tactician." (Chambers UK 2024 - Commercial Dispute Resolution)

"Kenneth is always properly and fully prepared; he knows his brief superbly well." (Chambers UK 2024 - Commercial Dispute Resolution)

"Kenneth MacLean really impresses with how he rolls his sleeves up. He is a pleasure to work with and a great team player." (Chambers UK 2024 - Commercial Dispute Resolution)

Tremendously clever and very strong tactically and strategically. He drafts beautifully and gets to the point. (Chambers UK 2021 - Commercial Dispute Resolution)

"An extremely effective, commercial advocate" who is "incredibly capable and brings great experience to a case." "Ken MacLean is just completely wonderful; his advocacy is powerful and there is not a single wasted word. His drafting is superb and his strategic nous is excellent." (Chambers Global 2021 - Commercial Dispute Resolution)

"Excellent, with a well-earned reputation for his intellect and tenacity in his advocacy. Kenneth is willing to take on challenging instructions where his skills make the difference between victory and defeat. ' (Legal 500 2021-22 - Commercial Litigation)

"A terrific advocate who is always well prepared and on top of the brief, he is very easy to work with and extremely knowledgeable." "Phenomenally hard-working." (Chambers UK 2020 - Commercial Dispute Resolution)

"Takes an evidence-based approach and has the ability to assimilate all the facts very quickly; he's a powerful advocate." "Ken is strategically excellent and delightful to work with." (Chambers UK 2019 - Commercial Dispute Resolution)

'A superb cross-examiner, tears into the witness without hesitation.' (Legal 500 2018-2019 - Commercial Litigation)

*"Really lasered in on witnesses' different areas of weakness, and had thought carefully about how to expose them." "Has firm and well-reasoned views, and gives clear guidance." (*Chambers UK 2018 - Commercial Dispute Resolution)

'He gives sensible, no-nonsene, commerical advice.' 'He's a fierce advocate and a good cross-examiner.' (Chambers UK 2017 - Commercial Dispute Resolution)

'Excellent. He has a lot of gravitas and is nice to work with. Judges listen to him and take him seriously'. 'A legal luminary excelling not only in law, but also in his approach, attitude and temperament'. (Chambers UK 2016)

Awards

Legal500 LEADING SILK 2023

2027 Chambers Top Ranked UK Bar

One Essex Court

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