

James Cross QC

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James Cross QC has an extensive and wide-ranging commercial practice.

He has particular expertise in:

- Construction & Engineering & Facilities Management
- Energy
- Professional Negligence
- Insurance
- Property Damage
- Product Liability

He has particular knowledge and experience of property damage, liability and insurance claims relating to fires, floods, explosions and other man-made, or natural, disasters. He was instructed in the Buncefield litigation, acting for some 30 claimants pursuing multi-million pound claims for damages as a result of physical damage caused by the Buncefield Explosion to a wide range of commercial properties and businesses.

He has an established PFI/PPP Projects practice involving contractual disputes between employers' (local authorities and Government departments) and contractors arising from the construction, and facilities management, of a wide range of buildings, infrastructure and other facilities including schools, leisure facilities and scientific establishments.

James is a very experienced litigator, from the earliest stages of pre-action protocol procedures to trial, with considerable expertise in both written and oral advocacy. His work involves advisory work and drafting in relation to all areas of his practice. His wide-ranging experience of disputes and dispute resolution extends particularly to adjudication, arbitration and mediation.

His clients include Government departments, local authorities, well known civil engineering contractors, international oil companies, pension funds, major engineering consultancies, a number of FTSE 100 companies (retailers and property companies) and many of the largest insurance companies both in the UK and overseas.

James is qualified to undertake Public Access work.

Construction & Engineering

James's construction and engineering practice covers all aspects of building contract claims and disputes, whether in adjudication, arbitration or litigation. He acts for employers, contractors and sub-contractors and is familiar with most of the principal standard forms of Building Contract and has considerable experience of contractors' claims for extensions of time as a result of delay and disturbance and for additional payment by way of loss and expense.

Featured Construction & Engineering cases

Aggregate processors and suppliers – contracts relating to the processing and sale of steel slag – compliance with future environmental legislation – advice as to issues of contractual interpretation (pre-action).

Air conditioning contractors – serious fire at a bowling alley – defective/dangerous air conditioning equipment – contributory negligence (TCC litigation/mediation).

Bovine carcass incinerators and flue gas emission abatement equipment – contract for the design, supply and installation of the plant – MF/1 Contract – alleged defects in the design and installation of the plant – allegedly defective materials – acting for the designers and installers of the incinerators in connection with their defence of substantial claims for damages (TCC litigation).

Car-parks – modular car-parks for Sainsbury's across many stores nationally – defects in the design and construction of the car-parks – acting for Sainsbury's in pursuing multi-million pound claims for damages against the design & build contractors (TCC litigation).

Design & Build Contractors – contract for design and construction of a mixed residential and commercial development (including a hotel) in London – underpinning of party wall of adjacent terrace of houses and shop – collapse of houses and shops in 2013 – acting for the Employer in claims against the Contractor and in defence of multi-million pound claims for damages by adjoining owners (Pre-Action Protocol).

Design & Build Contractors – contract for design and construction of a shopping centre in Leeds – hidden defects relating to fire protection (lack of fire-stopping, inadequate fire protection to steel beams and columns, lack of compartmentation etc.) – acting for the Employer and building owner in potential claims against the Contractor – advice regarding limitation issues, latent damage and economic loss (pre-action).

Design & Install Contractors – contract for design and installation of a Low Volume Foam Fire Suppression System in an Anechoic Chamber for BAE Systems in 2013 – accidental discharge of foam causing damage to Chamber and damage to aircraft undergoing testing in the Chamber in 2016. Multi-party litigation – multi-million pound claims by BAE Systems – acting for the 4th Defendant, the designer & installer of the quite separate Gas Fire Suppression system in its defence of the claims made (TCC litigation).

Distribution centre development for Sainsbury's in Yorkshire (Sherburn) – defects in the design and construction of the external concrete slab & pavement areas – acted for Sainsbury's in connection with multi-million pound claims for damages against the design & build contractor (TCC litigation & mediation).

Distribution centre and warehouse development in Doncaster – defects in the design and construction of the internal concrete slab & dock levellers – acted for development owners & landlords (Standard Life) in connection with multi-million pound claims for damages against the design & build contractor (TCC litigation).

Distribution centre development for Sainsbury's – defects in the design and construction of the internal concrete slab – acting for Sainsbury's in connection with substantial claims for damages against the design & build contractor – advice as to remoteness of damage in connection with the delayed closure of other warehousing & distribution facilities (Pre-Action Protocol).

Electrical and instrumentation contractors – construction of a waste water treatment plant – multi-million pound claims for additional payment by sub-contractors – valuation of variations – re-measurement of contractual work – assessment and analysis of prolongation costs (adjudication).

Electrical contractors – defence of substantial claims for damages for negligence, and under the Consumer Protection Act 1987, as a result of a major fire in a residential block of Flats in Surrey allegedly arising out of the supply and installation of downlighters (TCC litigation/mediation).

Electrical contractors – acted for electrical contractors in their defence of claims for damages for negligence in and about the installation of a new electrical system for a retail shop in Ealing as a result of a major fire (TCC litigation).

Enabling Works and Bulk Earthworks Contractors – NEC3 Contract for enabling works and bulk earthworks at the site of a new distribution depot in the South West of England for a national food retailer – adverse weather conditions – adverse physical conditions (discovery of asbestos) – acting for the Employer in connection with claims for Compensation Events (delay and loss & expense) (pre-action).

Highway contractors – London Highways Alliance – NEC3 Term Service (framework) contracts and NEC3 Call-Off Contracts for the maintenance, repair and improvement of London's roads – acting for the Employer (Transport for London) in connection with various contractual disputes (multiple adjudications).

Highway contractors – M40 motorway – defects in resurfacing works causing premature failure of carriageway and impaired Residual Life – acting for the DBFO employer in connection with claims against the JV contractor responsible for the design and construction of the resurfacing works (pre-action).

Highway contractors – Silverstone F1 Circuit – acting for the highway contractors in connection with their defence of claims arising from works to resurface the Silverstone Circuit in early 2018 and the cancellation of the Moto GP in August 2018 (Pre-Action Protocol).

Highway maintenance contractors – NEC3 contract for highway maintenance of roads in Norfolk – price adjustment for inflation – HTMA Method of price adjustment – advising highway maintenance contractors as to issues of contractual interpretation and rectification (pre-action).

Housebuilders – contract for sale and transfer of house building business – potential liabilities for personal injury arising from contaminated land – environmental liabilities – advising housebuilders as to issues of contractual interpretation and limitation affecting contractual indemnity clauses (pre-action).

Housing Association – residential development in London – serious design and construction defects – NHBC Buildmark Cover – comprehensive advice to Housing Association regarding enforcement of multi-million pound claims against the NHBC and general issues regarding NHBC's Buildmark Cover.

Housing Association – residential developments in London – serious design and construction defects in relation to fire safety – post-Grenfell fire – cladding and related defects – acting for the Housing Association in their pursuit of multi-million pound claims for defect rectification costs against (1) the design and build contractors of the developments and (2) the development warranty insurers (Premier Guarantee) (Pre-Action Protocol).

Local Authority employer – construction of a road tunnel – contractor claims for additional payment under Clause 12 ICE Conditions – unforeseeable ground conditions (arbitration).

Main contractors – acted for main contractors in their successful defence of adjudication proceedings arising out of the refurbishment of a landmark building in London – claims by the employer aimed at enforcing ‘audit’ provisions in the main contract (adjudication).

Main contractors – resistance of adjudication enforcement proceedings by a sub-contractor: *Chamberlain Carpentry & Joinery Ltd v Alfred McAlpine Construction Ltd*.

Main contractors – major construction site in west London – multi-million pound claims for subsidence to residential properties (withdrawal of support) caused by building works (arbitration).

Maintenance contractors – major flood at European HQ in London of International Drinks Company – acted for claimant in multi-million pound claims for damages against maintenance contractors and designers/installers of fire suppression systems (TCC litigation/mediation).

Mechanical services contractors – major flood at a branch of an international bank in London – acted for contractors in defence of multi-million pound claims arising (TCC litigation/mediation).

Piling contractors – collapse of a listed building adjacent to a construction site (works to a major retail store) in Glasgow (TCC litigation/mediation).

Piling contractors – damage to gable wall of terrace of houses adjacent to a construction site in London – acting for piling contractors in defence of claims against them for contribution by structural engineers (TCC litigation).

Thermal oil heating contractors – Project in Scotland for the construction of a Biomass fired furnace and thermal oil heating plant – FIDIC Yellow Book – acting for contractors in connection with various contractual disputes with the employer.

Tower crane operators – collapse of tower crane at Canary Wharf – acted for property insurers of property damaged by the collapse in subrogated claims against the crane operators and the crane manufacturers (TCC litigation/mediation).

Waste management technology providers – Greater Manchester Waste Management Project – IVC (In Vessel Composting) – effluent disposal under Trade Effluent Discharge Consents – acting for the technology providers in the defence of multi-million pound claims by the main contractors for damages for breach of contract (adjudication).

PFI/PPP projects and defence contracts

James also has considerable experience and expertise in:

- PFI/PPP Projects which involve contractual disputes between employers (local authorities and Government departments) and contractors arising from the construction, and facilities management, of a wide range of buildings, infrastructure and other facilities including schools, leisure facilities, scientific establishments and waste management plants. During the COVID-19 pandemic, James has been acting for and advising Leisure Service providers in particular.

- Defence contract work which involves, in particular, acting for Government departments in relation to the contract management of contracts for the manufacture and delivery of military equipment and infrastructure for HM Armed Forces; and in relation to the resolution of disputes under defence contracts.

Featured PFI/PPP projects and defence contracts cases

Facilities Management Contractors – Schools – facilities management of schools in Bradford – PFI contracts – acting for the facilities management contractors in disputes with the Local Authority regarding payment deductions for Unavailability (adjudication).

Facilities Management Contractors – Schools – facilities management of schools in Bradford – PFI contracts – acting for the facilities management contractors in disputes with the Local Authority regarding payment for Insurance Risk Premium Sharing Provisions – contractual interpretation (advice).

Facilities Management Contractors – Schools – facilities management of schools across the country – PFI contracts – acting for the facilities management contractors in disputes with local authorities regarding payment for Utilities Management – contractual interpretation (adjudication).

Government Department – Science and Research Facilities – facilities management of the Department’s extensive scientific and research facilities – PFI contract – acting for the Government Department in connection with various potential and actual disputes with the FM contractors (pre-action).

Government Department – Housing – facilities management of UK Family Service Accommodation – PFI contract – acting for the Government Department in connection with various potential and actual disputes with the FM contractors (pre-action).

Government Department – facilities management of Department’s estate across the SE of England – PFI contract – acting for the Government Department in connection with various potential and actual disputes with the FM contractors (pre-action).

Government Department – UK Warrior tank upgrade – acting for the Government Department in connection with various potential and actual disputes with the defence contractors (pre-action).

Government Department – UK A400M Atlas Aircraft – OCCAR procurement – acting for HM Government in connection with various potential and actual disputes with the main contractor and the TP400 Engine manufacturer (pre-action).

Leisure Service Providers – COVID 19 pandemic – PFI contracts for the provision of leisure centres and leisure facilities nationally with numerous local authorities – advice as to Change in Law provisions – advice in relation to relevant Government Guidance in respect of leisure centre operation and management.

Local Authority – Waste Management – PFI contract for domestic waste management in Daventry and Northampton – acting for the Local Authority in disputes with the waste management contractor regarding alleged variations arising from population growth (TCC litigation, mediation).

Local Education Authority – facilities management of schools in Tyne & Wear – PFI project for the maintenance and operation of schools – acting for the Local Authority in relation to disputes with the SPV (Special Purpose Vehicle) and the Building Contractor as a result of floor slab cracking and other construction defects in the schools (pre-action).

Local Education Authority – Schools – facilities management of schools in Leicester – PFI project for the maintenance and operation of schools – acting for the Local Authority in relation to various disputes with the FM Contractor in respect of PPM issues, Reporting obligations, Utility service costs and deductions for Unavailability, Service Performance & Reporting (pre-action).

Main contractors – PFI contract for design and construction of care homes in Hull – acting for the main contractors in relation to final account claims and claims against them for Deductions (pre-action).

PFI Project Company (SPV) – PFI contract for the construction and facilities management of a Leisure Centre – acting for the SPV in connection with various disputes with FM Contractor – advice as to dispute resolution, termination provisions and payment mechanism (pre-action).

PPP Project Company (SPV) – Schools – PFI contracts for the construction of schools in Rotherham, Birmingham and Bassetlaw – fire-stopping defects in schools – Latent Defects and Defects Liability – acting for the SPV in connection with various disputes with JV Building Contractor (adjudication and arbitrations x 3).

Energy

James's work in connection with energy-related matters complements and overlaps with his other principal practice areas.

Featured Energy cases

Acted for major international oil company and contractor – supply of defective gas industry low temperature valves for a gas terminal in Scotland – *Mobil North Sea & Fluor Daniel v PJ Valves*.

CHP Plant – Energy Supply Agreement for chemicals factory in Huddersfield – supply of electricity and steam from CHP Plant – separate contract works to upgrade the controls and gas turbine of the CHP Plant – acting for the contractors in their defence of multi-million pound loss of profit claims arising out of a fire in the course of the upgrade works (international arbitration).

Product liability insurance – product failing so as to cause physical damage to gas compressor station under commissioning – purchaser liable for substantial liquidated damages for delay – advising insurers of product supplier in respect of policy coverage for contractual liabilities and consequential economic loss in tort.

Product liability insurance – collapse of sewage treatment tank – advising insurers of product supplier in respect of policy coverage for contractual and tortious liabilities.

Supply of coal – advice to national electricity generating company as to contractual terms of supply.

Supply of mains gas to homes in the UK – defence of claims by sales agents – advice as to the applicability of the Commercial Agents Regulations (litigation/mediation).

Water distribution pipeline and storage networks on Ascension Island – claims by national broadcaster for professional negligence against consulting engineers and against product suppliers in respect of defective products.

Professional Negligence

James's professional liability practice involves acting both for and against professionals and covers all the main professions. His particular focus, however, is construction industry professionals; Architects, Engineers, Managers, Surveyors.

Featured Professional Negligence cases

Design and construction of a tall mixed use development in Leeds – effect of building on wind environment – microclimate studies and wind engineering – acting for the architects in defending multi-million pound claims for damages for professional negligence in respect of the alleged failure to design for wind mitigation measures (TCC litigation)

Design and construction of the Museum of Liverpool – acted for the claimant Museum in the pursuit of multi-million pound claims for damages against architects in respect of design defects in the Museum – operation of termination clauses in architect's appointment (TCC litigation).

Design and construction of a new building at the Arts College University, Bournemouth – acted for the claimant University in its claim for damage against architects in respect of numerous design and construction defects in the building – limitation issues – accrual of causes of action and duty to review (TCC litigation).

RIBA Appointment – contract formation – entitlement to betterment fee as a result of termination of Appointment following grant of planning permission – advice to well-known architect.

Contract administration – JCT 1998 Private Without Quantities – major residential development in Surrey – certification of extensions of time, non-completion and practical completion – acted for architects in successful defence of Employer's claims for declaratory relief (adjudication).

Government Department – DBFO Contract for new airport – feasibility and technical advice and other services relating to the planning and design of the new airport – acting for the Government Department in connection with multi-million pound claims for damages for professional negligence against aviation engineers (pre-action and mediation).

Advice as to the insurance arrangements under a JCT Contract – defence of claims by client as a result of damage to works caused by fire (TCC litigation/mediation).

Major residential refurbishment project for a Housing Action Trust in Birmingham – specification and supervision of work (arbitration/mediation).

Construction mismanagement of a large residential redevelopment project in north-west London (pre-action protocol/mediation).

Developer of motorway service stations – acted for developer in successful multi-million pound claims against consulting civil engineers – design and supervision of lime stabilisation works to form capping layer for car parks – failure of lime stabilised layer (pre-action protocol/mediation/TCC litigation).

Agreement by engineer to provide collateral warranty – whether agreement enforceable by specific performance in adjudication or by summary judgment – whether agreement in fact made (TCC litigation).

River erosion of property – acted for engineers and Secretary of State for Wales in successful defence of claims for damages for nuisance and professional negligence as a result of the construction of a major new road in South Wales (TCC litigation).

Development of residential flats for Housing Association – JCT Design & Build Contract – role of Employer’s Agent, especially with regard to inspection obligations – defective works by contractor – contributory negligence of Clerk of Works (TCC litigation/mediation).

Commercial developers – acted for developers in pursuit of successful claims for professional negligence against geotechnical engineers in respect of the reclamation of a former open cast coal mine in Cannock – advice regarding problem of inundation collapse settlement – design and implementation of inadequate measures to reclaim site for commercial development (TCC litigation/mediation).

House builders – acted for engineers in defence of claims relating to site levels and cartaway operations for a large housing development – successful application to debar house builders’ reliance on expert evidence in the absence of amendment of pleadings by house builders (and adjournment of trial) – important decision on proper function of pleadings in TCC litigation – *Upton McGougan v Bellway Homes* [2009] EWHC 1449 (TCC).

House builders – acted for house builders in a series of adjudications arising from the failure of a sewerage system for a residential development in Blackpool – successful defence of claims by engineers for declaratory relief and successful pursuit against engineers of claims for damages (adjudication).

House builders – negligent site investigation by geotechnical consultants – chalk and piling – acted for house builders in successful claims for additional costs – *Linden Homes v LBH Wembley* (2002) 87 CLR 180 (TCC).

House builders – negligent design and construction of largest reinforced earth mound in England – acted for house builders in successful claims against geotechnical specialists and structural engineers (TCC litigation/mediation).

Highway bridges – North Circular Road – NEC3 Professional Services Contract – assessment of settlement, strains and damage to existing third party services infrastructure as a result of construction of new bridges – acted for highway authority in connection with claims for damages against engineers for inadequate assessment (adjudication).

Highway embankment – commercial development of land for a national distribution centre adjacent to highway in Leeds – collapse/slip of embankment – acted for engineers in defence of claims for damages alleging negligent geotechnical site investigation and earthworks design (TCC litigation).

Ground investigation for the redevelopment of a former Ironworks in Birmingham – identification of slag – acted for engineers in defence of claims arising out of damage to retail superstore caused by expansive slag (TCC litigation/mediation).

Clerical Medical’s new HQ in Bristol – interpretation of mechanical services’ specifications – meaning of “summer design temperature” and “winter design temperature” for cooling and heating systems – acted for successful engineers – *Clerical Medical Investment Group Limited v Crest Nicholson (South West) Limited and Others* [2006] EWHC 2481 (TCC).

London HQ for investment managers – basebuild works – potential multi-party litigation and defence of multi-million pound claims – design and commissioning of fan coil units, condensate drainage and water treatment works to prevent pseudomonas etc., – acted for engineers – net contribution clauses (Pre-action protocol/mediation)

London HQ of major financial services company – design & maintenance of Uninterruptible power supply (UPS) –

defence of multi-million pound claims for damages arising out a fire allegedly caused by UPS failure (TCC litigation).

London HQ for a major national food retailer – design of rainwater drainage, chillers and comfort cooling systems (TCC litigation).

Failure of bridge bearings on the M6 Thelwall Viaduct – acted for engineers in defence of multi-million pound claims – *The Secretary of State for Transport v Pell Frischmann Consultants* [2007] BLR 46 (Civil procedure, CPR 31.17); *The Secretary of State for Transport v Pell Frischmann Consultants (No.2)* [2006] EWHC 2909 (TCC) (Civil procedure, CPR 17.4).

NEC3 Professional Services Contract – bridge engineer – advice to employer re termination under Core Clause 90.3 and termination costs under Core Clauses 91 and 92.

Major office development in Guildford – design and construction of cladding and curtain-walling – defence of multi-million pound claims by main contractor (TCC litigation).

Design of floor slabs for basement and ground floors of large shopping centre – changes in design (tender stage design different to construction stage design) – acted for engineers in successful defence of multi-million pound claims by tendering design & build contractor (adjudication).

Design of dance floor for a night-club – dance floor “bouncing” when in use at certain frequencies – acted for engineers in defence of multi-million pound claims arising out of alleged fatigue damage to dance floor (TCC litigation/mediation).

A1/M1 Motorway – acted for engineers in defence of multi-million pound claims by design & build Joint Venture arising out of failure of sub-base materials used in construction of the new Motorway (TCC litigation).

Major residential development in London – provision of contract administration services by quantity surveyors – contractual requirement for provision of Performance Bond by the Building Contractor – Bond not provided – Insolvency of the Building Contractor – acted for the Employer in claims against the quantity surveyors for professional negligence in failing to take reasonable steps to ensure that the Bond was provided (Pre-action).

Major office refurbishment project in Sussex – negligent cost estimates and cost reporting – acted for surveyors in successful defence of claims by employer (adjudication).

Government Department – defence of claims for damages arising from overpayment of sums to contractors – valuation and certification of advance payments – advice on limitation issues (arbitration/mediation).

Government Department – defence of claims for financial mismanagement of a multi-million pound office refurbishment project (TCC litigation/mediation).

Chartered Surveyors & Valuers – large pension fund – purchase of an investment property in Manchester – pre-purchase surveys and valuations by chartered surveyors and valuers – subsequent design and management of repairs – acted for pension fund in successful claim for damages (TCC litigation/mediation).

Chartered Surveyors & Valuers – bank lending on alleged over-valuation of residential property by chartered surveyors – acted for surveyors in successful resistance of application by bank Claimant to accept a Part 36 Payment out of time – *Barclays Bank PLC v Martin & Mortimer LTL 19/8/2002* (unreported elsewhere).

Chartered Surveyors – property developers – agricultural barn conversions – acted for developers in substantial claims against chartered surveyors in respect of project management of demolition works which led to revocation of planning

permission (TCC litigation/mediation).

Managing agents – alleged mismanagement of a government office building – defence of managing agents; contributory negligence and apportionment of damages with negligent solicitors – *Secretary of State for the Environment v (1) Unicorn Consultancy Services Ltd & (2) Veale Wasbrough (A firm)* [2000] NPC 108.

Risk management consultants – chemical industry – chemical plant in Yorkshire – production of COMAH Safety Report for Top-Tier establishment – catastrophic fire at the factory – acting for consultants in their defence of multi-million pound claims for damages by the factory owners and operators – allegations of negligent advice and negligent assessment of risk (TCC litigation).

Insurance & Property Damage

James's insurance practice involves acting for (and sometimes against) many of the largest national and international insurance companies and underwriters. He regularly advises insurers on matters of policy wording and interpretation (both in contentious and non-contentious contexts) and on issues of non-disclosure, misrepresentation and fraud. He also regularly represents insurers in litigation, whether when themselves pursuing claims for declaratory relief or the recovery of monies already paid under policies; or when themselves defending claims made against them by the insured for indemnification. He has particular expertise in contractor's all risks cover, motor insurance, permanent health insurance, property and business interruption insurance, professional indemnity policies, product liability policies and public liability cover.

Featured Insurance & Property Damage cases

Contractor's All Risks – acted for insurers in defence of contractor's claims for alleged damage to drainage works along the length of the M77 motorway in Scotland (TCC litigation/mediation).

Contractor's All Risks – advice to insurers regarding Clause 22A (JCT 98) Joint Names cover and policy cover in respect of a claim by the Employer as a result of damage to/loss of contract works.

Contractor's All Risks – damaged pipework at a new hospital in Liverpool – advice to main contractors in respect of insurance position and generally (pre-action).

Defective Title and Restrictive Covenant Liability – approved development of site for 3 houses – insured use – advice to insurers as to issues of policy interpretation (pre-action).

Defective Title and Restrictive Covenant Liability – property development in breach of covenant – acting for insurers in responding to claims by insured for indemnity in respect of costs of delay & disruption to work on site – advice as to fraudulent exaggeration of claim (pre-action).

Employers' Liability – acting for insurers in declaratory proceedings following the avoidance of an employers' liability policy for non-disclosure and misrepresentation (High court litigation/mediation).

Fire – Waste Warranty – Reasonable Precautions clause – acted for insurers in defending claims by insured as a result of a major fire at a furniture factory in the South of England (Commercial Court litigation/mediation).

Flood – fraudulent exaggeration of alternative accommodation claims – advice to insurers re proof of fraud.

Latent Defects – advice to insurers regarding policy coverage in respect of multi-million pound claims arising out of alleged defects in concrete floor slab.

Latent Defects – advice to insurers regarding policy coverage in respect of multi-million pound claims arising out of alleged defects (Nickel sulphide inclusions) in heat-treated glass causing spontaneous destruction of the glass.

Motor – fraudulent exaggeration of value of a Ferrari – acting for insurers in successful defence of claim by insured (London Mercantile Court litigation: *Usman v UK Insurance Ltd*).

Motor – advice to insurers as to general questions of indemnity and policy wording in respect of loss/theft of keys.

Permanent Health Insurance – acted for insurers in defence of claims by a former solicitor – total incapacity from work by reason of mental illness: *Hopkins v UNUM* [2005] All ER (D) 29.

Permanent Health Insurance – acted for insurers – proceedings in Scotland – advising as to English law approach to the determination of disputed PHI claims – consideration of obligations of (i) good faith and (ii) reasonable care on the part of insurers in claims handling.

Product Liability – works carried out by insured causing water damage to contract works and other property – advising insurers in respect of policy coverage issues.

Product Liability – supply of chicks infected with salmonella to third parties – destruction of chicks – advising insured in respect of policy coverage issues vis-à-vis its liabilities to third parties.

Professional Indemnity – advice to insurers regarding issues of non-disclosure/ misrepresentation and late notification of claims.

Professional Indemnity – advice to prospective claimant against insured/insurer regarding cover under a PI policy in respect of defects in the design and construction of a wind turbine supplied by the insured.

Professional Indemnity – advice to insurer of structural steelwork contractor as to policy cover in respect of liability for the supply by a sub-contractor of concrete planks – potential defect of design of concrete planks – repudiation of cover – advice for provision to the insured.

Professional indemnity – estate agents and letting agents – alleged misappropriate and misuse of confidential information – advice to insurers regarding declination of cover in respect of potential liability arising from fraud or dishonest conduct.

Property Insurance – advising and/or acting for insurers in respect of numerous claims, particularly those involving fire, flooding, the collapse of buildings or other structures and landslips.

Acted for property insurers of a shopping centre in Sussex in relation to policy coverage issues following the collapse of parts of the roof in a storm in December 2012 and the subsequent closure of the centre as the result of the service of a Dangerous Structure Notice (pre-action).

Acting for property insurers of a school in Milton Keynes in relation to policy coverage issues following the collapse of part of a school hall ceiling in a storm (pre-action).

Acting for property insurers of an office block in Bristol – escape of diesel fuel from a generator service tank on the 6th floor of the building in 2018 – damage and contamination by diesel to the rest of the building – acting for insurers in their pursuit of claims against the designer and installer of the generator and its associated fuel transfer system (TCC litigation).

Acting for property insurers of householders in West Yorkshire – damage by flooding in 2013 due to collapse of local authority culvert – damage to houses and to other culverts – acting for insurers in connection with subrogated claims for damages against the local authority (pre-action).

Acted for property insurers of householders in relation to policy liability issues and potential third party liability on the part of the owners and occupiers of an old railway tunnel in Liverpool following the collapse of the tunnel below residential housing in 2012 (pre-action).

Acted for property insurers of Middlesex University in respect of damage to university residences caused by the Beaufort Park fire – claims for damages against main contractors on neighbouring building site – timber frame structures – liability for fire origin (smoking) and liability for fire spread (TCC litigation/mediation).

Acting for property insurers of a School destroyed by fire (arson) in Lancashire in relation to potential third party liabilities of contractors and building surveyors (pre-action).

Acting for the property insurers of the Liverpool Echo Arena in relation to claims arising out of the destruction of the Arena Car Park by fire on 31 December 2017 (pre-action).

Property Insurance – All Risks – escape of water – damage by wet rot or dry rot in residential premises – general advice to insurers regarding cover under various sample policy wordings (pre-action).

Public Liability – advising and/or acting for insurers in respect of numerous claims, particularly those involving fire, flooding, the collapse of buildings or other structures and landslips.

Acting for liability insurers of main contractors in respect of their defence of substantial claims for damages arising from damage to a water main (and subsequent flooding of neighbouring property) during works to install a communications duct, including advice as to the public liability cover of a sub-contractor (TCC litigation).

Acting for liability insurers of householders in Shropshire – steep-sided valley – landslip – damage to neighbouring property and threat of damage to neighbouring property and public highway in 2019 – advice regarding potential third party liability and legal issues surrounding practical interim measures to stabilise the slope (pre-action).

Acting for liability insurers of the owners/occupiers of a ground floor flat in London in respect of potential claims arising from basement extension works causing the collapse of the property (including the first floor flat above) and damage to neighbouring properties on either side in 2012 (pre-action).

Public Liability – Fire – Wilful and Malicious Act exclusion – acting for insurers in defending claims by third party as a result of a major fire at a factory/warehouse in Manchester (TCC litigation/mediation).

Public Liability – contractual liabilities to third parties – *Tesco Stores v Constable* – advice to insurers regarding public liability cover for contractual liabilities generally and specifically (pre-action).

Product Liability

James's product liability practice covers all aspects of product liability, whether in contract, tort or under statute, and frequently requires James to advise and act on conflict of laws issues (especially questions of jurisdiction and proper law) where products have been manufactured or supplied from overseas.

Featured Product Liability cases

Acting for the UK manufacturers and suppliers of insulation boards for an external wall insulation system in connection with multi-million pound claims for damages arising from the alleged failure of the system on blocks of flats in Glasgow (TCC litigation/mediation).

Acting for factory owners and their property insurers against the UK distributors and Italian manufacturers of lorry – major fire at the factory caused by electrical fault in the vehicle – recall campaign – claims for damages for negligence in and about the management and implementation of the product recall campaign (TCC litigation/mediation).

Acting for German manufacturers and UK maintenance contractors of a gas compressor – fire at a Power Station – advising insurers and insured in respect of potential claims arising (pre-action).

Acting for US manufacturers of an ultraviolet transilluminator (“UVT”) – successful defence of claims against them at first instance and on appeal – UVT causing serious burns to a university employee – *Lewis v University of Bristol*, CA unreported elsewhere.

Acting for suppliers of aggregates – aggregates allegedly expansive – damage to housing estate roads in West Yorkshire – claims in negligence only by a national house builder (TCC litigation/mediation).

Advising importers and suppliers of contaminated rice (unfit for human consumption) as to liability for product recall claims made by retailers and food producers and as to ability to seek damages, indemnity and/or contribution from Swedish exporters (pre-action protocol).

Advising suppliers of defective motor industry gaskets as to liability for vehicle recall claims made by car manufacturers and as to ability to seek damages, indemnity and/or contribution from gasket manufacturers (Mercantile Court litigation/mediation).

Advising suppliers of a defective laboratory incubator – fire at a biotechnology research & development facility in Wales – recovery action against German manufacturer.

ADR

James has considerable experience of adjudication and mediation. Acting as an advocate in numerous mediations and adjudications over many years.

Appointments

- LCLCBA Executive Committee Member 2002-2008
- PNBA Executive Committee Member 2008-2012
- Adjudication Society Executive Committee Member 2016-2020

Publications

- Chapter 32 of “Architect’s Legal Handbook” (9th ed., 2010 and 10th ed., 2020) – Architects’ liability
- Payment Notices and Payless Notices: Are we there yet? (2017)
- Damages for late payment of insurance claims (2017)
- Duties of Care in Construction Projects: ‘Other Property’ and ‘Complex Structure Theory’ – Society of Construction Law – Paper No.178 (2013)
- Contribution Claims: Is there anything left to say? (2008) PNBA Lawyers’ Liability Seminar

Education

- MA (Oxon) Jurisprudence

Recommendations

James was appointed a QC in 2006 having ‘proved himself to be “absolutely first class” (Chambers UK 2007). Nominated for Professional Negligence Silk of Year 2009 at the Chambers & Partners Bar Awards. He is recommended in Chambers UK and the Legal 500 as a Leading Silk for Construction, Professional Negligence and Property Damage work:

- First rate ability to understand complex matters and plead them in an intelligible fashion
- Practical and tenacious with sheer brain power
- Very good on his feet and tactically astute
- He’s client-friendly, shows excellent attention to detail, and grasps complex matters with ease. He rolls His sleeves up and provides pragmatic, commercial advice
- His grasp of the facts and relevant detail from enormous bundles of papers is absolutely phenomenal
- He is brilliant, very approachable and extremely quick
- His attention to detail and commitment to the case really inspire confidence
- Fantastic and delightful to work with