

# Mek Mesfin

Call 2014



Mek Mesfin specialises in commercial dispute resolution, with particular emphasis on construction, energy & infrastructure, insurance & reinsurance, professional liability, and arbitration.

Mek regularly appears as sole counsel in the High Court and County Courts and has appeared led in the Court of Appeal. He is instructed in disputes which are litigated, arbitrated, adjudicated, mediated, as well as those resolved through other fora.

Before coming to the Bar, Mek studied Philosophy, Politics and Economics at Corpus Christi College, Oxford and then completed his GDL and BPTC at City Law School, London. During his early years of practice, Mek appeared in Court on a daily basis and cut his teeth in front of a variety of tribunals. He still frequently appears in Court in trials, costs/case management conferences and procedural applications.

Mek is a TECBAR and CPA accredited Adjudicator and is regularly appointed to determine a variety of disputes. Mek is qualified to undertake public access work.

## Commercial Dispute Resolution

Mek is regularly instructed to advise on and appear in Court in commercial disputes and has experience of a wide range of commercial areas including, sale of goods, supply of services, agency, bailment, landlord & tenant, jurisdiction, conflict of laws and insolvency and restructuring.

### Featured Commercial Dispute Resolution cases

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Advising on potential grounds for resisting payment of a significant regulatory fine.

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*NHS Trust v Multinational contractor*: Sole counsel in a £multi-million dispute relating to the cleaning of a large London hospital; issues of contractual interpretation, restitution and complex quantum.

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*Covid-19*: Advising on contractual issues and generally in relation to the Covid-19 pandemic. In particular, matters he has

and continues to advise on include the performance of obligations, frustration, force majeure under a standard form contract, repudiatory breach of contract and termination, as well as advising on issues of strategy and responding to binding and non-binding government guidance.

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*Melville Dunbar Associates v Carter*: Mek appeared on appeal before HHJ Lewis in relation to a previously undecided point of interpretation of the CPR on costs.

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*Care Home v (1) Biomass Boiler Manufacturer and (2) Installer*: Instructed as sole counsel advising a care home in a multi-million pound dispute against both (1) a supplier and (2) installer / maintenance contractor of boilers and peripheral equipment, for breach of contract and/or negligence. The case involved significant issues of contractual interpretation, exclusion clauses, fraudulent misrepresentation and was set against the backdrop of a government backed renewable energy scheme. The case has recently settled favourably for Mek's client.

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*PFI/PPP arrangements*: Mek has experience of the complex web of contractual arrangements and contractual provisions often found under long term PFI/PPP agreements. His experience extends to supply, leasing, operating, maintain provisions for the provision of a range of projects / long-term services including hospitals, prisons, power plants and medical services.

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*Medical Equipment Supplier v NHS Public Body [Expert Determination by senior commercial KC]*: Instructed as sole counsel in a substantial termination dispute about a contract for the provision of primary care services. The matter was resolved through expert determination and involved issues of the validity of purported contractual termination, good faith clauses, exclusion clauses and remoteness, as well as technical issues relating to the fulfilment of obligations under the contract. The claims against Mek's client were dismissed in their entirety. Mek continues to advise.

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*Individual v International Insurer*: Mek is instructed as sole counsel in a £0.6m case relating to a guarantee / bond under a building contract progressing through the Commercial Court.

## Construction & Engineering

Mek has a wide range of experience of construction disputes and is familiar with the main contract forms including JCT, NEC, FIDIC, IChemE, LOGIC and RIBA forms. He has a wide range of experience (both as sole counsel and as part of a team) in litigation, arbitration and in heavy adjudications.

Mek is frequently instructed prior to and following adjudication proceedings, whether to provide advice on merits or strategy, and to pursue or resist the enforcement of Adjudicators' decisions. He also regularly sits as an Adjudicator and is on the TECBAR and CPA nominating Panels.

### Featured Construction & Engineering cases

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*NHS Trust v Utilities contractor [2020 – ongoing]*: Advising on a claim against utilities provider in relation to it causing significant delays and costs caused to a £multi-million refurbishment of a large London hospital.

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*Covid-19*: Mek is advising on contractual issues and generally in relation to the Covid-19 pandemic. In particular, matters he has and continues to advise on include the performance of obligations, frustration, force majeure under a standard form contract, repudiatory breach of contract and termination, as well as advising on issues of strategy and reacting to non-binding government guidance.

*Contractor v Sub-Contractor [2020 – ongoing]:* Advising and drafting pleadings in proceedings relating to a contribution proceedings for defective work at a prestigious hotel.

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*The Purchasers of Ballard Hall Chase v Mandale Construction Limited [Manchester TCC; HHJ Eyre / HHJ Stephen Davies]:* Instructed as sole counsel for two defendants, a developer and contractor, in relation to a claim brought by 9 claimants for alleged defects in a residential project. The issues range from contractual interpretation of leases and building contracts, the application of the DPA 1972, and many technical issues in relation to defects.

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*Gatwick Propco Limited v McAleer & Rushe Limited:* Instructed on this £multi-million, multi-party matter relating to defective “Grenfell” type cladding at a Hilton Hotel at Gatwick Airport. The case raises significant issues of causation, expert evidence and Approved Document B.

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*ICCT Ltd v Sylvein Pinto [2019] EWHC 2134 (TCC) (Waksman J; London TCC):* Mek was successful in enforcing an adjudicator’s decision; this case raised a plethora of issues relating to natural justice and jurisdiction, the most important of which was how a party/parties may provide an adjudicator with ‘ad hoc’ jurisdiction in the context of the residential occupier carve out at s.106 of the Construction Act.

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*Protostar v 203 Willesden Lane LLP [2019] HT-2019-000084 (London TCC; Alexander Nissen KC):* Successfully obtained the enforcement of an adjudicator’s decision in the sum of c.£250,000 and indemnity costs.

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*Tolent Construction Ltd v Benchmark Leisure Limited [2018] (Leeds TCC; HHJ Raeside KC):* Successfully obtaining summary judgment for the enforcement of a c.£200k Adjudicator’s decision. The Court considered whether the dispute arose from a separate agreement or a variation to the original contract.

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*Aifos Properties Ltd v GHM Construction Ltd (London TCC; Sir Antony Edwards-Stuart):* Obtained summary judgment for the enforcement of an Adjudicator’s decision and indemnity costs; involved issues of jurisdiction, natural justice and allegations of fraud and other impropriety.

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*Meddings v Aedis:* Instructed to defend an Approved Inspector in a large multi-party claim. The matter had several hard fought hearings before HHJ Klein and HHJ Davis-White.

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Significant adjudication relating to matters of practical completion on a c.£8m project.

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Ongoing adjudication relating to notifications (conditions precedent) and alleged delay under an NEC3 contract.

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Mek has a very wide range of experience in relation to construction disputes resolved through various adjudication rules.

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*Broom v Fluid [2018 – 2019]:* Acting for engineers in a multi-million pound claim arising from a private development that appeared on the “Grand Designs” programme and is alleged to require significant remedial works. The claim involves difficult questions of scope of duty, technical evidence and quantification arise, along with the unique feature of the building having its own television programme about it.

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## Energy, Natural Resources & Infrastructure

Mek’s experience of projects extends disputes over the construction of heavy infrastructure including roads, transport systems, power stations, energy facilities, hotels, and residential developments. He is regularly instructed in very heavy international arbitrations.

## Featured Energy, Natural Resources & Infrastructure cases

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*Consultancy v UAE Government [2020 – ongoing]:* Assisting in a \$multi-billion dispute defending a multi-disciplinary consultancy JV in relation to UAE airport project.

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*Main Contractor v Sub-Contractor [2016 – 2020]:* Instructed in an ad hoc international arbitration concerning the construction of a coal-fired power station in South Africa.

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*Main Contractor v Sub-Contractor [2018 – 2020]:* Instructed in a \$150m ICC Arbitration relating to the construction of a rail system (Qatari Law; ICC)

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*Main Contractor v M&E Contractor:* Instructed in a c. \$200m ICC Arbitration between a Main Contractor and a MEP contractor (Qatari Law; ICC)

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*Main Contractor v M&E Contractor:* Instructed in a c. \$500m DIAC Arbitration between an M&E Contractor and a Main Contractor (Qatari Law; DIAC)

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*M&E Sub-Contractor v Main Contractor [2019]:* Mek was instructed as sole counsel for a sub-contractor in relation to a multi-million pound International Arbitration arising out of M&E works at an alcohol plant. The case settled on favourable terms for Mek's client, days before a 3-day evidentiary hearing (Law: English; Seat: Milan).

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## Insurance & Reinsurance

Mek has a wide range of experience in insurance disputes, covering a wide range of industries and sectors.

### Featured Insurance & Reinsurance cases

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*Cladding Claims / Building Insurance:* Instructed on several £multi-million policy and coverage matters in relation to defective cladding and other fire safety matters. Issues include defect/damage, the need for immediate remedial action / risk to health & safety and matters of the measure of loss.

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*Dalamd v Butterworth Spengler [2018] EWHC 2558 (Comm):* Mek defended Butterworth Spengler against a claim for insurance broking negligence arising out of property damage, business interruption and CAR policies. This is a significant case on damages for loss of a chance, particularly in the context of insurance brokers.

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*Hill Residential v Berryrange Limited:* Sole counsel in a claim relating to piling works at a prestige development in London, raising issues of duties to warn and the interpretation of the joint insurance provisions obtained by one of the parties and the extent of its cover.

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*Coverage/Policy issues:* Mek has significant experience of the gamut of policy/coverage issues. He has recently completed secondment at a City Law Firm in its Insurance/Property Damage team, where he dealt with a range of multi-million pound disputes raising a range of policy coverage and liability issues.

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Advising on a coverage dispute between an employers' liability and a public liability policy in relation to a fatal accident at a school.

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Advising a Lloyd's syndicate on whether it was – and if so to what extent – contractually liable to indemnify the employee

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of an insured for costs incurred in defending a criminal prosecution brought against him.

Advising an insurer on issues of causation, liability and whether it could overcome a *Mark Rowlands v Berni Inns* defence in order to bring a subrogated claim against a tenant of its insured following a fire at a warehouse.

Advising a Lloyd's syndicate on equitable and contractual set-off and limitation in relation to historic coverage for property damage and theft.

Advising an insurer on the applicability of a deliberate / illegal act clause in a coverage dispute.

Advising a school on a coverage dispute relating to its vicarious liability in matters of historic sexual abuse.

## Professional Liability

Mek has a wide range of experience of professional negligence, including matters involving construction professionals (including engineers, contractors, architects, approved inspectors, sound acoustic engineers, surveyors), legal professionals (solicitors and barristers), financial professionals (including investment funds, SIPP providers), insurance professionals (including insurance brokers, Lloyds syndicates), and others (including auctioneers and auction houses, boutique motor vehicle garages, crop production consultants) and a range of consultants. He has a wide range of experience of disputes relating to claims/counterclaims for professional fees. His professional liability work is often tied to instructions relating to professional indemnity insurance and related coverage / policy matters. Mek also has significant experience of property damage cases including floods, fires, water damage and tree roots cases.

### Featured Professional Liability cases

*Individuals v Solicitors (solicitors/conveyancers) [2020 – ongoing]*: Allegedly negligent conveyancing relating amongst other things to an overage clause.

*Individual v Solicitors (solicitors) [2020 – ongoing]*: Allegedly negligent conduct of underlying litigation.

*McAvoy v Blue Sky Design (structural designer) [2019 – ongoing]*: Instructed as sole counsel (against a KC) in a claim relating to defects alleging to design life (issues pertaining to *Blackpool Borough Council v VolkerFitzpatrick Limited & Ors*). CCMC listed in Manchester TCC in June 2021.

*Dalamd v Butterworth Spengler [2018] EWHC 2558 (Comm)*: Defended Butterworth Spengler against a claim for insurance broking negligence arising out of property damage, business interruption and CAR policies. This is a significant case on damages for loss of a chance, particularly in the context of insurance brokers.

*Mortgage brokers*: Instructed on a number of claims alleging negligence in relation to interest only mortgages.

*McQuin v Pickett (interior designer) [2020 – ongoing]*: Mek is instructed to defend an interior designer in relation to wide ranging allegations of project mismanagement on a high end residential project.

*Policy Excess v Dynamo (insurance brokers) [2020 – ongoing]*: Defending an insurance broker in relation to alleged mis-selling and failures to comply with verification processes.

*Niblock v Hoskin t/a PMN (solicitors) [2019 – ongoing]*: Allegedly negligent conduct of litigation by solicitors met by a defence that the underlying claim was fraudulent and/or illegal; issues relating to *Stoffel v Grondona [2020] UKSC 42*.

*Individual v IFA (financial advisor) [2020 – ongoing]:* Mek is instructed in relation to a claim against a financial advisor; significant issues include scope of duty, causation and the SAAMCO cap. Listed for a 1 day summary judgment hearing.

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*Kennedys v GAL (specialist contractor) [2020 – ongoing]:* Instructed in claim for breach of contract for the supply of allegedly defective glass.

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*Individual v Structural Engineer [2020 – ongoing]:* Instructed in relation to a claim for allegedly defective design of slab foundations with significant issues of causation and limitation.

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*International Law Firm v Construction Firm [2019 – ongoing]:* Instructed as sole counsel representing the defendant in relation its professional negligence action for the allegedly negligent conduct by solicitors of adjudication / arbitration proceedings an underlying construction dispute.

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*Taylor v Pardoes Solicitors [2018 – 2020]:* Instructed in this case concerning allegedly negligent conduct by solicitors of a judicial review action raising complex issues of the scope of implied retainer and loss of a chance.

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*Freeholder v Insurer [2018 – ongoing]:* Instructed (as junior) on behalf of the freeholder of a building in claims worth c.£5m against its insurer and members of the construction professional team in relation to defective cladding and compartmentation issues.

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*Broom v Fluid [2018 – 2019]:* Mek was instructed as junior counsel for engineers in a multi-million pound claim arising from a private development that appeared on the “Grand Designs” programme and is alleged to require significant remedial works. The claim involves difficult questions of scope of duty, technical evidence and quantification arise, along with the unique feature of the building having its own television programme about it.

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## Awards

- Prince of Wales BPTC and Residential Scholar, Grays Inn (2013)
- Bar Council Law Reform Essay Competition, Prize Winner (2012)
- Herbert Smith/The Times Advocacy Competition, Prize Winner (2012)
- Sir Isaiah Berlin Prize, Corpus Christi College, Oxford (2011)

## Memberships

- BILA
- COMBAR
- PNBA
- SCL
- TECBAR

Adjudicator on:

- (1) TECBAR Panel and
- (2) Panel of Adjudicators for the Construction Plant Hire Association

## Education

- Philosophy, Politics & Economics, BA (Hons), Corpus Christi College, University of Oxford
- Graduate Diploma in Law, City Law School
- Bar Professional Training Course, City Law School

## Languages

Amharic (conversational)