



Jonathan Lopian

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"He has an inordinate ability to quickly assert command over a new matter."

Legal 500 UK Bar 2021

"He has a keen eye for detail and will leave no stone unturned."

Legal 500 UK Bar 2020

"He is a wickedly sharp cross-examiner."

Legal 500 UK Bar 2019

Practice Overview

Jonathan is a highly experienced and sought-after commercial chancery barrister with a litigation and advisory practice focused primarily on insolvency, company and commercial law.

His commercial litigation practice covers all types of contractual disputes, including claims relating to agency, guarantees, banking, partnership, breaches of trust and fiduciary duty, unjust enrichment and asset tracing. His company law practice covers directors' duties and remedies for maladministration, director disqualification, shareholder disputes, derivative claims and shareholder agreements, while in his insolvency practice, covering administrations, receiverships, liquidations, bankruptcy and voluntary arrangements, he has extensive experience in cases involving preferences and undervalue transactions, fraudulent and wrongful trading, misfeasance and breach of duty.

His reported cases include the high-profile administration of the Christmas hamper savings club *Farepak Food & Gifts Limited*, the liquidation of the largest Greek mobile telephone operator *Hellas II Telecommunications (Luxembourg) II SCA*, and the important landmark Court of Appeal decisions in *JCAM Commercial Real Estate Property XV Limited v Davis Haulage Limited*, *St Poulton's Trustee v Ministry of Justice* and *Imageview Management Limited v Jack*.

He was appointed **Junior Counsel to the Crown** from 1999 to 2009 and was instructed throughout that period by a wide range of government departments including the Department of Trade & Industry, HM Revenue & Customs and the Ministry of Justice, and by the Treasury Solicitor and Official Receiver.

Prior to commencing practice at the Bar, Jonathan worked for six years in high-level corporate finance, first as a corporate finance executive at the leading UK merchant bank Morgan Grenfell (now part of Deutsche Bank) and subsequently as a corporate finance executive at Olympia & York, then the world's largest private commercial property developer whose projects included Canary Wharf in London, Battery Park City in New York and First

Canadian Place in Toronto.

Chambers UK Bar and **Legal 500** have recommended Jonathan for many years in the commercial chancery and insolvency practice areas. Described as *"a master of detail, and a focused and ferocious cross-examiner"* and as *"a suitably forceful barrister and quick on his feet"*, he is said to be *"excellent – very thorough and gets on top of difficult issues quickly"*, is *"admired by market sources as he is highly technically skilled"*, is *"a highly commercial junior"*, a *"good, forceful litigator"*, and a *"tenacious and clear and compelling advocate"*, who is *"extremely approachable and user-friendly"*.

Commercial Litigation

Jonathan's commercial chancery litigation practice covers all types of contractual disputes including claims relating to agency, guarantees, banking, partnership, breaches of trust and fiduciary duty, unjust enrichment and asset tracing. In the words of Chambers UK, *"trust, breaches of fiduciary duty and partnership disputes all fall within his remit, and his corporate finance background holds him in good stead for anything with a banking or financial services tinge to it"*.

Notable cases include:

- ▢ *Athena Capital Fund Sicav-Fis SCA v Crownmark Ltd* [2020] EWHC 2945 (Comm)
- ▢ *Dodoun v Collings* [2019] EWHC 2008 (Ch)
- ▢ *McTear and Williams v Engelhard* [2016] 4 WLR 108 (CA), (2016) Times Law Reports 2 June
- ▢ *McTear and Williams v Engelhard* [2014] EWHC 1056 (Ch)
- ▢ *McTear and Williams v Engelhard* [2014] EWHC 722, [2014] 3 Costs LR 493
- ▢ *Garwood v Ambrose* [2012] BPIR 996
- ▢ *Imageview Management Limited v Jack* [2009] 2 AER 666 (CA), [2009] Bus. LR 1034, [2009] 1 Lloyd's Rep 436, (2009) Times Law Reports 24 March, Law Quarterly Review 2009 125(Jul) 369-374
- ▢ *Re Farepak Food & Gifts Ltd (In Administration)* [2007] 2 BCLC 1

Company & Partnership

Jonathan specialises in all aspects of company law and corporate insolvency including directors' duties and remedies for maladministration, director disqualification, shareholder disputes, derivative claims, shareholder agreements, share offerings, corporate finance, financial assistance and reductions of capital. He acts for shareholders, directors, office holders, lenders, creditors and insolvent companies.

Recent notable cases include:

- ▢ *Touchstone Retail Limited v Grabal Alok (UK) Limited* [2019] EWHC 3927 (Ch)
- ▢ *JCAM Commercial Real Estate Property XV Limited v Davis Haulage Limited* [2017] BCC 222 (CA)
- ▢ *Re C & MB Holdings Ltd: Hamilton v Brown* [2016] BPIR 531, [2017] 1 BCLC 269, [2017] BCC 457
- ▢ *Godefroy v Company Health Limited (In Liquidation)* [2016] BPIR 1402
- ▢ *McTear and Williams v Engelhard* [2016] 4 WLR 108 (CA), (2016) Times Law Reports 2 June
- ▢ *McTear and Williams v Engelhard* [2014] EWHC 1056
- ▢ *McTear and Williams v Engelhard* [2014] EWHC 722, [2014] 3 Costs LR 493
- ▢ *Re Hellas Telecommunications (Luxembourg) II SCA (In Liquidation)* [2013] BPIR 756
- ▢ *Re Hellas Telecommunications (Luxembourg) II SCA (In Administration)* [2013] 1 BCLC 426

Insolvency

Jonathan specialises in all aspects of corporate and personal insolvency, including administrations, receiverships,

liquidations, individual voluntary arrangements and company voluntary arrangements. He has extensive experience in cases involving preferences and undervalue transactions, fraudulent and wrongful trading, misfeasance and breach of duty, security and priority issues and private and public examinations. He acts for office holders, individuals, creditors, directors and insolvent companies.

Recent notable cases include:

- *Athena Capital Fund Sicav-Fis SCA v Crownmark Ltd* [2020] EWHC 2945 (Comm)
- *Touchstone Retail Limited v Grabal Alok (UK) Limited* [2019] EWHC 3927 (Ch)
- *JCAM Commercial Real Estate Property XV Limited v Davis Haulage Limited* [2017] BCC 222 (CA)
- *Hamilton v Brown and C&MB Holdings Limited* [2017] 1 BCLC 269, [2017] BCC 457
- *Godefroy v Company Health Limited (In Liquidation)* [2016] BPIR 1402
- *Re Calibre Solicitors Limited (In Administration)* [2015] BPIR 435
- *Re Hellas Telecommunications (Luxembourg) II SCA (In Liquidation)* [2013] BPIR 756
- *Re Hellas Telecommunications (Luxembourg) II SCA (In Administration)* [2013] 1 BCLC 426
- *Bonney v Mirpuri* [2013] BPIR 412
- *Chadwick v Nash* [2012] BPIR 70
- *Ross v Commissioners for HM Revenue & Customs* [2012] BPIR 843
- *St John Poulton's Trustee v Ministry of Justice* [2011] Ch 1, [2010] 4 AER 600
- *Ross & Holmes v Commissioners for HM Revenue & Customs* [2010] 2 AER 126
- *Tradition (UK) Limited v Ahmed* [2009] BPIR 627
- *Monecor (London) Limited v Ahmed* [2009] BPIR 235
- *Appleyard v Ritecrown Ltd* [2009] BPIR 235
- *Re Farepak Food & Gifts Ltd (In Administration)* [2007] 2 BCLC 1, [2008] BCC 22, [2010] 1 BCLC 444

Additional Information

Qualifications / Education

- BA (Cantab) Double First, History
- MA PhD (Cantab), Doctorate in History
- Dip Law (City University), Distinction

Awards

- Senior Scholarship, Gonville & Caius College, Cambridge
- Research Scholarship, Gonville & Caius College, Cambridge
- Queen Mother's Scholarship, Middle Temple

Professional Appointments

Junior Counsel to the Crown (1999 – 2009)

Memberships

Chancery Bar Association
Insolvency Lawyers' Association

Cases

McTear & Williams v Engelhard & Others

Reference: [2016] EWCA Civ 487, [2016] 4 WLR 108

Date: 24 May 2016

Court: Court of Appeal

Management contracts – Adjustment of prior transactions – CVA – Breach of fiduciary duty – Equitable and Insolvency Set-Off

Relief from sanctions - Extensions of time - Late service of witness statements – Amendments – Expert evidence

Jonathan Lopian represented the defendants in their successful appeal against the decisions of the trial judge (see [2014] EWHC 722 (Ch) and [2014] EWHC 1056 (Ch))

The Court of Appeal held that the trial judge was wrong to have refused to grant the defendants relief from sanction in respect of the late service of their witness statements and wrong to have refused permission for the defendants to rely on newly discovered documents, and it ordered a re-trial before a new judge. The Court of Appeal also considered, without needing to decide the matter, that the defendants should have been allowed to rely on a defence of set-off and that a witness excluded by the judge on the grounds that he was an expert should not have been excluded.

Judge: Lord Justices Moore-Bick, Ryder and Vos
Insolvency

Practice Area: Company & Partnership
Commercial Litigation

JCAM Commercial Real Estate Property XV Ltd v Davis Haulage Limited

Reference: [2016] EWHC 772 (Ch)

Date: 31 Mar 2016

Court: Chancery Division

Jonathan Lopian represented the applicant creditor in its challenge against the filing in court by the respondent company of a notice of intention to appoint an administrator under paragraphs 26 and 27 of Schedule B1 to the Insolvency Act 1986 as an abuse of process. The respondent company had served and filed four back to back notices, the last of which was filed the day after it had filed a CVA proposal in court and which would expire before the date of the meeting of creditors which had been summoned to consider the proposal. As a matter of statutory construction, the court held that the phrase “proposes to make an appointment” in paragraph 26 of the schedule did not preclude the filing of such a notice, even though the appointment of an administrator was a second best option that would only be pursued if the CVA proposal was rejected.

This decision, with the permission of the judge, is currently the subject of an appeal by the applicant to the Court of Appeal.

Judge: HHJ Bird (sitting as a judge of the High Court)

Practice Area:

Hamilton & Dowers v Brown & C&MB Holdings Ltd

Reference: [2016] EWHC 191 (Ch); [2016] BPIR 531

Date: 08 Feb 2016

Court: Companies Court

Unfair prejudice petition – Just & Equitable Winding-Up petition – Shares vesting in trustees in bankruptcy

Jonathan Lopian represented the first respondent at the trial of an unfair prejudice and just and equitable winding-up petition issued by bankruptcy trustees against the bankrupt’s wife, the director and co-shareholder of the second respondent. New and interesting points of law on:

- the locus of bankruptcy trustees to present a just and equitable winding up petition where they have been registered as members for less than the six-month period required by s.124(2)(b) Insolvency Act 1986, and
- whether the involvement of the bankrupt in the affairs of the company was a ground for relief under s.994 Companies Act 2006

Judge: Mr Registrar Jones
Practice Area: Company & Partnership
Insolvency

Godefroy & Stoneman v Company Health Limited & Others

Reference: [2015] EWHC 3978 (Ch)
Date: 16 Dec 2015
Court: Chancery Division

Liquidators' powers and duties - Subsidiaries guarantors of parent company debt - Dividends – Equalisation between guarantors

Jonathan Lopian represented the joint liquidators of four group companies, subsidiaries and co-guarantors of a company which had borrowed money from three creditors. All of the companies subsequently went into voluntary liquidation and the creditors submitted claims against all of the subsidiaries pursuant to their guarantees. Three of the companies repaid the loan in full but in different amounts. The liquidators wished to equalise the position as between the paying subsidiaries because further dividends were to be declared by the four companies. In the absence of liquidation committees, they applied to the court for declarations that the proposed dividends were held on trust by them for the three paying subsidiaries in specified and different amounts, in order to achieve a form of equitable accounting.

Judge: HHJ Hodge QC (sitting as judge of the High Court)
Practice Area: Insolvency

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