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CHAMBERS



## KRISTA LEE

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### Areas of practice

- Construction & Engineering
- Energy & Natural Resources
- Infrastructure & Utilities
- International Arbitration
- IT & Technology
- Offshore Construction & Marine Engineering
- Professional Negligence

### Clerks' Details

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### Practice overview

Krista is a specialist in engineering, construction, and energy disputes. She has a BSc in engineering and enjoys complex technical disputes, particularly involving the professional negligence of architects, engineers and project managers. Krista's wider commercial practice covers insurance, corporate insolvency and partnership disputes.

She has worked on projects concerning power stations, wind farms, electrical and gas infrastructure, telecoms, railways, chemical and food processing plants, entertainment venues, factories, shopping centres, housing projects and hotels both in the UK and overseas.

Krista is a skilled advocate, with a wealth of experience of obtaining injunctions, arbitration applications and conducting trials in the Technology and Construction Court, Commercial Court, Chancery Division and Court of Appeal.

She is familiar with all forms of ADR including mediation, adjudication, expert determination and dispute resolution boards.

Krista is a fellow of the Chartered Institute of Arbitrators and Chartered Arbitrator and has been appointed to act as sole arbitrator by the ICC. As counsel, she has experience of international and domestic arbitration using the ICC, UNCITRAL, LCIA and other ad hoc rules. She has made arbitration applications and appeals to the High Court.

Krista has a working knowledge of all the major forms of construction/engineering contracts and partnering agreements including JCT, FIDIC, ICE, ACE, IMechE and RIBA. She has a particular interest in NEC3 and was the assistant editor and a major contributing author on Keating on NEC3.

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## Recent Cases

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### Energy & Natural Resources

- Counsel for the EPC Contractor for one of Europe's largest Energy from Waste plants. Involved in adjudications and arbitrations.
- Legal adviser to the UK's largest offshore wind farm.
- Junior counsel in a counterclaim concerning the quality of the foundations at a UK offshore wind farm project.
- Civil works final account claim arising out of the installation of a flue gas desulphurisation plant at a coal-fired power station.
- Negotiation and drafting of a £multi-million engineering contract (based on NEC3) for the design, installation and commissioning of a new power station.
- Counsel in a multi-billion dollar claim arising out of a consortium agreement for the construction and operation of a gasfuelled power station in South America.
- Advised defendants in a multi-party claim arising out of an explosion at Humber Oil Refinery during the installation of a Diesel Hydrodesulphurisation Unit.
- Junior counsel acting for a Joint Venture between Birse Construction Ltd and Bilfinger and Berger UK Ltd, main contractors in respect of the construction of Didcot B power station.

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*“She is incisive and has the ability to see the real issues, and deal with them incredibly effectively.”*

Legal 500, 2015

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### Infrastructure & Utilities

- Advised in respect of the gas meter installations required for the 2012 Olympics. Disputes arose as to the parties' obligations under contracts based on the NEC3.
  - Multi million dollar dispute concerning the sale of telecoms capacity on sub-marine cables linking London and West Africa.
  - Junior counsel in a substantial dispute brought by Thames Water concerning a framework agreement to make new water supply connections. This case involved substantial works in the highways and the parties' obligations under the New Roads and Street Works Act 1991.
  - Domestic arbitration arising out of the supply and installation of conductor wire for overhead transmission of electricity.
  - Advised on the CERT (Carbon Emissions Reduction Target) Scheme and its impact on domestic energy suppliers' obligations to reduce CO2 emissions.
  - Acted for UKPN in a series of adjudications concerning a contractor's final account claim on termination of a framework agreement for civil engineering works and groundworks in respect of new connections to the electricity network and fault repairs.
  - Counsel for a Highway Authority concerning a £20m transport/road scheme relating to a final account claim with the main contractor and a professional negligence claim against the company responsible for carrying out topographical surveys.
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*“She’s knowledgeable and gives highly detailed advice.”*

Chambers UK Bar, 2015

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#### **International Arbitration**

- Sole Arbitrator in a telecommunications dispute. (ICC).
- Counsel in a 3 week hearing with several experts dealing with welding, metallurgy and defect detection issues at an offshore wind farm. (LCIA).
- Sole Arbitrator in a domestic professional negligence dispute where the principal issue was limitation. (ad hoc).
- Sole Arbitrator in a dispute concerning failed project management of housing projects in Eastern Europe. (ICC).
- Three week arbitration, involving cross examination of 4 experts concerning the defective refurbishment of a nursing home and substantial claims for loss of profits. (ad hoc).
- US \$35m claim arising out of the failed operation of gold mine on a South Pacific Island. Dispute as to scope of insurance policies covering political risks in the event riots and/or war. (LCIA).
- US\$1.3 billion dispute as to liability for construction and running costs and distribution of profits in respect of a thermoelectric power plant in Brazil. (UNCITRAL).
- US\$40 million letter of credit dispute arising from the performance of a petrochemical plant in Qatar constructed by a French/US joint venture. (ICC).
- US\$2 million claim arising out of the design, construction and commissioning of an Exxon facility on Sakhalin Island. (LCIA/UNCITRAL).

#### **Professional Negligence**

- Acted for project managers and quantity surveyors in High Court litigation arising out of an architectural competition and proposal to build an art gallery offshore at Margate. The project managers and quantity surveyors faced allegations of fraud during the design competition and inadequate risk and cost management thereafter.
- Acted for an architect in disciplinary proceedings brought by the Architect's Registration Board.
- Acted for a Borough Counsel in High Court proceedings arising out of works required under the Environmental Protection Act 1990 to remediate contaminated land below a historic petrol station. Krista has advised in connection with the professional obligations of the environmental consultant/contractor/project manager and structural engineers.
- Acted for the main contractors in a dispute concerning the design and construction of a double basement at a property in Holland Park. The case concerned allegations of negligent design and construction of the foundations, Party Wall Act 1996 issues and liability for damage to neighbouring properties.
- £10m professional negligence claim against quantity surveyors in a project to convert and restore a historic manor house in to a first class hotel.

#### **Offshore Construction & Marine Engineering**

- Junior counsel to the Ministry of Defence concerning the design and construction of a £multimillion offshore berthing facility for nuclear submarines.
  - Junior counsel in an LCIA Arbitration arising out of the alleged defective foundations at the UK's largest offshore windfarm.
  - Counsel in TCC litigation arising out of the defective design and installation of dolphins and fenders in a commercial roll on/roll off terminal at ` harbour in Scotland.
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## Insurance

- Acted for insurers in a US\$35m insurance claim arising out of civil unrest, which resulted in physical damage to and the emergency evacuation of a gold mine. Coverage was disputed on several grounds including: the civil war exclusion clause; timing of the damage; inapplicability of the business interruption extension; coverage by other policies.
- Junior counsel in a CA case concerning the meaning and effect of joint names insurance provisions within a construction contract.
- Advised on the effect of an insolvent defendant consenting to judgment and the possibility of recovering judgment from the insurers of the group of companies, to which the defendant belonged.
- Routinely act for professional indemnity insurers and advise on issues of coverage, non-disclosure, notification and recovery against insurers of insolvent companies.

## IT & Technology

- Junior counsel in an ad hoc arbitration concerning breaches of a software licence agreement to supply financial software to the worldwide branches of an international bank.

## Corporate Insolvency

Krista is one of the few specialists in corporate insolvency in the construction industry and has been counsel in some of key decisions including: *Wilson & Sharp Investments Ltd v Harbour View Developments Ltd* [2015] EWCA Civ 1030; *William Hare Ltd v Shepherd Construction Ltd* [2010] EWCA Civ 283; and *Re A Company* (number 1299 of 2001) June [2001] CILL 1745.

- Obtained an injunction from the Court of Appeal to prevent an insolvent contractor from winding up a developer on the basis of unpaid interim certificates, in reliance upon s111(10) of the HGCR Act 1996 and the provisions of the JCT standard form.
- Adjudication enforcement proceedings in the Court of Appeal, concerning whether the employer's administration triggered a pay when paid clause.
- Two week Chancery Division trial of preliminary issues arising out of a £4m partnership dispute.
- Obtained injunctive relief for minority shareholders to prevent the threatened buy out of their shares.
- Junior counsel in £230m claim against investment bankers, director's and solicitors for fraud, misrepresentation and breach of the Listing Rules and the City Code prior to the sale of a PLC.
- Junior counsel in four week trial for breach of warranty in a share sale agreement.
- Acted for chief executive of Crystal Palace Football Club (1986) Ltd in a five week directors disqualification.

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*“Hard-working, user-friendly and responsive.”*

Chambers UK Bar, 2014

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## NEC

Krista has a particular interest in NEC3. She was the assistant editor of Keating on NEC3 and was the lead author on the chapters concerning compensation events. The book covers the ECC, Sub-Contract and Professional Services Contract. Krista's practical experience of NEC3 ranges from contractual negotiation through to advice throughout the contract and dispute resolution through adjudication and arbitration/litigation. A few examples include:

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- Successfully defended a £6m adjudication concerning the interpretation of bespoke painshare and fee provisions within an NEC Option C contract for the creation of substantial underground gas storage caverns.
- Acting for an Austrian engineering company in the negotiation and drafting of the NEC3 (Options A and E) contract for the supply and installation of diesel rotary uninterruptible power supply devices at London's largest data centre.
- Advising the Olympic Delivery Authority on their liabilities under amended NEC3 contracts with regard to the gas meter installations and associated infrastructure.
- Arbitration arising out of the inaccurate topographical surveys for a major transport improvement project for Plymouth. The highway services contract was based on an amended NEC3 term service contract.
- Acting for EDF Energy in an adjudication concerning the operation of the provisions as to the Contractor's share and the assessment of compensation events in an amended NEC3 Option C contract.

### Construction & Engineering

- £32m claim arising out of the construction of a purpose built factory, for the relocation of three businesses serving the automotive industry.
- Junior counsel in a US\$35m claim relating to defects and delay in a Coca-Cola megaplant in Ballina, Ireland.
- Successfully resisted enforcement of an adjudicator's award on the ground that "more than one dispute" had been referred.
- Advising a Borough Council on its obligations under the Environmental Protection Act 1990 with regard to the remediation of contaminated land.

### Selected Reported Cases

- *Wilson & Sharp Investments Ltd v Harbour View Developments Ltd* [2015] EWCA Civ 1030
- *St. Austell Printing Co. Ltd v Dawnus Construction Holdings Ltd* [2015] EWHC 96 (TCC)
- *Carillion JM Ltd v PHI Group Ltd* [2010] EWHC 496 (TCC)
- *William Hare Ltd v Shepherd Construction Ltd* [2010] EWCA Civ 283; [2010] BLR 358, [2010] 12 EG 96, 130 Con LR 1, [2010] CILL 2825, [2010] 22 EG 108
- *Mayhaven Healthcare Ltd v Bothma (t/a DAB Builders)* [2009] EWHC 2634 (TCC), 127 Con LR 1, [2010] BLR 154
- *William Hare Ltd v Shepherd Construction Ltd* [2009] EWHC 1603 (TCC), [2009] BLR 447, 125 Con LR 123, [2009] CILL 2753, [2010] BCC 332
- *Tyco Fire & Integrated Solutions (UK) Ltd v Rolls-Royce Motor Cars Ltd* [2008] [2008] 1 CLC 625, [2008] Lloyd's Rep IR 617, [2008] EWCA Civ 286, [2008] 2 All ER (Comm) 584, [2008] BLR 285, 118 Con LR 25 and [2008] 14 EG 100
- *Permasteelisa Japan UK v Bouyguesstroi* [2007] All ER (D) 97 TCC
- *Sydenhams (Timber Engineering) Ltd v CHG Holdings Ltd* [2007] EWHC 1129 (TCC)
- *Tyco Fire & Integrated Solutions (UK) Ltd v Rolls - Royce Motor Cars Ltd* [2007] LTL 11/07/2007
- *David and Teresa Bothma (in partnership) t/a DAB Builders v Mayhaven Healthcare Ltd* [2006] EWHC B2 (TCC), [2007] EWCA Civ 527 (114 Con LR 131)
- *Isaacs, Harrison v Belfield Furnishings Ltd and ors* [2006] 2 BCLC 705
- *Khan v Khan* [2006] EWHC 1477 (ChD); [2006] All ER (D) 217
- *Hitesh Lad v (1) Subhas Patel (2) Satyadev Patel (3) Central Coating Ltd* [2004] LTL

- *Infinteland Ltd v Artisan Constructing Ltd* [2004] EWHC 955 (ChD); [2004] All ER (D) 350
- *Secretary of State for Trade & Industry v Goldberg & Anor* [2004] EWCA Civ 1292; [2003] EWHC 2843 (ChD); [2003] All ER (D) 369
- *Re A Company (number 1299 of 2001) June* [2001] CILL 1745

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## Education & Professional Career

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BA (Hons) Jurisprudence, University College Oxford	1992-1995
Exhibitioner at University College Oxford	1993
Hardwicke, Megarry and Sunley Scholarships, Lincoln's Inn	1994-1996
Called to the Bar, Lincoln's Inn	1996
BCL, University College Oxford (Corporate Insolvency, Restitution, Evidence, Conflicts)	1996-1997
Hilda Martindale Scholar	1996
MA, University College Oxford	2001
BSc (Hons) (Open) (Engineering Mechanics: Solids and Fluids, Thermofluid Mechanics, Heat Transfer, Failure of Stressed Materials, Inorganic Chemistry)	2003
TECBAR Accredited Adjudicator	2007
Public Access Training	2007
Chartered Arbitrator	2007
TECBAR panel of Arbitrators	2013
Associate Membership of the Institute of Mechanical Engineers	2013

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## Memberships

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Fellow Chartered Institute of Arbitrators  
 Institute of Mechanical Engineers  
 London Court of International Arbitration  
 Technology and Construction Bar Association  
 Society of Construction Law  
 Society of Computers and Law

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## Seminar, Publications & Papers

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- Developing an Arbitration Practice, University of Exeter (2015)
- International Dispute Resolution in the Construction Industry, University of Exeter (2014)
- Costs in International Arbitration, RICS (2014)
- Expert Evidence: Immunity, Reports, Preparation for Hearings, Techniques for giving evidence (Constructing Excellence North East (2014)
- Evidence in International Arbitration: Documentary, Factual and Expert, Reed Smith (2013)
- Contributing author and assistant editor of Keating on NEC3 First Edition (2012)
- Researcher, Keating on Construction Contract - Ninth Edition (2012)

- E-Disclosure, Hill International (2011)
- Adjudicating More than One Dispute – Adjudication Society Newsletter (December 2006)
- The New Administration Regime (April 2006)
- Pride & Prejudice -s459 of the Companies Act 1985 (March 2006)
- Arbitration: Practical self-study course on best practice (Informa (2005)
- Civil War Exclusion Clauses - (On Risk Spring 2005 - Insurance Newsletter)
- Performance Bonds & Guarantees (November 2005)
- Concurrent Delay in Construction Claims (September 2005)
- The Liability of Construction Professionals (April 2005)
- Brokers - The New Regulatory Framework (March 2005)
- Liquidated Damages Clauses in Construction Contracts (August 2004)
- Unlawful Financial Assistance - Recent Cases (March 2004)
- The Enterprise Act 2002 - Impact on Corporate Insolvency (December 2003)
- Freezing Injunctions -A Practical Guide (March 2002)
- Winding up petitions following an application for payment (Tolley's Newsletter 2001)

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## Additional Information

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Krista enjoys classical music, theatre, yoga and riding.