

## Max Schaefer

YEAR OF CALL: 2010

*"He is extremely bright ... his work output is incredible"*

Chambers & Partners 2018

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## Practice Overview

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Max has been instructed in some of the most significant commercial disputes of recent years, often involving complex financial or economic issues. Current and recent instructions acting for Hewlett-Packard group companies in their US \$5 billion fraud claims against former executives of Autonomy; for Asda and other high-street retailers in competition damages claims against MasterCard (and, previously, Visa) relating to the networks' multilateral interchange fees (to be remitted to the Competition Appeal Tribunal after Max's clients succeeded in a two-week hearing before the Court of Appeal in 2018); for Goldman Sachs International in a jurisdiction dispute relating to US \$830 million claims against Novo Banco, a Portuguese "rescue bank" (before the High Court, Court of Appeal, and Supreme Court); and defending Iveco in competition damages claims in the wake of the European Commission's *Trucks* decision.

Other notable cases include acting for John Walker at every stage of the *Walker v Innospec* litigation, which concluded in a landmark Supreme Court judgment upholding the right of Mr Walker and his husband (and thousands of other civil partners and same-sex married couples) to the same pension benefits as spouses of the opposite sex; and for Sebastian Holdings Inc in its mammoth dispute with Deutsche Bank.

Max came to the Bar after a previous career in media and technology.

## Commercial

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- *Autonomy Corporation Ltd and ors v Lynch and Hussain*: acting for companies in the Hewlett-Packard group in their US \$5 billion fraud claims against Michael Lynch and Sushovan Hussain, the former CEO and CFO of Autonomy, which HP purchased for US \$11 billion in 2011. Led by Lawrence Rabinowitz QC and Patrick Goodall QC.
- *Goldman Sachs International and ors v Novo Banco SA*: acting for the Claimant in a jurisdiction dispute relating to US \$830 million claims against a Portuguese "rescue bank". The case raises difficult questions about the operation of the EU scheme for the recovery and resolution of failing credit institutions. Before the High Court [2015] EWHC 2371 (Comm); [2015] 2 CLC 475, Court of Appeal [2016] EWCA Civ 1092; [2017] 2 BCLC 277 and Supreme Court [2018] UKSC 34; [2018] 1 WLR 3683. Led by Tim Lord QC and Thomas Plewman QC (and on one occasion Tom Adam QC).
- *Deutsche Bank AG v Sebastian Holdings Inc*: Lawyer Top 20 case. Defending, and bringing a substantial counterclaim in, a commercial dispute arising from a prime-brokerage agreement: four-month Commercial Court trial [2013] EWHC 3463 (Comm); Court of Appeal [2014] EWCA Civ 1100. Led by David Railton QC, Thomas Plewman QC and Simon Birt QC.

- Acted for an online gambling provider engaged in a complex multijurisdictional dispute with a shareholder seeking to interfere with its planned acquisition. Led by Sonia Tolaney QC.
- Defended a provider of infrastructural products in a £900,000 claim under an alleged commercial agency agreement. Unled.
- Defended a £1m claim for breach of contract, breach of copyright and conspiracy on behalf of a major theatre group. Unled.
- *Bruce Emery and ors v Masroor Siddiqui and ors*: acting for the claimant seeking damages and other relief brought by one founding partner in a hedge fund against his co-founder and the fund's principal entities. Led by Jasbir Dhillon QC.
- *Spectrum Agencies v Crocs Europe BV*: defending a claim under a commercial agency agreement before the High Court [2011] EWHC 3386 (QB) and Court of Appeal [2012] EWCA Civ 1400; [2013] 1 Lloyd's Rep 1. Led by Fergus Randolph QC.
- Acted for the claimant in a US \$600,000 contractual dispute concerning the installation of photovoltaic systems. Unled.
- Acted for the Defendant in a contractual dispute concerning the provision of emergency shelters.
- Successfully resisted a claim for pre-action disclosure on behalf of a major bank. Unled.
- Successfully resisted an attempt to invoke the *Mitchell* case law against a defendant bank applying for an extension of time to serve witness evidence. Unled.
- Advised a major utility company on international jurisdictional issues relating to its terms of supply to businesses and consumers.

## Competition

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- *Trucks* litigation: acting for Iveco in various damages claims brought in the wake of the European Commission's decision in *Trucks*. Led by Kelyn Bacon QC.
- *Arcadia and ors v MasterCard Inc and ors*: Lawyer Top 20 case. Acting for (originally) twelve groups of high-street retailers seeking competition damages from MasterCard worth in the hundreds of millions. The Commercial Court trial ran from June–October 2017 [2017] EWHC 93 (Comm); [2017] UKCLR 283. After a two-week hearing in April 2018, the Court of Appeal found for Max's clients on every issue [2018] EWCA Civ 1536. The claims are now due to be remitted to the Competition Appeal Tribunal, together with Sainsbury's parallel claims against MasterCard and Visa. Led by Jon Turner QC and Meredith Pickford QC in the appeal, and by Paul Lowenstein QC and Fergus Randolph QC at first instance.
- *Arcadia and ors v Visa Inc and ors*: acting for the same retailers in similar claims against Visa, in a 13-week trial before the Commercial Court. The claims settled before the trial concluded. Led by Paul Lowenstein QC and Fergus Randolph QC.
- *European Commission Euribor investigation*: acting for a bank in a European Commission cartel investigation. Led by Dinah Rose QC.
- *WH Newson Holding Ltd and ors v IMI plc and ors*: Acted for one of several Part 20 Defendants in the complicated, multi-party High Court damages actions relating to the copper-fittings cartel. Led by Kelyn Bacon QC.

## Arbitration

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- Acted for the creditor in a LCIA arbitration of a nine-figure dispute raising a wide range of issues concerning contract, foreign law, and conflict of laws. The client succeeded on every material issue in the arbitration and subsequently obtained a worldwide freezing order against the counterparty. Led by Tom Adam QC.
- Advised a foreign company on the use of ECHR rights in international arbitration enforcement proceedings.

## Banking and finance

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- *Goldman Sachs International and ors v Novo Banco SA*: acting for the Claimant in a jurisdiction dispute relating to US \$830 million claims against a Portuguese “rescue bank”. The case raises difficult questions about the operation of the EU scheme for the recovery and resolution of failing credit institutions. Before the High Court [2015] EWHC 2371 (Comm); [2015] 2 CLC 475, Court of Appeal [2016] EWCA Civ 1092; [2017] 2 BCLC 277 and Supreme Court [2018] UKSC 34; [2018] 1 WLR 3683. Led by Tim Lord QC and Thomas Plewman QC (and on one occasion Tom Adam QC).
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- *European Commission Euribor investigation*: acting for a bank in a European Commission cartel investigation. Led by Dinah Rose QC.
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## Chancery: commercial

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- Acted for the Respondents in a petition under the Companies Act 2006.

## Civil fraud

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- *Autonomy Corporation Ltd and ors v Lynch and Hussain*: acting for companies in the Hewlett-Packard group in their US \$5 billion fraud claims against Michael Lynch and Sushovan Hussain, the former CEO and CFO of Autonomy, which HP purchased for US \$11 billion in 2011. Led by Lawrence Rabinowitz QC and Patrick Goodall QC.
- Acted for a major retailer in a dispute involving allegations of breach of contract, fiduciary breach and fraud. Led by Jonathan Hirst QC

## Civil liberties and human rights

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- *Walker v Innospec*, a landmark pension equality claim. Max succeeded, unled, for the Claimant at first instance [2013] Pens LR 21, and the decision was cited in Parliamentary debates. The Government then intervened in favour of the employer. After appeals before the Employment Appeal Tribunal [2014] ICR 645 and Court of Appeal [2015] EWCA Civ 1000; [2017] 1 All ER 1078, Mr Walker’s claim was finally vindicated in the Supreme Court [2017] UKSC 47; [2017] 4 All ER 1004. Led by Maya Lester QC before the EAT and Martin Chamberlain QC before the CA and SC.
- Advised Children’s Rights Alliance for England on the legality of proposed legislation relating to the use of force on children in custody. Led by Martin Chamberlain QC.
- *Eweida and ors v UK*: intervened on behalf of the National Secular Society in claims before the European Court of Human Rights concerning the protection of religious freedom [2013] IRLR 231. Led by Anthony Lester QC.

For international human-rights work please see under public international law.

## EU law

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Much of Max's work is heavily engaged with EU law. Beyond the competition sphere, Max has acted in disputes relating areas of EU law as diverse as the bank rescue regime (*Goldman Sachs International v Novo Banco* – see banking and finance), pensions law (*Walker v Innospec* – see civil liberties and human rights), medicine regulation (see pharmaceuticals) and EU commercial agency rules (see commercial law).

## Pharmaceuticals

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- *Dr Reddy's Laboratories (UK) Ltd and anor v Warner-Lambert Co LLC* [2012] EWHC 3715 (Pat); [2013] Bus LR 612: successfully defended a challenge to extended patent protection for Pfizer's drug Lipitor. Led by Kelyn Bacon QC.
- *Accord Healthcare Ltd v Astellas Pharma GmbH*: acted for the Defendant in a claim by a generics manufacturer. Led by Kelyn Bacon QC
- Acting for a major pharmaceutical company in regulatory proceedings relating to the complex EU paediatric medicines regime. Led by Kelyn Bacon QC.

## Private international law

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- *Goldman Sachs International and ors v Novo Banco SA*: acting for the Claimant in a jurisdiction dispute relating to US \$830 million claims against a Portuguese "rescue bank". The case raises difficult questions about the operation of the EU scheme for the recovery and resolution of failing credit institutions. Before the High Court [2015] EWHC 2371 (Comm); [2015] 2 CLC 475, Court of Appeal [2016] EWCA Civ 1092; [2017] 2 BCLC 277 and Supreme Court [2018] UKSC 34; [2018] 1 WLR 3683. Led by Tim Lord QC and Thomas Plewman QC (and on one occasion Tom Adam QC).
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## Public international law

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- Advising on a constitutional challenge to anti-LGBTQ legislation in a foreign state.
- Advised a foreign company on the use of ECHR rights in international arbitration enforcement proceedings.
- Advised on remedies available under international human-rights law to an NGO in a foreign state.
- Advised an NGO in relation to threats of violence against human-rights defenders in an African state, including by making urgent petitions to the UN special rapporteur.
- Advised an NGO in relation to the detention of human-rights defenders by a Eurasian state.
- Advised an NGO on the merits of a potential judicial review relating to legal aid.

## Qualifications

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### Qualifications

2010–11: Pupillage, Brick Court Chambers

2009–10: Bar Vocational Course, BPP Law School, London (Outstanding)

2008–09: Graduate Diploma in Law, The City Law School, City University London (Distinction)

1996–97: Frank Knox Fellow, Graduate School of Arts and Sciences, Harvard University

1993–96: BA Classics, King's College, Cambridge (Double first)

## Publications

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'Al-Skeini and the elusive parameters of extraterritorial jurisdiction' [2011] 5 EHRLR 566.

## Directory Quotes

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"Schaefer is very bright with a good understanding of economics, which he can translate into plain English."  
(Chambers & Partners UK & Global 2019)

"He is extremely bright, a very good drafter and really on top of the econometrics." "His work output is incredible and his ability to understand economics is remarkable." (Chambers & Partners 2018)