

Alistair Schaff KC

Call: 1983 | Silk: 1999

"Alistair is devastating. When he opens his mouth, everyone listens. He is absolutely brilliant on his feet."

Insurance, Chambers UK Bar 2026



✉ aschaff@7kbw.co.uk ☎ +44 (0)20 7910 8300

Alistair Schaff KC practises both as a barrister and as an arbitrator specialising in international commercial law. He is a leading commercial Silk, particularly in the fields of international arbitration, insurance and reinsurance, and shipping/international trade.

In 2018, Alistair was named the Chambers Bar Awards Shipping Silk of the Year (in 2015 he was named The Legal 500 Awards Shipping Silk of the Year). In 2009, Alistair was named the Chambers Bar Awards Insurance Silk of the Year and has been frequently short-listed ever since. He is ranked in band 1 as an International Arbitrator (London Bar) by Chambers & Partners.

As Counsel, he is heavily involved in the insurance and reinsurance treatment of COVID 19 Business Interruption losses and in the very large claims concerning the continued detention of commercial aircraft in Russia. He has recently concluded an appeal to the Supreme Court (which settled) concerning the allocation of mesothelioma losses at the reinsurance level, issues which the Court of Appeal resolved by an extended application of implied contractual principles of good faith. He acted for Ukrnafta in a major enforcement battle concerning a Stockholm arbitration award. He led for the insurance market in the recently settled billion dollar SBM/ MOPUstor Commercial Court action involving sub-sea and topsides damage to a North Sea platform; and he led for the shipowners in the "**B Atlantic**" an appeal to the Supreme Court in a war risks insurance claim concerning the total loss of a vessel which was detained by the Venezuelan authorities after a large consignment of cocaine had been found strapped to the hull; the decision is a leading one on war risks perils and exclusions.

Other recent cases include acting for super-yacht underwriters in an over-valuation case; for a financial services firm, establishing the principle that '*res judicata*' principles preclude complainants from accepting a FOS award in their favour and then suing for additional compensation over and above the limits of the FOS monetary jurisdiction in respect of the same cause of action; for insurers in litigation surrounding Standard Life's Sterling Pension Fund and its claim under its professional liability policy; and for insurance brokers in litigation involving the alleged loss of gold bullion in Turkey and its disputed insurance coverage. He acted in the long-running jurisdictional contest known as the Masri litigation and the even more long-running jurisdictional and substantive contest known as the Metro litigation. And he also appeared in the Privy Council, on appeal from the Guernsey Court of Appeal, in a very significant case involving the discount rate to be applied to lump sum awards for personal injuries. Although outside his normal area of practice, this latter case exemplifies both the range of his abilities and his refusal to limit his work to discrete areas of specialisation. Landmark successes included the seminal decisions of the House of Lords in *Wasa v Lexington* [2009] UKHL 40 and of the Commercial Court in *Equitas v R&Q* [2009] EWHC 2787 (Comm).

As an advocate, he has argued cases before the European Court of Justice, the Supreme Court, the House of Lords, the Privy Council and the Court of Appeal and makes frequent appearances in the Commercial Court and in commercial arbitrations, both in London and

overseas, and whether in long complex trials or arbitrations involving lengthy cross-examination of factual witnesses or experts or in short interlocutory hearings involving difficult points of law. At the pre-trial stage, he operates a very *'hands-on'* approach to his cases. He believes that being an advocate is not just about presenting a case in court or in arbitration but is also about being involved in, and being on top of, a case from an early stage and about helping to shape its eventual outcome through the necessary tactical, procedural and evidential decisions on the way. He is both accessible and *'user-friendly'*.

He has also acted as an expert on English law for use in foreign proceedings and has appeared as counsel before the Court of Final Appeal in Hong Kong and the Supreme Court of Gibraltar.

As an arbitrator, he is regularly appointed in all manner of international commercial arbitrations, both institutional (ICC, UNCITRAL and LCIA) and otherwise, and as sole or party-appointed arbitrator or chair. He has considerable experience as an arbitrator not merely in insurance and shipping matters but in commercial disputes more generally. Recent appointments as arbitrator include disputes relating to alleged banking fraud, bribery in relation to large commercial contracts, product liability, gas pricing, oil pollution and the transfer of shares, as well as insurance and shipping disputes by the dozen. As Chambers recites: *"he's thorough, incredibly well prepared and has everything at his fingertips."* *"He is enormously inventive and reliable and he writes beautifully."*

Expertise

Insurance & Reinsurance

Alistair Schaff KC has a pre-eminent insurance and reinsurance practice. In 2009, he was named the Chambers Bar Awards Insurance Silk of the Year. He has been frequently short-listed ever since.

Alistair Schaff KC is currently heavily involved in very large claims concerning COVID business interruption losses and commercial aircraft detained in Russia

Alistair Schaff KC appeared in the recent case of *Equitas v MMI* [2019] EWCA (Civ) 718, one of the latest cases involving mesothelioma liabilities within the 'Fairchild enclave,' this time at the reinsurance level. The Court of Appeal set aside the award of the judge arbitrator, Flaux LJ, and held that allocation at the reinsurance level was governed by implied contractual principles of good faith. An appeal to the Supreme Court was compromised in mid 2020.

In *Atlas Navios v Navigators (the "B Atlantic")* [2018] UKSC 26, the Supreme Court dismissed Owners' appeal in relation to a claim for a total loss of a vessel which had been detained (and ultimately confiscated) by the Venezuelan authorities prior to sailing after a large consignment of cocaine had been found professionally strapped to the underwater hull. Owners, represented by Alistair Schaff KC, had claimed on their war risk policy, for a total loss by perils insured, and insurers relied on the standard 'customs infringement' exclusion. Although Flaux J rejected Owners' case that there had been wrongful political interference in the judicial process, the Judge upheld the claim on the policy on the grounds that (1) as was common ground at trial and on appeal, the affixing of the drugs which had caused the detainment recklessly subjected the vessel to the risk of detainment and accordingly amounted to 'malicious acts' by persons unknown within the cover and (2) as a matter of construction, the standard policy exclusion did not apply where the relevant customs 'infringement' was no more than the manifestation of those insured 'malicious acts'. The decision was reversed on appeal, as a matter of construction: [2106] EWCA Civ 808. However, the Supreme Court permitted insurers to withdraw its previous concession that the relevant acts amounted to 'malicious acts' and has now held that the 'malicious acts' cover was not engaged at all, the acts of the drugs smugglers (albeit reckless) lacking the necessary spite or ill will towards the vessel to qualify as 'malicious acts'. The decision has significantly narrowed the scope of the malicious acts cover although the exclusion was also upheld on alternative construction grounds.

Alistair Schaff KC has recently been and continues to be involved in a string of high value and complicated liability insurance or reinsurance claims which are the subject of London arbitration and in which he has acted for insurers or reinsurers. Frequently governed by New York law, and often on the Bermuda Form, these arbitrations have ranged from pharmaceutical liabilities, liabilities for patent infringement, liabilities for personal injury (mesothelioma) and maritime pollution.

In *Involnert v Aprilgrange (the "Galatea")* [2015] EWHC 2225 (Comm), a superyacht had been inadvertently insured for 13m euros when it was known by its owners and managers to be worth no more than 8m euros. Leggatt J. upheld the defence of Insurers, represented by Alistair Schaff KC, that the policy had been avoided for material non-disclosure. *Standard Life v Ace* [2012] EWHC 104 (Comm) involved a claim for £100m on Standard Life's professional liability policy in respect of a cash injection made to top up the value of the Pension Sterling Fund as a result of falls in value in the Fund. Alistair Schaff KC acted for the insurance market. The litigation raised significant issues of fact and law, including the scope of Mitigation Costs coverage in a professional liability policy and novel and difficult questions of apportionment where mitigation costs are alleged to have been incurred for both insured and uninsured purposes. The Court of Appeal dismissed Insurers' appeal from the first instance judgment in Standard Life's favour: [2012] EWCA Civ 1713. *Aioi v Heraldglen* [2013] EWHC 154 (Comm) involved an appeal from an arbitration award in which the tribunal had held that the losses arising from the attacks on the World Trade Center arose from two events, rather than one event. Alistair Schaff KC acted for the Respondent who successfully upheld the award before Field J.

Two landmark victories were for the successful reinsurers in the leading case of *Wasa v Lexington* [2009] UKHL 40 in which the House of Lords considered the nature of a 'back to back' facultative reinsurance contract and held that reinsurers were not liable to indemnify the reassured in respect of an underlying liability for property damage which had occurred outside the policy period (see [2010] J.B.L. page 9 for an article which he has written on this case); and in *Equitas v R&Q* [2009] EWHC 2787 (Comm) in which Gross J. upheld the use of actuarial models as a means of kick-starting the LMX spiral in the aftermath of the incorrect aggregation and/or settlement of KAC / BA and Exxon Valdez losses.

Other selected cases:

- ***Orient Express Hotels v Generali*** [2010] EWHC 1186 (Comm) which involved business interruption claims arising out of Hurricanes Katrina and Rita, the 'other circumstances' clause and the vexed question of wider 'vicinity' damage (this controversial decision was appealed to the Court of Appeal but settled; it has since been overturned by the Supreme Court in the FCA test case concerning COVID BI losses: [2021] UKSC 1).
- ***Mopani Copper Mines v Millennium*** [2009] Lloyd's Rep IR 158, which involved principles of construction concerning the admissibility of deleted words.
- ***Enterprise v Strand*** [2006] 1 LLR 500 in which he acted for the successful reinsurers in litigation involving the liability section of an energy policy.
- ***CGU v Astrazeneca*** [2006] Lloyd's Rep. IR 409 which involved the scope of a 'back to back' reinsurance.
- ***GE Re v New Hampshire / Willis*** [2004] Lloyd's Rep. IR 404, a film finance case in which he acted for the successful Claimant whose declining of liability on grounds of breach of warranty was upheld.
- ***Super Chem Products Ltd v American Life & General Insurance Co. Ltd*** [2004] Lloyd's Rep. IR 446, in which he acted for the successful insurers on an appeal from the Court of Appeal of Trinidad and Tobago to the Privy Council in a case which upheld the insurers' right to rely on timebar and claims co-operation conditions to deny liability for a claim on fire policies.
- ***Jan de Nul v Royale Belge*** [2002] 1 LLR 583 (CA) in which he acted for the successful insured who claimed under a third party liability policy in respect of liabilities for negligence and nuisance.
- ***Kingscroft v Nissan*** [1999] Lloyds' Rep. IR 603, in which he acted for the successful Weavers stamp companies in their claim against their quota share reinsurers in a case which raised important issues as to how underwriting pools operated.
- ***Royal Boskalis Westminster v Mountain*** [1997] 2 All ER 929 (CA) in which he acted for the successful insurers in a claim involving

illegality and duress arising out of the first Gulf War.

- **The State of the Netherlands v Youell** [1998] 1 LLR 236 (paint damage to submarines and issues of sue and labour).
- **Fraser v Colton** [1997] 1 LLR 586 (marine insurance – total loss)

Commercial Litigation

Alistair Schaff KC is currently involved in significant Commercial Court litigation involving claims for COVID BI losses.

In *Carpatsky v Ukrnafta* [2020] EWHC 769 (Comm), Alistair Schaff KC was involved in a major Commercial Court action concerning the enforcement of a Stockholm arbitration award.

Alistair Schaff KC was involved in the major Commercial Court action involving damage to a North Sea platform (the YME MOPUstor) which was fixed for 12 weeks in October 2018 and in which the claim was allegedly worth about \$1bn. The claim involved highly complex factual and expert issues concerning causation of loss and the quantum of repair and settled in September 2018.

More generally, and although a personal injury action would not normally be regarded as a 'commercial dispute,' he was instructed by the insurance market in what was a landmark ruling on the discount rate in relation to the award of lump sum damages. In *Helmut v Simon*, the Guernsey Court of Appeal had assessed damages by reference to an unprecedented negative discount rate which had the effect of increasing the multiplier to unprecedented levels. The Privy Council dismissed insurers' appeal: [2012] UKPC 5.

He also acted in a major dispute involving Forward Freight Agreements. An important issue arose as to whether a settlement agreement could be construed in the light of statements allegedly made in the course of 'without prejudice' negotiations. The Supreme Court has held that they can be relied on for that purpose, reversing the Court of Appeal who had ruled to the contrary. *Oceanbulk v TMT* [2010] 3 WLR 1424 is an important authority on the (reduced) scope of the 'without prejudice' rule.

More historically, in *Great North Eastern Railway v Railcare*, he acted for the successful claimant in its claim for substantial damages for negligence against a supplier of rail parts arising out of a derailment, vindicating a very substantial claim of approximately £3m in the face of an unsuccessful plea of contributory negligence.

International Arbitration (Counsel)

Alistair Schaff KC has a major international arbitration practice. He has acted as Counsel in commercial arbitrations for over 30 years, both in London and overseas, including in the Far East and in the Caribbean.

His arbitration practice covers all aspects of international commercial disputes, both of a general commercial nature and involving insurance or maritime-related disputes. He is currently involved in arbitration concerning the recovery of COVID BI losses. He recently appeared as Counsel in a significant case on enforcement of a Swedish arbitration award in *Carpatsky v Ukrnafta* [2020] EWHC 769 (Comm). He has recently been involved as Counsel in a number of significant New York law and Bermuda Form arbitrations concerning liability insurance involving a wide range of subjects such as pharmaceutical products, patent infringement and maritime pollution, as well as an English law arbitration involving liability for mesothelioma at the reinsurance level which went to the Court of Appeal: *Equitas v MMI* [2018] EWCA (Civ) 991 and settled shortly before an appeal to the Supreme Court.

Selected cases as Counsel:

- On behalf of reinsureds seeking recovery of COVID BI losses.

- On behalf of a Ukrainian oil and gas company seeking to resist enforcement of a multi-million dollar SCC arbitration award.
- On behalf of a UK insurer and reinsured in connection with the allocation of mesothelioma losses.
- On behalf of various insurers concerning multi-million dollar claims in respect of third party liabilities in respect of the distribution of various pharmaceutical drugs and products, in respect of patent infringement and in respect of maritime pollution.
- On behalf of Far Eastern hotel resorts in Singapore and Bangkok arbitrations arising out of business interruption losses consequent on the tsunami.
- On behalf of personal accident reinsurers in a London reinsurance arbitration concerning the personal accident spiral.
- On behalf of London market insurers concerning hurricane damage in the Caribbean.
- On behalf of shipping interests concerning the commissioning and operation of a new port facility in Latin America
- On behalf of political risk underwriters in an LCIA arbitration concerning energy business in Argentina.
- On behalf of a Middle East government in a major ICC arbitration involving the successful defence of a two billion dollar dispute concerning an oil production sharing agreement with oil majors.

International Arbitration

Alistair Schaff KC regularly sits as a commercial arbitrator in ICC, LCIA, UNCITRAL, LMAA and other arbitrations, as sole or party-appointed arbitrator or chair, dealing with a very broad range of international commercial disputes, both general and of an insurance or maritime nature.

Selected cases as Arbitrator:

Commercial disputes

- Contractual dispute involving valuation of Russian business (LCIA, chair).
- Procurement of large Far Eastern shipbuilding contract by bribes and secret commissions (co-arbitrator)
- Commodities contracts involving secret commissions (ICC, co-arbitrator).
- Application of gas pricing formula in long term agreement (co-arbitrator).
- Disputed transfer of shares in overseas company (LCIA, party appointed).
- Fraudulent signature of banking documents (co-arbitrator).
- Claim for wrongful termination of Chinese distribution agreement (LCIA, sole).

Insurance and reinsurance disputes

- US products liability insurance claim for building products (chair).
- US products liability insurance claim for ground water contamination (co-arbitrator).
- Aggregation of 9/11 World Trade Center losses (sole).
- P&I Club cover in respect of maritime pollution on French and Spanish littoral (reported on appeal as **London Steamship v Spain**)

and France, The "Prestige" [2015] EWCA Civ 333) (sole).

- Loss of hire reinsurance dispute concerning reinstatement and aggregation (sole).

Maritime disputes

- No right of withdrawal for non payment of previous instalments of hire (upheld on appeal as *The "Caravos Liberty"* [2019] EHC 3171 (Comm) (party-appointed).
- Cost of compliance with 2020 low sulphur fuel oil regulations (co-arbitrator).
- Switching of hull numbers of new shipbuildings in two separate but related arbitrations (co-arbitrator; chair).
- Delayed demobilisation of drilling rig (ICC, sole).
- Charterparty repudiation, freight/lien/damages issues (chair, LMAA).
- West African off-sea drilling dispute (LMAA, co-arbitrator).

Jurisdiction / Conflict of Laws

Alistair Schaff KC has always enjoyed and is experienced in handling difficult jurisdictional issues. In 2011, he acted in the long-running Masri litigation in connection with difficult issues concerning the scope and application of Articles 27 and 28 of the Brussels 1 Regulation: *Masri v CCI* [2011] EWHC 1780 (Comm).

Selected cases:

- *ICSOP v Equitas* [2013] EWHC 3713 (Comm)
- *Equitas v Allstate* [2009] Lloyd's Rep. IR 227.
- *Metro litigation* (see, by way of example, [1999] 2 LLR 724)
- *The "Tatry" / "Maciej Rataj"* [1999] 2 WLR 181, in which he represented cargo interests before the European Court of Justice in the leading case involving Articles 21 and 22 of the Brussels Convention.
- *Surzur v Koros* [1999] 2 LLR 611 (a Court of Appeal decision on conspiracy by unlawful means) arose in a jurisdictional context, as did:
- *Ocarina v Marcard Stein* [1994] 2 LLR 524, the latter then proceeding into a major trial between the bank and its customer which was only concluded on appeal in 1999.

Professional Negligence

Professional negligence experience involves claims against financial service providers, solicitors, accountants / auditors and insurance brokers. In *Clarks v In Focus* [2014] EWCA Civ 118, Alistair Schaff KC led on a very important appeal to the Court of Appeal concerning claims for professional negligence against a financial adviser which had been previously been referred to and determined in the complainants' favour by the Financial Ombudsman Service (FOS). The Court of Appeal reversed Cranston J. and accepted the submission that the application of res judicata and merger principles prevent a complainant from bringing subsequent court proceedings for claims in excess of the maximum amount awardable under the FOS jurisdiction, in circumstances where the

complainant has previously accepted a FOS determination for the maximum sum awardable and thereby rendered it final and binding under the Financial Services Act. He has acted for insurance brokers in relation to significant commercial litigation, first involving the insurance against product liability risks and secondly concerning the alleged loss of over \$400m worth of gold in Turkey and the disputed insurance arrangements surrounding that gold. He is currently acting for liability insurers in relation to a number of mis-selling claims against financial advisers, concerning the question of aggregation.

Selected cases:

- ***Environcom v Miles Smith*** [2011] EWCA Civ 1152. The brokers had been found not liable on grounds of causation. The appeal was dismissed, essentially because the pleadings did not support the case sought to be argued.
- ***Dunlop Haywards (DHL) Ltd v Barbon Insurance Group Ltd*** [2010] Lloyd's Rep. IR 149. Acting for Nationwide Building Society in a professional negligence action against insurance brokers in a case raising issues as to the extent of brokers' duties, contributory negligence and causation of loss.

Shipping & Transport

In the shipping context, Alistair Schaff KC has over 30 years of experience in litigation and arbitration, beginning with demurrage disputes and culminating in several of the leading cases on shipping law. He was the Chambers Bar Awards Shipping Silk of the Year for 2018 (and he was also named Legal 500 Awards Shipping Silk of the Year for 2015). He sits regularly in maritime arbitrations, both party appointed, sole arbitrator and chair.

Alistair Schaff KC has acted for insurers in a number of complex total loss cases. He acted for the shipowners in ***Atlas Navios v Navigators (the "B Atlantic")*** [2014] EHHc 4133 (Comm); [2016] EWCA Civ 808; [2018] UKSC 26, in which the Owners claim for a total loss on their war risk insurance in circumstances where cocaine had been found strapped to the vessel's hull and the Venezuelan authorities had consequently detained the vessel was ultimately dismissed. He acted for the successful super-yacht insurers in ***Involnert v Aprilgrange (the "Galatea")*** [2015] EWHC 2225 (Comm), where the policy was avoided for non-disclosure of the fact that the yacht had been over-valued. He acted for shipowners in a major piece of Commercial Court litigation involving microbially induced corrosion and whether such corrosion amounted to or arose from 'perils of the seas' or ordinary wear and tear or poor maintenance.

In other cases, he has also acted for shipping interests in relation to the commissioning and operation of new port facilities in Latin America and for ship purchasers in a Singapore arbitration concerning alleged illegality in the form of alleged non-compliance with IACS shipbuilding regulations. He acted for shipowners in the latest recent case on Letters of Indemnity in ***The "Songa Winds"*** [2018] EWHC 397 (Comm) and in a case on COGSA 1992 in ***The "Baltic Strait"***.

Other Selected cases:

- ***MacWilliam v Mediterranean Shipping Company (The "Rafaella S")*** – He successfully represented the cargo claimants in what is now the leading case on the status of 'straight' bills of lading made out to a named consignee without the addition of the words 'to order.' Overturning the first instance judge (who, in turn, had upheld the decision of the arbitrators), the Court of Appeal held in [2004] QB 702 that 'straight' bills of lading are nonetheless 'bills of lading' for the purposes of the Hague-Visby Rules. The House of Lords upheld the Court of Appeal's decision: [2005] 2 AC 423.
- ***Carewins v Bright Fortune*** (FACV no 13 of 2008) – He successfully represented the cargo claimants before the Court of Final Appeal in Hong Kong in a decision which not only reaffirms the presentation rule for 'straight' bills of lading but holds that an exceptions clause which excludes liability for the consequences of 'misdelivery' is not to be construed as protecting the carrier for breaching the presentation rule.

- ***Effort Shipping v Linden*** [1998] AC 605 – In this shipping case which went to the House of Lords, he acted for the successful shipowners in what is the leading case on dangerous cargoes.

Education

Joint Honours (1st class) in history and law at Magdalene College, Cambridge