

# Austin Mahler

Call 2016



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Austin Mahler's practice focuses on commercial litigation and insolvency, specialising in construction, insurance, product liability, and property damage. He also has experience in cross-border arbitration and travel law.

He has been instructed in a range of disputes including the Kenya Emergency Group Litigation and *Redbourn Group v Fairgate Group* [2018] EWHC 658 (TCC), successfully resisting a claim for the lost chance to earn fees in a development contract (led by Andrew Miller QC). Austin worked with the GLD in *SPL v DEFRA*, a claim for over £50 million in Francovich damages for denial of payments under the EU Common Agricultural Policy. Since the start of 2019 he has been, instructed in the Dame Linda Dobbs Review into the Lloyds Banking Group. He has a keen interest in repudiatory breach and loss-of-chance issues in construction disputes.

Prior to joining Chambers, Austin read Law at Trinity Hall, Cambridge, where he was elected President of the Cambridge Union Society. His LLM dissertation, examining the enforcement of arbitration awards tainted by foreign illegality, was among the top in his year at LSE. While studying international arbitration and public international law, Austin competed in the Jessup International Law Moot and the Vis International Commercial Arbitration Moot. Austin has since taught himself New York law and was admitted as a New York State Attorney in the summer of 2019.

Austin regularly appears in the High Court and County Court in all levels of claims and applications, including interim applications before both Masters and Judges. Austin appears in the High Court (Chancery Division) Interim Applications Court acting *pro bono* as part of the CLIPS scheme. He has been seconded to Pinsent Masons, where he worked with the property damage team. In 2018 he was seconded to Mills & Reeve, where he assisted the commercial team in a number of *Norwich Pharmacal* applications and freezing injunctions.

# Expertise

## Commercial Dispute Resolution

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Austin acts for both claimants and defendants in contractual and tortious commercial disputes. He has appeared both led and as sole junior in a number of cases involving allegations of repudiatory breach of construction contracts and loss-of-a-chance.

Austin brings a pragmatic and commercial approach to these cases, backed up with exhaustive research. In a quantum trial in the TCC in *Redbourn Group v Fairgate Group* [2018] EWHC 658, Austin and his leader, Andrew Miller QC, successfully argued that the defendant's breach of a construction and development contract did not cause the claimant to lose a chance to earn performance fees. He has since assisted in a high-value commercial arbitration arising out of the breakdown of a multinational hydrocarbon joint-venture.

Acting recently on behalf of the claimant following the breakdown of a waste disposal facility construction contract, Austin drafted pleadings and provided advice leading to a swift and generous pre-issue settlement. He has also prepared the successful application for an expedited trial in a case involving alleged breaches of an SPA and funds held in a time-limited escrow account following the sale of a pharmaceutical company: *Takeda Pharmaceutical v Fougera Sweden Holding 2* [2017] EWHC 1402 (Ch).

Austin has also been instructed in matters related to enforcement of restrictive covenants and the protection of commercially sensitive data. He accepts instructions in freezing injunctions and non-party disclosure orders.

## Notable Commercial Dispute Resolution cases

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*Redbourn Group v Fairgate Group* [2018] EWHC 658

*Takeda Pharmaceutical v Fougera Sweden Holding 2* [2017] EWHC 1402 (Ch)

## Insurance

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Austin is instructed both for and against insurers in coverage and subrogation related disputes. He is currently instructed in cases relating to avoidance for misrepresentation under the law both before and after the Consumer Insurance (Disclosure and Representations) Act 2012. He recently advised BUPA on its right to bring a subrogated claim for the cost of health care for an employee covered by the employer's group insurance policy. He has also advised a real estate insurer in an indemnity claim involving the question of whether a free-standing seawall fell within 'buildings' cover.

## Private International Law

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Austin is building a practice in disputes involving conflicts of law. He has acted on behalf of both claimants and defendants in travel law cases and has been instructed as sole junior in a claim involving breach of a contract for the international sale of goods.

Austin taught himself New York law and passed the New York State Bar Exam and Multistate Professional Responsibility Exam. He has completed his qualifications and is currently awaiting admission to the New York State Bar.

## Insolvency

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Austin has appeared in the Winding-Up Court and in the county courts in insolvency and debt recovery matters and has advised in a range of related disputes. He has recently advised on a proposed claim against the receivers and liquidators of Anglo Irish Bank following the financial crisis.

## Personal Injury

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Austin regularly appears in a range of trials, interim hearings, and appeals in personal injury cases. He is also often instructed to settle pleadings and advise in conference. He has particular experience in navigating costs in QOCS cases.

He was instructed by the UK Foreign and Commonwealth Office to assist with the Kenya Emergency Group Litigation (*Kimathi & Others v Foreign & Commonwealth Office*), a case involving over 40,000 claimants alleging personal injuries arising out of the Mau Mau uprising in Kenya during the 1950s.

## Notable Personal Injury cases

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Kimathi & Others v Foreign & Commonwealth Office

## Awards

- Queen Mother (Major) Scholarship, Middle Temple

## Education

- New York State Attorney
- BPTC
- LLM (Distinction), London School of Economics & Political Science
- BA (Hons), Trinity Hall, Cambridge University

## Memberships

- COMBAR

- PIBA