

Paul Lowenstein QC

SILK: 2009 | CALL: 1988 (ENGLAND AND WALES); 2019
(BRITISH VIRGIN ISLANDS)

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Languages: French (proficient); German (basic); Italian (basic)



Overview

Paul is a leading commercial silk in domestic and international litigation and arbitration. A pre-eminent courtroom advocate, he has expertise in high-profile, heavy and sensitive commercial, financial and international disputes of all kinds.

He is regularly instructed in complex and ground-breaking international and domestic fraud and asset-tracing cases, often involving pre-emptive injunctions, disclosure, and jurisdictional and choice of law issues. Paul also has strong and overlapping practices in the fields of banking and finance, information technology and telecommunications, professional negligence, and media.

Paul has been listed for many years as a leading silk in several categories including commercial dispute resolution and civil fraud in all the principal directories. Acknowledged as a formidable advocate and an accomplished cross-examiner, Paul is a team player and expert strategist with a highly commercial approach. He firmly believes in maintaining a broad commercial practice and regularly leads groups of barristers both within his core fields of practice and in diverse and specialist areas.

Paul is regularly instructed in international and domestic arbitration and in English court proceedings in aid of arbitral proceedings and in connection with the enforcement of arbitration awards and foreign judgments. He also advises overseas lawyers on issues arising in domestic and international litigation and arbitration and gives expert evidence on issues of English law and procedure arising in foreign proceedings.

He is a qualified Centre for Dispute Resolution (CEDR) mediator and

Publications

- Co-author (with Matthew McGhee) of 'In hot pursuit: The use of flexible remedies and procedures to combat fraud' in *Harbour View Spring 2019*.
- Co-author (with Matthew McGhee) of 'Breaking new ground in fraud recovery claims in London - international pursuit of cyber fraudsters' *IBA International Litigation Newsletter* (May 2018).
- Co-author of 'Interim Injunctions' in *Cases That Changed Our Lives* (2nd edn, LexisNexis 2014).
- Author of 'Mareva Injunctions/Freezing Orders' in *Cases That Changed Our Lives* (LexisNexis 2010).

Memberships and appointments

- Bar Disciplinary Tribunals (BTAS): Chairman
- Commercial Bar Association, Professional Negligence Bar Association and London Common Law: Member
- Commercial Fraud Lawyers Association: Executive Committee Member
- Harbour Litigation Funding, Investment

an experienced mediation advocate.

Paul is an active senior advocacy trainer at the Middle Temple and sits as a Chairman of Bar Disciplinary Tribunals. He is also a Chairman of the Trustees of the International Law Book Facility ([ILBF](#)), a registered charity that provides used printed legal texts to the developing world. In 2015, Paul was nominated for the Sydney Elland Goldsmith Bar Pro Bono Award for his work with the ILBF.

He is a member of the Investment Committee of Harbour Litigation Funding.

Paul was a nominee both for the 'Barrister of the Year' award at The Lawyer Awards (London, 2019) and for the 'Commercial Advocate of the Year' award at the Legal Week Awards (London, 2019).

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Education

- Manchester University: LLB (Hons)
- University of Cambridge: LLM

Committee: Member

- Master of the Bench, Middle Temple
- University of Manchester Review of Law (Crime and Ethics): Honorary Advisory Board

Lectures / talks

- Regular speaker on developments in fraud and commercial litigation.
- Speaker on developments in Proprietary Freezing Orders and Worldwide Freezing Injunctions and panel member: seminar on Disruptive Developments – CIS Disputes (October 2019).
- Speaker and chairman of a panel addressing developments in preliminary freezing injunction and jurisdiction battles at the Legal Business Commercial Litigation Forum (June 2019). Individual topic: current trends in Proprietary Freezing Orders and Worldwide Freezing Injunctions.
- Speaker and panel member addressing the use of technology in litigation and other IT and technical issues at the inaugural London International Disputes Week (LIDW) (May 2019).
- Speaker and panel member addressing issues of cyberfraud, cryptocurrency and associated technologies litigation and arbitration: Shenzhen Arbitration Commission, Guangdong Province, PR China (December 2018).
- Speaker on cyberfraud litigation: Singapore Academy of Law (November 2018).
- Speaker and panel member addressing issues concerning international commercial, fraud and injunction litigation in England: conference in Bratislava attended by lawyers from several CEE jurisdictions (April 2018).
- Speaker on 'Recent Developments in the Law of Contempt' to a meeting of The Association of Contentious Trust and Probate Specialists, London (April 2018).
- Panel chairman and speaker on disruptive approaches to cyber-fraud litigation: C5 Fraud and Asset Tracing conference in Geneva (March 2018).
- 'Disrupt or be disrupted', the impact and uptake of technology of technology in litigation: Legal Week Commercial Litigation and Arbitration Forum (November 2017).
- Chairman and speaker at a seminar on 'Recent Developments in Commercial and Commercial Fraud Law' (July 2017).
- Chairman and speaker at a seminar on 'Managing Large Scale Litigation' (June 2017).

Key cases

- *CMOC Sales & Marketing Ltd v Persons Unknown & 30 others* [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep. F.C. 62: acted of the claimant seeking recovery of money stolen from its bank in a cyber fraud hack. Obtained first-known proprietary and worldwide freezing injunctions against "persons unknown" as well as *Bankers Trust v Shapira* and other asset-tracing disclosure orders against many banks worldwide. Obtained blanket permission for the enforcement of the WFO and the disclosure orders worldwide as well as orders for service of documents by alternative means including Facebook Messenger, web-based data room and WhatsApp. Liability established against all 29 remaining defendants to the action at trial in July 2018 (variously with Harris Bor, Philip Hinks, Philip Riches and Matthew McGhee).
- *SAS Institute Inc v World Programming Ltd* [2018] EWHC 3452 (Comm): acted for the defendant software company in its successful resistance at trial of the enforcement in England of a US\$26 million US court judgment on the grounds that the enforcement action was contrary to public policy, an abuse of the process and contrary to the Protection of Trading Interests Act 1980. Successful counterclaim ordering repayment under the Protection of Trading Interests Act 1980 of payments made in respect of a US judgment for multiple damages (with Josephine Davies). Further anti-suit injunction obtained post-trial (with Thomas Raphael QC, Josephine Davies and Oliver Caplin). Further judgment deciding that payments made under the US judgment could not be appropriated by the Claimant because the statutory appropriation under the Protection of Trading Interests Act 1980 operated immediately it received payment: [2019] EWHC 2496 (Comm).
- *Alessandra Foglia v The Family Officer Ltd and others* (2019) (Commercial Court): acting for the claimant in an action to recover €15 million of her money stolen from a bank account in Cayman following a cyber fraud. Proprietary and freezing injunctions and international *Bankers Trust v Shapira* and domestic Norwich Pharmacal disclosure orders.
- *Alexander Gorbachev v Andrei Guriev* (2018–19) (Commercial Court, Manchester DR): acting for the claimant in an action to secure his approximately quarter-share of a major Russian industrial chemicals conglomerate alleged to be held on his behalf by a high-profile ultra-high-net-worth Russian national. [2019] EWHC 2684 (Comm), deciding that the claimant had effected good service of the proceedings by effecting personal service of the defendant in the street in London notwithstanding the defendant's deployment of close personal security personnel (with Tony Beswetherick).
- *Joanne Dove and others v HBOS and Bank of Scotland* (2019) (Ch.D): acting for several individuals who make serious allegations including fraud against one of the big four UK clearing banks and others after the assets of their companies were 'stripped' and their business taken from them by allegedly dishonest officers of the Impaired Asset division of the Bank and by 'turnaround' consultants imposed on them by the Bank (with Luke Pearce).
- *de Carvalho Pinto Viegas and others v Cutrale and others* (2019): acting for the claimant Brazilian orange growers in their claims brought in England under Brazilian competition laws against the alleged operators of a Brazilian orange juice cartel (with Jonathan Harris QC and Gregor Hogan).
- *Eric Daniels v Lloyds Banking Group* [2018] EWHC 660 (Comm); [2018] I.R.L.R. 813: acted for the former group chief executive of Lloyds Banking Group in his successful claims for unpaid bonuses payable on the integration of HBOS into Lloyds (with Alistair Wooder).
- *SKAT (the Danish Customs and Tax Administration) v Solo Capital Partners LLP and others* (2018–19) (Commercial Court): acting for six of the defendants to a very substantial fraud action said to arise out of alleged false claims for refunds of Danish withholding tax relating to shareholder dividends (with Charlotte Tan).
- *A v B Bank* (2019) (LCIA arbitrations): acting for a foreign mining company in four closely-related substantial LCIA commercial, banking, guarantee and financial claims against and brought by a bank and others in relation to a metal ore mine joint venture (with Tamara Oppenheimer and Mark Tushingham).
- *A v B* (2018–2019) (LCIA arbitration): acting for a defendant to an LCIA arbitration – claim for unpaid money under commercial documents and instruments – defence that the instruments are fraudulent and that the claims are statute-barred (variously, with Henry Byam-Cook, Belinda McRae and Andrew Dinsmore).
- *E D & F Man Capital Markets Ltd v Come Harvest Holdings Ltd and others* (2018–2019) (Commercial Court): (with Benjamin Woolgar) defence of an alleged substantial commodities (Nickel) trading fraud – allegations of the passing of fraudulent warehouse receipts.
- *Vneshprombank v Bedzhamov* (2017–18) (Commercial Court): acted for a substantial overseas financial institution with regard to its £1.3 bn proposed fraud claims against former directors (variously with Adam Kramer, Philip Hinks and Sam Goodman).
- *A v B* (2018): advised an ultra-high net worth individual in relation to overseas contempt of court committal proceedings served on him and others in London (with Simon Milnes).
- *Be In v Google* (2017–18) (Commercial Court): acted for an online tech company in respect of its claims against Google for losses suffered following alleged misappropriation and use in 'Google Hangouts' of business secrets in the face of a non-disclosure agreement (with Oliver Caplin).

Commercial dispute resolution

Paul Lowenstein QC is instructed in high-profile, heavy or sensitive commercial disputes of all kinds, including in specialised fields and jurisdictions. Paul is particularly known for his strength of advocacy, strategic thinking and commercial approach.

He has particular experience of commercial, multinational and fraud work, including: jurisdiction and choice of law issues; injunctions, freezing, search, imaging and *Norwich Pharmacal* and other disclosure orders and other interim remedies; asset tracing; enforcement action to secure the payment of domestic and foreign judgments and awards; applications for committal for contempt of court; conflict of laws international and domestic arbitration; letters of request; banking and other financial transactions; claims arising out of business and asset sale agreements; “boardroom bust-ups”; domestic and international trade disputes; commercial agency; technical IT, the Internet and disputes relating to claims concerning defective plant and machinery and property disputes. Paul has most recently led teams in several ground-breaking fraud actions, including obtaining the first-known Worldwide Freezing and Proprietary Injunctions against ‘Persons Unknown’ and in 2016-17 led a specialist team of counsel in the two competition damages trials brought in the Commercial Court by 12 major national retailers against MasterCard and Visa.

Paul is also a member of the Investment Committee of Harbour Litigation Funding.

Recent and current cases include:

- *CMOC v Persons Unknown and others* (2017-18) (Commercial Court): acted for an international commodities business which fell victim to a sophisticated Business Email Compromise (payments fraud) following the hacking of its email system. Obtained first-known worldwide freezing injunction against ‘Persons Unknown’ as well as *Bankers Trust v Shapira* and other disclosure orders against many banks worldwide. Obtained blanket permission for the enforcement of the WFO worldwide and orders for service of documents by alternative means including by (1) Facebook Messenger (2) web-based data room and (3) WhatsApp. Liability established against all 29 remaining defendants to the action at trial in July 2018. Trial judgment at [2018] EWHC 2230 (Comm); [2019] Lloyd’s Rep. F.C. 62. Interim judgments at [2017] EWHC 3599 (Comm) (ex parte) and [2017] EWHC 3602 (Comm) (return date) (variously with Harris Bor, Philip Hinks, Philip Riches and Matt McGhee).
- *SAS Institute Inc v World Programming Ltd* [2018] EWHC 3452 (Comm): acted for the defendant software company in its successful resistance at trial of the enforcement in England of a US\$26 million US court judgment on the grounds that the enforcement action was contrary to public policy, an abuse of the process and contrary to the Protection of Trading Interests Act 1980. Successful counterclaim ordering repayment under the Protection of Trading Interests Act 1980 of payments made in respect of a US judgment for multiple damages (with Josephine Davies). Further anti-suit injunction obtained post-trial (with Thomas Raphael QC, Josephine Davies and Oliver Caplin). Further judgment deciding that payments made under the US judgment could not be appropriated by the Claimant because the statutory appropriation under the Protection of Trading Interests Act 1980 operated immediately it received payment: [2019] EWHC 2496 (Comm).
- *Alessandra Foglia v The Family Officer Ltd and others* (2019) (Commercial Court): acting for the claimant in an action to recover €15 million of her money stolen from a bank account in Cayman following a cyber fraud. Proprietary and freezing injunctions and international *Bankers Trust v Shapira* and domestic *Norwich Pharmacal* disclosure orders.
- *Eric Daniels v Lloyds Banking Group* [2018] EWHC 660; [2018] I.R.L.R. 813 (Comm): acted for the former group chief executive of Lloyds Banking Group in his successful claims for unpaid bonuses payable on the integration of HBOS into Lloyds (with Alistair Wooder).
- *A v B Bank* (2019) (LCIA Arbitrations): acted for a foreign mining company in four closely-related substantial LCIA commercial, banking, guarantee and financial claims against and brought by a bank and others in relation to a metal ore mine joint venture (with Tamara Oppenheimer and Mark Tushingham).
- *Alexander Gorbachev v Andrei Guriev* (2018–19) (Commercial Court, Manchester DR): acting for the claimant in an action to secure his approximately quarter-share of a major Russian industrial chemicals conglomerate alleged to be held on his behalf by a high-profile ultra-high-net-worth Russian national. [2019] EWHC 2684 (Comm), deciding that the claimant had effected good service of the proceedings by effecting personal service of the defendant in the street in London notwithstanding the defendant’s deployment of close personal security personnel (with Tony Beswetherick).
- *E D & F Man Capital Markets Ltd v Come Harvest Holdings Ltd and another* (2018–2019) (Commercial Court): defence of an alleged substantial commodities (Nickel) trading fraud – allegations of the passing of fraudulent warehouse receipts (with Benjamin Woolgar).
- *de Carvalho Pinto Viegas and others v Cutrale and others* (2019): acting for the claimant Brazilian orange growers in their claims brought in England under Brazilian competition laws against the alleged operators of a Brazilian orange juice cartel (with Jonathan Harris QC and Gregor Hogan).
- *A v B* (2018–2019) (LCIA Arbitration): acting for a defendant to an LCIA arbitration – claim for unpaid money under commercial documents and instruments – defence that the instruments are fraudulent (variously, with Henry Byam-Cook, Belinda McRae and Andrew Dinsmore).

- *A v B* (2018-19) (ICC Arbitration): acted for the Claimant in an ICC arbitration concerning a dispute over the establishment of an energy production plant in the Caucasus (with Luke Pearce).
- *Joanne Dove and others v HBOS and Bank of Scotland* (2019) (Ch.D): acting for several individuals who make serious allegations including fraud against one of the big four UK clearing banks and others after the assets of their companies were 'stripped' and their business taken from them by allegedly dishonest officers of the Impaired Asset division of the Bank and by 'turnaround' consultants imposed on them by the Bank (with Luke Pearce).
- *A v B* (2018) – advised an LCIA award creditor with substantial associated litigation in India and Mauritius on availability of Freezing Injunction and 'Chabra' injunctive relief in England.
- *Manek and others v IIFL and others* (2018) (Commercial Court): acted for two of the Defendants, based in India, in relation to a Worldwide Freezing Injunction obtained against them in an action where fraud is alleged in connection with a sale of company shares (with Peter de Verneuil Smith).
- *A v B* (2018): advised an ultra-high net worth individual in relation to overseas contempt of court committal proceedings served on him and others in London (with Simon Mills).
- *Be In v Google* (2017-18) (Commercial Court): acted for an online tech company in respect of its claims against Google for losses suffered following alleged misappropriation and use in 'Google Hangouts' of business secrets in the face of a non-disclosure agreement (with Oliver Caplin).
- *Vneshprombank v Bedzhamov* (2017-18) (Commercial Court): acted for a substantial overseas financial institution with regard to its £1.3 bn proposed fraud claims against former directors (variously with Adam Kramer, Philip Hinks and Sam Goodman).
- *Re: An Application in Private (Part 36)* (Commercial Court): acted for a group of claimants who (during trial) made a successful application to accept an offer made to them before trial under CPR Part 36. The court refused permission, under CPR r.36.10(3), for a group of defendants to withdraw the Part 36 offer while the trial was in progress. A judgment handed down in a case concerning similar issues did not amount to a change in the legal landscape which would make it unjust to hold the defendants to the offer. Judgment at [2017] EWHC 3606 (Comm) (with Vikram Sachdeva QC and Hannah Glover).
- *A v B* (2017) Commercial Court – obtained a very substantial worldwide freezing order on behalf of a well-known overseas bank in support of intended LCIA arbitral proceedings.
- *Montblanc v Doshi* (2017) Commercial Court: acted for the Claimants on the enforcement in England of a substantial ICC arbitration award – worldwide freezing order.
- Dispute related to the VW emissions litigation (2017) Ch.D: acted for a firm of solicitors in litigation over the right under a non-disclosure agreement containing solicitors' undertakings to represent claimant clients in the VW emissions litigation (with Ian Higgins).
- *Enforcement of Russian arbitral award*(2017): advised the claimant in respect of a contested claim for the enforcement in England of a very substantial Russian arbitral award.
- *Retailers (Asda, Arcadia, Wm Morrison and others) v MasterCard and Retailers v Visa: Payment Card Interchange Fee Competition Damages Claims* (2015-2017): instructed as lead counsel for the 12 claimant groups, all well-known UK national retailers, in their separate Commercial Court competition damages actions worth hundreds of millions of pounds against MasterCard and Visa to recoup credit and debit card charges (Multilateral Interchange Fees) on the basis that the defendants operated alleged cartel arrangements in connection with their charging structures. The action against MasterCard was tried in the Commercial Court over 20 days in 2016: [2017] 4 C.M.L.R. 32. Permission to appeal to the Court of Appeal was granted in August 2017. The claims against Visa settled or came to an end after the court allowed certain claimants to accept Part 36 offers ([2017] EWHC 3606 (Comm)) in February 2017 after 33 days of trial. These actions were named amongst 'The Lawyer's 'Top 20 Cases of 2014 and 2016' and said to be the largest ever such claims launched in the English courts (with Fergus Randolph QC, Christopher Brown, Max Schaefer and Hannah Glover).
- *Kazakhstan Kagazy Plc v Zhunus and others* (2013-17): acted for the first defendant in an alleged £100 million corporate fraud claim said to have taken place in Kazakhstan; and in connection with associated claims. Jurisdiction, choice of law / foreign law, security for costs (judgment at [2015] EWHC 996 (Comm)) and other preliminary issues including successful resistance of application to amend to introduce proprietary claims (judgment at [2015] EWHC 117 (Comm)) and successful application for substantial interim payment on account of costs (judgment at [2015] EWHC 404 (Comm)). Non-molestation injunction. Security for costs, with issues over the enforceability of an English costs judgment in Kazakhstan. Further dispute between defendants regarding Contribution Notice and the right of a Defendant/Contribution Notice applicant to seek a Worldwide Freezing Order against a co-defendant (judgement at [2016] 4 WLR 86). (with David Head and Paul Wee). Also acted in the related action: *Alliance Bank JSC v Zhunus and others* (2014-15) (Commercial Court).
- *Globe Motors Inc. and another v TRW Lucas Varity Electrics Steering Ltd*(2011-16) (Court of Appeal and Commercial Court): represented the Claimant, a major US automotive parts manufacturer throughout the litigation and at the trial—over approximately 11 weeks in spring and summer 2014—in its successful claim at trial against its UK customer for breach of a long-term exclusive agreement for the supply of electric motors for incorporation in power assisted steering units in cars arising out of when it sourced "second generation" electric motors for those systems from another supplier rather than from the Claimant. Issues of contractual construction and breach of contract and misrepresentation in the

context of a long-term exclusive supply agreement. Detailed technical and expert evidence to explain the complex technology in the product. Decision reversed on a point of contractual construction. Interim decision at [2012] EWHC 3134 (QB). Trial judgment at [2014] EWHC 3718 (Comm). Quantum judgment at [2015] EWHC 553 (Comm). Appeal judgment at [2016] EWCA Civ 396 (with Rajesh Pillai and – earlier – Richard Hanke).

- Integrated Global Card Payments IT Services: Earn-out and Warranty Dispute (2014-15): acted for the sellers of a substantial hi-tech business which provided payment card processing solutions in connection with their claims against the buyers for unpaid earn-out payments, and in defence of threatened warranty cross-claims. Significant technical detail overlaying a complex contractual framework (with Adam Kramer).
- *Ecotricity Group Ltd v Tesla Motors* (2014) (Ch): represented Tesla Motors, the respondent electric battery-powered volume car manufacturer in its defence of the claimant power supplier's claims for injunctions for alleged procurement of breach of contract and misuse of confidential information and counterclaims alleging breach of UK and European Competition Law (with Nicholas Craig).
- *Tamara Ecclestone v Omar Khyami and others* [2014] EWHC 29 (QB) Dingemans J: represented Tamara Ecclestone at trial of this substantial action in a dispute that concerned claims and cross-claims in privacy, breach of confidence, non-molestation and the title to and damages flowing from the alleged conversion of a Lamborghini car. Successful restriction of the principal damages counterclaim from £6+ million originally claimed and from the £415,000+ asserted at trial to a judgment award of only £7,500 (with Jeremy Reed and David Head).
- *S v S* (2013) (Family Division): acted for the creditor wife on the successful and speedy enforcement of a £14 million unpaid matrimonial finance consent order where the former husband, his assets and the family trusts were primarily based abroad (with Katie Cowton).
- *JSC BTA Bank v Soldochenko and others (the AAA Litigation)* (2011-15) (Ch): acted for Anatoly Ereschenko (17th Defendant) in his defence of claims in which he was alleged to have assisted in the facilitation of serious fraud said to have been suffered by the claimant Kazakh bank. Concurrent issues relating to *Norwich Pharmacal* disclosure obligations. Contested application to cross-examine regarding disclosure determined by Henderson J in April 2011 [2011] EWHC 843 (Ch). Extended interim cross-examination on *Norwich Pharmacal* disclosure in June and November 2011. Successful defence at trial before Vos J of contempt of court / committal proceedings in which the claimant bank alleged that Ereshchenko had lied in evidence given in response to the disclosure order and under cross-examination [2012] EWHC 1891 (Ch). Successful defence of the bank's appeal against Vos J's refusal to commit for contempt of court [2013] EWCA Civ 1961. Several further interim judgments on applications in committal proceedings including [2012] EWHC 550 (Henderson J) and LTL 3/5/2012 (x 2) (Peter Smith J).

Civil fraud

Paul Lowenstein QC is regularly instructed in the heaviest international and domestic fraud cases of the day. His work here overlaps to a great degree with his commercial, banking, tech/I.T. and professional negligence practice. Paul has most recently led teams in several ground-breaking fraud actions, including obtaining the first-known Worldwide Freezing Injunctions against 'persons unknown'.

He has particular relevant experience of: jurisdiction and choice of law issues, injunctions, freezing, search, imaging and *Norwich Pharmacal*, *Bankers Trust v Shapira* and other disclosure orders, anti-suit injunctions and other interim remedies; asset tracing; enforcement action to secure the payment of domestic and foreign judgments and awards; conflict of laws international and domestic arbitration; domestic and international banking and other financial transactions and the relationship between deceit and contract/negligence claims against professionals.

Recent and current cases include:

- *CMOC v Persons Unknown and others* (2017-18) (Commercial Court): acted for an international commodities business which fell victim to a sophisticated Business Email Compromise (payments fraud) following the hacking of its email system. Obtained first-known worldwide freezing injunction against 'Persons Unknown' as well as Shapira and other disclosure orders against many banks worldwide. Obtained blanket permission for the enforcement of the WFO worldwide and orders for service of documents by alternative means including by (1) Facebook Messenger (2) web-based data room and (3) WhatsApp. Liability established against all 29 remaining defendants to the action at trial in July 2018. Trial judgment at [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep. F.C. 62. Interim judgments at [2017] EWHC 3599 (Comm) (ex parte) and [2017] EWHC 3602 (Comm) (return date) (variously with Harris Bor, Philip Hinks, Philip Riches and Matt McGhee).
- *Alexander Gorbachev v Andrei Guriev* (2018-19) (Commercial Court, Manchester DR): acting for the claimant in an action to secure his approximately quarter-share of a major Russian industrial chemicals conglomerate alleged to be held on his behalf by a high-profile ultra-high-net-worth Russian national. [2019] EWHC 2684 (Comm), deciding that the claimant had effected good service of the proceedings by effecting personal service of the defendant in the street in London notwithstanding the defendant's deployment of close personal security personnel (with Tony Beswetherick).
- *Alessandra Foglia v The Family Officer Ltd and others* (2019) (Commercial Court): acting for the claimant in an action to recover €15 million of her money stolen from a bank account in Cayman following a cyber fraud. Proprietary and freezing

injunctions and international *Bankers Trust v Shapira* and domestic Norwich Pharmacal disclosure orders.

- *SKAT (the Danish Customs and Tax Administration) v Solo Capital Partners LLP and others* (2018–19) (Commercial Court): acting for six of the defendants to a very substantial fraud action said to arise out of alleged false claims for refunds of Danish withholding tax relating to shareholder dividends (with Charlotte Tan).
- *A v B* (2018–2019) (LCIA Arbitration): acting for a defendant to an LCIA arbitration – claim for unpaid money under commercial documents and instruments – defence that the instruments are fraudulent (variously, with Henry Byam-Cook, Belinda McRae and Andrew Dinsmore).
- *Arena v Guan Jia Qun International Co., Ltd* (2019): advised the claimant victims of a cyber fraud in connection with their claims brought in the High Court of the Hong Kong Special Administrative Region against the recipients of the stolen money.
- *A v B* (2018-19): advising a first-class Russian Bank in connection with a proposed substantial fraud action and associated pre-emptive remedies to be brought in England against an ultra-high net worth individual (with Sam Goodman).
- *E D & F Man Capital Markets Ltd v Come Harvest Holdings Ltd and another* (2018–2019) (Commercial Court): defence of an alleged substantial commodities (Nickel) trading fraud – allegations of the passing of fraudulent warehouse receipts (with Benjamin Woolgar).
- *Joanne Dove and others v HBOS and Bank of Scotland* (2019) (Ch.D): acting for several individuals who make serious allegations including fraud against one of the big four UK clearing banks and others after the assets of their companies were ‘stripped’ and their business taken from them by allegedly dishonest officers of the Impaired Asset division of the Bank and by ‘turnaround’ consultants imposed on them by the Bank (with Luke Pearce).
- *A v B* (2018): advised a firm of London solicitors regarding their obligations in relation to client monies held on behalf of a high profile individual who was at the time subject to a proprietary freezing injunction.
- *Arcadia Petroleum and others v Bosworth and others* (2015-19) (Commercial Court): advised and acted for two of the defendants (based in Dubai and Mauritius) in substantial Commercial Court oil trading-related fraud litigation said to be worth \$335 million (formerly with David Head).
- *Manek and others v IIFL Wealth (UK) Ltd and others* (2018) (Commercial Court): acted for two of the Defendants, based in India, in relation to a Worldwide Freezing Injunction obtained against them in an action where fraud is alleged in connection with a sale of company shares (with Peter de Verneuil Smith).
- *Vneshprombank v Bedzhamov* (2017–18) (Commercial Court): acted for a substantial overseas financial institution with regard to its £1.3 bn proposed fraud claims against former directors (variously with Adam Kramer, Philip Hinks and Sam Goodman).
- *Group Seven and Equity Trading Systems v Notable Services and others* (2015-16) (Ch): defended a Swiss bank, LLB Verwaltung (Switzerland) AG, against allegations of fraudulent conspiracy and dishonest assistance following banking references allegedly given to English solicitors by one of its employees which were said to have caused the wrongful payment-away of the claimants’ money (with Peter de Verneuil Smith).
- *Kazakhstan Kagazy Plc v Zhunus and others* (2013-17): acted for the first defendant in an alleged £100 million corporate fraud claim said to have taken place in Kazakhstan; and in connection with associated claims. Jurisdiction, choice of law / foreign law, security for costs (judgment at [2015] EWHC 996 (Comm)) and other preliminary issues including successful resistance of application to amend to introduce proprietary claims (judgment at [2015] EWHC 117 (Comm)) and successful application for substantial interim payment on account of costs (judgment at [2015] EWHC 404 (Comm)). Non-molestation injunction. Security for costs, with issues over the enforceability of an English costs judgment in Kazakhstan. Further dispute between defendants regarding Contribution Notice and the right of a Defendant/Contribution Notice applicant to seek a Worldwide Freezing Order against a co-defendant (judgement at [2016] 4 WLR 86). (with David Head and Paul Wee).
- *Alliance Bank JSC v Zhunus and others* (2014-15) (Commercial Court): acted for the first defendant in an alleged £170 million banking fraud claim said to have taken place in Kazakhstan. Discharge of freezing order (with David Head and Paul Wee).
- Professional Negligence Fraud Claims: acted for a number of mortgage lenders (including nationalised banks) in their multi-claim managed actions against fraudulent and negligent conveyancing solicitors, valuers and other individuals (with William Edwards and Charlotte Eborall).
- *PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov* (2015) (Commercial Court) – committal proceedings for contempt of court – adjournment – issues of access to justice where the alleged contemnor was in a refuge in the Ukraine and subject to Ukrainian asset freezing order which prevented him using his own money to pay English costs.
- *JSC BTA Bank v Soldochenko and others (the AAA Litigation)* (2011-15) (Ch): acted for Anatoly Ereschenko (17th Defendant) in his defence of claims in which he was alleged to have assisted in the facilitation of serious fraud said to have been suffered by the claimant Kazakh bank. Concurrent issues relating to *Norwich Pharmacal* disclosure obligations. Contested application to cross-examine regarding disclosure determined by Henderson J in April 2011 [2011] EWHC 843 (Ch). Extended interim cross-examination on *Norwich Pharmacal* disclosure in June and November 2011. Successful defence at trial before Vos J of contempt of court / committal proceedings in which the claimant bank alleged

that Ereshchenko had lied in evidence given in response to the disclosure order and under cross-examination [2012] EWHC 1891 (Ch). Successful defence of the bank's appeal against Vos J's refusal to commit for contempt of court [2013] EWCA Civ 1961. Several further interim judgments on applications in committal proceedings including [2012] EWHC 550 (Henderson J) and LTL 3/5/2012 (x 2) (Peter Smith J).

Banking and finance

Paul Lowenstein QC's extensive commercial, financial and fraud practice means that he regularly acts both for and against domestic and international banks and other financial institutions. In addition to core banking and financial disputes, his work here overlaps to a great degree with his commercial, fraud and professional negligence practice. He has particular relevant experience of:

Banking and finance transactions and instruments, guarantees, payment card systems and transactions, fraud in, of and against banks; jurisdiction and choice of law issues; injunctions, freezing, search, imaging and *Norwich Pharmacal* and other disclosure orders and other interim remedies; asset tracing; enforcement action to secure the payment of domestic and foreign judgments and awards; complex financial transactions; claims arising out of business and asset sale agreements; mortgages and secured lending; contract/negligence and deceit actions against professional advisers to lenders.

Recent and current cases include:

- *A v B Bank* (2019) (LCIA Arbitrations): acted for a foreign mining company in four closely-related substantial LCIA commercial, banking, guarantee and financial claims against and brought by a bank and others in relation to a metal ore mine joint venture (with Tamara Oppenheimer and Mark Tushingam).
- *SKAT (the Danish Customs and Tax Administration) v Solo Capital Partners LLP and others* (2018–19) (Commercial Court): acting for six of the defendants to a very substantial fraud action said to arise out of alleged false claims for refunds of Danish withholding tax relating to shareholder dividends (with Charlotte Tan).
- *Joanne Dove and others v HBOS and Bank of Scotland* (2019) (Ch.D): acting for several individuals who make serious allegations including fraud against one of the big four UK clearing banks and others after the assets of their companies were 'stripped' and their business taken from them by allegedly dishonest officers of the Impaired Asset division of the Bank and by 'turnaround' consultants imposed on them by the Bank (with Luke Pearce).
- *Eric Daniels v Lloyds Banking Group* [2018] EWHC 660; [2018] I.R.L.R. 813 (Comm): acted for the former group chief executive of Lloyds Banking Group in his successful claims for unpaid bonuses payable on the integration of HBOS into Lloyds (with Alistair Wooder).
- *A and others v B Bank* (2018–2019): advising a group of former directors of a subsidiary of a clearing bank with regard to unpaid earn-out bonuses.
- *A v B* (2018-19): advising a first-class Russian Bank in connection with a proposed substantial fraud action and associated pre-emptive remedies to be brought in England against an ultra-high net worth individual (with Sam Goodman).
- *Vneshprombank v Bedzhamov* (2017–18) (Commercial Court): acted for a substantial overseas financial institution with regard to its £1.3 bn proposed fraud claims against former directors (variously with Adam Kramer, Philip Hinks and Sam Goodman).
- *CMOC v Persons Unknown and others* (2017-18) (Commercial Court): acted for an international commodities business which fell victim to a sophisticated Business Email Compromise (payments fraud) following the hacking of its email system. Obtained first-known worldwide freezing injunction against 'Persons Unknown' as well as Shapira and other disclosure orders against many banks worldwide. Obtained blanket permission for the enforcement of the WFO worldwide and orders for service of documents by alternative means including by (1) Facebook Messenger (2) web-based data room and (3) WhatsApp. Liability established against all 29 remaining defendants to the action at trial in July 2018. Trial judgment at [2018] EWHC 2230 (Comm). Interim judgments at [2017] EWHC 3599 (Comm) (ex parte) and [2017] EWHC 3602 (Comm) (return date) (variously with Harris Bor, Philip Hinks, Philip Riches and Matt McGhee).
- *A v B* (2017) Commercial Court - obtained a very substantial worldwide freezing order on behalf of a well-known overseas bank in support of intended LCIA arbitral proceedings.
- *Retailers (Asda, Arcadia, Wm Morrison and others) v MasterCard and Retailers v Visa: Payment Card Interchange Fee Competition Damages Claims* (2015-2017) (with Fergus Randolph QC, Christopher Brown, Max Schaefer and Hannah Glover) - instructed as lead counsel for the 12 claimant groups, all well-known national retailers, in their separate Commercial Court competition damages actions worth hundreds of millions of pounds against MasterCard and Visa to recoup credit and debit card charges (Multilateral Interchange Fees) on the basis that the defendants operated alleged cartel arrangements in connection with their charging structures. The action against MasterCard was tried in the Commercial Court over 20 days in 2016: [2017] 4 C.M.L.R. 32. Permission to appeal to the Court of Appeal was granted in August 2017. The claims against Visa settled in February 2017 after 33 days of trial. These actions were named amongst the 'Top 20 Cases of 2016' and 2014 by The Lawyer newspaper and said to be the largest ever such claims launched in the English courts.

- *Kazakhstan Kagazy Plc v Zhunus and others* (2013-17) (with David Head and Paul Wee) acted for the first defendant in an alleged £100 million corporate fraud claim said to have taken place in Kazakhstan; and in connection with associated claims. Jurisdiction, choice of law / foreign law, security for costs (judgment at [2015] EWHC 996 (Comm)) and other preliminary issues including successful resistance of application to amend to introduce proprietary claims (judgment at [2015] EWHC 117 (Comm)) and successful application for substantial interim payment on account of costs (judgment at [2015] EWHC 404 (Comm)). Non-molestation injunction. Security for costs, with issues over the enforceability of an English costs judgment in Kazakhstan. Further dispute between defendants regarding Contribution Notice and the right of a CN applicant to seek a Worldwide Freezing Order against a co-defendant (judgment at [2016] 4 WLR 86). Also acting in the related action: *Alliance Bank JSC v Zhunus and others* (2014-15) (Commercial Court).
- *Group Seven and Equity Trading Systems v Notable Services and others* (2015-16) (Ch): defended a Swiss bank, LLB Verwaltung (Switzerland) AG, against allegations of fraudulent conspiracy and dishonest assistance following banking references allegedly given to English solicitors by one of its employees which were said to have caused the wrongful payment-away of the claimants' money. Choice of law and Swiss banking secrecy issues (with Peter de Verneuil Smith).
- *Integrated Global Card Payments IT Services: Earn-out and Warranty Dispute* (2014-15): acted for the sellers of a substantial hi-tech business which provided payment card processing solutions in connection with their claims against the buyers for unpaid earn-out payments, and in defence of threatened warranty cross-claims. Significant technical detail overlaying a complex contractual and financial framework (with Adam Kramer).
- *Ignis Asset Management Ltd. v Heming* (2014) (Ch): acted for a software developer in defence of a claim for alleged breach of confidence etc relating to proprietary software following his resignation from the employment of the Claimant asset managers. Imaging orders (with James MacDonald).
- *PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov* (2015) (Commercial Court): committal proceedings for contempt of court – adjournment – issues of access to justice where the alleged contemnor was in a refuge in the Ukraine and subject to Ukrainian asset freezing order which prevented him using his own money to pay English costs.
- *Hedge Fund Introducer Commissions* (2013-14): advised a leading hedge fund on a dispute over contractual arrangements for the payment of introduction of business commissions.
- *JSC BTA Bank v Soldochenko and others (the AAA Litigation)* (2011-15) (Ch): acted for Anatoly Ereschenko (17th Defendant) in his defence of claims in which he was alleged to have assisted in the facilitation of serious fraud said to have been suffered by the claimant Kazakh bank. Concurrent issues relating to *Norwich Pharmacal* disclosure obligations. Contested application to cross-examine regarding disclosure determined by Henderson J in April 2011 [2011] EWHC 843 (Ch). Extended interim cross-examination on *Norwich Pharmacal* disclosure in June and November 2011. Successful defence at trial before Vos J of contempt of court / committal proceedings in which the claimant bank alleged that Ereshchenko had lied in evidence given in response to the disclosure order and under cross-examination [2012] EWHC 1891 (Ch). Successful defence of the bank's appeal against Vos J's refusal to commit for contempt of court [2013] EWCA Civ 1961. Several further interim judgments on applications in committal proceedings including [2012] EWHC 550 (Henderson J) and LTL 3/5/2012 (x 2) (Peter Smith J).

Information technology and telecommunications

Information technology and telecommunications disputes including internet, website, computer, hardware, software, e-publishing, High-Tec and "dot.com" disputes and of all aspects of fixed and cellular telecoms contractual and service litigation. His experience also leads him to be instructed in cases where IT is applied to litigation, such as in applications for imaging orders. His work in this area often overlaps with complex commercial, financial, banking, fraud and professional negligence disputes.

Recent cases include:

- *CMOC v Persons Unknown and others* (2017-18) (Commercial Court): acted for an international commodities business which fell victim to a sophisticated Business Email Compromise (payments fraud) following the hacking of its email system. Obtained first-known worldwide freezing injunction against 'Persons Unknown' as well as Shapira and other disclosure orders against many banks worldwide. Obtained blanket permission for the enforcement of the WFO worldwide and orders for service of documents by alternative means including by (1) Facebook Messenger (2) web-based data room and (3) WhatsApp. Liability established against all 29 remaining defendants to the action at trial in July 2018. Trial judgment at [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep. F.C. 62. Interim judgments at [2017] EWHC 3599 (Comm) (ex parte) and [2017] EWHC 3602 (Comm) (return date) (variously with Harris Bor, Philip Hinks, Philip Riches and Matt McGhee).
- *Be In v Google* (2017-18) (Commercial Court): acted for an online tech company in respect of its claims against Google for losses suffered following alleged misappropriation and use in 'Google Hangouts' of business secrets in the face of a non-disclosure agreement (with Oliver Caplin).
- *Neurosoft SA v Barclays Bank Plc* (2018) QBD: acting for the claimant in respect of its substantial action to recover damages and compensation following termination of a project for the design and supply of a specialised banking software platform (with Andy Feld).

- *Integrated Global Card Payments IT Services: Earn-out and Warranty Dispute* (2014-15): acted for the sellers of a substantial hi-tech business which provided payment card processing solutions in connection with their claims against the buyers for unpaid earn-out payments, and in defence of threatened warranty cross-claims. Significant technical detail overlaying a complex contractual and financial framework (with Adam Kramer).

Jurisdiction, conflicts and enforcement

Questions of jurisdiction, choice of law, issues concerning the enforcement of judgments and arbitral awards, conflicts and other principles of Private International Law arise frequently in Paul's practice both as preliminary or incidental issues or as substantive disputes. Paul has extensive experience in these areas, having acted in a number of the leading cases.

Recent, current and notable cases include:

- *SAS Institute Inc v World Programming Ltd* [2018] EWHC 3452 (Comm): acted for the defendant software company in its successful resistance at trial of the enforcement in England of a US\$26 million US court judgment on the grounds that the enforcement action was contrary to public policy, an abuse of the process and contrary to the Protection of Trading Interests Act 1980. Successful counterclaim ordering repayment under the Protection of Trading Interests Act 1980 of payments made in respect of a US judgment for multiple damages (with Josephine Davies). Further anti-suit injunction obtained post-trial (with Thomas Raphael QC, Josephine Davies and Oliver Caplin). Further judgment deciding that payments made under the US judgment could not be appropriated by the Claimant because the statutory appropriation under the Protection of Trading Interests Act 1980 operated immediately it received payment: [2019] EWHC 2496 (Comm).
- *A v B Bank* (2019) (LCIA Arbitrations): acting for a foreign mining company in four closely-related substantial LCIA commercial, banking, guarantee and financial claims against and brought by a bank and others in relation to a metal ore mine joint venture. Substantial issues in relation to arbitral jurisdiction (with Tamara Oppenheimer and Mark Tushingham).
- *Alexander Gorbachev v Andrei Guriev* (2018-19) (Commercial Court, Manchester DR): acting for the claimant in an action to secure his approximately quarter-share of a major Russian industrial chemicals conglomerate alleged to be held on his behalf by a high-profile ultra-high-net-worth Russian national. [2019] EWHC 2684 (Comm), deciding that the claimant had effected good service of the proceedings by effecting personal service of the defendant in the street in London notwithstanding the defendant's deployment of close personal security personnel (with Tony Beswetherick).
- *de Carvalho Pinto Viegas and others v Cutrale and others* (2019): acting for the claimant Brazilian orange growers in their claims brought in England under Brazilian competition laws against the alleged operators of a Brazilian orange juice cartel (with Jonathan Harris QC and Gregor Hogan).
- *SKAT (the Danish Customs and Tax Administration) v Solo Capital Partners LLP and others* (2018—19) (Commercial Court): acting for six of the defendants to a very substantial fraud action said to arise out of alleged false claims for refunds of Danish withholding tax relating to shareholder dividends. Issues as to appropriate governing law (with Charlotte Tan).
- *E D & F Man Capital Markets Ltd v Come Harvest Holdings Ltd and another* (2018—2019) (Commercial Court): defence of an alleged substantial commodities (Nickel) trading fraud - allegations of the passing of fraudulent warehouse receipts. Conflicts arise between the English proceedings and a related action in Hong Kong (with Benjamin Woolgar).
- *A Bank v B* (2018): advised a first class Russian bank in connection with the enforcement of a Russian judgment against the defendant in England.
- *Arcadia Petroleum and others v Bosworth and others* (2015-19) (Commercial Court): advised and acted for two of the defendants (based in Dubai and Mauritius) in substantial Commercial Court oil trading-related fraud litigation said to be worth \$335 million.
- *A v B* (2018-19): advising a first-class Russian Bank in connection with a proposed substantial fraud action and associated pre-emptive remedies to be brought in England against an ultra-high net worth individual. Jurisdiction/domicile and choice of law issues (with Sam Goodman).
- *Vneshprombank v Bedzhamov* (2017-18) (Commercial Court): acted for a substantial overseas financial institution with regard to its £1.3 bn proposed fraud claims against former directors. Jurisdiction/domicile and choice of law issues (variously with Adam Kramer, Philip Hinks and Sam Goodman).
- *Manek and others v IIFL and others* (2018) (Commercial Court): acted for two of the Defendants, based in India, in relation to a Worldwide Freezing Injunction obtained against them in an action where fraud is alleged in connection with a sale of company shares. Conflicts between English freezing injunction and Indian Anti-Suit Injunction (with Peter de Verneuil Smith).
- *A v B* (2018): advised an ultra-high net worth individual in relation to overseas contempt of court committal proceedings served on him and others in London (with Simon Mills).
- *Cinnamon European Structured Credit Master Fund v Banco Commercial Portugues SA* [2009] EWHC 3381 (Ch):

substantial jurisdiction dispute and stay application in relation to claims brought under documents effecting the securitisation of a portfolio of Portuguese residential mortgages (with David Mumford).

- *Islamic Republic of Iran v Berend* [2007] 2 All E.R. (Comm) 132 (QB, Eady J) – dispute over title to ancient movable property (a fragment originally from Persepolis in Iran) and offered for sale by auction in London – successful defence at trial of Iran’s claim to possession. Conflict of laws – law applicable to movable property abroad. First judicial consideration of the relevance of the doctrine of renvoi to the transfer of title to tangible movable property abroad. Consideration of French domestic law and conflict of laws.
- *HIT Entertainment Ltd v Gaffney International Licensing Pty Ltd* [2007] EWHC 1282 (Ch, Sir Donald Rattee) jurisdiction – principles applicable at common law to application for stay where the claimant relies on a non-exclusive jurisdiction clause – effect of Art.23 of EC Regulation 44/2001 – whether scope for application of doctrine of forum non conveniens in Art.23 cases.
- *Sawyer v Atari Interactive Inc* [2007] EWCA Civ 170 (CA) – interactive video games royalty accounting dispute – acted for the Defendant on its successful appeal against the striking out of its counterclaim – consideration of the principles on which new evidence is admitted on appeal – consideration of appropriate procedure on appeal when the law applied by the judge on striking out part of the counterclaim is presently under consideration in the House of Lords. The claim proceeded until it settled after a mediation (which I attended) on the eve of trial in January 2008 (led by Ian Mill QC). I appeared alone for the Claimant during the jurisdiction phase and at the hearings at first instance (Ch).

Professional negligence

Paul Lowenstein QC has expertise in:

Complex professional liability and deceit claims, principally acting for lenders in heavy, managed actions against solicitors, surveyors, valuers, accountants and auditors. Much of Paul’s work in this area overlaps with his commercial, banking, fraud and IT practice.

Recent and current cases:

Paul has for many years advised and acted for a number of mortgage lenders (including Mortgage Express, Bradford & Bingley, Northern Rock, Platform Home Loans, Britannia, Royal Bank of Scotland and Bank of Scotland) as lead counsel in a number of single and managed multi-claim actions (each comprising between 60 and 1,000+ cases) and proposed actions against solicitors, valuers, mortgage brokers, packagers and borrowers, including:

- *Mortgage Express v Countrywide* [2016] EWHC 224 (Ch): acted for the claimant nationalised lender in its successful claims brought in deceit for damages arising out of losses sustained following gross over-valuation of rental assessments used to support buy-to-let mortgages over 40+ properties in Eastbourne. Trial in January 2016: (with Charlotte Eborall).
- *NRAM v Lambert Smith Hampton* (2015-17): acted for the claimant in its claim arising out of the allegedly negligent over-valuation of a group of commercial care homes (with Charlotte Eborall).
- *Mortgage Express and NRAM v Countrywide* [2015] EWCA Civ 1110: acted for the claimants in an action against valuers for damages for alleged dishonest and/or negligent over-valuations of 70+ buy-to-let properties in Leeds. Successful appeal to the Court of Appeal regarding the construction of a limitation standstill agreement, which had the effect of allowing Mortgage Express to advance 40+ of its claims in the tort of deceit (with William Edwards).
- *Powernet Telecom Plc v Teathers (in liquidation)* (2012-13) (Ch): acted for the joint liquidators of the respondent firm of stockbrokers in insolvency and related Chancery proceedings. Core allegations of negligence in connection with a retainer to assist the applicant to raise finance in a private placement of shares in a dot com. Issues concerning the viability of the business plan of the subject Telecom / Internet Service Provider (with William Edwards).
- *GMAC-RFC Ltd v (1) Watson & Brown (2) Connells and others* (London Mercantile Court): advised and acted for the claimant Lender in its 200+ simultaneous managed claims for conveyancing negligence and breach of fiduciary duty against the first defendant solicitors and for valuation negligence against the second defendant valuers (with Rajesh Pillai).
- *Mortgage Express v SFM Legal Services Ltd. and others* (Manchester Mercantile Court): solicitor’s fraud, breach of equitable duties and conveyancing negligence in relation to 724 conveyancing transactions – acted for the Claimant lender – obtained a series of search, property preservation, delivery-up, ‘gagging’ freezing and *Norwich Pharmacal* disclosure orders against the Defendant solicitor and others (with Charlotte Eborall).

Media and entertainment

Paul Lowenstein QC has particular relevant experience of:

Entertainment and media cases, including actions for breach of confidence and privacy; video and interactive games

litigation; royalty accounting and distribution disputes. Paul is also experienced in art litigation, including high profile disputes over the ownership and provenance of artworks, artefacts and antiquities. Paul's work in this area regularly overlaps with his commercial and fraud practice.

Cases in this area include:

- *Tamara Ecclestone v Omar Khyami and ors* [2014] EWHC 29 (QB) Dingemans J: represented Tamara Ecclestone at trial of this substantial action in a dispute that concerned claims and cross-claims in privacy, breach of confidence, non-molestation and the title to and damages flowing from the alleged conversion of a Lamborghini car. Successful restriction of the principal damages counterclaim from £6+ million originally claimed and from the £415,000+ asserted at trial to a judgment award of only £7,500 (with Jeremy Reed and David Head).
- *Newspaper Group Fulfilment Contract Dispute* – advised a leading national newspaper and media group in relation to a dispute with its former contractor for the fulfilment of customer services and online customer orders.
- *Islamic Republic of Iran v Berend* [2007] 2 All E.R. (Comm) 132 (QB, Eady J) – dispute over title to ancient movable property (a fragment originally from Persepolis in Iran) and offered for sale by auction in London – successful defence at trial of Iran's claim to possession. Conflict of laws – law applicable to movable property abroad. First judicial consideration of the relevance of the doctrine of renvoi to the transfer of title to tangible movable property abroad. Consideration of French domestic law and conflict of laws.
- *HIT Entertainment Ltd v Gaffney International Licensing Pty Ltd* [2007] EWHC 1282 (Ch, Sir Donald Rattee) jurisdiction – principles applicable at common law to application for stay where the claimant relies on a non-exclusive jurisdiction clause – effect of Art.23 of EC Regulation 44/2001 – whether scope for application of doctrine of *forum non conveniens* in Art.23 cases.
- *Sawyer v Atari Interactive Inc* [2007] EWCA Civ 170 (CA) – interactive video games royalty accounting dispute – acted for the Defendant on its successful appeal against the striking out of its counterclaim – consideration of the principles on which new evidence is admitted on appeal – consideration of appropriate procedure on appeal when the law applied by the judge on striking out part of the counterclaim is presently under consideration in the House of Lords. The claim proceeded until it settled after a mediation (which I attended) on the eve of trial in January 2008 (led by Ian Mill QC). I appeared alone for the Claimant during the jurisdiction phase and at the hearings at first instance (Ch).
- *Crave Entertainment Inc v Computer Game Play Ltd* (2007) (Ch) acted (with Rajesh Pillai) – for the U.S. – based claimant interactive video game development house in a licence fee dispute against an English game publisher. The action was stayed when the Defendant went into administration on the eve of trial.
- *Rachmaninoff v (1) Sotheby's (2) Terenyi* [2005] (QB, David Steel J) acted for Mrs Terenyi in her defence of the claim for possession of the manuscript of Rachmaninoff's second symphony, which had been left to her in a will.

Arbitration

Paul Lowenstein QC is instructed in high-profile, heavy or sensitive commercial disputes proceeding in domestic and international arbitration, both institutional and ad hoc. Particularly known for his strength of advocacy, strategic thinking and commercial approach, Paul is regularly retained for difficult and complex arbitrations with highly-contested facts or where substantial witness or expert examination is required.

Paul has particular experience of applications in the Commercial Court in London in support of arbitral proceedings in England and overseas and in connection with the enforcement or resistance of enforcement of arbitral awards. In particular, he is regularly retained for Jurisdiction and choice of law issues; freezing, search, imaging and Norwich Pharmacal and other disclosure orders required in connection with arbitral proceedings; anti-suit injunctions and on court arbitration applications and challenges.

A substantial part of Paul's recent practice has been taken up in enforcement proceedings relating to arbitration, including pre-emptive remedies in support of such action.

In recent years Paul has been involved in arbitration and arbitration-related proceedings arising out of or connected with England, Singapore, the Gulf States, India, Russia and the CIS states, Ukraine and Hong Kong.

Paul Lowenstein QC accepts appointments as arbitrator in domestic and international arbitrations.

Most of Paul Lowenstein QC's arbitration practice remains confidential, but sample examples of recent and current cases include:

- Acting for a foreign mining company in four closely-related substantial LCIA commercial, banking, guarantee and financial claims against and brought by a bank and others in relation to a metal ore mine joint venture (with Tamara Oppenheimer and Mark Tushingam).
- Acting for a defendant to an LCIA arbitration – claim for unpaid money under commercial documents and instruments – defence that the instruments are fraudulent – preliminary issue over limitation defence (variously, with Henry Byam-Cook,

Belinda McRae and Andrew Dinsmore).

- Advised the BVI companies parties and their ultra-high net worth UBO, who defended a substantial corporate dispute in LCIA arbitration.
- Acted for the Claimant in an ICC arbitration concerning a dispute over the establishment of an energy production plant in the Caucasus (with Luke Pearce).
- Advised an LCIA award creditor with substantial associated litigation in India and Mauritius on availability of Freezing Injunction and 'Chabra' injunctive relief in England.
- Acted for Indian personal clients sued in England and made subject of an English freezing injunction in alleged breach of an Indian arbitration agreement (with Peter de Verneuil Smith).
- Obtained a very substantial Commercial Court worldwide freezing injunction on behalf of a well-known overseas bank in support of intended LCIA arbitral proceedings (with Andrew Fulton).
- *Montblanc v Doshi* - Commercial Court - acted for the Claimants on the enforcement in England of a substantial ICC arbitration award - worldwide freezing order.
- Enforcement of Russian arbitral award - advised the claimant in respect of a contested Commercial Court claim for the enforcement in England of a very substantial Russian arbitral award.
- Gulf State banking fraud claim - acted for a substantial Gulf State-based industrial conglomerate alleged to have been in dishonest breach of banking arrangements with the claimant multinational banking group.

Mediation

Paul is a qualified CEDR mediator and regularly appears as an advocate in mediations. He has an intimate knowledge of the mediation process derived from his training as a mediator and through his experience in mediation.

Examples of Paul's work in this area include:

- Integrated Global Card Payments IT Services: Earn-out and Warranty Dispute (2014-15) - acted at mediation for the sellers of a substantial hi-tech business which provided payment card processing solutions in connection with their claims against the buyers for unpaid earn-out payments, and in defence of threatened warranty cross-claims. Significant technical detail overlaying a complex contractual framework.
- Taxi Despatch Software Licensing Dispute (2014) - advised and represented (at mediation) a firm of specialist software developers and engineers who had licensed bespoke despatch and scheduling software to a well-known London private hire taxi company. Allegations of misuse and issues concerning the global resolution of the relationship between the parties.
- *Ecotricity Group Ltd v Tesla Motors* (2014) (Ch) represented Tesla Motors, the respondent electric battery-powered volume car manufacturer at mediation in a dispute where it is defending the claimant power supplier's claims for injunctions for alleged procurement of breach of contract and misuse of confidential information and counterclaims alleging breach of UK and European Competition Law.
- *Tamara Ecclestone v Omar Khyami and others* (2013) (QBD) - represented Tamara Ecclestone at trial and earlier mediation of this substantial action in a dispute which concerned claims and cross-claims in privacy, breach of confidence, non-molestation and regarding the title to and damages flowing from the alleged conversion of a Lamborghini car. Successful restriction of the principal damages counterclaim from £6+ million originally claimed and from the £415,000+ asserted at trial to a judgment award of only £7,500. Trial judgment at [2014] EWHC 29 (QB).
- *ANC Harlow & others v FedEx UK Ltd and another (the "FedEx Franchisee Litigation")* (2010-11) - represented FedEx at mediation in its defence of claims by 23 of its franchisees for further payments under a franchise bonus scheme.
- *EMDA Business Holding Corporation & others v GEV Offshore & others* (2010) (Commercial Court) - represented the claimant oil exploration industry maintenance contractors at mediation in connection with their action against Defendant company and former directors of the claimant who had taken very large sums of money from the claimant company and had set up a competing business.
- *Sectrack NV v (1) Satamatics Ltd (2) Jan Leemans* (2008) commercial injunction and misuse of confidential information dispute. For the Claimant at the mediation, held urgently after the return date of the injunction application in the Commercial Court. The mediation lasted approximately 37 hours.

Recommendations

He is just a supreme advocate and a master of the art: a very good communicator who is very measured and ensures that points are not lost in translation. [Chambers UK Bar 2020](#)

Polished, confident, and stylish in the way he goes about his business. [The Legal 500 UK Bar 2020](#)

Thinks outside the box and is not limited by current legal thinking. [Who's Who Legal, Asset Recovery 2019](#)

Undoubtedly one of the genuine fraud specialists. [The Legal 500 UK Bar 2020](#)

Very forthright and no-nonsense in court; he takes good points, and has a very aggressive style. [Chambers UK Bar 2020](#)

An excellent cross-examiner. [Chambers UK Bar 2020](#)

A silk who can be relied upon to deal soundly with difficult hearings. [The Legal 500 UK Bar 2020](#)

Paul is very responsive, and stands out for his robust and measured approach. [Chambers UK Bar 2020](#)

He is incredibly bright. [The Legal 500 UK Bar 2020](#)

He's an excellent option for representation in complex contractual disputes, and has good experience in the automotive sector. [Chambers UK Bar 2020](#)

A very strong advocate. [Who's Who Legal UK Bar 2019](#)

He is known for his experience in a range of telecoms contracts and IT disputes. [The Legal 500 UK Bar 2020](#)

Thought Leader for Asset Recovery. [Who's Who Legal Thought Leaders GIR 2019](#)

A very gathered individual, who has impressive self-control and doesn't put a foot wrong. [Chambers UK Bar 2019](#)

He is aggressive and effective. [Chambers UK Bar 2019](#)

A wonderful cross-examiner who has a great presence in court. Paul can deal soundly with difficult hearings and makes creative applications involving injunctive relief. [Chambers UK Bar 2019](#)

An immensely impressive commercial silk; extremely thorough, hardworking and responsive. [The Legal 500 UK Bar 2019](#)

A wonderful cross-examiner, who is very tenacious and has good client-handling instincts. [Chambers UK Bar 2018](#)

A very formidable advocate, who's prepared to regularly stress-test your case in detail. [Chambers UK Bar 2018](#)