

CURRICULUM VITAE

GARRY RICH

Contact details

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Areas of Practice

Advocacy & advice in commercial litigation, in particular:

- Banking & Securities;
- Competition law;
- Contract disputes;
- Corporate insolvency
- Corporations law;
- Directors' duties;
- Insurance (esp. financial lines, D&O, major projects);
- Misleading conduct; and
- Representative proceedings.

Appellate advocacy in criminal matters.

Advocacy & advice in Commissions of Inquiry.

Professional history

Senior Counsel (since October 2013)

Barrister (since February 2000)

Senior Associate, Associate & Law Graduate (1997-2000)

Selected experience as Senior Counsel

- Advising and appearing for Port of Newcastle in FCA proceedings commenced by the ACCC, wherein it is alleged that the terms upon which certain ports were privatised by the State of NSW included provisions that contravene s 45 of the CCA (2019 – ongoing).
- Advising and appearing for Reinsurers of NAB in FCA proceedings that relate to the mis-selling of fixed rate business loan products in the UK and insurance claims totalling over \$670 million (2019 – ongoing).
- Appearing for Volkswagen AG in its defence of several FCA representative proceedings relating to non-compliance with diesel emissions standards (2019 – ongoing).
- Advised Vodafone Australia in relation to the ACCC's consideration of its proposed merger with TPG (2019).
- Advised and appeared for Macquarie Group & Macquarie Bank at the Royal Commission into Misconduct in the Banking and Financial Services Industry (2018).
- Appearing for Toyota in its defence of NSWSC representative proceedings relating to the supply of vehicles fitted with Takata Airbags (2018 – ongoing).
- Appeared for the Litigation Funders at the settlement approval hearing arising from 6 separate FCA proceedings against Standard & Poors (2018).
- Appeared for former U.S. Executives of the Babcock & Brown Group in NSWSC proceedings arising from failed investments in Babcock & Brown Rail North America LLC (2018, settled during the trial).
- Appeared for Sirtex Medical Limited in its defence of FCA representative proceedings alleging misleading conduct and failure to comply with continuous disclosure obligations (2017 – 2019, settled during the trial).
- Appeared for underwriters of IOOF in NSWSC representative proceedings arising from the collapse of Provident Capital (2017 – 2018, settled at trial).
- Appeared for the Receivers of the Brisconnections Group in FCA proceedings seeking to recover over \$2 billion from Arup in respect of its traffic forecasts for the Airport Link toll road (2017, settled during the trial).
- Advising and appearing for the Insurance Commission of WA in its efforts to recover a share of the proceeds of the Bell Litigation from the Liquidators of The Bell Group (2016 – 2019).
- Appeared for Ms Radhika Oswal in VSC proceedings against ANZ Bank, its appointed Receivers & others, seeking to recover US\$900M+ for alleged unconscionable conduct & breaches of duty in connection with the sale of Burrup Fertilisers (2016, settled during the trial).
- Appeared for Sage Group plc in its defence of FCA proceedings brought by Archer Capital relating to the proposed sale of MYOB (2015).

- Appeared for Pfizer in its defence of FCA proceedings brought by the ACCC alleging misuse of market power (2014).
- Appeared for the CFO of Australian Water Holdings and the principal of a property development group in public inquiries before the NSW ICAC (2014).
- Advising numerous D&O, Financial Lines & Major projects underwriters and insured parties on coverage and related issues.

Selected judgments following appearance as Senior Counsel

- *CCL Secure Pty Ltd v Berry* [2019] FCAFC 81 (Appeal against findings of misleading conduct; credit findings; measure of damages).
- *KTC v David (No 1)* [2019] NSWSC 281 (Striking out a claim for knowing assistance).
- *Dimitrov v Bendigo & Adelaide Bank Ltd* [2019] VSCA 41 (Resisting application for leave to appeal and proposed appeal from orders approving settlement of the Great Southern class actions).
- *Muriniti; Newell v Lawcover Insurance Pty Ltd (No 2)* [2018] NSWCA 311 (Responding to an appeal concerning the construction of an insurance policy; duty of good faith).
- *Hyder v McGrath Sales Pty Ltd* [2018] NSWCA 223 (Appeal regarding allegations of misleading conduct; conduit defence).
- *Bell Group NV v Insurance Commission of WA* [2018] WASCA 179 (Responding to an appeal concerning an application to strike out pleadings).
- *Liverpool City Council v McGraw-Hill Financial Inc* [2018] FCA 1289 (Acting for the Funder on an application for approval of the settlement in representative proceedings against Standard & Poor's).
- *Insurance Commission of WA v Woodings as Liquidator of The Bell Group Ltd (No 4)* [2018] WASC 186 (Service on trustee; Representative order affecting holders of bearer bonds).
- *Commonwealth Bank of Australia v The Law Debenture Trust Corporation plc (No 4)* [2018] WASC 165 (Discharge of undertakings).
- *Bell Group NV v Insurance Commission of WA* [2017] WASCA 229 (Responding to an appeal concerning injunctive relief; contractual construction; scope of implied term requiring co-operation and good faith).
- *Dimitrov v Supreme Court of Victoria & Ors* [2017] HCA 51; 263 CLR 130 (Striking out an application in the original jurisdiction of the High Court of Australia which sought to set aside the settlement of the Great Southern class actions).
- *Brisconnections Finance v Arup P/L* [2017] FCA 1268; 252 FCR 450 & [2017] FCA 590 (Interlocutory decisions on privilege and expert evidence in proceedings alleging misleading and negligent traffic forecasts).

- *Obeid v R* [2017] NSWCCA 221; 96 NSWLR 155 (Application to adduce new evidence on appeal in criminal proceedings).
- *DSHE Holdings Limited (Receivers & managers appointed) (In liq) v Abboud* [2017] NSWSC 579 (Appearing for underwriters of former directors of Dick Smith to oppose an application to join them pursuant to s 6(4) of the LRMP Act).
- *In the matter of Pulse Health Limited* [2017] NSWSC 140 (Scheme of arrangement; break clauses; collateral benefits).
- *Calvo v Ellimark P/L* [2016] NSWCA 136; and *Ellimark P/L v Calvo* [2015] NSWSC 1240 (Interpretation of contracts; Unconscionable conduct).
- *Todd v Alterra at Lloyd's* [2016] FCAFC 15; 239 FCR 12 & *Sienkiewicz v Salisbury Group* [2015] FCA 147; 323 ALR 547 (Interpretation of insurance policy covering financial advisers).
- *Allianz Australia Insurance v Mercer* [2016] TASFC 2; 330 ALR 157 & [2014] TASFC 3; 309 ALR 154 (Limitation period for claims against insurers under s 601AG of the Corps Act and date of discoverability).
- *Archer Capital 4A v Sage Group plc* [2015] FCA 960; 108 ACSR 218 (Whether a binding business sale contract had been made; estoppel; misleading conduct).
- *Blairgowrie Trading v Allco Finance Group* [2015] FCA 811; 325 ALR 539 (Opposing application for common fund orders in representative proceedings).
- *Infrashore v Health Administration Corporation* [2015] NSWSC 736 (Whether an action relating to asbestos removal works at RNSH was the subject of an arbitration agreement for the purposes of the Commercial Arbitration Act).
- *Minumbra P/L v AM Lancewood Investment Nominees P/L* [2015] NSWSC 302 (Proper construction of a guarantee; Subrogation).
- *ACCC v Pfizer Australia* [2015] FCA 113; 323 ALR 429 (ACCC alleged that Pfizer had contravened ss. 46 and 47 of the Competition and Consumer Act by taking advantage of market power and engaging in exclusive dealing).

Professional appointments

Member, NSW Bar Association Senior Counsel Selection Committee (2019)

Member, Council of Law Reporting for NSW (since 2015)

Chair, The Barristers' Sickness and Accident Fund Pty Limited (Director since 2013, Chair since 2017)

Chair, NSW Bar Association Barristers' Professional Indemnity Insurance Working Group (since 2011)

Tertiary Education

Bachelor of Laws, with First-Class Honours
Macquarie University (1992-1996)

Bachelor of Arts
Macquarie University (1992-1994)

Secondary Education

Fort Street High School, Petersham, NSW (HSC 1991)