

CURRICULUM VITAE

GARRY RICH

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Areas of Practice

Advocacy & advice in commercial litigation, in particular:

- Competition law;
- Contract disputes;
- Corporate insolvency;
- Corporations law;
- Directors' duties;
- Insurance & Reinsurance;
- Misleading conduct;
- Public infrastructure projects; and
- Representative proceedings.

Appellate advocacy in civil & 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)

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)

Selected experience as Senior Counsel

- Appearing for EG Fuel (acquirer of Woolworths' service station business) in contract and competition proceedings against Ampol (2021 – ongoing).
- Advising and appearing in an access pricing dispute that was referred to Arbitration under the *Maritime Services (Access) Act 2000* (SA) (2020 – 2021).
- Appearing for the lead underwriter of CIMIC (formerly Leighton Holdings) defending NSWSC proceedings seeking indemnity for losses arising from foreign bribery allegations (2020 – ongoing).
- Appeared for Transport for NSW in a contractual dispute pertaining to the WestConnex M4-M5 Link Project (2020).
- Advised various underwriters with respect to coverage issues arising from the COVID 19 pandemic (2020 – 2021).
- Appearing for Port of Newcastle in proceedings commenced by the ACCC, alleging that the terms upon which certain NSW ports were privatised by the State included provisions that contravened s 45 of the CCA (2019 – ongoing).
- Appeared for Reinsurers of NAB defending FCA proceedings seeking indemnity for over \$670 million in claims related to the mis-selling of fixed rate loans in the UK (2019 – 2020, settled following preliminary hearings).
- Advising underwriters on coverage issues that have arisen from various representative proceedings commenced against financial institutions since the Hayne Royal Commission (2019 – ongoing).
- Appeared for Volkswagen AG in the latter stages of its defence of several FCA representative proceedings relating to non-compliance with diesel emissions standards, as well as the regulatory penalty hearing and appeal (2019 – 2020).
- Advised Vodafone Australia in relation to the ACCC's consideration of its merger with TPG and the subsequent commencement of proceedings (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 NSWSC representative proceedings relating to the supply of vehicles fitted with Takata Airbags (2018 – settled, subject to court approval).
- 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 to recover over \$2 billion from Arup in respect of its traffic forecasts for the Airport Link toll road (2017, settled during the trial).
- Advised and appeared 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, settled after interlocutory hearings and appeals).
- 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).
- Advising numerous D&O, Financial Lines & Major projects underwriters and insured parties on coverage and related issues.

Selected decided cases as Senior Counsel

- *EG FuelCo (Australia) v Ampol Australia* [2021] NSWSC 989 (Resisting an application for a mandatory injunction).
- *ACCC v NSW Ports* [2021] FCA 720 (Whether the terms upon which ports were privatised by the State included provisions that contravene s 45 of the CCA).
- *Volkswagen Aktiengesellschaft v ACCC* [2021] FCAFC 49 (Appeal regarding pecuniary penalty for contraventions of the ACL).
- *Augusta Ventures v Mt Arthur Coal* [2020] FCAFC 194; 384 ALR 340 (Appeal challenging security for costs orders made against the Funder of representative proceedings brought under the *Fair Work Act*).
- *Berry v CCL Secure* [2020] HCA 27; 94 ALJR 715 (Appeal regarding causation and assessment of damages in misleading conduct proceedings).
- *Hazelhurst v Toyota Motor Corporation* [2020] NSWCA 66; 101 NSWLR 890 (Appeal concerning the Court's power to make class closure orders).
- *National Australia Bank v Nautilus Insurance* [2019] FCA 2139 (Proper construction of a contract of insurance).
- *CCL Secure v Berry* [2019] FCAFC 81 (Appeal against findings of misleading conduct; credit findings; assessment of damages).
- *KTC v David (No 1)* [2019] NSWSC 281 (Striking out a claim that alleged knowing assistance of breaches of fiduciary duty).
- *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; Insurer's 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; 129 ACSR 132 (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 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; 19 ANZ Ins Cases 62-137 (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, Federal Court of Australia Class Action Users' Group (since 2020)
- Member, Federal Court of Australia Commercial & Corporations (General) Users' Group for NSW & ACT (since 2019)
- Member, NSW Bar Association Senior Counsel Selection Committee (2019)
- Member, Council of Law Reporting for NSW (2015 – 2021)
- 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)