

CURRICULUM VITAE

GARRY RICH

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Areas of Practice

Advocacy & advice in commercial litigation, including:

- Insurance
- Competition
- Class actions
- Contracts
- Corporate insolvency
- Directors' duties
- Misleading conduct

Appellate advocacy in civil & criminal matters.

Advocacy 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
Prizes for first place in Years 1, 2 & 5
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

- Appeared for TPG Telecom in Competition Tribunal proceedings seeking merger authorisation relating to mobile network sharing and spectrum authorisation arrangements with Telstra (2022 – 2023).
- Advising and appearing for Hino Motor Sales in VSC representative proceedings alleging misleading conduct in connection with diesel emissions standards (2022 – ongoing).
- Advising and appearing for Epic Games in FCA proceedings against Apple and Google alleging contraventions of Part IV of the *Competition & Consumer Act* in connection with the distribution of mobile apps and in-app payment solutions (2022 – ongoing).
- Appeared for the ACCC in FCA proceedings against Meta Platforms, seeking pecuniary penalties for contraventions of the *Australian Consumer Law* (2022 – 2023).
- Appeared for Sweetpea Petroleum in two appeals in the NTSC concerning access agreements granted under the *Petroleum Act 1984* (NT) (2022).
- Appeared for various lessors of Aircraft & Engines in NSWSC proceedings arising from the administration of Virgin Airlines (2021 – 2022).
- Advised and appeared for TPG Internet in FCA pecuniary penalty proceedings commenced by the ACCC for misleading conduct relating to Internet broadband plans (2021 – 2022).
- Advising and appearing for AIG Insurance in NSWSC and NSWCA proceedings commenced by CIMIC (formerly Leighton Holdings), seeking indemnity for claims arising from allegations of bribery in Iraq (2020 – ongoing).
- Appeared for Transport for NSW in a contractual dispute pertaining to the WestConnex M4-M5 Link Project (2020).
- Appeared for Port of Newcastle in FCA and FCAFC proceedings commenced by the ACCC, alleging that the terms upon which certain NSW ports were privatised contravened s 45 of the *Competition & Consumer Act* (2019 – 2022).
- 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).
- 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 FCA proceedings (2019).

- Advised and appeared for Macquarie Group & Macquarie Bank at the Royal Commission into Misconduct in the Banking and Financial Services Industry (2018).
- Appeared for Toyota in NSWSC representative proceedings relating to the supply of vehicles fitted with Takata Airbags (2018 – 2022).
- Appeared for former U.S. Executives of the Babcock & Brown Group in NSWSC proceedings arising from failed investments in Babcock & Brown Rail North America (2018).
- Appeared for Sirtex Medical in its defence of FCA representative proceedings alleging misleading conduct and failure to comply with continuous disclosure obligations (2017 – 2019).
- Appeared for underwriters of IOOF in NSWSC representative proceedings arising from the collapse of Provident Capital (2017 – 2018).
- Appeared for the Receivers of Brisconnections in FCA proceedings to recover over \$2 billion from Arup in respect of its traffic forecasts for the Airport Link toll road (2017).
- Advised and appeared for the Insurance Commission of WA in WASC and WASCA proceedings to recover a share of the proceeds of the Bell Group Litigation (2016 – 2019).
- Appeared for Ms Radhika Oswal in VSC proceedings against ANZ Bank and the Receivers of Burrup Fertilisers, seeking to recover US\$900M+ for alleged unconscionable conduct & breaches of duty in connection with the sale of Burrup Fertilisers (2016).
- 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).
- Regularly advising D&O, Financial Lines & Major projects underwriters and insured parties on insurance coverage and related issues.

Selected decided cases as Senior Counsel

- *ACCC v Meta Platforms* [2023] FCA 842 (Civil penalty proceedings for contraventions of the *Australian Consumer Law*).
- *Resolution Life Australasia v NM Superannuation* [2023] NSWCA 138 (Proper construction of life insurance contracts for members of the AMP Super Fund).
- *Applications by Telstra Corporation & TPG Telecom (No 2)* [2023] ACompT 2 (Review of merger authorisation determination made by the ACCC in relation to mobile network sharing and spectrum authorisation arrangements).

- *Yarabala & Anor v Sweetpea Petroleum* [2023] NTSC 50; and *Rallen Australia v Sweetpea Petroleum* [2023] NTSC 36 (Disputes concerning exploration permits and access agreements under the *Petroleum Act 1984*).
- *ACCC v NSW Ports* [2023] FCAFC 16 (Whether ports privatisations contravened s 45 of the *Competition & Consumer Act*; Derivative Crown immunity).
- *ACCC v TPG Internet* [2022] FCA 1399 (Misleading conduct; Internet broadband plans; Pecuniary penalty hearing).
- *CIMIC Group v AIG Group* [2022] NSWSC 999 (Insurance; Non-disclosure; Policy construction; Contribution between insurers).
- *Melbourne Aircraft Leasing v Algeri & Ors* [2022] NSWSC 443; 161 ACSR 569 (Insolvency; Priority dispute arising from the administration of Virgin Airlines).
- *Koper v Zurich Insurance* [2021] NSWSC 1587 (Constitutional law; Statutory construction; Opposing leave under the *Third Party Claims Against Insurers Act*).
- *ACCC v NSW Ports* [2021] FCA 720; 284 FCR 24 (Whether ports privatisations contravened s 45 of the *Competition & Consumer Act*; Derivative Crown immunity).
- *Volkswagen AG v ACCC* [2021] FCAFC 49; 284 FCR 24 (Appeal against pecuniary penalty for contraventions of the *Australian Consumer Law*).
- *Augusta Ventures v Mt Arthur Coal* [2020] FCAFC 194; 283 FCR 123 (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; 271 CLR 151 (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 a contract of insurance; 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).
- *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 that sought to set aside a 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).
- *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*).
- *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; 29 Tas R 121 & [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).
- *ACCC v Pfizer Australia* [2015] FCA 113; 323 ALR 429 (ACCC alleged that Pfizer had contravened ss. 46 and 47 of the *Competition & 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)

Clerk / Enquiries

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