

CURRICULUM VITAE

GARRY RICH

5th Floor, St James' Hall
169 Phillip Street
Sydney NSW 2000
+ 61 2 8257 2567
rich@stjames.net.au

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

- 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).
- *Fonterra Brands (Australia) v Bega Cheese* [2025] NSWSC 395. Appeared for Bega in proceedings that concerned the Court’s jurisdiction to grant declaratory relief and the proper construction of change of control provisions (2025).
- *ASIC v Hawkins & Theodore* [2025] FCA 121. Appeared for the former CFO of Star Entertainment in proceedings commenced by ASIC for breach of duty under s 180 of the *Corporations Act*. Penalties agreed before trial (2024 – 2025).
- *Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited* [2024] ACompT 1; 386 FLR 372. Appeared for the ACCC in proceedings concerning the acquisition of Suncorp Bank by ANZ (2023).
- *Zurich Australian Insurance v CIMIC Group* [2024] NSWCA 229; and *CIMIC Group v AIG Group* [2022] NSWSC 999; 22 ANZ Ins Cas 62-320. Advised and appeared for AIG at trial and on appeal. CIMIC (formerly Leighton Holdings) sought indemnity for claims arising from alleged bribery in Iraq. AIG’s successful defence raised issues of non-disclosure and policy construction (2020 – 2023).
- *Central Australia Frack Free Alliance v Minister for Environment* [2024] NTSC 75. Appeared for the permit holder in proceedings which challenged the validity of the Minister’s decision to approve exploration activities under the *Petroleum Act 1984* (NT) (2023).
- *ACCC v Meta Platforms* [2023] FCA 842. Appeared for the ACCC in proceedings against Meta Platforms. Obtained pecuniary penalties for contraventions of the *Australian Consumer Law* (2022 – 2023).
- *Resolution Life Australasia v NM Superannuation* [2023] NSWCA 138. Appeared at trial and on appeal in proceedings concerned with the proper construction of life insurance contracts covering members of the AMP Super Fund (2023).
- *Applications by Telstra Corporation & TPG Telecom (No 2)* [2023] ACompT 2 and *Re Telstra Corporation* [2023] ACompT 1; 376 FLR 1. Appeared for TPG Telecom in proceedings relating to proposed mobile network and spectrum sharing arrangements with Telstra (2022 – 2023).
- *Rallen Australia v Sweetpea Petroleum* [2023] NTSC 36; 376 FLR 239 and *Yarabala & Anor v Sweetpea Petroleum* [2023] NTSC 50; 378 FLR 67. These proceedings concerned the validity of exploration permits and access agreements under the *Petroleum Act 1984* (NT) (2022).
- *ACCC v NSW Ports* [2023] FCAFC 16; 296 FCR 364 and *ACCC v NSW Ports* [2021] FCA 720; 284 FCR 24. Appeared for Port of Newcastle at trial and on appeal. The proceedings raised issues of derivative Crown immunity and whether

- certain ports were privatised on terms which contravened s 45 of the *Competition & Consumer Act* (2019 – 2022).
- *Melbourne Aircraft Leasing v Algeri & Ors* [2022] NSWSC 443; 161 ACSR 569. Appeared for various lessors of aircraft and engines in a priority dispute arising from the administration of Virgin Airlines (2021 – 2022).
 - *ACCC v TPG Internet* [2022] FCA 1399. Advised and appeared for TPG Internet in pecuniary penalty proceedings commenced by the ACCC for misleading conduct relating to Internet broadband plans (2021 – 2022).
 - *Hazelhurst v Toyota Motor Corporation* [2020] NSWCA 66; 101 NSWLR 890. Appeared for Toyota in representative proceedings relating to the supply of vehicles fitted with Takata Airbags, including an appeal concerning the Court's power to make class closure orders (2018 – 2022).
 - *Koper v Zurich Insurance* [2021] NSWSC 1587. Appeared for Zurich on an application relating to the extra-territorial operation of the *Third Party Claims Against Insurers Act 2017* (NSW) and the constitutional validity of the *Trans-Tasman Proceedings Act 2010* (Cth) (2021).
 - *Volkswagen AG v ACCC* [2021] FCAFC 49; 284 FCR 24. Appeared for Volkswagen AG in proceedings relating to non-compliance with diesel emissions standards, as well as the regulatory penalty hearing and appeal (2019 – 2020).
 - Appeared for Transport for NSW in an arbitration pertaining to the WestConnex M4-M5 Link (2020).
 - *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* (2020).
 - *Berry v CCL Secure* [2020] HCA 27; 271 CLR 151 and *CCL Secure v Berry* [2019] FCAFC 81. Appeared in appeals to the FCAFC and the High Court relating to misleading conduct and the assessment of damages (2019 – 2020).
 - *National Australia Bank v Nautilus Insurance* [2019] FCA 2139. Appeared for Reinsurers of NAB, which sought indemnity against \$670 million of third party claims arising from the mis-selling of fixed rate loans (2019 – 2020).
 - *Dimitrov v Bendigo & Adelaide Bank Ltd* [2019] VSCA 41. Resisting application for leave to appeal and a proposed appeal from orders approving settlement of the class actions against Great Southern (2019).
 - Appeared for Sirtex Medical in its defence of FCA representative proceedings alleging misleading conduct and failures to comply with continuous disclosure obligations. Settled during trial (2017 – 2019).
 - *Bell Group NV v Insurance Commission of WA* [2018] WASCA 179; *Insurance Commission of WA v Woodings as Liquidator of The Bell Group (No 4)* [2018] WASC 186; 129 ACSR 132; and *Bell Group NV v Insurance Commission of WA* [2017] WASCA 229. Advised and appeared for the Insurance Commission of WA

- in proceedings to recover a share of the proceeds of the Bell Group Litigation. Various interlocutory applications and appeals. Settled before trial (2016 – 2019).
- Advised and appeared for Macquarie Group and Macquarie Bank at the Royal Commission into Misconduct in the Banking and Financial Services Industry (2018).
 - *Muriniti; Newell v Lawcover Insurance Pty Ltd (No 2)* [2018] NSWCA 311. Appeared for Lawcover in an appeal concerning the construction of a contract of insurance and the duty of good faith (2018).
 - *Hyder v McGrath Sales Pty Ltd* [2018] NSWCA 223. Appearing in an appeal concerning misleading conduct and the conduit defence (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. Settled during trial (2017).
 - *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 class actions against Great Southern (2017).
 - *DSHE Holdings (Receivers & managers appointed) (In liq) v Abboud* [2017] NSWSC 579; 19 ANZ Ins Cases 62-137. Appeared for the underwriters of former directors of Dick Smith to oppose an application for joinder pursuant to s 6 of the *LRMP Act* (2017).
 - Appeared for Ms Radhika Oswal in VSC proceedings against ANZ Banking Group 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. Settled during trial (2016).
 - *Calvo v Ellimark* [2016] NSWCA 136 and *Ellimark v Calvo* [2015] NSWSC 1240. Appeared at trial and on appeal in proceedings concerning the interpretation of contracts and unconscionable conduct (2015 – 2016).
 - *Todd v Alterra at Lloyd's* [2016] FCAFC 15; 239 FCR 12 and *Sienkiewicz v Salisbury Group* [2015] FCA 147; 323 ALR 547. Appeared for underwriters at trial and on appeal. The proceedings concerned the proper construction of a contract of insurance covering financial advisers (2015 – 2016).
 - *Allianz Australia Insurance v Mercer* [2016] TASFC 2; 29 Tas R 121 & [2014] TASFC 3; 309 ALR 154. Appearing for Allianz in two appeals concerning the limitation period applicable to claims against insurers under s 601AG of the *Corporations Act* (2014 – 2016).
 - *Archer Capital 4A v Sage Group plc* [2015] FCA 960; 108 ACSR 218. Appeared for Sage Group in its defence of proceedings brought by Archer Capital relating to the proposed sale of MYOB (2015).

- *Blairgowrie Trading v Allco Finance Group* [2015] FCA 811; 325 ALR 539. Opposing an application for common fund orders in representative proceedings (2015).
- *ACCC v Pfizer Australia* [2015] FCA 113; 323 ALR 429. Appeared for Pfizer to defend proceedings brought by the ACCC alleging misuse of market power and exclusive dealing in contravention of ss 46 and 47 of the *Competition & Consumer Act* (2014).
- Regularly advising D&O, Financial Lines & Major projects underwriters and insured parties on insurance coverage and related issues.

Professional appointments

- 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).
- 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, Council of Law Reporting for NSW (2015 – 2021).
- Member, NSW Bar Association Senior Counsel Selection Committee (2019).

Clerk / Enquiries

Ms Caroline Davoren
 + 61 2 8257 2500
caroline.davoren@stjames.net.au