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Curriculum Vitae

ADMISSIONS AND QUALIFICATIONS

1983: Bachelor of Arts (University of Sydney)
1984: Bachelor of Laws (University of Sydney)
6 July 1984: Called to the Bar (NSW)
1984 to date: Barrister practising in all Australian jurisdictions
2003 to date: Senior counsel practising in all Australian jurisdictions,
 Appeared or appearing in cases in Vanuatu and Fiji
2012 to 2014, 2018 to 2024: Member of Bar Association Professional Conduct Committee
2018 to date: Head of Chambers – Nine Wentworth

PROFESSIONAL RECOGNITION

- Doyle's Guide – Leading Commercial Litigation and Disputes Resolution Senior Counsel NSW, 2016, 2017, 2018, 2020, 2021, 2022
- Doyle's Guide – Leading Insurance Senior Counsel NSW, 2017, 2018, 2019, 2021
- Doyle's Guide – Leading Professional Indemnity Senior Counsel NSW, 2020, 2021, 2022, 2023
- Doyle's Guide – Leading Insolvency and Restructuring Senior Counsel NSW 2019
- The Best Lawyers in Australia – Insurance Law (2018 to 2024; 2020 Insurance Lawyer of the Year); Litigation (2023, 2024); Class Action Litigation (2023, 2024)

PRINCIPAL AREAS OF PRACTICE

Commercial and equity, corporations, insolvency, insurance and reinsurance, professional negligence, class actions.

EXPERIENCE AT THE BAR - OVERVIEW

- Practised at the Bar throughout Australia since 1984 in Federal and State courts.
- Came straight to the Bar where he has practised ever since.
- With 40 years' experience at the Bar and having been silk more than 20 years, the areas of practice are extensive.
- Believes that a capable barrister should be able to and should appear in all jurisdictions and engage in a diverse range of case work.

- Particular interests are pre-trial case strategy and cross-examination.
- Appeared in a number of leading High Court cases in diverse areas including reliance damages (*Cessnock Council* – judgment reserved), interaction between Civil Liability Act and Australian Consumer Law (*Scenic Tours*), insolvency (*Lehman Brothers*), insurance (*Silbermann v CGU*), trusts (*Aid/Watch*), privilege (*Rich v ASIC*), and unconscionability (*Garcia v NAB*).
- Appeared at first instance and on appeal for Swiss Re in COVID-19 business interruption test case.
- Appeared at first instance and on appeal in Arrium litigation – (*Anchorage Capital v Sparkes*) – insolvency/material adverse change certificates.
- Appeared at first instance and on appeal to Court of Appeal and High Court for plaintiff in leading case explaining reliance damages post Amann Aviation (*123 259 932 v Cessnock Council*).
- Appeared at first instance and on appeal for appellants concerning partnerships, trusts, limitations of action and indefeasibility (*Sze Tu v Lowe*).
- Appeared on appeal for Sydney Local Health District in leading case on mesne profits (*Sydney Local Health District v Macquarie*).
- Appeared for defendants in *ASIC v Rich* – one of the longest NSW civil trials – (232 hearing days, 37 witnesses, 7500 paragraph judgment).
- Appeared for defendant in Queensland Floods class action (*Rodriguez v Seqwater*).
- Appeared for Scenic Tours on appeal to the Court of Appeal and High Court concerning consumer guarantees, and whether the state limitations on damages are picked up and applied as surrogate federal laws under the Australian Consumer Law (*Moore v Scenic Tours*).

PARTICULAR AREAS OF PRACTICE ARE AS FOLLOWS:

Commercial

- Appeared in leading case on reliance damages and principles in Amann Aviation (High Court Appeal – judgment reserved, *Cessnock Council*).
- Appeared in leading appellate case on statutory unconscionability (*Ipstar Australia Pty Ltd v APS Satellite Pty Ltd*).
- Appeared in leading case on mesne profits (*Sydney Local Health District v Macquarie International Health Clinic Pty Ltd*).
- Appeared in long running Arrium litigation concerning insolvency principles in cases of long term finance debts and material adverse change clauses (*Anchorage Capital Master Offshore Ltd v Sparkes (No 3)*).
- Appeared in class action proceedings concerning consumer guarantees (*Scenic Tours Pty Ltd v Moore*).
- Appeared in several recent decisions on enforcement of arbitral awards.

- Appeared in commercial arbitration re reinsurance.
- Appeared in numerous cases regarding contractual construction and statutory interpretation.
- Other commercial cases appear under other headings.

Cases include:

Nature's Care Holdings Pty Ltd v Chen (No 2) [2024] NSWSC 107

(Interlocutory injunction; balance of convenience; injunction restraining exercise of rights acquired by minority shareholders; director/fiduciary duties)

123 259 932 Pty Ltd v Cessnock City Council [2023] NSWCA 21

(Contracts; remedies; reliance damages; principles in *Amann Aviation*)

Anchorage Capital Master Offshore Ltd v Sparkes [2023] NSWCA 88

(Insolvency – long term debt; misleading and deceptive conduct – material adverse change; contractual construction; negligence; accessory liability in tort; employee liability for corporate conduct; causation)

BCEG International (Australia) Pty Ltd v Xiao [2023] NSWSC 57

(Contempt; breach of asset preservation orders and undertakings; director's liability for contempt)

BCEG International (Australia) Pty Ltd v Xiao [2023] NSWSC 6

(Variation of freezing orders; application to permit a source of funds be available to pay judgment debt; alleged contempt; prejudice via bankruptcy)

Dermapenworld Pty Ltd v Dermapen IP Holdings LLC [2022] FCA 1094

(Confirmation of service outside Australia; criteria under *Federal Court Rules 2011*)

Xiao v BCEG International (Australia) Pty Ltd [2022] NSWCA 223

(Security for costs of appeal; special circumstances)

BCEG International (Australia) Pty Ltd v Xiao (No 3) [2022] NSWSC 1221

(Costs; indemnity costs ordered on grounds of delinquency; conduct unnecessarily difficult and protracted)

Vaughan Constructions Pty Ltd v Melbourne Water Corporation [2022] VCAT 633

(Construction of Water Act; proportionate liability)

Vaughan Constructions Pty Ltd v Melbourne Water Corporation [2022] VCAT 821

(Costs under VCAT Act)

Zoobury Pty Ltd v Cariste Pty Ltd [2022] NSWSC 18

(Contracts; construction; corporations; reinstatement of deregistered company)

Cohen v Sacks [2021] NSWSC 88

(Vacation of hearing date; financial difficulty; inferences from failure to adduce evidence)

123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329

(Contracts; unconscionable conduct; damages)

Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2) [2021] NSWSC 1025

(Insolvency – long-term financing liabilities; misleading or deceptive conduct; tort – personal liability of employees; material adverse change clauses; damages)

Moore v Scenic Tours Pty Ltd (2020) 268 CLR 326

(Interaction between Australian Consumer Law and Civil Liability Act)

Sydney Local Health District v Macquarie International Health Clinic Pty Ltd [2020] NSWCA 274

(Damages for trespass to land; mesne profits; user principle; taxation impacts on damages; re-opening application)

Wollongong Coal Ltd v Gujarat NRE India Pty Ltd [2019] NSWCA 135

(Contracts; construction; waiver of subrogation clause; equitable set off)

Scenic Tours Pty Ltd v Moore [2018] NSWCA 238

(Representative proceedings; common questions; Australian Consumer Law consumer guarantees; damages; *Civil Liability Act 2002* (NSW) as a surrogate federal law)

Robinson v Deep Investments Pty Ltd [2018] FCAFC 262

(Anshun estoppel, abuse of process, summary judgment)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 13) [2019] NSWSC 1590

(Damages; gross up of interest award for taxation)

Anchorage Capital Master Offshore Ltd v Delia Sparkes & Ors [2019] NSWSC 384

(Assignments of choses in action; whether capable of assignment; pleadings; summary disposal)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 12) [2019] NSWSC 916

(Damages mesne profits for trespass; practice and procedure re-opening of proceedings; costs)

Australian Insolvency Group v LCM Litigation Investment Fund No 1 [2018] NSWSC 1571

(Res judicata; issue estoppel; Anshun estoppel)

Gujarat NRE India Pty Ltd v Wollongong Coal Limited [2018] NSWSC 1459

(Guarantee and indemnity; debt; equitable set off)

Ipstar Australia Pty Ltd v APS Satellite Pty Ltd [2018] NSWCA 15

(Statutory unconscionability between commercial parties; defective goods; Australian Consumer Law statutory indemnities)

Almona Pty Ltd v Parklea Corporation Pty Ltd [2019] NSWSC 579

(Privilege; communications in furtherance of a fraud)

Morris v IMF Bentham Limited [2018] FCA 1009

(Deceit; bankruptcy; damages – reflective loss; summary dismissal)

APS Satellite Pty Ltd v IPSTAR Australia Pty Ltd [2016] NSWSC 1898

(Sale of goods; merchantable quality; fitness for purpose; statutory unconscionability)

Clipsal Australia Pty Ltd v Clipso Electrical Pty Ltd (No 3) [2017] FCA 60

(Intellectual property; trade marks; passing off; misleading and deceptive conduct)

Sahade v The Owners – Strata Plan No 62022 [2014] NSWCAT (13 January 2015)

(Strata titles; unit reallocation; management and control)

Obeid v Australian Competition and Consumer Commission [2014] FCA 839

(Restrictive trade practices; validity of section 155 Notices; anti-competitive contracts; cartel conduct; definition of “services” under the *Competition and Consumer Act 2010* (Cth))

Armada (Singapore) Pty Ltd v Gujarat NRE Coke Ltd [2014] FCA 636

(Enforcement of international arbitral award; composition of arbitral tribunal; declaration as to future breaches)

Traxys Europe SA v Balaji Coke Industries Pty Ltd (No 2) (2012) 201 FCR 535; (2012) 291 ALR 99; [2012] FCA 276

(International arbitration; public policy; enforcement of arbitral awards)

Lowe v Pascoe (No 4) [2012] NSWSC 1493

(Partnership and joint ventures)

BOS International (Australia) Ltd v Babcock & Brown International Pty Ltd [2011] NSWSC 1382

(Commercial law; contracts; construction; directors and officers insurance policies)

Caason Investments Ltd v Cao [2014] FCA 410

(Class actions; pleading; causation; fraud on the market theory)

Gillies v Downer EDI Ltd [2011] NSWSC 1055

(Employment law; contracts; damages)

Garde v Workcover Authority (NSW) (1992) 35 AILR 103

(Termination of SES employees; *Public Sector Management Act 1988* (NSW); section 88F of the *Industrial Arbitration Act 1912* (NSW); unfair dismissal)

Henderson v Australian Chamber of Manufactures (1991) 34 AILR 10

(Employment termination packages; redundancy; eligible termination payments; implied terms; estoppel)

Fisons Pty Ltd v Rostinga Pty Ltd (1989) NSW Conv R 44-589

(Leases; rent review causes; declarations)

Kitt v Tourism Commission of NSW (1987) 11 NSWLR 686; (1987) EOC 92-196

(*Public Service Act 1999* (Cth); anti-discrimination legislation)

Bective Station Pty Ltd v AWB (Australia) Ltd [2006] FCA 1596

(misleading and deceptive conduct; termination of contract; similar fact evidence)

Garcia v National Australia Bank Ltd (1998) 194 CLR 395; (1998) 72 ALJR 1243; (1998) ALR 614

(Unconscionable conduct; guarantees; rule in *Yerkey v Jones*)

***National Australia Bank Ltd v Garcia* (1996) 39 NSWLR 577; (1996) 21 ACSR 309 (CA)**
(Unconscionable conduct; guarantees)

***Portacomm Building Systems Pty Ltd v Southern Sheet* [2013] NSWCA 123**
(Practice and procedure; stay of proceedings)

***Southern Sheet & Coil Pty Limited v Portacomm Building Systems Pty Limited* [2013] NSWSC 38**
(Contracts; failure to pay; guarantee; misleading and deceptive conduct; misrepresentation)

***Edward Keller (Australia) Pty Limited v Henelly* (1990) 35 IR 464; 33 AILR 79 (CA)**
(Employment contracts; reasonable notice)

Equity

- Appears in all aspects of equitable claims, fiduciary relations, estoppel.
- Appeared in *Aid/Watch v Commission of Taxation* – a High Court case defining the boundaries of charitable trusts.
- Appeared in *Garcia v National Australia Bank* – one of the leading High Court cases on unconscionability in a husband/wife/guarantee situation.
- Appeared in *Sze Tu v Lowe* – an appellate decision on trusts, tracing, partnerships and indefeasibility of title and limitation of actions.

Cases include:

***Lewis v Martinez and the persons named in the Schedule (No 5)* [2024] NSWSC 359**
(Partnership, expulsion, dissolution)

***BCEG International (Australia) Pty Ltd v Xiao* [2022] NSWSC 972**
(Corporations; sham sub-contracts; fraud; director and de facto director duties; fiduciary duties; remedies; split election between different defendants)

***Carter v Orix Australia Corporation Ltd* [2022] FCA 784**
(Employment and industrial relations; unpaid long service leave; equitable set-off; practice and procedure)

***Lowe v Pascoe (No 10)* [2021] NSWSC 1232**
(Equity; trusts; right to call for distribution of trust property; calculation of final distribution of estate)

***Lowe v Pascoe (No 9)* [2021] NSWSC 163**
(Estoppel; Anshun estoppel; issue estoppel; equitable defences - laches and acquiescence; restitution)

***Almona Pty Ltd v Parklea Corporation Pty Ltd* [2021] NSWCA 171**
(Mortgagee's duty on exercise of power of sale; fraud and indefeasibility; mortgages and securities)

***Almona Pty Ltd v Parklea Corporation Pty Ltd* [2019] NSWSC 1868**

(Mortgagee exercise of power of sale; fraud; equity of redemption; indefeasibility of title; estoppel; equitable remedies)

***Wollongong Coal Ltd v Gujarat NRE India Pty Ltd* [2019] NSWCA 135**

(Equitable set-off; waiver of subrogation)

***Dr Shanahan v Jatase Pty Ltd* [2019] NSWCA 113**

(Oppression; damages for oppression; valuation; new case on appeal)

***Australian Insolvency Group v LCM Litigation Investment Fund (No 2)* [2018] NSWSC 1571**

(Res judicata; issue estoppel; Anshun estoppel)

***Garcia v National Australia Bank Ltd* (1998) 194 CLR 395; (1998) 72 ALJR 1243; (1998) ALR 614**

(Unconscionable conduct; guarantees; rule in *Yerkey v Jones*)

***Aid/Watch Inc v Commission of Taxation* (2010) 241 CLR 539; (2010) 85 ALJR 154; (2010) 272 ALR 417; [2010] HCA 42**

(Charitable trusts; taxation; charitable institutions; political purposes)

***Sze Tu v Lowe* [2014] NSWCA 462**

(Equity; trusts; tracing; limitations of actions; partnerships and joint ventures; *Real Property Act 1900* (NSW) – indefeasibility of title)

***Griffin v Coe* [2012] NSWSC 412**

(Probate; devastavit; procedure)

***Grace v Grace* [2012] NSWSC 976**

(Undue influence; unconscionability; laches; trusts; oppression; winding up; family law; family provision)

***Grace v Grace (No 6)* [2013] NSWSC 897**

(Equity – taking of accounts)

***Westpac Banking Corporation v Billgate Pty Ltd* [2013] NSWSC 1304**

(Equity – implied and constructive trusts; unconscionable dealings; equitable fraud; unjust contracts; trade practices; misleading and deceptive conduct)

***Phoenix Rising Investments Pty Ltd, Re: Grace v Grace* [2010] NSWSC 758**

(Superannuation; trustee's duties; practice and procedure)

Insurance and reinsurance

- Regularly advises and appears for insurers, reinsurers and insureds in all classes of insurance and reinsurance business.
- Frequently engaged in professional indemnity and directors' and officers' liability disputes.
- Particular areas include misrepresentation and non-disclosure, aggregation, utmost good faith, statutory charge on insurance monies.
- Engaged by insurers and insureds to prepare binding legal opinions.

- Appeared for Swiss Re in COVID-19 Test Case at first instance and on appeal.
- Appeared for insured in case concerning s 40(3) notifications to insurers and known claims circumstances exclusions (*Uniting Church in Australia Property Trust v Allianz*).
- Appeared for insurers in leading appellate case on statutory charge on insurance monies (*Chubb v Moore*).
- Appeared in leading appellate case on sections 40 and 54 of the *Insurance Contracts Act 1984* (Cth) (*Gosford City Council v GIO*).
- Appeared for Guy Carpenter in the HIH Royal Commission.
- Presented papers on insurance issues to Australian Insurance Law Association.

Cases include:

Uniting Church in Australia Property Trust (NSW) v Allianz Australia Insurance Limited (Liability Judgment) [2023] FCA 190

(Insurance; s 40(3) notifications to insurer; bulk notifications; authority of solicitors to receive notice; utmost good faith; known claims circumstances exclusions; sections 33, 40(3) and 54 of the Insurance Contracts Act 1984 (Cth); declaratory relief)

Zurich Australian Insurance Limited v XL Insurance Company SE [2023] NSWSC 29

(Private international law; insurance; equal contribution on basis of coordinate liability; appropriate jurisdiction; international insurance policies)

Watson & Co Superannuation Pty Ltd v Dixon Advisory and Superannuation Services Ltd [2022] FCA 1273

(Insurance; compulsory production of insurance policies; potential breach of confidence; prejudice mitigated by limitations on disclosure)

Legge v Universal Hospitality Group Pty Ltd & Ors (No 3) [2022] NSWSC 709

(Insurance; *Insurance Contracts Act* ss 21, 26, 27 and 28; alleged misrepresentation by insured; misrepresentation or failure to disclose)

LCA Marrickville Pty Limited v Swiss Re International SE [2022] FCAFC 17

(Business interruption insurance; contractual interpretation; statutory interpretation); s 54 Insurance Contracts Act 1984 (Cth); s 61A Property Law Act 1958 (Vic)

Swiss Re International SE v LCA Marrickville Pty Limited (Second COVID-19 insurance test cases) [2021] FCA 1206

(Business interruption insurance; contractual interpretation; statutory interpretation); s 54 Insurance Contracts Act 1984 (Cth); s 61A Property Law Act 1958 (Vic)

Giabal Pty Ltd v Gunns Plantations Ltd (In Liquidation) [2020] NSWSC 1070

(Leave to proceed against insurers; conflict of interest exclusion; lenders liability exclusion)

Chubb Insurance Australia Ltd v Giabal Pty Ltd; Catlin Australia Pty Ltd v Giabal Pty Ltd [2020] NSWCA 309

(Leave to proceed against insurers; entitlement to disclaim liability)

***Evolution Precast Systems Pty Ltd v Chubb Insurance Australia Limited* [2020] FCA 1690**
(Insurance; construction of policy; advance payment of defence costs)

***Legge v Universal Hospitality Group Pty Limited (No 2)* [2020] NSWSC 1411**
(Insurance; duty of disclosure; misrepresentation; admissibility of evidence; relevance; hearsay)

***Bank of Queensland Limited v AIG Australia Limited* [2019] NSWCA 190**
(Insurance; aggregation clauses; multiple claims; representative proceedings)

***Chubb Insurance Company of Australia Limited v Moore* [2013] NSWCA 212, (2013) 302 ALR 101, 17 ANZ Ins Cas 61-976**
(Liability insurance; statutory charge on insurance monies; section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); extraterritorial operation of State Acts)

***Gosford City Council v GIO General Ltd* (2003) 56 NSWLR 542 (CA)**
(Sections 40 and 54 of the *Insurance Contracts Act 1984* (Cth); circumstances that may give rise to claims)

***Lambert Leasing Inc. v QBE Insurance Ltd* [2015] NSWSC 750**
(Dual Insurance; contribution; subrogation; utmost good faith; other insurance clauses; section 45 *Insurance Contracts Act 1984* (Cth))

***Lambert Leasing Inc. v QBE Insurance Ltd (No 2)* [2015] NSWSC 1196**
(Pay-to-be paid policy; costs orders; offers of compromise under *Uniform Civil Procedure Rules 2005* (NSW))

***Lambert Leasing Inc. v QBE Insurance (Australia)* [2016] NSWCA 254**
(Insurance; double insurance and contribution; section 45 *Insurance Contracts Act 1984* (Cth))

***Bank of Queensland Ltd v AIG Australia Ltd* [2018] NSWSC 1689**
(Insurance; number of claims; aggregation; representative proceedings)

***LawCover Insurance Pty Ltd v Muriniti* [2017] NSWSC 1557**
(Insurance; utmost good faith; contract)

***Rich v CGU Insurance Ltd; Silbermann v CGU Insurance Ltd* (2005) 214 ALR 370; (2005) 79 ALJR 856; (2005) 13 ANZ Ins Cas 61-642 (HC)**
(Director and officer insurance policies)

***Wilkie v Gordian RunOff Limited & Anor* (2005) 214 ALR 410; [2005] NSWSC 873**
(Director and officer insurance policies)

***QBE Insurance Ltd v Nguyen* (2008) 100 SASR 560 (FC)**
(Insurance policy construction; conclusiveness of default judgment for purposes of legal liability policy; equitable doctrines; election)

***Grimson v Aviation & General (Underwriting) Agents Pty Limited* (1991) 25 NSWLR 422; (1991) 7 ANZ Ins Cas 61-095 (CA)**
(Statutory charge on insurance monies; leave to proceed under section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); limitations of actions)

***Smart v Westpac Banking Corporation* (2011) 282 ALR 400; [2011] FCA 829**
(Insurance; duty of utmost good faith)

Drayton v Martin (1996) 67 FCR 1; (1996) 137 ALR 145; (1996) 9 ANZ Ins Cas 61-322
(Professional indemnity insurance; claims made policies; section 54 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW))

BOS International (Australia) Ltd v Babcock & Brown International Pty Ltd [2011] NSWSC 1382
(Commercial law; contracts; construction; directors and officers insurance policies)

Insurance Superannuation Commission v Regal Life Insurance Ltd (1994) 121 ALR 513
(Life insurance; powers of judicial manager)

Class Actions

- Appeared on appeal in Court of Appeal and High Court in *Scenic Tours Pty Ltd v Moore* (consumer guarantees, application of State caps on damages)
- Appeared for defendant in Brisbane Floods class action (*Rodriguez & Sons Pty Ltd v Queensland Bulkwater Supply t/as Seqwater*) (negligence, nuisance)
- Appeared for defendant in Chandler MacLeod class action (*Turner v Ready Workforce (A Division of Chandler MacLeod Pty Ltd)*) (casual/permanent employment)
- Security for costs against litigation funder in no costs jurisdiction (*Turner v Tesa Mining (NSW) Pty Limited [2019] FCA 1644*)
- Appeared for defendant auditors in a securities class action (*Caason Investments Pty Ltd v Cao & Ors*) and appeared for cross defendants in Blue Mountains bushfires class action (*More v Endeavour Energy; Johnston v Endeavour Energy*) and defendant company in Equititrust class action (*In the matter of Equititrust Ltd (In Liq)*)
- Appeared for insurer in Gunns forestry schemes class action

Cases include:

Augusta Ventures Limited v Mt Arthur Coal Pty Limited [2020] FCAFC 194
(Industrial class action; representative proceedings; costs sought against funder; "no costs" jurisdiction; security for costs order)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 22) [2019] NSWSC 1657
(Class actions; flood mitigation; negligence; nuisance; trespass; vicarious liability; causation)

Turner v Tesa Mining (NSW) Pty Limited [2019] FCA 1644
(Class actions; security for costs against litigation funder; litigation funding generally)

Bank of Queensland Limited v AIG Australia Limited [2019] NSWCA 190
(Representative proceedings; insurance; aggregation clauses; multiple claims)

Scenic Tours Pty Ltd v Moore [2018] NSWCA 238
(Representative proceedings; common questions; Australian Consumer Law consumer guarantees; damages; *Civil Liability Act 2002* (NSW) as a surrogate federal law)

In the matter of DSHE Holdings Limited (recs and mgrs apptd) (in liq) [2018] NSWSC 82
(DickSmith class action)
(Leave to commence proceedings against company in liquidation; overlapping class actions)

Bank of Queensland v AIG Australia Ltd [2018] NSWSC 1689
(Insurance; representative proceedings; number of claims)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 13)
[2018] NSWSC 565
(Evidence; business records)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 9)
[2017] NSWSC 1116
(Practice & procedure; amendments to pleading)

Hassid v Queensland Bulk Water Supply Authority t/as Seqwater (No 2) [2017] NSWSC 1064
(Class actions; "de-classing" orders)

Hassid v Queensland Bulk Water Supply Authority t/as Seqwater [2017] NSWSC 599
(Class actions; competing and overlapping classes; group definitions; strike out)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 6)
[2016] NSWSC 1279
(Practice & procedure; confidentiality orders)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 5)
[2015] NSWSC 1771
(Class actions; group definition; sub-groups; sample groups; common questions)

Caason Investments Ltd v Cao [2014] FCA 1410
(Class actions; pleading; causation; fraud on the market theory)

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater [2014]
NSWSC 1565
(Class actions; group description; pleading of negligence case)

Civil penalty proceedings

- Appeared in the leading High Court case on privilege against self-exposure to a penalty (*Rich v ASIC*).
- Appeared for defendant directors in civil penalty proceedings concerning the GIO/AMP takeover (*ASIC v Vines*), the One.Tel liquidation (*ASIC v Rich*), the MFS/Octavian liquidation (*ASIC v Managed Investments*; *White v ASIC*; *Anderson v ASIC*).
- Appearing for company and director in civil penalty proceeding concerning continuous disclosure obligations (*ASIC v McPhersons*).

Cases include:

Australian Securities & Investments Commission v Rich (2010) 75 ACSR 1; (2009) 236 FLR 1
(Directors' duties; business judgment rule; insolvency; evidence)

ASIC v Rich interlocutory decisions include - opinion evidence (2005) 190 FLR 242; (2005) 218 ALR 764; 54 ACSR 326; search warrants, evidence (2005) 188 FLR 416; 220 ALR 324; 52 ACSR 324; use of ASIC examinations (2006) 201 FLR 207; expert evidence, documentary evidence (2005) 191 FLR 385; penalty privilege (2003) 183 FLR 361; 203 ALR 671; 48 ACSR 6; evidence in reply (2006) 235 ALR 587; leave to tender new evidence [2005] NSWSC 706; amendment, new evidence [2005] NSWSC 940; opinion evidence [2005] NSWSC 296; pleading and cross-examination [2006] NSWSC 712; compulsory mediation [2005] NSWSC 489; opinion evidence [2005] NSWSC 939; legal professional privilege, waiver [2004] NSWSC 1089; privilege, issue waiver [2004] NSWSC 969; privilege, waiver [2004] NSWSC 923; adjournment [2006] NSWSC 266; disqualification for apprehended bias [2004] NSWSC 970; adjournment and amendment (2004) 50 ACSR 521; unlawfully obtained evidence [2004] NSWSC 951; penalties, remedies for breach of directors duties (2003) 44 ACSR 682; privilege [2004] NSWSC 1017; documentary evidence and discretionary exclusion [2005] NSWSC 1022; privilege, disclosure waiver [2004] NSWSC 1090; privilege, waiver [2004] NSWSC 1104; evidence by audiovisual link, evidence on commission (2004) 49 ACSR 578; 22 ACLC 1125; documentary evidence, section 1305 of the *Corporations Act 2001* (Cth), business records (2005) 54 ACSR 28; expert evidence [2005] NSWSC 256; adjournment (2004) 50 ACSR 357; business records, s 1305 of the *Corporations Act 2001* (Cth) [2005] NSWSC 1031; evidence in chief [2005] NSWSC 1187; leave to appeal interlocutory rulings (2005) 54 ACSR 365; privilege, waiver [2004] NSWSC 934; evidence in re-examination (2005) NSWSC 1015; access to court file by non-parties [2002] NSWSC 198; subpoena, discovery, abuse of process (2003) 46

ACSR 86; burden and onus of proof (2003) 176 FLR 106; appeals as to costs [2003] NSWCA 194; expert evidence [2005] NSWSC 1170; costs [2003] NSWSC 293; penalty privilege (2003) 45 ACSR 305; media access to court files (2001) 51 NSWLR 643; evidence on voir dire (2004) 213 ALR 338; 51 ACSR 563.

Australian Securities & Investments Commission v Vines (2006) 58 ACSR 298
(Civil penalty orders; disqualification of directors; pecuniary penalties)

Australian Securities & Investments Commission v Managed Investments Pty Ltd (No 6)
(2013) QSC 355
(Witnesses; competence and compellability; privilege against self-incrimination)

White v Australian Securities and Investments Commissions [2013] QCA 357
(Stay of civil penalty proceedings pending criminal proceedings; sections 19 and 79 of the Australian Securities and Investments Commission Act 2001 (Cth))

Anderson v Australian Securities and Investment Commission (2013) 2 Qd R 401; (2012) 91 ACSR 452; (2012) 297 ALR 546; [2012] QCA 301
(Penalty privilege; privilege against self-incrimination; pleading rules)

Insolvency

- Advises and appears in all aspects of corporate and personal insolvency.
- Experience includes winding up, deeds of company arrangements, preferences, bankruptcy settlements.
- Appeared in leading High Court and intermediate appellate cases on deeds of company arrangement (*Lehman Brothers v City of Swan*; *BE Australia v Sutton*).

- Appeared for defendant in *Anchorage Capital Master Offshore Ltd v Sparkes (No 3)*; *Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025 dealing with insolvency in the context of long-term financing liabilities.

Cases include:

***Anchorage Capital Master Offshore Ltd v Sparkes* [2023] NSWCA 88**

(Insolvency – long term debt; misleading and deceptive conduct – material adverse change; contractual construction; negligence; accessory liability in tort; employee liability for corporate conduct; causation)

***Anchorage Capital Master Offshore Ltd v Sparkes (No 3)*; *Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025**

(Insolvency – long-term financing liabilities; misleading or deceptive conduct; tort – personal liability of employees; material adverse change clauses; damages)

***Lehman Brothers Holdings Inc v City of Swan & Ors*; *Lehman Brothers Asia Holdings Limited (in liq) v City of Swan & Ors* (2010) 240 CLR 509; (2010) 84 ALJR 275; (2010) 265 ALR 1; [2010] HCA 11**

(Corporations law; deeds of company arrangement; releases of claim; section 444D of the *Corporations Act 2001* (Cth))

***BE Australia (Subject to a Deed of Company Arrangement) v Sutton* [2011] NSWCA 414**

(Corporations law; deeds of company arrangement; creditors admissible to proof; scope of section 447A of the *Corporations Act 2001* (Cth); industrial law; claims under section 106 of the *Industrial Relations Act 1996* (NSW))

***Morris v IMF Bentham Limited* [2018] FCA 1009**

(Bankruptcy; deceit; damages – reflective loss; summary dismissal)

***In the matter of DSHE Holdings Limited (recs and mgrs. apptd) (in liq.)* [2018] NSWSC 82**

(Leave to commence proceedings against company in liquidation; overlapping class actions)

***Re Credit Reference Association of Australia Ltd* (1998) 16 ACLC 491**

(Company arrangements and reconstructions)

***Re ACN 076 673 875 LTD (receiver and manager appointed) (in liq) Bendeich as liq, Greatorex & Ors intervening by leave* (2002) 42 ACSR 296**

(Liquidators; liquidation funding)

***Re G.B. Nathan & Co Pty Limited (In Liq)* (1991) 24 NSWLR 674; (1991) 5 ACSR 673; (1991) 9 ACLC 1291**

(Powers of court on liquidator's application for directions; liquidators control over trust property)

***Weston v Carling Constructions Pty Ltd* (2000) 175 ALR 202; (2000) 35 ACSR 100**

(Administrators' liens in company liquidation)

***Wily v Rothschild Australia Ltd* (1999) 47 NSWLR 555; (1999) 17 ACLC 1643**

(Preferences; set-off; securities)

***Mineral & Chemical Traders Pty Ltd v T. Tymczyszczym Pty Ltd (in liq.) & Horn* (1994) 15 ACSR 398; (1994) 13 ASC 40**

(Effect of liquidation on floating charge)

Re Spedley Securities Ltd (in Liq) (1992) 9 ACSR 83

(Liquidators' compromise with creditors; liquidators' application for directions)

Grace v Grace (2007) 25 ACLC 141; [2007] NSWSC 6

(External administration; provisional liquidation; oppression; just and equitable ground)

Clemada Pty Limited v Hire-it Pty Limited (No. 2) (1990) 3 ACSR 202

(Appointment of provisional liquidators)

Stanham v National Trust of Australia (NSW) (1989) 15 ACLR 87; (1989) 7 ALLC 628

(Rights of members at extraordinary general meeting; rights of members of corporations)

Peter Nobbs Consultancy Pty Limited (In Liq) v Brambles Holdings Limited & Ors (1987) 8 NSWLR 231; (1987) 11 ACLR 460

(Settlements in bankruptcy; settlements under Companies Code)

Re Ward; ex parte Official Trustee & Bankruptcy v Dabnas Pty Limited (1984) 55 ALR 395; (1984) 3 FCR 112

(Settlements in bankruptcy; assignments of choses in action; promissory estoppel)

Companies Law

- Areas of practice include directors' duties, deeds of company arrangement, oppression, winding up.
- Appeared in numerous cases employing s 1322 Corporations Act to case breaches and irregularities.

Cases include:

Canon Australia Pty Ltd [2023] FCA 281

(Cleansing orders; deed of cross guarantee; financial reporting obligations; application under s 1322(4) of the Corporations Act)

BCEG International (Australia) Pty Ltd v Xiao [2022] NSWSC 972

(Corporations; sham sub-contracts; fraud; director and de facto director duties; fiduciary duties; remedies; split election between different defendants)

In the matter of Airtasker Limited [2021] NSWSC 629

(Corporations; capital raising; cleansing notice; s 1322 relief)

ET-China.com International Holdings Ltd v Cheung [2021] NSWCA 24

(Corporations; directors duties; resulting trusts; sham transfers; appellate review of credit findings)

Lehman Brothers Holdings Inc v City of Swan & Ors; Lehman Brothers Asia Holdings Limited (in liq) v City of Swan & Ors (2010) 240 CLR 509; (2010) 84 ALJR 275; (2010) 265 ALR 1; [2010] HCA 11

(Liquidation; Deeds of Company Arrangement; statutory interpretation)

***BE Australia (Subject to a Deed of Company Arrangement) v Sutton* [2011] NSWCA 414**
(Corporations law; deeds of company arrangement; creditors admissible to proof; scope of section 447A of the Corporations Act 2001 (Cth); industrial law; claims under section 106 of the Industrial Relations Act 1996 (NSW))

***Registrar-General v Northside Developments Pty Limited* (1988) 14 NSWLR 571; (1988) 14 ACLR 543; (1988) 7 ACLC 52 (CA)**
(Companies' indoor management rule)

***Australian Securities and Investments Commission v Rich* (2010) 75 ACSR 1**
(Corporations; civil penalty proceedings; directors' duty of care and diligence; standard of care; business judgment rule; pleadings and particulars; evidence)

***Australian Securities & Investments Commission v Vines* (2006) 56 ACSR 528; (2006) 24 ACLC 165**
(Directors' duties; relief from liability)

***DAC Finance (NSW/QLD) Pty Ltd & Other Companies* [2012] NSWSC 182**
(Corporations Act; failure to lodge financial statements; relief from civil liability under section 1322)

***In the matter of Wollongong Coal Ltd* [2017] NSWSC 201**
(Corporations law; share capital reduction; share buy-back)

***In the matter of DSHE Holdings Limited (recs and mgrs. apptd) (in liq.)* [2018] NSWSC 82**
(Leave to commence proceedings against company in liquidation; overlapping class actions)

***Downer EDI Limited v Gillies* (2012) 92 ACSR 373; [2012] NSWCA 333**
(Employment law; directors duties)

***Spika Trading Pty Limited v Harrison* (1990) 19 NSWLR 211; (1990) 1 ACSR 609; (1990) 8 ACLC 310**
(Directors liabilities under section 556 of the Companies Code; contribution between directors)

***Grace v Grace* [2012] NSWSC 976**
(Undue influence; unconscionability; laches; trusts; oppression; winding up; family law; family provision)

***Grace v Grace* (2007) 25 ACLC 141**
(External administration; provisional liquidation; oppression; just and equitable ground)

***Maurice Dry Cleaners Pty Ltd (in liq) v National Australia Bank Ltd* (1990) 8 ACLC 798**
(preferences, interest on preferences)

***Portfolio Projects Pty Limited v Oakes Building Co Pty Limited* (1987) 5 ACLC 911**
(Company winding-up; abuse of process)

Negligence

- Practice has a particular focus on professional negligence.
- Has been briefed on behalf of professional indemnity insurers for over 20 years.
- Appeared in numerous class actions concerning negligence allegations.

Cases include:

***Anchorage Capital Master Offshore Ltd v Sparkes* [2023] NSWCA 88**

(Insolvency – long term debt; misleading and deceptive conduct – material adverse change; contractual construction; negligence; accessory liability in tort; employee liability for corporate conduct; causation)

***Sydney Local Health District v Macquarie International Health Clinic Pty Ltd* [2020] NSWCA 274**

(Damages for trespass to land; mesne profits; user principle; taxation impacts on damages; re-opening application)

***Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 22)* [2019] NSWSC 1657**

(Class actions; flood mitigation; negligence; nuisance; trespass; vicarious liability; causation)

***King v Benecke* [2013] NSWSC 568**

(Solicitor's negligence; lack of formal retainer; conflict of interest)

***Watkins (t/as Watkins Tapsell) v De Varda* [2003] NSWCA 242**

(Duty of care in absence of retainer; conflict of interests)

***Studer v Boetcher* [2000] NSWCA 263**

(Solicitors' negligence; pressure to settle)

***Amaca Pty Ltd v Hicks* [2011] NSWCA 295;**

(Damages; gratuitous care)

***Collingwood Hotel Pty Ltd v O'Reilly; Night Knowledge Security Pty Ltd* (2007) NSWCA 155**

(Negligence; duties of licensees and security guards)

***Amaca Pty Ltd v Banton* (2007) 5 DDCR 314; (2007) NSWCA 336**

(Exemplary and aggravated damages; dust diseases)

***Snorkel Elevating Work Platforms Pty Ltd v Nominal Defendant* [2007] ACTCA 14**

(Legal practitioners; challenge to retainer; indemnity costs)

***Lowns & Anor v Woods & Ors* (1996) Aust. Torts Rep.81-376 (CA)**

(Medical negligence; urgent request for medical assistance)

Property

Advises and appears in property and conveyancing matters.

Cases include:

***Almona Pty Ltd v Parklea Corporation Pty Ltd* [2021] NSWCA 171**

(Mortgagee's duty on exercise of power of sale; fraud and indefeasibility; mortgages and securities)

***Almona Pty Ltd v Parklea Corporation Pty Ltd* [2019] NSWSC 1868**

(Mortgagee exercise of power of sale; fraud; equity of redemption; indefeasibility of title; estoppel; equitable remedies)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (No 12) [2019] NSWSC 916

(Damages mesne profits for trespass; practice and procedure re-opening of proceedings; costs)

Franz Boensch as trustee of the Boensch Trust v Scott Darren Pascoe [2015] NSWSC 1882

(Caveats; lodgment without reasonable cause)

Pedulla v Panetta (2011) 16 BPR 30, 229; [2011] NSWSC 1386

(Real property; Torrens Assurance Fund; negligence; fraud; insurance; proportionate liability; amendment)

Chandra v Perpetual Trustees Victoria Ltd (2007) 13 BPR 24,675; (2007) ANZ Conv 12481;

(2007) Aust Torts Reports 81-896; (2007) NSW Conv R 56-187; [2007] NSWSC 694

(Torrens system; assurance fund; indefeasibility of title; professional negligence)

Drulroad Pty Limited v Gibson (1993) ANZ Conv Rep 115

(Oral agreement for mortgage; priorities)

Family

Cases include:

Miu v Miu [2018] FamCA

(Setting aside property consent orders; miscarriage of justice)

F Firm v Ruane & Ors [2014] Fam CAFC

(Accrued jurisdiction of Family Court; professional negligence claim in Family Law proceedings; single justiciable controversy; intermediate appellate courts departing from their own earlier decisions)

Grace v Grace (No. 9) [2014] NSWSC 1239

(Interest on costs; costs in cross-vested *Family Law Act 1975* (Cth) proceedings)

Ruane & Bachmann-Ruane and Ors (Accrued jurisdiction) (2012) 48 Fam LR 131; [2012]

FamCA 369

(Constitution; Accrued jurisdiction of Family Court)

Grace v Grace [2012] NSWSC 976

(Undue influence; unconscionability; laches; trusts; oppression; winding up; family law; family provision)