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DAVID WEINBERGER SC
BARRISTER

With over two decades experience at the New South Wales Bar, David maintains a practice in commercial law, commercial insurance litigation and building and construction / infrastructure litigation. In the sphere of insurance and construction law, he is often briefed in indemnity disputes and disputes concerning the *Building and Construction Industry Security of Payment Act* 1999 (NSW) and the *Design and Building Practitioners Act* 2020 (NSW).

David has appeared in an extensive list of reported cases. He is routinely briefed in disputes that are complex and factually dense. He has also appeared in seminal cases, including class actions, and has gained considerable experience in insolvency disputes and common law matters. Given his wide range of expertise and multi-disciplinary skill-set, David is also available to appear in family law matters.

David is briefed by a wide range of law firms in his areas of practice, including on behalf of major Australian and international insurers, corporations and individuals. The majority of his work is conducted without a leader, and he often appears with a junior against Senior Counsel. He appears predominately in the Commercial List and the Technology and Construction List in the Equity Division of the Supreme Court of New South Wales, as well as in the New South Wales Court of Appeal and the Federal Court of Australia.

David has been consistently ranked by his peers in legal directories for his high calibre work in commercial law, construction / infrastructure law and insurance law. He is the only barrister from New South Wales to be recommended in the construction / infrastructure and insurance law categories, demonstrating his unique blend of knowledge and technical skills. David is also available to appear as a Mediator.

ADMISSIONS TO PRACTICE

- 2025 Appointed Senior Counsel at the New South Wales Bar
- 2000 Admitted to the Bar of New South Wales
- 1995 Admitted as a Solicitor of the Supreme Court of New South Wales

PROFESSIONAL EXPERIENCE

- 2000 – present Barrister, Nine Wentworth Chambers
- 1996 – 2000 Solicitor

PRINCIPAL AREAS OF PRACTICE

- Commercial Law
- Building & Construction / Infrastructure
- Appellate
- Insolvency
- Family Law
- Insurance Law
- Common Law
- Public & Product Liability
- Class Action Litigation
- Mediation

ACCOLADES

Year	Areas of practice	Legal Directory
2024	Commercial Law, Construction / Infrastructure Law, Insurance Law	Best Lawyers in Australia
2023	Leading Construction and Infrastructure Junior Counsel (Leading)	Doyle's Guide
2022	Leading Professional Indemnity Junior Counsel and Construction and Infrastructure Junior Counsel (Recommended)	Doyle's Guide
2021	Leading Professional Indemnity Junior Counsel and Infrastructure Junior Counsel (Recommended)	Doyle's Guide
2020	Leading Construction and Infrastructure Junior Counsel (Recommended)	Doyle's Guide
2020	Construction / Infrastructure Law, Insurance Law	Best Lawyers in Australia
2019	Leading Construction and Infrastructure Junior Counsel (Recommended)	Doyle's Guide
2018	Leading Construction and Infrastructure Junior Counsel (Recommended)	Doyle's Guide
2017	Leading Insurance Barrister (Leading)	Doyle's Guide

SELECTION OF RECENT CASES

New South Wales Court of Appeal

The J & P Marlow (No 2) Pty Ltd v Joseph Hayes & Andrew McCabe in their capacity as joint and several liquidators of Peak Invest Pty Ltd (in liq), Five Islands Invest Pty Ltd (in liq), Surry Hills Pub Invest Pty Ltd (in liquidation) and Four By Four Investments Pty Ltd (in liq) [2023] NSWCA 117 – Appeared for the respondent in a case involving the proper interpretation of four relevantly identical Hotel Management Agreements, in particular whether the appellant was entitled to a "Capital Gains Bonus Fee" under each of those agreements to the collective value of about $8 million. The appeal was unanimously dismissed.

Scenic Tours Pty Ltd v Moore [2023] NSWCA 74 – Appeared for the appellant over two days in representative proceedings for the supplier of services. The primary issue concerned the statutory guarantees under ss61(1) and (2) of the Australian Consumer Law and the defences provided by s61(3). These provisions had not previously been the subject of appellate consideration. Another issue was whether the cost of airfares was recoverable under s267(4) of the Australian Consumer Law. The appeal was upheld in part, namely in relation to the s267(4) question.

Piety Constructions Pty Ltd v Hville FCP Pty Ltd [2023] (Appeal settled following the hearing) – Appeared for the appellant who argued that a payment schedule under the *Building and Construction Industry Security of Payment Act* 1999 (NSW) served using an electronic information exchange system had not been served within the 10-day period in s14 of the Act. The amount in issue was approximately $10 million.

Tredmore Pty Ltd v Atlas Advisors Australia Pty Ltd [2023] NSWCA 60 – Appeared for the unsuccessful appellant and the successful cross-respondent. The appeal involved whether oral representations were made to the effect that an investment had little or no risk. The cross-appeal involved whether conduct which was found to be misleading by the trial judge was in fact misleading. The cross-appeal is now the subject of an application for Special Leave.

Shoal Bay Beach Constructions No 1 Pty Ltd v Mark Hickey & the persons listed in Schedule A to the Notice of Appeal trading as Sparke Helmore [2023] NSWCA 23 – Appeared for the appellant who succeeded before Adamson J in demonstrating that a firm of solicitors was negligent in failing to advise a property developer to issue a notice under a contract for the sale of land so as to extend the time for completion. The cross-appeal was upheld.

C&V Engineering Pty Ltd v Metropolitan Demolitions Pty Ltd [2023] NSWCA 167 – Successfully appeared for the appellant. The primary question on appeal was whether or not there was a contract for the supply of steel. The ancillary question was whether the trial judge had erred in not allowing GST on amounts in respect of which the appellant had succeeded at trial. The GST point was conceded by the respondent on the appeal.

Rialto Sports Pty Ltd v Cancer Care Associates Pty Limited; CCA Estates Pty Limited; Davjul Holdings Pty Limited; Armmam Pty Limited [2022] NSWCA 146 – Appeared for the successful respondents. The respondents had each acquired commercial property "Off-the-Plan" pursuant to contracts which contained a covenant that the developer/vendor will cause the property to be constructed in a proper and workmanlike manner. Questions arose as to whether the covenant merged on completion and whether the lot owners can claim damages in respect of their respective share in the cost to rectify common property. Another question which was peculiar to one of the respondents was where the assignment of a chose in action was effective. The appeal was unanimously dismissed on all issues.

PL Town Hall Pty Ltd v The Trust Company Ltd [2021] NSWCA 188 – Appeared for the respondent who successfully resisted a challenging to the terms of the interlocutory regime permitting tenant to recover goods from premises after conclusion of lease.

Gorman v McKnight [2020] NSWCA 20 – successfully resisted an appeal which sought a permanent stay of proceedings in relation to historic sexual abuse.

Other Superior Courts

WSP Structures Pty Ltd v Liberty Mutual Insurance Company t/as Liberty Specialty Markets [2023] FCA 1157 – Appeared for excess insurers in relation to a dispute arising out of the Opal Towers litigation.

Chung & Ho [2023] FedCFamC1F 269 – Appeared for the wife in a property dispute where the husband unsuccessfully contended that the pool of assets was compromised of debts to third parties.

The University of Sydney v Multiplex Constructions Pty Ltd [2023] NSWSC 383 – Successfully resisted an application to amend a Technology and Construction List Statement in connection with a multi-party dispute concerning the design and construction of property on behalf of the University of Sydney.

A-Civil Aust Pty Ltd v Meso Solutions Pty Ltd [2023] NSWSC 372 – Successfully resisted an application to quash an adjudication determination under the *Building and Construction Industry Security of Payment Act* 1999 (NSW). The matter involved a question of law under the Act which had not previously been determined. There was also a question as to whether David's client, the defendant, engaged in

misleading or deceptive conduct which was largely determined favourably on the basis of cross-examination

Garawin Pty Ltd v 1A Eden Pty Ltd (No. 3) [2023] NSWSC 169 – The question involved the terms upon which final relief should be given in circumstances where the beneficiaries of a trust, for whom David appeared, wished to procure its share of the distribution consequent upon a property development.

The Owners – Strata Plan No 84674 v Pafburn Pty Ltd [2023] NSWSC 116 – Appeared for the plaintiff on an interlocutory application to dismiss certain parts of a Technology and Construction List Response. This involved arguments concerning the interaction s37 and s39 of the *Design and Building Practitioners Act* 2020 (NSW) and ss 5Q and 39(a) of the *Civil Liability Act* 2002 (NSW).

The Owners-Strata Plan 86807 v Crown Group Constructions Pty Ltd [2023] NSWSC 44 – Successfully resisted an application to amend a Technology and Construction List Statement.

BCFK Holdings Pty Ltd v Rork Projects Pty Ltd [2022] NSWSC 1706 – Appeared for the plaintiff who succeeded in demonstrating that an adjudication determination under *Building and Construction Industry Security of Payment Act* 1999 (NSW) was void and that the plaintiff did not engage in misleading or deceptive conduct which was causative of any loss. The question under the Act involved the construction of s13(1C) which had not previously been the subject of judicial determination.

The Owners – Strata Plan No 84674 v Pafburn Pty Ltd – [2022] NSWSC 659 – Successfully appeared for the plaintiff on an application to amend a pleading in relation to a claim under the *Design and Building Practitioners Act* 2020 (NSW). The application involved the question as to whether a person "having substantive control over the carrying out of any work" for the purposes of clause (d) of the definition of "construction work" in s36(1) of the Act is a person who is in a position where it is able to control how the work is carried out.

Garwin Pty Ltd v 1A Eden Pty Ltd [2022] NSWSC 333 – Successfully appeared for the plaintiff on an application for the removal of caveats.

Sydney Capitol Hotels Pty Ltd v Bandelle Pty Limited [2021] HCATrans 91 – Appeared for the appellant on an application for Special Leave in the High Court of Australia which was dismissed. This was an application from a majority decision in the New South Wales Court of Appeal.

Mobis Parts Australia Pty Ltd v XL Insurance Company SE (No 2) [2019] NSWCA 19 – This case was the subject of commentary in the insurance industry. Although led by Mr J E Marshall SC, David conducted the quantum aspects of the trial (which involved various questions of law), and the client was largely successful in this respect. The amount in issue was approximately $50 million. The trial proceeded over about five weeks. The appeal from the decision was heard over 4 days in August 2018. Led by Mr J T Gleeson SC, and David conducted various aspects of the appeal: *Mobis Parts Australia Pty Ltd v XL Insurance Company SE* [2018] NSWCA 342.