

CHRISTOPHER WITHERS
Banco Chambers
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PRACTICE AREAS

Appellate
Equity and commercial
Corporations and insolvency
Representative proceedings
Civil penalty proceedings, regulatory and criminal proceedings

BAR ADMISSIONS

Called to the Bar in NSW in 2006

Other Bar Admissions

2007 High Court and Federal Court of Australia
2005 Supreme Court of the United States
2003 United States Court of Appeals for the Second Circuit
2002 United States Federal Court, Southern and Eastern Districts of New York, Supreme Court of New York
2001 Supreme Court of England and Wales
1998 Supreme Court of South Australia

PROFESSIONAL

2013 – 2019 Australian Financial Review, *Best Lawyers in Australia*, General Litigation and Insolvency & Reorganisation Law

2015 – 2019 *Doyle's Guide*, leading junior counsel (NSW) for litigation and for insolvency / reconstruction

2006 Legal Aid Society (New York) *Pro Bono* Award for Outstanding Service to Legal Aid Clients

PREVIOUS EXPERIENCE

2001 - 2007 Davis Polk & Wardwell (New York) (commercial litigation)

2000 - 2001 Freshfields Bruckhaus Deringer (London) (commercial litigation)

1997 – 1998 Federal Court of Australia, Associate to Justices von Doussa and O'Loughlin (Adelaide)

EDUCATION

1998 - 1999 Bachelor of Civil Laws (University of Oxford)

1993 - 1996 Honours Degree, Bachelor of Laws (First Class) (University of Adelaide)

1992 - 1995 Bachelor of Arts (University of Adelaide)

SELECTED CASES (unled)

Equity and commercial

- *Rinehart litigation* – representing Bianca Rinehart and John Hancock in proceedings in the Supreme Court of NSW, the Federal Court of Australia and the Supreme Court of Western Australia in litigation against Gina Rinehart and Hancock Prospecting Pty Ltd, including application for removal of Gina Rinehart as trustee of family trust and claim in the Federal Court for a constructive trust over the assets of Gina Rinehart and Hancock Prospecting. Examples of important judgments include:
 - *Hancock Prospecting Pty Ltd v Rinehart* (2017) 257 FCR 442 (Full Court of the Federal Court) (application by HPPL and Gina Rinehart for stay of proceedings and referral to arbitration)
 - *Hancock v Rinehart (Trust documents)* (2018) NSWSC 1684 (scope of obligation of former trustee to produce documents to successor trustee) (leave to appeal refused (2019) NSWCA 54)
 - *Hancock v Rinehart* (2015) 106 ACSR 207 (decision of Brereton J appointing Bianca Rinehart as trustee of Hope Margaret Hancock Trust)
 - *Rinehart v Rinehart* (2015) 108 ACSR 415 (preliminary discovery against Gina Rinehart and Hancock Prospecting)
 - *Hancock and Anor v Rinehart and Ors* (2013) 96 ACSR 76 (application by Gina Rinehart and HPPL for referral of proceedings to arbitration) and *Rinehart v Hancock* [2013] NSWCA 326 (refusal of application for leave to appeal)
 - *Rinehart v Rinehart* (application by Gina Rinehart and HPPL for interim suppression orders over Federal Court Proceedings) (2014) 320 ALR 195
- *Swiss Re International SE v Simpson & Ors* (2018) 354 ALR 607, 124 ACSR 423 (Supreme Court of NSW, Equity Division) (representing former general manager of finance for the Forge Group in \$100 million claim brought against him by bond insurers alleging misleading and deceptive conduct)
- *Warner Bros Feature Productions Pty Ltd v Kennedy Miller Mitchell Films Pty Ltd* (2018) 130 IPR 527 (NSW Court of Appeal) (representing Kennedy Miller Mitchell Films in suit against Warner Bros. relating to the film “*Mad Max, Fury Road*”)
- *Australian Funding Partners Limited v Botsman* [2018] VSC 303 and (2018) VSC 507 (Supreme Court of Victoria) (representing group member in *Banksia* litigation in suit by litigation funder seeking to enjoin group member from appealing against approval of settlement) (leave to appeal refused (2019) VSCA 1))
- *Northern Beaches Council v Built Development (Manly) Pty Ltd* [2018] NSWCA 193 (pleading dispute in a breach of contract claim against Northern Beaches Council in relation to proposed development at Manly)
- *Equititrust Ltd (in Liq) v Equititrust Ltd (In Liq) & Ors* (Federal Court of Australia) (representing liquidator of Equititrust as responsible entity for managed investment scheme in suit against its former directors and auditors) (2018) 124 ACSR 115
- *Perera v Genworth Financial Mortgage Insurance Pty Ltd* [2017] 94 NSWLR 83 (NSW Court of Appeal) (representing appellant asserting previously unrecognized duty of care)
- *Farmwide Pty Ltd v Commonwealth of Australia* [2016] ACTSC 17 (ACT Supreme Court) (representing the Commonwealth of Australia in breach of contract claim brought against it by Farmwide)
- *White v Forster* [2015] NSWCA 245 (NSW Supreme Court) (representing solicitor in appeal concerning scope of advocate’s immunity)
- *British Marine PLC v Wollongong Coal Limited* [2015] FCA 403 (Federal Court of Australia) (representing Wollongong Coal in dispute over contract of affreightment for transport of coal)
- *Sze Tu v Lowe* (2014) 89 NSWLR 317 (NSW Court of Appeal) representing partners in partnership dispute involving breach of fiduciary duty by a partner, tracing of real property acquired using stolen funds, limitations of actions, partnerships and joint ventures, constructive trusts, resulting trusts and indefeasible title)

Corporations and insolvency

- *Allied Resource Partners Pty Ltd; Atlas Holdings Pty Ltd (Trustee), Re v Allied Resource Partners Pty Ltd* (2017) 122 ACSR 345 (representing company in dispute about validity of removal of a director)
- *In the matter of Kupang Resources Limited (subject to Deed of Company Arrangement) (receivers and managers appointed)* [2016] NSWSC 1895 (NSW Supreme Court) (representing deed administrator in application for leave to transfer shares in company under s 444GA of the Corporations Act 2001 (Cth))
- *In the matter of Wollongong Coal Limited* (2015) 110 ACSR 134 (NSW Supreme Court) (representing debtor in applications to set aside statutory demands)
- *Re Featherston Resources Ltd* (2014) 101 ACSR 394 (NSW Supreme Court) (representing plaintiff seeking leave to bring an action as a shareholder derivative action in Australia)
- *In Re Equititrust Limited (in Liquidation)* (Federal Court of Australia) (conducting liquidators' examinations into failure of a managed investment scheme. Examination of compliance plan and financial statement auditors and former directors of responsible entity). Representing liquidators in proceedings against KPMG and former directors of managed investment scheme.
- *Mercedes Holdings Pty Ltd v Waters* (2010) 78 ACSR 118 (Federal Court of Australia) (representing former director of managed investment scheme in relation to allegations of contraventions of Chapter 5C of the Corporations Act 2001 (Cth))

Representative Proceedings

- *Botsman v Bolitho & Ors* (2018) 57 VR 68 (Supreme Court of Victoria, Court of Appeal) (representing group member in successful appeal against approval of funding commission and reimbursement of legal fees ordered to be paid to litigation funder)
- *Quintis Litigation* (representing Frank Wilson, the former CEO of Quintis Limited in various class actions brought against him in the Federal Court)
- *Bonham v Iluka* (Federal Court of Australia) representing Iluka Resources Limited in shareholder class action brought in relation to 2012 sales guidance issued by Iluka.
- *Caason Investments Pty Ltd v Cao* [2018] FCA 527 (application for settlement approval / common fund order).
- *Clurname Pty Ltd v McGraw-Hill Financial, Inc.* (Federal Court of Australia) (representing investors in CDOs rated AAA, AA and A by Standard & Poor's in proceedings alleging misleading and deceptive conduct and fraud by S&P): see *Clurname Pty Ltd v McGraw-Hill Financial, Inc.* [2017] FCA 1319 (allowing amendment of statement of claim to allege fraud) and on appeal *McGraw-Hill Financial Inc. v Clurname Pty Ltd* (2017) 123 ACSR 467.
- *In the matter of DSHE Holdings Ltd (receivers and managers appointed) (in liquidation)* (NSW Supreme Court) (representing shareholders in two class actions against Dick Smith Holdings (in liq) and its former directors relating to accounting practices and published financial statements of Dick Smith Holdings).
- *DSHE Holdings Ltd (Recs and Mgrs Apptd) (in liq)* (NSW Supreme Court) (application for leave to commence representative proceedings against company in liquidation) (2018) NSWSC 82
- *Ceramic Fuel Cells Limited (in Liq) v McGraw-Hill Financial, Inc.* (2016) 112 ACSR 102 (whether Federal Court has power to issue a subpoena to U.S. bank)
- *Coffs Harbour City Council v Australian and New Zealand Banking Group Limited (trading as ANZ Investment Bank)* [2016] FCA 306 (Federal Court of Australia) (representing applicant in representative proceedings against ANZ bank in relation to the sale of structured credit derivatives; hearing in relation to access to funding agreement)

- *City of Swan v McGraw-Hill Financial Inc* (2014) 223 FCR 328 (Federal Court of Australia) (representing applicants seeking to amend class definition)
- *City of Swan v McGraw-Hill Financial, Inc* (2014) 226 FCR 462 (Federal Court of Australia) (construction of rule 20.14 of the Federal Court Rules 2011)

Civil Penalty, Regulatory Proceedings and Criminal Proceedings

- *ASIC v Managed Investments Ltd & Ors (No 9)* (2016) 112 ACSR 138 (Qld Supreme Court) (representing CEO of MFSIM, the Responsible Entity for Premium Income Fund in civil penalty proceedings brought by ASIC) and on appeal to Queensland Court of Appeal (*ASIC v Managed Investments Ltd (No 9)* (2018) QCA 352).
- *ASIC v Managed investments Pty Ltd (No 7)* [2015] 2 Qd R 32 (Qld Supreme Court) (use of affidavits and statutory declarations in civil penalty proceedings where witness unavailable)
- *Mercedes Holdings Pty Ltd v Waters (No 8)* [2013] FCA 601 (Federal Court of Australia) (application for stay of proceedings until completion of related civil penalty proceedings)
- *Anderson v ASIC* (2013) 2 Qd R 401 (Qld Supreme Court) (pleading requirements under Uniform Rules of Civil Procedure in civil penalty proceedings and operation of privilege against self-incrimination and exposure to penalties) (with Williams SC)
- *DPP v Arab and Anor* [2009] NSWCA 75 (NSW Court of Appeal) (representing *amicus* in challenge to jurisdiction of District Court)
- *Mahmood v the State of Western Australia* [No 2] [2008] WASCA 259 (WA Court of Appeal) (representing appellant on remitter from High Court of Australia – whether error at trial constituted substantial miscarriage of justice)
- Representing client wrongly convicted of murder and sentenced to life imprisonment in New York 2002 (*People v. Jones*, 818 N.Y.S.2d 285 (2006)). Lead counsel in re-trial (and acquittal) in Supreme Court of NY in 2007.
- Representing witnesses in *Project Jasper* and *Project Acacia*, investigating decisions made by NSW Government to issue mining licenses at the Bylong Valley and Doyle's creek.
- Representing former partner of PWC in the *Inquiry under the Charitable Fundraising Act 1991 into the Returned and Services League of Australia (NSW Branch) and RSL LifeCare Limited*.

SELECTED CASES (led)

- *ACCC v Roberts* (representing the former Country Officer of Citigroup in criminal prosecution under the cartel provisions of the *Competition and Consumer Act 2010* (Cth)) (with Dick SC)
- *Commissioner of Taxation v Oswal (No 6)* [2016] FCA 762 (Federal Court of Australia) (representing Radhika Oswal in application by the Commissioner of Taxation to set aside a mortgage alleged to have been given for the purposes of hindering or delaying creditors) (with Hutley SC)
- *Bonham v Iluka Resources Limited* (2015) 107 ACSR 75 (Federal Court of Australia) (representing Iluka in defence of application for preliminary discovery by purported lead applicant in a class action alleging breach of Iluka's continuing disclosure obligations) and on appeal *Bonham v Iluka Resources Ltd* (2017) 252 FCR 58 (led by Dick SC)
- *Bathurst Regional Council v Local Government Financial Services Pty Ltd (No. 5)* [2012] FCA 1200 (First ever successful suit against Standard & Poor's for negligent misrepresentation and for misleading and deceptive conduct relating to assignment of a AAA rating to a financial product) (with Hutley SC and Coleman SC). Appeal dismissed in June 2014: *ABN Amro Bank NV v Bathurst Regional Council* (2014) 224 FCR 1.

- *City of Swan and Anor v McGraw-Hill Companies, Inc* (2014) 223 FCR 295 (Federal Court of Australia) (application by Standard & Poor's to set aside an originating application and service on Standard & Poor's in the United States) (led by Hutley SC)
- *White v Australian Securities and Investments Commission* (2013) A Crim R 83 (Qld Supreme Court) (criminal law – privilege against self-incrimination and exposure to penalties in civil penalty proceedings and application for stay of civil proceedings pending criminal proceeding) (with Williams SC)
- *Grimaldi v Chameleon Mining NL (No. 2)* (2012) 200 FCR 296 (Full Court of the Federal Court) (representing plaintiff in claim against former de facto directors and officers and alleging breach of fiduciary duty, bribes and secret commissions and knowing receipt by Murchison Metals NL) (with Hutley SC)
- *Oswal v Burrup Holdings Ltd (No. 2)* (2012) 297 ALR 599 (Federal Court of Australia) (representing Pankaj Oswal in contempt proceedings brought against him by the ANZ) (with Habib SC)
- *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission* (2012) 247 CLR 240 (High Court of Australia) (foreign states immunity – price fixing claim against airline) (with J.T. Gleeson SC)
- *Australian Competition and Consumer Commission v Cathay Pacific Airways Ltd* (2012) 207 FCR 380 (Federal Court of Australia) (representing Cathay Pacific in price fixing suit brought by the ACCC; dispute concerning legal professional privilege) (with Coleman SC)
- *CTI Joint Venture Company Pty Ltd v CRI Chatswood Pty Ltd (in liq) (No 3)* [2012] NSWLEC 6 (NSW Land and Environment Court) (civil enforcement of development consent) (with Lancaster SC)
- *Parramatta City Council v Transport Construction Authority* [2011] NSWLEC 49 (NSW Land and Environment Court) (compulsory acquisition of land) (with Walker SC)
- *Jeffman Pty Ltd and Lawrence Dry Cleaners Pty Ltd v Environment Protection Authority of NSW, Sydney Water Corporation and Douglas and Hilary Hutchinson* [2011] NSWLEC 89 (NSW Land and Environment Court) (representing Sydney Water as an affected party responding to appeal by polluters against terms of a management order issued by EPA under Contaminated Land Management Act 1997)
- *Rosebanner Pty Ltd v EnergyAustralia* [2011] NSWCA 10 (NSW Court of Appeal) (representing Energy Australia in contract and trade practices dispute with landowner) (with Leeming SC)
- *Zhang v Jiang Zemin* (2010) 79 NSWLR 513 (NSW Court of Appeal) (foreign sovereign immunity – tort claims against foreign heads of state) (with J.T. Gleeson SC)
- *Babcock & Brown Limited (in liq)* (Federal Court of Australia) (2010) (representing liquidators of Babcock & Brown Limited in examinations of former directors and office holders) (with Peter Wood)
- *Global Partners Fund v Babcock & Brown Limited (in liq) & Ors* (NSW Court of Appeal) (2010) 79 ACSR 383 (corporations / private international law) (with Peter Wood)
- *Sam Management Services Pty Ltd v Bank of Western Australia* [2009] NSWCA 320 (NSW Court of Appeal) (representing BankWest in dispute with customer over enforcement of a commercial loan) (with Dick SC)
- *Air Tahiti Nui Pty Ltd v McKenzie* (2009) 264 ALR 709 (NSW Court of Appeal) (aviation, private international law) (with Leeming SC)
- *CSR Limited v Eddy* (2008) 70 NSWLR 725 (NSW Court of Appeal) (administrative law – procedural fairness) (with Leeming SC)
- *Mahmood v The State of Western Australia* (2008) 232 CLR 397 (High Court of Australia) (representing appellant in appeal from murder conviction – directions to jury) (with JJ Edelman)
- *Ulan Coal Mines Limited v Minister for Planning* (NSW Land and Environment Court) [2008] NSWLEC 185 (judicial review – approval of coal mining project) (with Leeming SC)

- *Ulan Coal Mines v Minister for Mineral Resources and Anor* (NSW Land and Environment Court) (2008) 161 LGERA 391 (mining law – challenge to grant of mining lease) (with Leeming SC).
- *Lionsgate Australia Pty Ltd v Macquarie Private Portfolio Management Ltd* (2007) 62 ACSR 522 (NSW Supreme Court) (action seeking specific performance for sale of shares in hostile takeover) (with Leeming SC)
- *Lionsgate Australia v Macquarie Private Portfolio* (2007) 62 ACSR 178 (NSW Supreme Court) (jurisdiction of Takeover Panel) (with Leeming SC)
- *Northern Sydney and Central Coast Area Health Service and Anor v the Attorney-General for New South Wales and Anor* [2007] NSWSC 881 (NSW Supreme Court) (application for cy-pres scheme in place of failed trust) (with Leeming SC)
- *Mine Subsidence Board v Wambo Coal Pty Ltd* (2007) 154 LGERA 60 (NSW Court of Appeal) (statutory construction – powers of Mine Subsidence Board) (with Leeming SC)