

# TERRY MEHIGAN SC

## BARRISTER

### 12 WENTWORTH SELBORNE CHAMBERS



#### Singapore Chambers

- Maxwell 42 International Arbitration Chambers

#### Education

- BA (1982) LL.B (1984) LL.M (1990) (Syd. Uni.)

#### Professional

- 2019 Senior Counsel (NSW)
- 2007 Barrister (NSW, England & Wales)
- 1995 Solicitor Advocate (Civil) (England)
- 1985 Australia (Solicitor) (1990 England & Wales)

- Herbert Smith, London (1990 to 2006 – Partner 1994 to 2006)
- Hill Taylor Dickinson, London (Solicitor (1989 to 1990)
- Blake Dawson Waldron, Solicitor (1986 to 1989)
- Associate to Justice Beaumont – Federal Court of Australia (1986)

#### Professional Appointments/Memberships

- Current Head of Chambers, 12 Wentworth Selborne Chambers
- Fellow, Australian Centre for International Commercial Arbitration (ACICA)
- Member of the Panel of Arbitrators, Singapore International Arbitration Centre (SIAC)
- Member, Australian Maritime and Transport Arbitration Commission (AMTAC) Panel of Arbitrators
- Committee Member, Australian Bar Association International Committee
- Member, International Council for Commercial Arbitration
- Member, Australian Insurance Law Association
- Member, ICC Australia
- Accredited Mediator of Centre for Dispute Resolution (CEDR) (UK)
- Trainer on Gray's Inn Continuing Education Programme for New Practitioners (Advocacy and Ethics) (2000 to 2006)

#### General Background

- After qualification in NSW and three years with Blake Dawson, Terry Mehigan practised in London for 17 years (mainly as a partner with Herbert Smith between 1994 and 2006) as a commercial litigator and Solicitor Advocate with a practice which encompassed international arbitration, professional negligence, banking and other financial institutions, insurance and reinsurance, insolvency, private international law, energy industry disputes and shipping and transport. In 2007, he returned to Australia and joined the NSW Bar. He won the inaugural Christopher Gee QC Prize for Evidence and Advocacy on the May 2007 Bar Practice Course.

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## Main Areas of Practice

- Arbitration, Banking Litigation, Corporations, General Commercial Litigation, Equity, Insurance and Reinsurance, Intellectual Property, Financial Services, Product Liability, Professional Negligence, Private International Law, Shipping and Transport, Trade Practices.

## Directories

- Chambers Global 2025 – International Arbitration
- Chambers Asia Pacific 2021-2026 – ranked 1 in International Arbitration – The Bar in the Asia Pacific Region – “*one source saying: "His greatest strength is his knowledge and experience in large-scale international arbitration. His knowledge of international law, institutional procedures, arbitrators and the market more broadly allows him to provide pragmatic, inventive and impactful input to the cases in which he appears."*”
- Listed as a leading arbitration barrister - Doyle’s Guide, Australian Litigation and Insolvency Rankings (2017, 2018, 2019, 2020)
- “*The complete solicitor*”, Mehigan was lauded by clients for his “ability to understand the ins and outs of litigation” and for his “creative approach to problem solving” (Chambers 2006-7)
- “*Partner Terry Mehigan is also widely respected in the insurance sector*” (Legal 500 (2002-3)) “*Terry Mehigan is described by clients as 'very commercial and straightforward'*” (Legal 500 (2003-4)). “*That the firm is able to handle such a wide-ranging caseload is testament to the high quality of its partners, who include .... Terry Mehigan*” (Legal 500 (2004)). Leading individual (insurance and reinsurance) (Legal 500 (2005)).
- “*Terry Mehigan was singled out for particular praise by clients ....*” (Chambers (2004)). Leading individual (insurance) – “*level-headed and commercially minded*” (Chambers 2005/06).

## Arbitration cases include:

- ACICA arbitration (as sole arbitrator) relating to shipment of Covid-19 rapid antigen tests
- LMAA arbitrator (as party appointed arbitrator) in a charterparty dispute relating to the shipment of coal from Australia to China
- Ad hoc arbitration (as sole arbitrator) in a dispute concerning the provision of marine engineering services
- ICC arbitration (as counsel) in relation to a dispute between consortium members in relation to the design and construction of on-shore storage facilities for a major LNG project
- ICC arbitration (party appointed arbitrator) in relation to a dispute under a contract for the sale of thermal coal

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- Ad hoc arbitration (as counsel) in relation to a dispute under agreements to fund and sell solar technology
- Ad hoc arbitration under Resolution Institute Rules (sole arbitrator) in relation to a dispute between sports governing bodies and a statutory body providing venues
- ACICA arbitration (sole arbitrator) in relation to a dispute under an agreement for the commercialisation of start-up technology
- ICC arbitration (as counsel) in relation to a dispute between Participants in an iron ore joint venture in Pilbara, Western Australia
- SIAC arbitration (as counsel) for engineering contractor in dispute over performance of an engineering and procurement contract for a major polymetallic mining project in Vietnam
- ICC arbitration (as lead counsel) in relation to a dispute between the vendor and purchaser of participating interests in Indonesian oil and gas PSCs over tax indemnities in the sale and purchase agreement
- Ad hoc arbitration under UNCITRAL rule (as lead counsel) for an Indonesian pipeline operator in dispute with shippers over tariff increases under changed tariff regulations promulgated in Indonesia
- ACICA arbitration (as lead counsel) acting for a Philippines gold mining company in dispute with an Australian engineering company over the failure of a semi autogenous grinding mill
- Arbitrations under UNCITRAL Rules (as party appointed arbitrator) in relation to disputes under iron sale contracts between Singaporean sellers and Chinese purchasers
- SIAC arbitration (party appointed arbitrator) involving a dispute between Thai and Singaporean shareholders in a joint venture company relating to coal projects in Indonesia
- ICC arbitration in Singapore (as lead counsel) acting for an Indonesian coal bed methane gas (CBM) exploration company in dispute with a Canadian CBM company over a participating interest in an exploration block in East Kalimantan
- SIAC arbitration in Singapore (as lead counsel) acting for a Japanese/Vietnamese joint venture company in dispute with a Japanese contractor over the installation of a floating storage facility offshore Vietnam
- Ad hoc arbitration under the *Commercial Arbitration Act 2010* (NSW) (as counsel) acting for a licensor of solar storage technology in dispute with its licensee over entitlement to improvements to the technology the subject of pending patent applications
- *Commonwealth Games Federation v Fiji Association of Sports and National Olympic Committee* - Court of Arbitration for Sport – CAS 2010/O/2039 – acting as counsel for the Commonwealth Games Federation in relation to the eligibility of Fijian athletes to compete at the 2010 Commonwealth Games in Delhi (award published by CAS)

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- Ad hoc arbitration (as counsel) between two major Australian oil and gas companies in dispute over the extent of a participating interest in a gas field in Papua New Guinea turning on the construction of a conditional obligation in a sale agreement providing for the transfer of an additional interest in a gas field on the grant of a product development licence
- Ad hoc arbitration (as counsel) under ARIAS Rules between a leading UK employers' liability insurer and its reinsurers over allocation of mesothelioma claims
- Ad hoc arbitration (as counsel) between a Bermudian reinsurer and its London market retrocessionaires in relation to Sydney Hailstorm losses

**Arbitration-related litigation includes:**

- *XY v UV* [2024] QCA 244 (Queensland Court of Appeal) – Arbitration – production of documents – public interest immunity and parliamentary privilege – whether arbitrator had jurisdiction to determine claims – whether s 5 of the *Commercial Arbitration Act 2012* (Qld) (Article 5 of the Model Law) displaced the Court's jurisdiction to determine immunity and privilege claims
- *Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company* [2021] FCAFC 110 (Full Federal Court) – International Arbitration – enforcement of arbitral award - whether arbitral tribunal constituted in accordance with the agreement of the parties – comity – whether enforcing court should accept the appointment of the tribunal by the supervisory court – nature of burden to prove ground to refuse enforcement and nature of discretion to enforce
- *Hancock Prospecting Pty Ltd & Ors v DFD Rhodes Pty Ltd & Ors* [2020] 55 WAR 632, [2020] WASCA 77 (WA Court of Appeal) – Arbitration – whether s 8 of the *Commercial Arbitration Acts* mandated a stay of defences in proceedings brought by non-parties to an arbitration agreement where those issues overlapped with issues referred to arbitration between co-defendants – whether continuation of proceedings contrary to s 5 of the Acts – whether proceedings should be stayed on discretionary case management grounds
- *Rinehart & Anor v Hancock Prospecting Pty Ltd & Ors* [2019] HCA 13 (High Court of Australia); *Hancock Prospecting Pty Ltd v Rinehart* (2017) 257 FCR 442; [2017] FCAFC 170 (Full Federal Court) – Arbitration – whether a dispute involving allegations of fraud, undue influence and misconduct by the trustee of a trust holding valuable iron ore assets is a “commercial arbitration” under the *Commercial Arbitration Acts* - whether the primary judge erred in ordering a trial on the question of whether the arbitration agreement in deeds of release were null and void – whether related companies not party to the arbitration agreements can be referred to arbitration because the claims are “through or under” entities who are parties – circumstances where claims can be stayed on discretionary grounds
- *First Solar (Australia) Pty Ltd v Lyon Infrastructure Investments Pty Ltd & Ors* [2018] FCA 1666 – application for stay of proceedings to appoint liquidators and realise security pending arbitration of a dispute under a funding and distribution contract
- *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No. 9)* [2018] WASC 122 – application for stay of proceedings pending referral to arbitration of issues arising between the defendants to proceedings brought by a company not party to the arbitration agreement

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- *Armada (Singapore) Pte Ltd v Gujarat NRE Coke Ltd* [2014] FCA 636 (Foster J) – Arbitration – enforcement of LMAA awards - whether constitution of tribunal in accordance with arbitration agreement – whether arbitration agreement of no effect under s 11(2) of the *Carriage of Goods by Sea Act 1991* (Cth) and enforcement contrary to Australian public policy
- *Coeclerici Asia Pte Ltd v Gujarat Coke NRE Ltd* [2013] FCA 882 (Foster J) – Arbitration – whether award debtors can resist enforcement of LMAA awards on basis not afforded reasonable opportunity to present case to London tribunal – whether refusal of Commercial Court in London to set aside award on irregularity grounds created estoppel in relation to same issue on enforcement – *International Arbitration Act 1974* (Cth), ss 2D, 8, 9, 18C and 39
- *Westport Insurance Corporation & Ors v Gordian Runoff Limited* (2011) 244 CLR 239 (High Court) (2010) 267 ALR 74 (NSW Court of Appeal) Arbitration – judicial review – meaning of “manifest error on the face of the award” and “strong evidence of an error of law” (*Commercial Arbitration Act 1984* (NSW) s 38) – awards – adequacy of reasons – treaty reinsurance – *Insurance Act 1902* (NSW) s 18B
- *Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd* (2011) 279 ALR 772 (Hammerschlag J) – Arbitration – jurisdiction of arbitrator – arbitrability of intellectual property issues – whether arbitrator called on to exercise powers of Commissioner of Patents or Federal Court of Australia – public interest in subject matter – whether hypothetical issues – *Commercial Arbitration Act 2010* (NSW), s 16(9), *Patents Act 1990* (Cth), ss 15, 32 and 36.
- *Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd* [2011] NSWSC 1567 – voluntary administration – whether costs award in arbitration after date of voluntary administration a contingent claim before that date – *Corporations Act 2001* (Cth) ss 444A(4)(i), 444D(1), 444E(3) and 5553(1)
- *Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd* [2011] NSWSC 1331 – whether recognition and enforcement of parts of arbitral award contrary to public policy – *Commercial Arbitration Act 2010* (NSW), ss 35 and 36
- *Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd* [2011] 285 ALR 207 – leave to proceed against company in administration to enforce arbitral award in order to vindicate patent property rights established by award - *Corporations Act 2001* (Cth) s 440D

#### **Insurance and reinsurance cases include:**

- *Koolan Iron Ore Pty Ltd v Infrassure Ltd* [2024] FCA 747 [2023] FCA 1654 – Insurance – business interruption losses flowing from inundation of open cut mine following collapse of seawall – whether adjustments clause permitted a claim based on a hypothetical mine plan rather than historical output adjusted for trends – whether in fact hypothetical mine plan would have been adopted
- *Rheem Australia Pty Ltd v Mitsui Sumitomo Insurance Co Ltd* [2023] FCA 1570 – Insurance – determination of coverage for damage to switchboard under a industrial special risks insurance policy

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- *ASIC v Allianz Australia Insurance Ltd & Anor* [2021] FCA 1062 – Corporations – misleading and deceptive conduct – travel insurance products – regulatory penalties – principles relating to determination of penalties
- *Oceanview Developments Pty Ltd v Allianz Australia Insurance Ltd t/as Territory Insurance Office* [2020] FCA 852 (Allsop CJ) – Insurance – whether property insured limited to property listed in a schedule of declared assets or limited to property used in the insured's business
- *Mobis Parts Australia v XL Insurance Company SE (No. 7)* (2018) 363 ALR 730 (NSW Court of Appeal); [2017] NSWSC 1321 (Stevenson J) – Insurance – warehouse collapsed in storm – whether collapse caused by hail or storm – whether Local Policy should be rectified to include a hail limit specified in the Master Policy issued in Slovakia – whether faulty design exclusion enlivened – whether stock lost in collapse – whether alternative claim available under the Master Policy
- *Lendlease Building Contractors Pty Ltd v Insurance Australia Ltd & Ors* [2018] NSWSC 1595 – joinder of parties – whether necessary to join co-insureds under a professional indemnity policy to proceedings brought by two insureds for rectification of the policy
- *Buswell v TAL Life Ltd* [2018] NSWSC 1507 – claim under an income protection insurance policy – whether proceeds of settlement of a workplace injury claim to be set off against monthly payments under the income protection insurance
- *Ningaloo Escape v Hollard Insurance Company* [2017] NSWDC 147 – Insurance – cyclone damage to caravan park – scope of indemnity
- *Mobis Parts Australia v XL Insurance Company SE* [2016] NSWSC 1559 (Beech-Jones J) – Legal professional privilege – whether privilege waived over communications by disclosing privileged report on amendment application
- *Mobis Parts Australia v XL Insurance Company SE* [2016] NSWSC 1170 (Ball J) – whether originating service served on third defendant where first defendant agreed to accept service – whether proceedings under Master Policy should be stayed against third defendant on basis of a jurisdiction clause providing for disputes to be submitted to the Slovak courts
- *Mobis Parts Australia v XL Insurance Company SE* [2016] NSWSC 912 (Bergin CJ in Eq) – Insurance – material damage and business interruption losses arising out of the collapse of warehouse in the 2015 storms in Sydney - where qualified admission of liability by insurer – whether insurer should be permitted to amend to rely on a defective design exclusion – whether changed circumstances
- *Ransley v Chubb Insurance Co of Australia Ltd* [2015] NSWSC 854 (Ball J) – Directors and officers insurance – legal expenses cover – whether claims of each insured person in connection with an investigation to be aggregated under the policy
- *Poole v Chubb Insurance Co of Australia Ltd* [2014] NSWSC 1832 – Directors and officers insurance – allegations of fraudulent non-disclosure – whether insured knew submission made to NSW Government Minister false or misleading – whether insured knew of possibility of public inquiry into the grant of a mining exploration licence

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- *Prepaid Services Pty Ltd & Ors v Atradius Credit Insurance NV* [2014] NSWCA 440 (NSW Court of Appeal), [2014] NSWSC 21 (McDougall J) - Trade credit insurance – whether insurer entitled to reduce claim to nil for non-fraudulent misrepresentation under s 28(3) of the *Insurance Contracts Act 1984* (Cth)
- *Poole v Chubb Insurance Co of Australia Ltd* [2014] NSWSC 986 – Directors and officers insurance – allegations of fraudulent non-disclosure – whether leave to administer interrogatories ought to be granted in relation to matters the subject of an inquiry by the Independent Commission Against Corruption – *Independent Commission Against Corruption Act 1988* (NSW) s 37(3)
- *Commonwealth of Australia v Vero Insurance Limited* [2013] FCAFC 152 (Full Court of the Federal Court) (2012) 291 ALR 563 [2012] FCA 826 (Yates J) – Insurance – claim for remediation costs to contaminated land in the Australian Antarctic Territory – whether assertion of sovereignty over the AAT gave the Commonwealth beneficial title to land – whether claim time barred
- *Compagnie Francaise D'Assurance Pour le Commerce Exterieur (Coface Australia) v Sims Holdings Australia Limited* [2013] NSWCA 418 (NSW Court of Appeal) – Trade credit insurance – whether amounts owed by debtor “under” or “in connection with” business sale agreement and caught by charge over debtor’s assets – whether insured breached contractual duty to act as prudent uninsured in releasing charge – *Insurance Contracts Act 1984* (Cth) – s 54
- *Prepaid Services Pty Ltd & Ors v Atradius Credit Insurance NV* [2013] NSWCA 252 (NSW Court of Appeal) [2012] NSWSC 608 (McDougall J) [2014] NSWSC 21 (on remitter from NSW Court of Appeal) – Trade credit insurance – whether fraudulent misrepresentations in proposal for insurance – whether debts within scope of insurance – whether breaches of warranty under which insured required to mitigate loss – whether insurer relied on misrepresentations in entering into policy – whether insurer entitled to reduce liability to nil – *Insurance Contracts Act 1984* (Cth), ss 11, 21, 23, 26, 27, 28, 54
- *Genworth Financial Mortgage Insurance Pty Ltd v KCram Pty Ltd (in liq) (No 2)* (2011) 284 ALR 72 [2011] FCA 1124 (Perram J) – joinder of professional indemnity insurers of valuers – claims made policy – availability of statutory charge under s 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) – claimed priority under s 562 of the *Corporations Act 2001* (Cth)
- *NSW Self Insurance Corporation v Underwriting Members of Lloyds* [2010] NSWCA 44 (NSW Court of Appeal) - Statutory Interpretation — Subordinate legislative instruments — Ministerial Order made on 30 June 1992 pursuant to s 24 of *Government Insurance Office (Privatisation) Act 1991* (NSW) provided that all contracts of insurance or reinsurance which were entered into for the benefit of the TAC Fund be transferred from GIO Australia Holdings Ltd to the plaintiff — Whether the contracts of reinsurance were entered into for the benefit of the TAC Fund and had been transferred to the plaintiffs
- *General Reinsurance Australia Ltd v HIH Casualty & General Insurance Ltd (in liq)* [2009] NSWCA 22 (NSW Court of Appeal) [2008] NSWSC 461 (2008) 15 ANZ Ins Cases 61-764 – Insurance – Reinsurance – construction of underlying insurance treaty – trade credit insurance

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- whether sale of goods by financier on credit is within scope of trade credit insurance treaty – sale of goods – passing of property – construction of invoices and bills of lading
- *Towry Law plc v Chubb Insurance Co of Europe* [2008] NSWSC 1352 (McDougall J) – Insurance – construction and interpretation – objective intention of parties – equity – rectification – common contractual intention – conventional estoppel – inducement of mutual assumption
- *Prifti & Ors v. Musini Sociedad de Seguros y Reasuguros & Ors* [2005] EWHC 832 (Com) (Clarke J) - Personal Accident Insurance – discretion to stay proceedings – related proceedings in Spain determining whether football player suffering from pre-existing condition under direct insurance – English proceedings brought by reinsurers seeking to avoid reinsurance
- *Royal & SunAlliance Insurance plc v. Dornoch Limited & Ors* [2005] EWCA 238 (English Court of Appeal) [2005] 1 AllER (Comm) 590 [2004] Lloyd's Rep IR 82 – Reinsurance – notification and claims control clause – directors and officers liability cover – whether "loss" for purposes of clause is the loss suffered by investors or liability of insured once established – whether there was "knowledge of a loss which may give rise to a claim under the [reinsurance] policy"
- *R (on the application of Geologistics Limited) v. Financial Services Compensation Scheme* [2004] All ER (O) 338 (English Court of Appeal) [2003] Lloyd's Rep IR 277 (Davis J and Court of Appeal); [2003] 1 WLR 1696; [2003] 2 All ER (Comm) 165 (Davis J) – Insurance – judicial review – policyholder protection – defence costs – Policyholder Protection Act 1975 ss 6(4), 6(5)
- *BP plc v. GE Frankona Reinsurance Limited* [2003] 1 Lloyd's Rep 537 – Insurance – oil and gas – open cover facility – eligibility of projects for declaration – market practice as to delivery of declarations
- *Commercial Union Assurance Co plc & Ors v. Simat Helliesen & Eichner & Ors* [2001] LRIR 172; [2000] 1 LPr 239 – Insurance (liability) – conflict of laws – anti-suit injunction – applicable law – whether pursuant of foreign proceedings vexatious or oppressive
- *General of Berne Insurance Co v. Jardine Reinsurance Management Ltd* [1998] 2 All ER 301 (English Court of Appeal) - Costs – indemnity principle – reinsurance underwriting pool
- *Akai Pty Limited v. People's Insurance Company* [1998] 1 LLR 90 (Thomas J) - Conflicts of laws – exclusive jurisdiction clause – anti-suit injunction – comity in relation to High Court of Australia decision concerning jurisdiction – credit insurance – time bar
- *Home Insurance Co v. M E Ratty Underwriting Agency Ltd* [1996] LRLR 415 (Mance J) – underwriting pool – agency – ownership of documents
- *Mitsubishi Electric (UK) Ltd v. Royal Insurance (UK) Ltd* [1994] 2 LLR 249 (English Court of Appeal) – Insurance (construction) – deductible – meaning of component part
- *Kier Construction Limited v. Royal Insurance (UK) Ltd* [1992] 30 Con LR 45 – Insurance (construction) – exclusion for defective workmanship – late notice

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### Maritime and transport cases include:

- *Navios International Inc v Ship Huang Shan Hai* [2011] FCA 895 (Rares J) – Admiralty – bail bonds – proposed surety foreign corporation – sufficiency of security – applicability of modern commercial practice – *Admiralty Rules 1988* (Cth), rules 54(2) and 56(3A).
- *Great North Eastern Railway Limited v. Hart & Secretary of State for Transport, Local Government & The Regions & Anor* [2003] EWHC 2450 (QB) – Tort – duty of care owed by highway authority – adequacy of safety fencing – whether mere failure to exercise statutory power – *Stovin v. Wise* [1996] AC 923 – whether defence of ex turpi causa available - Civil Liability (Contribution) Act 1978 – if negligence had been found equal apportionment between negligent driver and highway authority appropriate.
- Acted for the provisional liquidators of Ocean Marine Mutual Protection and Indemnity Association Limited (a P&I club) on all aspects of the winding up of the affairs of the Club following its insolvency
- Acted for reinsurance brokers on a reinsurance dispute arising out of the Concorde crash in Paris
- Acted for the owners of the *Bowbelle* in relation to the collision with the *Marchioness* on the River Thames in 1989 (*The Bowbelle* [1990] 1 LLR 269 – Shipping – limitation of liability of shipowners – caveat against arrest)
- *The Tiburon* [1990] 2 LLR 418 – Marine insurance – breach of warranty as to flag ownership and management – broker's negligence
- Acted for the New Zealand harbour authority in litigation in NSW arising out of the sinking of the *Mikhail Lermontov* in Marlborough Sound, New Zealand in 1986
- Acted for cargo owners in litigation arising out of the capsizing and sinking of the MV *Gabriella* in Port Kembla, Australia in 1987 (*Australian Iron & Steel Pty Limited v. Jumbo Scheepvaart* [1988] 14 NSWLR 507 – Jurisdiction – shipping)

### Other significant cases include:

- *El-Ahmad v Westpac Banking Corporation* [2025] NSWCA 239 – Equity – inappropriate to disaggregate findings and credibility findings to challenge finding of knowledge of creation of false invoices – admissibility of first hand hearsay under s 64 of the *Evidence Act 1995*
- *Westpac Banking Corporation v Sentox Pty Ltd (No 4) & Ors* [2024] NSWSC 1578 – Equity – subrogation – principles in *Hepuru Pty Ltd v Belle* (2009) 76 NSWLR 230 – proprietary relief where misappropriated funds used to maintain property
- *Westpac Banking Corporation v Sentox Pty Ltd (No 2) & Ors* [2024] NSWSC 783 – Equity – where invoice discounting facility used to perpetrate fraud – tracing into mixed funds – elements of deceit – application of *Magill v Magill* (2006) 226 CLR 551

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- *Owners – Strata Plan No 80877 v Lannock Capital 2 Pty Ltd & Ors* (2023) 1 BPR 44,459 [2023] NSWSC 1401- Land law – termination of strata scheme – termination orders sought not unanimous – whether secured lenders to be paid before unsecured strata lender if scheme terminated – whether termination under Part 10 of the *Strata Scheme Development Act* more appropriate
- *Nguyen v Rickhuss & Ors* [2023] NSWCA 249 (NSW Court of Appeal) – Representative proceedings – class action against providers of breast augmentation surgery – whether proceedings should continue as a class action – whether claims give rise to substantial common questions of fact or law – whether claims individualistic
- *Caswell v Sony/ATV Music Publishing (Aust) Pty Ltd* [2012] NSWSC 986 – Copyright – application to set aside subpoena served on US parent of defendant in copyright infringement dispute – whether power under UCPR 11.5 to grant leave to serve court documents outside Australia – international comity
- *Hodder Rook & Associates Pty Ltd v Genworth Financial Mortgage Insurance Pty Ltd* [2011] NSWCA 279 (NSW Court of Appeal) – Professional negligence – valuers- evidence - whether expert evidence was wrongly rejected at trial under UCPR r 31.21(3) (appeal from [2010] NSWSC 1043)
- *Watts v Adelaide Bank Limited* [2009] FCAFC 169 (Full Federal Court) – Corporations - whether the appellant was entitled to go behind the default judgment of the NSW Supreme Court in possession proceedings - whether “genuine dispute” under s 459H(1)(a) of the *Corporations Act* - whether offsetting claim based on alleged sale of secured property at an undervalue, whether defect in statutory demand
- *Murphy v Arnoldus-Lewis* [2010] NSWCA 142 (NSW Court of Appeal) – Local Court – costs - whether the primary judge was right to conclude that there was no power to award “expenses” in proceedings in the Small Claims Division of the Local Court ([2008] NSWSC 1103) - whether jurisdictional error
- *Lehman Brothers Australia Limited v Wingecarribee Shire Council* [2009] FCAFC 63 (Full Court) (2009) 72 ACSR 38 [2009] FCA 532 (Rares J) – High Court and Federal Court – inherent or implied power to order party to disclose assets and produce documents – practice and procedure – corporations – protection of integrity of process – contracts of insurance may respond to applicant’s claims - proposed deed of company arrangement would extinguish applicant’s claims against third parties and their insurers
- *Great North Eastern Railway Limited v. JLT Corporate Risks Limited* [2006] EWHC 1478 (QB) – civil procedure – abuse of process – estoppel – insurance brokers – continuing duties after placement of insurance – train derailment – whether compelling reasons within CPR Part 24.2 why a limitation issue should be disposed of at trial where expert evidence as to relevant practice of insurance brokers likely to inform court – whether proceedings or collateral attack on judgment in earlier related proceedings (*Johnson v. Gore Wood* [2002] 2 AC1) – whether loss extinguished by earlier judgment
- *BP v. Aon Ltd* [2006] EWHC 424 (Comm) [2006] 1 All ER (Comm) 789 (Colman J) – Insurance broker’s duty in tort – assumption of responsibility – *Henderson v. Merrett Syndicates* [1995] 2 AC145 applied – whether duty of care inconsistent with terms of a service agreement

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with US affiliate of the broker – *Simaan Contracting Co v. Pilkington Ltd* (No 2) [1988] 1 QB 758 distinguished – whether settlement reached with insurers reasonable – whether failure to purchase alternative insurance broke chain of causation.

- *DP Mann & Ors. v. Coutts & Co* [2003] EWHC 2138 (Com) – Banking and Financial Services – insurance – trusts – duty of care – letter from bank concerning "client account" opened by agent – whether letter relied on – whether break in chain of causation because of unreasonable failure to investigate operation of account – whether monies held by agent in trust – whether part of fixed overheads recoverable as damages
- *Babcock International Limited v. Babcock Australia Limited & Eraring Energy* [2003] NSWCA 6 (NSW Court of Appeal) – Tort – duty of care of designer of works, contractors and employers – pure economic loss – contribution – appeals from the Dust Diseases Tribunal
- *Towcester Racecourse Company Limited v. The Racecourse Association Limited* [2002] EWHC 2141(Ch) (Patten J) – Company law – articles of association – implication of terms – general law duties when conducting enquiry

### Seminars and Speeches (Selected)

- "Stand by Me – A Reinsurance Update", Australian Insurance Law Association , 2008 Twilight Seminar Series (14 May 2008)
- "Liability Insurance – Is there a Crisis?" Chartered Insurance Institute, Breakfast Seminar (4th February 2003)
- "Measuring (and Minimising?) the Extent and Nature of a Reinsurer's Liability", Practical Reinsurance Law, Euroforum (14th May 1999)
- "Assessing the Expert's Exposure to Claims for Professional Negligence", Expert Evidence, Euroforum (30th April 1999)
- "Alternatives to Arbitration", International Commercial Arbitration, The Study Group International (18th July 1997)

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