

Justin Hewitt

Barrister

Eight Selborne Chambers
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BAR ADMISSION

Admitted as a barrister in New South Wales, April 2004

AREAS OF PRACTICE

Principally banking and finance, bankruptcy and insolvency, commercial law, competition and consumer law, corporations and securities, financial services, equity, property and trusts.

OTHER ADMISSION

Admitted as a legal practitioner of the Supreme Court of New South Wales in April 1996

Admitted to the Supreme Court of the State of New York in July 2000

Admitted to the United States District Court for the Southern District of New York in March 2007

EDUCATION

UNIVERSITY OF SYDNEY

Bachelor of Laws (First Class Honours), December 1994

Bachelor of Science, December 1992

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, New York

Master of Laws (LL.M.), May 1999

Awards: Law Council of Australia, Business Law Fellowship

PROFESSIONAL BACKGROUND

HIGH COURT OF AUSTRALIA

Canberra, August 1996 – February 1998

Associate to the Honourable Justice W M C Gummow, AC

FREEHILL HOLLINGDALE & PAGE (NOW HERBERT SMITH FREEHILLS)

Sydney, January 1996 – August 1996; February 1998 – August 1998

Solicitor, Litigation and Projects Groups.

SHEARMAN & STERLING LLP

New York, USA, 1999-2004, 2007

Attorney, Bank Finance and Bankruptcy and Restructuring Groups.

SELECTION OF RECENT CASES

Federal Court of Australia

- Appeared for ASIC in civil penalty proceedings alleging contraventions by AMP Financial Planning of the best interests obligations in the Corporations Act: *ASIC v AMP Financial Planning Pty Ltd*
- Appeared for respondents in class action in which group members seek refund of GST on off the plan apartment sales in the ACT: *El-Zein & Ors v Barton Nine Pty Limited atf the Barton Nine Settlement ACN 143 616 693 & Anor*
- Appeared for former director in proceedings seeking to reinstate deregistered company to make claims for refund of GST on off the plan apartment sales in the ACT: *Boys, in the matter of 38 Akuna Pty Ltd (Deregistered) v ASIC* [2019] FCA 320
- Appeared for South Korean manufacturer of wastewater systems in relation to proceedings concerning defective equipment installed at desalination plant in Western Australia: *VoR Environmental Australia Pty Limited v Taset Inc. (No 2)* [2019] FCA 1094
- Appeared for global credit rating agency, Standard & Poor's, in series of class actions alleging negligence, misleading and deceptive conduct and misrepresentation in relation to rating of complex financial products: *City of Swan v McGraw-Hill Companies Inc* (2016) 112 ACSR 65; *Lifepan Australia Friendly Society Limited v S&P Global Inc* [2018] FCA 379; *Liverpool City Council v McGraw-Hill Financial, Inc* [2018] FCA 1289
- Appeared for Standard & Poor's in appeal against case management order requiring affidavit from chief executive officer: *McGraw-Hill Financial, Inc v Mitsub Pty Ltd (Trustee)* [2017] FCAFC 11
- Appeared for appellants in appeal from the Federal Circuit Court against sequestration orders: *Alam v QBE Insurance (Australia) Ltd* [2018] FCA 1560
- Appeared for receivers of Oceanlinx Limited in relation to dispute over insurance proceeds resulting from damage to wave energy converter stranded off the coast of South Australia: *Ocean Energy Construction Pty Ltd v Oceanlinx Limited (in liq) (Receivers and Managers Appointed)* [2016] FCA 1055
- Appeared in proceedings alleging breach of directors' duties and oppression in conduct of the affairs of special purpose vehicles used for aviation leasing transactions in the Allco Group: *HNA Irish Nominee Ltd v Kinghorn (No 2)* (2012) 88 ACSR 427 and related appeal *HNA Irish Nominee Ltd v Kinghorn* (2010) 78 ACSR 553
- Appeared for Optus in the C7 litigation throughout the trial and interlocutory stages of the proceedings: *Seven Network Limited v News Limited* [2007] FCA 1062

NSW Supreme Court

- Appeared for the Sydney Fish Market in proceedings seeking to set aside settlement reached in proceedings concerning redevelopment proposals: *Galati v Deans (No 2)* [2018] NSWSC 1813
- Appeared for the Sydney Fish Market in dispute relating to breach of directors' duties concerning redevelopment proposals: *In re Felan's Fisheries Pty Limited* [2016] NSWSC 581; [2016] NSWSC 1351; [2016] NSWSC 1901
- Appeared for national property management company in proceedings brought by ASIC for alleged contraventions of the Corporations Act in operating a financial services business without a licence: *ASIC v Park Trent Properties Group Pty Ltd (No 3)* [2015] NSWSC 1527
- Appeared in dispute over implied terms of contract reached at a mediation: *Yulema Pty Ltd v Simmons* [2015] NSWSC 640
- Appeared for beneficiaries in will construction suit: *Bates v Trustees of the Redemptorist Fathers* [2015] NSWSC 539
- Appeared for IPIC, the sovereign wealth fund for the United Arab Emirates, in proceedings concerning construction of bond deed and valuation of shares in connection with \$1.6 billion bond issuance: *International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea* [2014] NSWSC 1289
- Appeared for Allco receiver in proceedings relating to claims for breach of statutory and fiduciary duties by former officers of Allco: *Allco Funds Management Ltd ((receivers and managers appointed) (in liq)) v Trust Co (Re Services) Ltd* [2014] NSWSC 1251
- Appeared in proceedings brought against purchasers for breach of contract for the sale of land: *Kelly v Galafassi* [2013] NSWSC 680; (2013) 17 BPR 32,123
- Appeared in proceedings relating to force majeure claim under electricity hedging agreement: *Ausgrid v Redbank Project Pty Ltd* [2013] NSWSC 1596
- Appeared for Lend Lease in proceedings relating to the collapse of the Prime Trust: *Re Australian Property Custodian Holdings Ltd (in liq) (receivers and managers appointed) (as responsible entity of the Prime Retirement Aged Care Property Trust)* [2012] NSWSC 679
- Appeared for mining company resisting application by shareholder to bring derivative suit: *Mathews Capital Partners Pty Ltd v Coal of Queensland Holdings Ltd* [2012] NSWSC 462
- Appeared in proceedings by unitholder of trust seeking to remove and replace trustee: *Everest Capital Ltd as Trustee of EBI Income Fund v Trust Co Ltd* [2010] NSWSC 231; (2010) 77 ACSR 371

NSW Court of Appeal

- Appeared for vendor of real property in appeal proceedings seeking to set aside orders for specific performance: *Despot v Registrar General of New South Wales* [2016] NSWCA 5
- Appeared for IPIC, the sovereign wealth fund for the United Arab Emirates, in appeal concerning construction of bond deed and valuation of shares into which A\$1.6 billion in bonds were exchangeable upon maturity: *International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea* [2015] NSWCA 363
- Appeared in proceedings relating to claim against the estate of the late Richard Pratt brought by Ms Ashton concerning escort services provided by her: *Ashton v Pratt* (2015) 88 NSWLR 281; [2015] NSWCA 12; [2013] NSWCA 400
- Appeared in proceedings brought against purchasers for breach of contract for the sale of land: *Galafassi v Kelly* [2014] NSWCA 190; (2014) 87 NSWLR 119
- Appeared in proceedings relating to misuse of power of attorney in conveyancing transaction: *Despot v Registrar General* [2013] NSWCA 313
- Appeared in proceedings relating to dispute concerning the sale of a business: *Moon v Mun* [2013] NSWCA 217

High Court of Australia

- Appeared in proceedings considering implied freedom of political communication: *Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3; (2013) 249 CLR 1
- Appeared in proceedings considering implied freedom of political communication: *Monis v R* [2013] HCA 4; (2013) 249 CLR 92
- Appeared in proceedings considering dispute relating to rights of unitholders under a managed investment scheme: *Westfield Management Ltd v AMP Capital Property Nominees Ltd* [2012] HCA 54; (2012) 247 CLR 129
- Appeared in proceedings considering consequences of trial judge being asleep during trial: *Cesan v R; Mas Rivadavia v R* [2008] HCA 52; (2008) 236 CLR 358
- Appeared in proceedings considering correct approach to application to strike out pleadings: *Favell v Queensland Newspapers Pty Ltd* [2005] HCA 52; (2005) 221 ALR 186
- Appeared in proceedings considering scope of liability in negligence of public authorities in respect of obvious risks: *Mulligan v Coffs Harbour City Council* [2005] HCA 63; (2005) 223 CLR 486

Interstate Courts

- Appeared in Queensland Supreme Court proceedings for the receivers of Octaviar Ltd: *Fletcher v Fortress Credit Corporation (Australia) II Pty Limited* [2015] QSC 51
- Appeared in Victorian Supreme Court proceedings for Lend Lease opposing application brought by liquidator for approval of litigation funding agreement: *Australian Property Custodian Holdings Ltd v Capital Finance Australia Ltd & Ors* [2012] VSC 124

Arbitrations

- Appeared in arbitration before The Hon Michael McHugh AC QC in relation to successful claim by electricity generator to pass through costs of carbon tax onto electricity retailer

Australian Competition Tribunal

- Appeared for Telstra in proceedings seeking review of ACCC decision to reject an access undertaking: *Application by Telstra Corporation Limited* [2010] ACompT 1

ASIC matters

- Counsel in various matters relating to ASIC investigations and administrative proceedings including proceedings seeking orders disqualifying persons from managing a corporation, orders banning persons from providing financial services and examinations under s 19 of the ASIC Act.