

MICHAEL ELLIOTT SC

General qualification and admission information

BA, LLB (Hons) (UQ) 1991

2017 to date	Senior Counsel, 8 th Floor Selborne Chambers, Sydney
2002 - 2017	Barrister, 8 th Floor Selborne Chambers, Sydney
2001	Mallesons Stephen Jaques, Sydney, senior associate
1997 - 2000	Herbert Smith, London, solicitor
1992 - 1997	Mallesons Stephen Jaques, Sydney & London, solicitor
1992 - 1995	Minter Ellison, solicitor

Core practice areas

Insurance – coverage and other disputes

Professional negligence and D&O claims

Commercial disputes, including:

- contract law
- estoppel, misrepresentation or fraud
- equity and trust law
- shareholder and partnership disputes
- corporation and consumer laws
- building and construction
- property and securities
- restraint of trade and employment
- succession

Independent expert appointed to determine disputes

Royal commissions and inquiries

Environment related prosecutions

Overview of practice

I advise and represent clients in a wide range of commercial disputes, generally conducted in the Supreme or Federal Courts, both at first instance and appellate level. The litigation in question is either conventional party-party or multi-party litigation, and increasingly frequently, class action proceedings.

Some examples of recent matters include:

Mir v Mir [2023] NSWSC 408
CIMIC v AIG & Ors [2022] NSWSC 999
Flanagan v Nadic Brokers [2022] NSWSC 381
Twigg v Twigg [2022] NSWCA 68; [2020] NSWSC 1159
Delor Vue v Allianz [2022] HCA 38; [2021] FCAFC 121; [2020] FCA 588
Argo v Quintis [2022] FCAFC 86; [2021] FCA 19 & 327
Allianz Australia v Rawson Homes [2021] NSWCA 224; [2020] NSWSC 1654
Secure Logic v Noble [2021] NSWSC 675
Angelis & Ors v Pemba Capital [2019] NSWSC 1759
Marketform v Amashaw [2018] NSWCA 70; [2017] NSWSC 612
Weir v AXA (2018) 359 ALR 314 (NSWCA); [2017] NSWSC 259
Maled Falek Islamic School v AFIC [2017] NSWSC 1712
AAI (Vero) v Kalnin [2017] NSWSC 548

Matters I work on fall into one or more of the following general descriptions:

Professional negligence and D&O claims

- Professional indemnity matters across a wide range of professions, including architects, engineers, directors, valuers, external administrators, auditors and other accountants, barristers, solicitors, insurance brokers, private building certifiers and financial service providers.

Insurance and reinsurance

- Advising on and appearing for parties in insurance matters. These include policy disputes in relation to the scope of cover, exclusions, aggregation, subrogation, allocation, defence costs and other policy issues; disputes concerning the nature and effect of policies of insurance in relation to relations between commercial parties; joinder applications against insurers of insolvent insureds; policy interpretation, contribution and other disputes as between insurers and as between insurers and reinsurers.

Commercial disputes

- Actions on a wide range of commercial contracts, including for example claims with respect to distributorship agreements, consultancy agreements, joint venture agreements and building contracts.

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- Claims under the various provisions of consumer protection legislation, including in particular claims relating to misleading and deceptive conduct. These claims include claims for damages or the avoidance of contracts, as well as claims for injunctive relief in comparative advertising cases.
 - Claims in respect of contraventions of the corporations and securities law, including claims against directors, financial services licencees, oppression suits, and cases concerning the exercise of powers by liquidators, receivers and administrators.
 - Claims involving the application of principles of tracing and following, and for the imposition of resulting or constructive trusts arising out of a variety of circumstances including, by way of example, fraud, joint contributions towards the purchase of property, partnership disputes and misappropriation of trust property.
 - Other claims concerning the application of a range of different equitable doctrines, including for example estoppel, specific performance, unconscionable conduct, undue influence, breach of confidence, contribution, subrogation, rectification, taking accounts and set off.
 - Actions involving allegations of breach of trust or fiduciary duty by trustees.
 - A range of finance law cases, including in particular claims involving the enforcement of mortgages, guarantees, charges and other securities.
 - Various insolvency matters under the *Corporations Act* and the *Bankruptcy Act*, including applications to the set aside of statutory demands, liquidators' examinations and the like.
 - Claims concerning allegations of breaches of equitable and/or contractual obligations of confidence, including actions to restrain firms from acting for parties in circumstances where there is a risk of a breach of confidence and/or a conflict of interest.
 - Restraint of trade cases and other similar cases, including claims for the enforcement of negative covenants in senior executive employment contracts.
 - Class action litigation in the Federal and Supreme Courts.
 - Various claims consequent upon the collapse of partnership and joint venture relationships.
 - Claims for breaches of building contracts.
 - A range of property related matters, including disputes over contracts for the sale of land, leases and easements.
 - Obtaining or resisting applications for mareva (freezing) orders and a wide range of interlocutory injunctions.

Royal Commissions and Inquiries

- Appearing for government instrumentalities, private enterprise and individuals in various Commissions of Inquiry, including as:
 - counsel for an interested party in the AFL inquiry into the Hawthorn Football Club
 - counsel assisting in the Royal Commission into Trade Union Funds and Corruption
 - senior counsel for an interested party and its witnesses in the Royal Commission into the Banking and Financial Sector
 - counsel for the State Rail of NSW in the Waterfall Commission of Inquiry
 - counsel for a major stakeholder in the Commission into the Sale of NSW Electricity Assets
 - counsel for interested parties in a wide range of ICAC inquiries.

Environment related prosecutions

- Appearing for and advising a variety of irrigators, farmers and landowners in prosecutions in the Land and Environment Court, and in challenging or otherwise responding to statutory notices, in relation to alleged contraventions of legislation such as the *Water Management Act*