

ANDREW SMORCHEVSKY

5 Wentworth
180 Phillip Street, Sydney NSW 2000

+61 2 8066 6134
andrew.smorchevsky@5wentworth.com

AREAS OF PRACTICE

Banking & Finance

Competition & Consumer Law

Contract & General Commercial Law

Corporations Law & Insolvency

Equity & Trusts

Insurance

BACKGROUND

Sep 2017 to date	Barrister
2016 to 2017	Solicitor, Whittens & McKeough
2015	Tipstaff to Justice R W White, Supreme Court of New South Wales
2014	Solicitor, Whittens & McKeough
2013	LLB (Hons), BCom (Finance), University of New South Wales
2013	Paralegal (full time), Whittens & McKeough

CASES AS A BARRISTER

Appeals

- Bupa HI Pty Ltd v Chang (FCAFC, contract and Medicare dispute)
- Mao v AMP Superannuation Ltd [2018] NSWCA 72 (guardianship, pro bono as amicus curiae, led by Sheila Kaur-Bains)
- Notaras v Barcelona Pty Limited (No 2) [2019] FCA 617 (costs following appeal, unled)
- Outerbridge v Hall [2020] NSWCA 205 (real estate agency commission; led by David Rayment)

Class actions

- Caason Investments Pty Limited v Cao (No 2) [2018] FCA 527 (securities class action, settlement approval hearing, led by Robert Yezerski)

Commercial contractual disputes:

- Baiada Poultry Pty Ltd v Ridley AgriProducts Pty Ltd (FCA, contract dispute, ongoing)
- Bupa HI Pty Ltd v Andrew Chang Services Pty Ltd [2018] FCA 2033 (contract and Medicare dispute, led by Cynthia Cochrane and David Harris)
- El Khoury v Harsany [2018] NSWSC 1774 (expedition and guarantee dispute, unled)
- Jabbcorp (NSW) Pty Limited v Strathfield Golf Club [2020] NSWSC 1317 (building contract dispute, led by David Rayment)
- New Life International, Inc v Seneviratne (FCA, sale of goods dispute, ongoing)
- NWC Finance Letter of Offer Pty Ltd v Edmonds (NSWSC, contract dispute, ongoing)

Consumer law and regulatory proceedings:

- ASIC v ForexCT Pty Ltd (FCA, freezing orders and financial services dispute, ongoing)
- NorvaNivel Pty Ltd v OfficeMax Australia Ltd (FCA, consumer law and intellectual property, settled)

Corporate law, shareholder oppression and insolvency:

- Gold and Copper Resources Pty Ltd v Locke (NSWSC, directors' duties, ongoing)
- Harris v Sirrah Pty Ltd (NSWSC, shareholder oppression and derivative proceedings, ongoing)
- Harris v Sirrah Pty Ltd [2018] NSWSC 1802 (application to commence derivative proceedings, unled)
- Harris v Sirrah Pty Limited [2017] NSWSC 1683 (shareholder application for access to documents, led by Stuart Lawrance)
- Immersive Insights Pty Ltd v Intalock Technologies Pty Ltd (2018, statutory demands, settled)
- Metallurg, Inc v Global Advanced Metals Pty Ltd (NSWSC, shareholder application for access to company documents and derivative suit; third party confidentiality claims, ongoing)
- Zarins v Metallicity Ltd (FCA, deed of company arrangement, settled)

Land and environment law

- Charara v Ku-ring-gai Council [2019] NSWLEC 183 (successful strike-out of Class 1 contentions in reply, validity of modified development consents after lapse, led by Ian Hemmings SC)

Property law

- Coastline Credit Union Limited v Edmonds (NSWSC, proceeds of sale and priorities)
- Edmonds v Bayfoyle Pty Ltd (NSWSC, removal of caveats, settled)
- Inquiry Property Investments Pty Ltd v Bestwick (NSWSC, proceeds of sale and freezing orders, settled)
- Grand Views Pty Ltd v Acumen Finance Pty Ltd (NSWSC, extension of caveats, settled)
- Harrison v Harrison (NSWSC, 2018, extension of caveats, settled)
- Estate of Rothe; Levitt v Morgan (NSWSC, extension of caveats, ongoing)

Other matters

- Various matters unled in the NSW Local Court, NSW District Court and NCAT

Advisory, research and other work

- Contractual interpretation
- Commercial disputes
- Constitutional law
- Consumer law and regulatory investigations
- Corporate law and insolvency
- Employment and industrial law
- Equity and trusts
- Intellectual property
- Property law
- Royal Commission
- Statutory interpretation

CASES AT WHITTENS & MCKEOUGH

Commercial contractual disputes:

- Antares Global Pty Ltd v Yang (NSWSC, 2017)
- Troy SMSF Pty Ltd v Bux.com Pty Ltd (WASC, 2017, settled)
- Taxi E Pay Pty Ltd v Smartpay Australia Pty Ltd (NSWSC, 2016 to 2017, settled)
- MG Logistics Pty Ltd v Ethan Group Pty Ltd (NSWSC, 2017, settled)
- Agriwealth Pty Ltd v Yang (NSWSC, 2016, settled)
- Smartpay Australia Pty Ltd v Auscabs Payment Solution Pty Ltd (NSWSC, 2016 to 2017, settled)
- Prospect Resources Limited v Molyneux [2014] NSWSC 1096 and [2014] NSWSC 1448
- Ethan Group Pty Ltd v Calvary Health Care ACT Limited (NSWSC, 2014, settled)

Corporate law, shareholder oppression and insolvency:

- Dolezal v PLD Corporation (NSWSC, 2014, settled, medical negligence proceedings against company after entry into deed of company arrangement)
- Harris v Sirrah Pty Ltd (NSWSC, 2017, shareholder oppression suit)
- Freiberg v Keller (NSWSC, 2016 to 2017, settled, shareholder oppression suit)
- Cody v Live Board Holdings Limited [2014] NSWSC 78 (validity of share issue)
- Various contested and settled disputes regarding statutory demands

Employment law and restraints of trade:

- Independent Education Union of Australia v Reddam House Limited (FWC, 2016, settled, employment and industrial law)
- Chrysiliou Law v Doherty (NSWSC, 2014, settled, restraints of trade)
- Robinson v iCash Payment Systems Limited (FCCA, 2014, settled, employment law)
- Charltons CJC Pty Ltd v Fitzgerald [2013] NSWSC 350, [2013] NSWSC 958, [2013] NSWSC 1945, [2014] NSWSC 523 (restraints of trade)

Class actions:

- Caason Investments Pty Ltd v Cao (Arasor Group Limited securities class action, FCA, 2013 to 2017)
- Caason Investments Pty Limited v Cao [2014] FCA 1410 (contested application to amend pleadings)

Consumer law and regulatory proceedings:

- Hipages Group Pty Ltd v Reach Aussie Pty Ltd [2017] FCA 112 (permanent injunctions)
- Hipages Group Pty Ltd [2016] FCA 986 (preliminary discovery)
- ACCC v Cornerstone Investment Aust Pty Ltd (2016 to 2017, ACCC pecuniary penalty proceedings)
- ACCC v Cornerstone Investment Aust Pty Ltd [2016] FCA 445 (strike-out of short-form pleadings)

Administrative law:

- Cornerstone Investment Aust Pty Ltd v ASQA (AAT, 2016, challenge to cancellation of licence)
- Unique International College Pty Ltd v ASQA (AAT, 2016, challenge to cancellation of licence)

Defamation and injurious falsehood:

- 1st Available Ltd v Melocco (NSWSC, 2015, settled, defamation and injurious falsehood)
- 1st Available Ltd v Melocco [2016] NSWSC 30 (contempt of court)

Equity and trusts:

- Sofer v SwissIndependent Trustees SA (NSWSC, 2017, preliminary discovery regarding international trust dispute)
- Rambaldi v Mullins (No 2) [2016] FCA 977 (trust and bankruptcy dispute)
- Griggs v Sorockyj Investments Pty Ltd [2014] NSWSC 667 (interlocutory injunction and trust dispute)

Intellectual property:

- Hussey v Better Caring Pty Ltd (FCCA, 2017, copyright dispute)
- Various disputes regarding trade marks and copyright

Commissions and inquiries:

- Royal Commission into Institutional Responses to Child Sexual Abuse (2013, acting for YMCA NSW)

Advisory and corporate transactional work

- Advice to ASX-listed company regarding insolvency law issues
- Acting on sale and restructure of international corporate group
- Advice on corporate law and taxation issues regarding restructure of Australian property business
- Advice on corporate law issues regarding restructure of Australian business
- Advices on prospects to litigation funder regarding current and potential class actions
- Various advices on contract, corporate law, trust and insurance issues
- Acting on insolvent unregistered managed investment scheme dispute

OTHER ACTIVITIES

Ongoing	UNSW, internal and external mooting competition judging
2015 to 2017	Australian Private Law Moot <ul style="list-style-type: none">- UNSW team coach (2015)- competition judge and problem author (2016)- competition judge (2017)
2011 to 2015, 2017	UNSW internal mooting: <ul style="list-style-type: none">- beginners', intermediate and senior mooting competition judge- UNSW Law Society senior mooting coordinator (2013)
2013 to 2014	Research assistant, Professor Leon Trakman
2013	Journal of Equity, student editor
2012 to 2013	Research assistant, Deborah Dinnen, barrister, Maurice Byers Chambers
2012 to 2013	UNSW Law Journal: <ul style="list-style-type: none">- General editor (2012)- Issue editor, UNSW Law Journal Issue 36(3) (2013), general competent and thematic complement ("Theories and Principles Underlying the Development of the Common Law")
2010 to 2012	Internal and national mooting competitions: <ul style="list-style-type: none">- UNSW beginners' mooting- UNSW intermediate mooting (finalist)- UNSW senior mooting (semi-finalist)- Shine Lawyers torts law moot (semi-finalists, Brisbane)- NSW Young Lawyers civil litigation moot (winning team, joint best speaker, Sydney)- ALSA Championship moot (Melbourne)- AAT Moot (national quarter-finalists, Sydney)- Sir Harry Gibbs constitutional law moot (quarter-finalists, Canberra)

INTERESTS

Chinese tea
Wine
Law