



## **TERRY MEHIGAN**

Barrister

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### **Education**

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

### **Professional**

- Dates of Admission: 1985 New South Wales (Solicitor)  
1986 High Court of Australia (Solicitor)  
  
1990 England & Wales (Solicitor)  
1995 Solicitor Advocate (Civil) (England)  
  
2007 Barrister (NSW & High Court)  
2007 Barrister (England)
- NSW Bar 2007 to date
- Herbert Smith, London (1990 to 2006 – Partner 1994 to 2006)
- Hill Taylor Dickinson, London (on secondment from Blake Dawson Waldron), Solicitor (1989 to 1990)
- Blake Dawson Waldron, Solicitor (1986 to 1989)
- Associate to Justice Beaumont – Federal Court of Australia (1986)

### **Professional Appointments/Memberships**

- Accredited Mediator of Centre for Dispute Resolution (CEDR) (UK)
- Solicitor Trainer on Gray's Inn Continuing Education Programme for New Practitioners (Advocacy and Ethics) (2000 to 2006)
- Australian Insurance Law Association
- Society for Advanced Legal Studies

- Anglo-Australasian Lawyers' Association

### **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.

### **Main Areas of Practice**

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

### **Significant decided cases include:**

- *Lehman Brothers Australia Limited v Wingecarribee Shire Council* [2009] Full Court FCA (unreported, 26 May 2009) [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
- *General Reinsurance Australia Ltd v HIH Casualty & General Insurance Ltd (in liq)* [2009] NSWCA 22 (Court of Appeal) [2008] NSWSC 461 (2008) 15 ANZ Ins Cases 61-764 – Insurance – Reinsurance – construction of underlying insurance treaty – trade credit insurance – 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 – Insurance – construction and interpretation – objective intention of parties – equity – rectification – common contractual intention – conventional estoppel – inducement of mutual assumption

- *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 – 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 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.
- *BP plc v. Aon Ltd* [2005] EWHC 2254 – Insurance – professional negligence claim against broker – new cause of action introduced by amendment – non-exclusive jurisdiction clause in favour of foreign court – forum non conveniens – potential time bar in foreign court – CPR 17.4 – whether claim arose out of same or substantial same facts as pre-existing claim against co-defendant.
- *Prifti & Ors v. Musini Sociedad de Seguros y Reasuguros & Ors* [2005] EWHC 832 (Com) - 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 (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 (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)
- *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.

- *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
- *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
- *Babcock International Limited v. Babcock Australia Limited & Eraring Energy* [2003] NSWCA 6 – 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) – Company law – articles of association – implication of terms – general law duties when conducting enquiry
- *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 (Court of Appeal) - Costs – indemnity principle – reinsurance underwriting pool
- *Akai Pty Limited v. People's Insurance Company* [1998] 1 LLR 90 - 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 – underwriting pool – agency – ownership of documents
- *Mitsubishi Electric (UK) Ltd v. Royal Insurance (UK) Ltd* [1994] 2 LLR 249 (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
- *The Tiburon* [1990] 2 LLR 418 – Marine insurance – breach of warranty as to flag ownership and management – broker's negligence

- *The Bowbelle* [1990] 1 LLR 269 – Shipping – limitation of liability of shipowners – caveat against arrest
- *Australian Iron & Steel Pty Limited v. Jumbo Scheepvaart* [1988] 14 NSWLR 507 – Jurisdiction – shipping

### **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)

### **Directories**

- “*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 straight forward'*” (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).
- “*Terry Mehigan excels in complex insurance claims*” (The Insider’s Guide to Legal Services – Insurance and Reinsurance – 2001)
- Guide to the World’s Leading Insurance & Reinsurance Lawyers (2006), The International Who’s Who of Business Lawyers (Insurance & Reinsurance) (2006) and Legal Business’ Legal Experts 2006 (Commercial Litigation and Insurance/ Reinsurance)