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WILLIAM JAMES

COMMERCIAL LITIGATION

— RECENT EXPERIENCE



COMMERCIAL LITIGATION

- Successfully acting in (7) sets of Supreme Court proceedings in resolving disputes arising from the sale of a mine, including resisting appeals to the Supreme Court, Court of Appeal;
- Successfully obtaining a Court judgment for a fund manager against the largest Australian investment bank to compel the bank's compliance with its contractual obligations;
- Acting for a fund manager defending commercial litigation proceedings in the Grand Court of the Cayman Islands involving a claim for damages exceeding \$235 million and serious allegations of unlawful conspiracy;
- Acting in a Victorian Supreme Court case for the major shareholder of a publicly significant company resisting shareholder oppression claims seeking orders in excess of \$50M;
- Acting for claimant in breach of fiduciary duty case where Anton Pillar search and seizure orders were successfully obtained and upheld after Supreme Court challenge;
- Acting for company officers in respect of the high-profile insolvency of an Australian manufacturing company and ASIC-instigated proceedings arising out of its collapse, involving alleged multi-million dollar claims for breaches of directors' duties and various insolvent transactions together with previously untested provisions of the Corporations Act relating to the non-payment of substantial million dollar employee entitlements;
- Acting for a former director of one of Australia's largest private colleges and VET course providers in claims brought by the liquidators to recover over \$60 million in dividends paid prior to the company's liquidation. This involved related proceedings by the ACCC and the Federal Government in another Court, seeking recovery of payments made under the Federal Government's funding of student's courses at the college;
- Acting for a number of companies to obtain urgent freezing orders and pursue asset recovery from their former CFO, who had defrauded in excess of \$9 million from the companies over several years and dissipated the assets amongst a complex web of corporate entities. Asset recovery strategies included detailed forensic work and tracing payment of the monies, in conjunction with police charges;
- Acting for a public manufacturing company successfully recovering over \$90 million in a dispute over earthworks and site preparation;
- Successfully acting for a listed Australian manufacturer in a multi-million dollar Supreme Court of Victoria proceedings, resolving untested issues of law arising from security for payments legislation in Victoria;
- Acting for joint venture owners in a dispute as to a \$150 million EPC contract for the construction of a cogeneration power plant, against numerous financiers and the head contractor, which included an urgent interlocutory application for injunctive relief as to finance terms;
- Acting for a leading Australian brick manufacturer in successfully defending a claim for \$22 million which alleged misleading or deceptive conduct relating to the extent of contamination in connection with the sale of a former site;
- Acting for an ASX 200 engineering company against a major electricity government enterprise and company's insurers in a multi-million dollar dispute relating to the supply, installation and commissioning of electrical equipment;
- Advising in respect of the funding of a substantial (approximately \$100 million) shareholder class action against a listed Australian company, involving allegations of misleading and deceptive conduct and continuous disclosure obligations under ASX Listing Rules;



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- Acting in a Victorian Supreme Court case defending a challenge to the appointment of voluntary administrators by a secured creditor client on the basis of alleged abuse of process.
- Successfully obtaining declarations that voluntary administrators had been validly appointed in circumstances where such appointment was challenged by the sole shareholder;
- Acting for a Japanese based multinational supplier in relation to fraud proceedings commenced in the Supreme Court regarding the misappropriation of in excess of \$3 million by an employee resulting in successful property recovery;
- Assisting a minority shareholder to successfully replace the board of directors for a listed investment trust ultimately culminating in those new directors effecting a sale process for the benefit of all shareholders;
- Acting for the trustee company of a large Australian listed hospitality investment fund in relation to a major shareholder dispute involving listed securities and employing shareholder advocacy strategies;
- Acting for directors operating a \$900m turnover business and successfully resisting ASIC banning them from being directors. The case included appeals to the full Federal Court;
- Acting for the private investment vehicle of a well-known Australian high net worth individual in its dispute with its joint venture partner, a major Australian distributor. The joint venture partners disputed the efficacy of the joint venture agreement and the ultimate interests of the client in the underlying business and assets. Proceedings were commenced in the Supreme Court of NSW and were ultimately successfully resolved commercially;
- Successfully resolving, through negotiation, a contractual dispute between a leading Australian bank and a software technology supplier in relation to the supply, installation and commissioning of a major multi-million dollar upgrade to the bank's loan origination computer system;
- Successfully resolving, at a mediation, a multi-million dollar contractual dispute for a leading international distributor of EFTPOS terminals against a manufacturer of component parts involving questions of breach of contract, negligence and misleading or deceptive conduct;
- Acting for a technology supplier against a listed public company providing automated recruitment services in a complex factual dispute relating to the design and installation of a software platform for provision of those services involving a substantial claim for damages for breach of contract, negligence and misleading or deceptive conduct;
- Advising a Fortune 500 fuel supply company in defending litigation in Hong Kong brought by a major commercial airline;
- Acting for a public company wholesaler in a hearing leading to the successful resolution of a \$15 million dispute against a retailer with 22 stores claiming alleged breaches of franchising code provisions;



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- Acting for a big four Bank in a dispute with a payment service provider which alleged the bank had breached the contract between them by underpaying the amounts owed to the service provider by falsely or misleadingly under-reporting transactions brokered by the service provider. Proceedings were commenced in the Supreme Court of NSW and the matter was ultimately successfully resolved commercially;
- Acting for a leading Australian wireless broadband provider in a Federal Court proceeding against the largest international computer processor manufacturer in a complex commercial dispute involving questions of construction, rectification, the law of penalties, claims of misleading or deceptive conduct and misuse of market power;
- Acting for the owner of various major Sydney shopping centres in various tenant disputes including conducting successful litigation in the Supreme Court of NSW against the operator of a flagship restaurant for them to exercise a lease option within forms;
- Acting for an Australian listed company within the construction industry in Federal Court proceedings involving trade mark and copyright infringement, passing off and misleading or deceptive conduct;
- Acting for a power generation company in injunctive relief proceedings against a bank preventing the bank from enforcement action;
- Successful representation of a shareholder in a multi-million dollar shareholders' litigation involving breaches of the Corporations Act and director malfeasance resulting from a deadlock in management of a construction company;
- Acting for receivers and managers of a major Australian car sale and leasing company in a multi-million dollar dispute with a customer for ongoing and material breaches of payment obligations under a leasing contract. Proceedings were commenced in the Supreme Court of NSW alleging breaches of the leasing contract and misleading and deceptive conduct by the customer. The matter was ultimately successfully resolved commercially;
- Acting for the board of directors in a multimillion dollar claim against key employees relating to breaches of employment contracts;
- Acting for the trustee of a superannuation fund for a world-leading petroleum corporation in a multi-million dollar commercial litigation proceedings in a Victorian Supreme Court concerning complex questions of contractual interpretation and fact findings;
- Acting for NZ based minority shareholders in a claim against the board of directors of a listed Australian company for misappropriation of company funds, oppression and breaches of fiduciary duties including an application for preliminary discovery;
- Acting for shareholders in Supreme Court proceedings to resist claims of oppressive conduct under the Corporations Act, pursuing the controlling director for diversion of corporate opportunity and breaches of director's duties and seeking relief in relation to corporate governance issues;



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- Acting for a big four Bank in relation to Supreme Court proceedings commenced against it by a property developer alleging misleading and deceptive conduct by bank officers;
- Acting for a financier in a negligence action commenced against a valuer in the Supreme Court for damages in excess of \$8 million;
- Acting for a big four Bank in relation to Federal Court proceedings against it by a well-known barrister regarding alleged negligent financial advice;
- Acting for a US court-appointed receiver to obtain various injunctions in Hong Kong in support of US proceedings commenced by a US government agency;
- Acting for lenders in NSW Court of Appeal proceedings against borrowers and ASIC (intervener) involving issues of statutory unconscionability under the Australian Consumer Law/ASIC Act, fraud, Unfair Contracts Act and questions of agency;
- Acting for a leading Australian transport courier company in NSW Supreme Court Proceedings relating to a contractual dispute concerning delivery of goods;
- Acting for a medical company in a Supreme Court shareholder's dispute involving complex allegations about share transfer and share valuation provisions;
- Acting for a secured lender in a \$20 million priority dispute between various secured creditors under the Personal Property Securities Act;
- Successfully acting for a land owner in Supreme Court proceedings with a purchaser over a \$15m disputed option and development agreement;
- Acting for a minority shareholder in oppression proceedings and proceedings against certain directors related to the majority shareholder seeking to agitate for acceptance of a takeover bid;
- Acting for the trustee of a large fund in relation to a major shareholder dispute involving listed securities;
- Acting for a major shareholder seeking to defend a challenge by the minority shareholder. This dispute was fought on multiple fronts in multiple jurisdictions as part of an attempt by the minority shareholder to ultimately try and remove a key competitor from the Australian and New Zealand market;
- Acting for a restaurant hospitality group to successfully obtain a rental reduction under a retail lease due to the ongoing construction of the Barangaroo precinct by the landlord;
- Acting for the liquidators of a major property development company to obtain freezing orders against the director and a related entity, before obtaining judgment for over \$6m in relation to various uncommercial transactions, unreasonable director-related transactions, unfair preferences and insolvent trading;
- Acting for the borrowers in an urgent and successful refinance of a \$5m+ home loan, with the effect of reversing the eviction of the mortgagors from the property and preventing its sale; and
- Acting for company liquidators and directors the subject of inquiry by ASIC.



(02) 9925 3222 • info@williamjames.com.au
Level 13, 74 Castlereagh Street, Sydney