

## John Tesarsch

### Contact details:

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**Admitted to the legal profession:** 10 April 1993

**First signed Victorian Bar Roll:** 22 May 1997

**Qualifications:** LL.B, B.Mus. (Hons)(Melb)

John has an extensive commercial practice. He is ranked by Doyle's Guide as leading Victorian Counsel in the areas of insurance and professional indemnity. In 2015, he was appointed a Senior Fellow of the University of Melbourne Law School, where he lectures in liability insurance law for the masters program.

John's recent matters include the following:

- claims against accountants, auditors, financial planners, lawyers, mortgage brokers, insurance brokers and other professionals, including:
  - *Loustas v Sier & Ors* [2018] VSC 709: claim against solicitor and joint venturer concerning property development; application for special costs order;
  - *Timbercorp Finance Pty Ltd (in liq) v Gruyters* (VSC): claim against financial planners concerning the collapse of the Timbercorp Group;
  - *Rush Corporation Pty Ltd v Catlin Syndicate Limited and anor* (VSC): claim by labour hire company against management liability insurer and insurance broker; alleged misrepresentation and non-disclosure;
  - *Dowling v Dowling and ors* (VSC): claim against accountants and lawyers following the division of a large agricultural business;
  - *King Water Sports Pty Ltd v Lawrence and ors* (TASSC): claim against tax advisers;
  - *Tarabay v Full Circle Financial Group Pty Ltd and ors* (VSC): claim against financial planners and mortgage brokers concerning geared property investments;

- *Smith v Charter Financial Planning Limited* [2013] VCC 2029: claim against insurance broker regarding life insurance cover;
- contractual, property, trust and estate disputes, and disputes regarding corporations law and directors' duties, including:
  - *Viva Energy Australia Ltd and anor v Knuckey and ors* (VSC): freight and logistics; claim for restitution; accessorial liability;
  - *Gainford Pty Ltd and anor v Penplay Investments Pty Ltd* (NSWSC): dispute concerning termination of contract of sale for retail shopping centre;
  - *In the matter of Chukles Global Pty Ltd* (VSC): oppression proceedings; alleged breach of directors' duties;
  - *Fay v Molloy and ors* (VSC): alleged breach of joint venture agreement and fiduciary duties; claim for declaration of constructive trust over substantial agricultural landholding;
  - *Land and anor v Prideland Equity Pty Ltd and ors* (VSC): alleged breach of trust and knowing assistance; claim for equitable compensation;
  - *Box v Box and anor* (VSC): dispute over terms of Deed of Family Arrangement; claim for declaration of constructive trust over agricultural land;
  - *Omega Group v Regional Rail Link Authority*: claim for compensation for loss of profits following compulsory acquisition of land (with Jim Delany QC);
  - *Gunns Finance Pty Ltd (in liq) v Moore* (VSC): dispute concerning failed MIS investment;
- construction disputes, property damage and liability claims, and claims against building professionals, including:
  - *Seecamp v Michael Parker Building Pty Ltd* [2018] VCAT 1806: reinstatement application against builder and surveyor;
  - *Davies v Yarra Valley Water and ors* [2016] VCAT 655: \$4.5m damages claim against water authority and contractors; alleged conspiracy;
  - *Telstra Corporation v Quinn Civil and ors* [2014] VCC 465: excavation works causing damage to underground services; proportionate liability;
  - *Gandel v Krongold Constructions (Aust) Pty Ltd and Ors* (VCC): fire in Toorak mansion; \$6m damages claim against builder and contractors; proportionate liability (with Michael Roberts QC);
  - *Feldman v MBuild (Aust) Pty Ltd & anor* [2013] VCAT 1125: claim against building surveyor;

- *Malcolm v Brurob Nominees and Ors* (VCAT): defective foundations and footings; claim against builder, contractors and surveyor;
- *Sienna Building Pty Ltd v Specta Pty Ltd and Ors* (VCAT): house fire caused by downlight; claim against building contractors; proportionate liability;
- *Building Practitioners' Board v Wright*: disciplinary hearing concerning excavation costs;
- general insurance and life insurance disputes, including:
  - *Danfoss (Australia) Pty Ltd and ors v BNY Trust Company of Australia Limited* (VSC): substantial warehouse fire; claim for indemnity on public and products liability policy (with Jon Davis QC);
  - *Future Fibre Technologies Pty Ltd v Catlin Syndicate 2003 and ors* (VSC): claim upon professional indemnity insurance policy, and negligence claim against broker;
  - *Jaques v AIG Australia Ltd* (VSC): D&O insurance claim (leading to the decision of *AIG Australia v Jaques* [2014] VSCA 332);
  - *O'Neill v Asteron Life Ltd and anor* (VCC): denial of life insurance claim; alleged breach of duty of disclosure; negligence claim against broker;
  - *Chambers v RACV Insurance*: destruction of Armadale mansion by toxic mould; claim for indemnity under property insurance policy;
- banking, corporate insolvency and bankruptcy disputes, including:
  - *Nelson and anor v Ji* [2015] FCCA 3575: claim by trustees in bankruptcy for interest in spouse's property pursuant to alleged constructive trust;
  - *Crucis Pty Ltd v Aitken and Ors* (VSC): loan dispute; alleged unconscionability; witnessing of loan documentation; and
  - *Comsport Pty Ltd (in liq) v Charterarm Investments Pty Ltd (in liq)*(VSC): disputed proof of debt.

Previously, between 1997 to 2003, John's matters included:

- *Deputy Commissioner of Taxation v Casualife Furniture International* (2004) 9 VR 549: winding up alleged phoenix companies on the just and equitable ground (with Greg Garde QC, now Garde J);
- *Medical Industrial Group Pty Ltd v National Australia Bank Limited* (VSC): financing dispute (with Peter Clark SC);
- *Stanganelli v Verducci and Ors* (VSC): constructive trust/market garden dispute (with Robin Brett QC);

- *Cooper v Blake Dawson Waldron* (VSC): professional negligence claim (with Russell Berglund QC and Robin Brett QC);
- *Danon Marketing International Pty Ltd and Collector of Customs* (AAT): customs duty dispute regarding imported fabrics (with Stuart Morris QC);
- probity inquiries for the Victorian Casino and Gaming Authority (with Peter Clark SC); and
- *Bergmans v Rant* [2000] VSC 539: adverse possession claim.

### **Publications and seminars**

John was the initial author of *Taxation of Partnerships: The Laws of Australia*. He has published articles on many aspects of commercial law, and his recent articles include:

- *Australian Insurance Law Bulletin*, July 2017, ‘Section 6 is gone, but what happens next?’ concerning claims against liability insurers;
- *Law Institute Journal*, May 2016 cover story, ‘Battleground of Claims,’ concerning claims against financial advisers;
- *Law Institute Journal*, May 2014 cover story, ‘The Highest of the High Rollers,’ concerning unconscionability and the High Court decision of *Kakavas v Crown Melbourne Limited* [2013] HCA 25; and
- *Resolve*, December 2013, lead article on MIS class actions.

John has recently presented seminars for:

- the Australian Insurance Law Association, on third party claims against liability insurers (November 2017, with Matthew Ellis);
- the PIS Seminar Group, on misrepresentation and non-disclosure (July 2017);
- the Australian Insurance Law Association, on claims against financial advisers (August 2016, with Rob Heath and Darryl Smith);
- the Australian Insurance Law Association, on reforms to the *Insurance Contracts Act* (March 2014, with Michael Thompson QC and David Guthrie);
- the Commercial Bar Association, on corporate collapses and D&O insurance (November 2013, with Jeff Gleeson QC and Jonathon Redwood);
- the Australian Professional Indemnity Group, on proportionate liability and the High Court decision of *Hunt & Hunt* (May 2013, with Rob Heath); and
- numerous law firms, including Herbert Smith Freehills, Minter Ellison, Norton Rose Fulbright, HWL Ebsworth, Gadens, Russell Kennedy, Moray & Agnew, and Wotton + Kearney, on topics including directors’ duties, insurance, and proportionate liability.

## **Norton Rose Australia (now Norton Rose Fulbright)**

John was a special counsel at Norton Rose Australia/Deacons from 2007 until 2013.

At Norton Rose Australia, John practised primarily in the areas of insurance, professional liability and directors' duties, and specialised in the conduct of class actions and other major litigation. He acted for financial planning firms in class actions issued by ASIC and Slater & Gordon following the collapse of the Westpoint Group, and in the Timbercorp class action (*Woodcroft-Brown v Timbercorp Securities Ltd (in liq) and Ors* [2011] VSC 427). He acted for and advised directors and professionals in other significant litigation following high-profile corporate collapses, including those of the Great Southern Group and the Blue Diamond Deposits Trust, and in examinations by liquidators and ASIC. Cases included *Traditional Values Management Limited (in liq) v Taylor & Ors* [2012] VSC 299 and *Re Traditional Values Management Ltd; Handberg v Dantay Pty Ltd* [2012] VSC 308.

John also acted for:

- Rio Tinto, defending a major land contamination claim;
- AustralianSuper, defending life insurance claims;
- fund managers defending claims arising from alleged unit pricing errors;
- accountants, auditors and financial planners defending claims arising from a wide range of tax, accounting and financial planning issues;
- valuers and estate agents; and
- architects, building designers, construction managers and other building professionals.

His advisory practice included:

- advising Lloyds syndicates and Australian insurers on a wide range of insurance issues; and
- conducting detailed insurance reviews for public companies and government departments, and for major infrastructure projects.

## **Holding Redlich**

From 2005 until 2007, John was a senior associate in Holding Redlich's commercial dispute resolution group. His practice areas included professional liability, corporations law, directors' duties, insolvency, banking and finance, insurance, property, and trade practices. His matters included:

- Supreme Court proceedings concerning a failed joint venture (leading to the decision of *Australian Super Developments Pty Ltd & Ors v Marriner & Ors* [2010] VSC 41);

- *Highpoint Shopping Centre v Coles Myer* (VSC): major litigation concerning the Coles Myer lease (with Allan Myers QC, Mark Derham QC and Stewart Anderson QC);
- *Orion Telecommunications Limited* [2006] ATP 23: Takeovers Panel proceedings;
- *OW Bunker and Trading Company Ltd A/S v Mawashi Al Gasseem* [2005] FCA 1041: the arrest of a converted oil-tanker;
- estate and trust disputes, including *Talacko & Ors v Talacko* [2008] VSC 128;
- advisory briefs for the AWB Royal Commission, ASIC prosecutions and insolvent trading claims, and for industry superannuation funds and public companies;
- acting for Epworth HealthCare in disputes regarding health legislation and in disputes with service providers;
- acting for liquidators and administrators in a range of large insolvencies; and
- acting for AustralianSuper in life insurance litigation.

#### **Ebsworth & Ebsworth/Monahan + Rowell (now Colin Biggers & Paisley)**

From 2003 until 2005, John was a senior associate in the dispute resolution/commercial litigation group of Ebsworth & Ebsworth/Monahan + Rowell. He specialised in the areas of professional liability and insurance, and his practice included:

- acting for the Legal Practitioners' Liability Committee and other insurers defending claims in the Supreme Court and Federal Court relating to corporations law, property and construction, trade practices, banking and finance, trusts, defamation, and intellectual property (see, for instance, *Porter v OAMPS Ltd* [2005] FCA 232); and
- conducting disciplinary hearings and prosecutions for the Dental Practice Board (for instance, *Dental Practice Board of Vic v Varnavides* [2005] VCAT 810, leading to *Varnavides v Victorian Civil & Administrative Tribunal & Anor* [2005] VSCA 231.)

#### **Freehills (now Herbert Smith Freehills)**

John was an articled clerk in 1992 and was admitted to practice in April 1993. He was a solicitor in the Corporate/Revenue Department from 1993 to 1995, and worked on several large-scale matters including the sale of Pacific Dunlop's food group, Pyramid litigation, casino tendering, the SECV disaggregation and the refinancing of the Pratt Group. He practised in a range of commercial areas including banking and finance, credit law, refinancing and restructuring, trusts and corporations law, stamp duty and tax.

**Memberships and associations**

John is a member of the Australian Insurance Law Association, the Australian Professional Indemnity Group, the Law Institute of Victoria, the Melbourne Cricket Club and Taki Ski Club.

Liability limited by a scheme approved under Professional Standards Legislation.