

## Michael Mills

Professional Profile



### Overview

Michael Mills is recognised as one of Australia’s leading lawyers for complex commercial litigation and dispute resolution.

As a top commercial litigator, he has been the lead defence lawyer for some of Australia’s largest and most complex disputes, representing both leading Australian and international companies, here and overseas.

He is considered by industry as a “go-to” lawyer for strategically important commercial and “bet the company” disputes. This includes regulatory and mass torts/civil liability disputes, as well as front end insurance, risk advisory and dispute resolution work. Michael has also been the lead lawyer in the recovery of over \$2 billion for his clients in various commercial disputes and court actions.

His creative tactical thinking in resolving disputes has seen his practice expand into providing strategic advice to clients in relation to directors and officers liability risks, corporate governance, front end insurance and risk management advice, as well as alternative means to resolve commercial problems and disputes.

Michael is also a nationally recognised and accredited mediator. He teaches courses in Australia and overseas on civil liability and dispute resolution. This includes teaching “Resolving Civil Disputes” at UNSW, being a guest lecturer at Stanford Law School on several occasions since 2011, author of Thomson Reuter’s text, *Dispute Resolution* (2018) and a past Chair of Resolution Institute (previously LEADR) and Advisory Board member of RAND Institute of Civil Justice.

Michael was a founding (and managing) partner of Quinn Emanuel Urquhart & Sullivan in Australia in 2013. In 2023 he founded Solve|Resolve, a practice providing independent representation and proactive strategic advice on commercial disputes, risks and resolution.

Michael has variously been described as an “Outstanding litigator ... a well-recognised trial lawyer whose strategic approach ... lends him a fantastic reputation in the market”; “... and often achieves a result you wouldn’t have thought possible”

*Who’s Who Legal and Chambers & Partners Asia Pacific Legal reviews*

### Advisory – Commercial

Michael has been involved in advising numerous ASX50 companies and boards of directors over the years across a wide range of commercial issues, including:

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- Advised and represented AirServices Australia in relation to administrative changes to Australia's airspace laws and the need for the federal government to reverse them.
- Advised and represented the liquidator of United Medical Protection. A later NSW Parliamentary Paper credited it as "the first body to [trade out of provisional liquidation] in Australian corporate history."
- Legal risk management and mitigation advice to ASX100 companies in relation to: compliance issues; mitigating risk for effective business strategy and crisis management (from a legal perspective); risk allocation and insurance programmes and wording.
- Corporate governance advice in respect of: Directors' and Officers' liability and his other areas of expertise, as noted in more detail below.

#### **Corporate roles**

Michael is presently:

- A director of Australian Geographic Pty Ltd;
- NSW Council member of Yalari;
- Principal of Solve|Resolve Pty Ltd.

Michael was previously:

- Founding and managing partner of Quinn Emanuel Urquhart & Sullivan in Australia (2013-2022);
- Prior to that, he was a partner and held national and then co-head global practice roles at Freehills/Herbert Smith Freehills;
- Chair of Resolution Institute (as LEADR is now known); and
- Advisory Board member of RAND Institute of Civil Justice for many years.

## Dispute Resolution

Successful dispute resolution is not a matter of a binary choice – litigation (whether by adjudication/court, administrative or regulatory process) or alternative dispute resolution processes (eg by negotiation, mediation or arbitration). Both have their place and the skills and process from each can be employed to successfully resolve a dispute. It is a matter of evaluating which options (or combination) will produce the optimal outcome for the client. In short, often the best avenue to a successful outcome is much more nuanced than instituting (or defending) legal proceedings with a singular focus on litigation and trial preparation.

#### **Litigation – Dispute Resolution**

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Michael has been the lead lawyer for some of Australia's largest and most complex disputes, representing both leading Australian and international companies, both on the defence and plaintiff side. This has included (where a matter of public record):

- Acting on behalf of the Administrator of Greensill Bank (following the collapse of Greensill Group) in a series of claims (exceeding €3 billion) against insurers on various trade credit insurance policies.
- Represented the Dreamworld CEO in Coronial Inquiry proceedings (no adverse finding or prosecution made against our client).
- Represented the Commonwealth Bank of Australia CFO in regulatory investigations following the AUSTRAC \$700m penalty of CBA for AML breaches (no prosecution).
- *Re Canavan; Re Joyce* ("Citizenship 7" case) – Represented MP Tony Windsor as the contradictor to the seven Australian parliamentarians before the High Court of Australia. The High Court adopted all of Mr Windsor's submissions regarding the proper interpretation of section 44(i) of the Constitution.

At the conclusion of the hearing, The Australian newspaper's Legal Affairs Editor (Mr Chris Merritt) wrote: "The great victors are Windsor and his ludicrously high-powered legal team ... Their arguments were endorsed by the seven judges. They took on the best legal brains the government could muster and wiped the floor with them."

- Acted as contradictor on behalf of ASIC/Full Federal Court of Australia in the important white collar crime test case of *ASIC v Whitebox Trading Pty Ltd*.
- Represented the Deputy Chair of Southern Cross Media (Austereo) in investigatory examinations and responding to compulsory notices issued by ASIC, which led to a rare public acknowledgement by ASIC not to proceed with action.
- In *re World Trade Center Disaster Site Litigation* – at the time this was said to be America's largest mass tort action (18,000 plaintiffs and damages claimed to be USD25 billion). Michael was the lead Australian defence lawyer for the 2nd defendant (Lend Lease). After lengthy litigation, negotiations and US federal government assistance (*Zadroga 9/11 Act*) the litigation was resolved with no adverse finding or payment by the defendants.

#### Mediation

Michael has long been recognised as a thought and industry leader in dispute resolution, with a focus on mediation. He has been recognised as such by the Resolution Institute as an honorary lifetime member for his past services and is an accredited mediator (NMAS and Resolution Institute). He taught the inaugural practical dispute resolution and mediation intensive course at the

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University of WA Law School for many years and has published numerous articles on alternative dispute resolution (listed below) as well as regularly being a guest lecturer and teacher in mediation and negotiation courses.

As a disputes lawyer, Michael has represented numerous clients in disputes going to mediation, usually as counsel. This has extended to Michael being asked to assume the role of lead lawyer and counsel at mediation, in place of the lawyers on record. Successful and recent mediated outcomes (which are a matter of public record) include:

- *Ingham (class action) v Ardent & Anor* – Michael acted for the company and the past CEO of Dreamworld in the class action following the tragic accident and deaths in 2016. The litigation was resolved in mediation and the settlement approved by the Federal Court Australia in 2023, with no admission of liability.
- *Simpson (class action) v Thorn (Radio Rentals)* – Class action successfully resolved at mediation with no admission of liability. Michael was the lead lawyer at the mediation and subsequent settlement negotiations, although not the defence lawyer on the record.
- *Hall v Pitcher Partners (a firm)* – Michael was initially instructed to act for the defendant firm in this class action. Later, insurers took over the conduct of the defence. However, post trial and prior to judgment, Michael was again instructed to assume conduct of the defence on behalf of the firm. Matter successfully resolved.
- *Ezra and Anor v Bank of America* – Michael was the lead lawyer in this recovery action following the acquisition of QuadPay. Matter successfully resolved at mediation in 2023.

As noted, Michael has been an accredited mediator for many years and taught numerous mediation courses, both at a practical/training level and at University courses in NSW and WA. The many occasions in which he has acted as a mediator are, of course, confidential.

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#### **Negotiation**

Experience and statistics all show that the vast majority of disputes the subject of legal proceedings in Court, are resolved before judgment and, usually, trial. This resolution is normally the product of negotiation, whether directly in settlement discussions with the other party(s) and/or in mediation.

There is nothing to say however that such negotiated resolution has to occur on the eve of trial (or “door of the court” as it is often described). With the correct approach, there are usually plenty of opportunities for sensible and constructive negotiation to occur at any time, including early on.

Directly negotiated (and/or mediated) resolution of disputes are usually subject to confidentiality terms (subject to any Court approval required). It is therefore not appropriate, beyond the matters mentioned elsewhere, to list specific matters where a successful negotiated outcome has been achieved for clients.

#### **Settlement advice and Counsel**

The common litigation approach is that clients and their lawyers spend vast amounts of time and effort on their litigation strategy, seeking to prove the worst about their adversary’s case and conduct, but little time thinking of ways the dispute could be sensibly resolved, particularly in devising at an early stage, a settlement strategy and approach to achieve that outcome. This is entirely understandable, because litigation is an adversarial process and neither the litigation lawyer or the client wish to show any weakness to the other side; nor pass up any opportunity (no matter how small or minor) to secure any tactical or evidential advantage which they can generate in the litigation.

In other words, the litigation process is counter-productive to a creative problem solving approach. The inevitable interlocutory disputes which litigation generates, are often corrosive to a constructive relationship and dialogue between the parties’ litigation lawyers (and clients). US Fortune 500 companies have long recognised this inherent tension and barrier in the litigation process to early and successful settlement. Their solution, now being followed elsewhere, is to appoint separate lawyers (independent from their lawyers on the court record) to provide advice on resolution options outside of litigation. The advantages are that the usual method of litigation resolution – settlement, not judgment at trial – is regularly evaluated from early on. This is done in tandem with the client, litigation lawyers and strategy, to produce both a litigation and alternative resolution (or settlement) strategy with the sole focus of achieving the optimal commercial outcome for the client. This is done collaboratively and in full recognition of the costs and risks at trial.

Similarly, sometimes it is helpful to bring in an independent lawyer who can objectively assess the matter in the present and provide a fresh perspective on resolution options and strategy.

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### Regulatory Investigations – Advice and Representation

Michael has regularly acted on behalf of companies, directors, officers and professional partnerships in Commissions of Inquiry and regulatory disputes concerning ASIC, ACCC and professional regulatory bodies, as well as acting on behalf of regulators. Michael's practice includes white collar crime cases. To the extent to which they can be mentioned, those matters include:

- *ACT Board of Inquiry Criminal Justice System* – Sofronoff KC (2023) – Michael acted on behalf of a senior member of the Australian Federal Police. No adverse finding or comment was made about our client in the Inquiry Report.
- *PricewaterhouseCoopers – CAANZ* – The Disciplinary Tribunal of Chartered Accountants Australia and New Zealand in its decision of November 2023 censured and imposed the maximum fine against PwC as a result of the Tax Practitioner's Board findings concerning conflicts of interest in the use of Commonwealth Treasury department information. Michael appeared on behalf of CAANZ at the hearing.
- *Inquest into Dreamworld* – Michael led the team representing the then CEO of Dreamworld at the Inquest before the Coroner's Court into the deaths of 4 people. No adverse findings were made against our client in the resulting Findings and Recommendations of February 2020.
- *Commonwealth Bank of Australia – ASIC* – Represented the CBA CFO in regulatory investigations following AUSTRAC \$700m penalty of CBA for AML breaches (no prosecution or adverse finding resulted against our client).
- *E\*Trade* – Represented E\*Trade after its Manila office was raided by the Philippine National Bureau of Investigation. Thirty-six of the 400+ employees in Manila were arrested for alleged violations of Philippine securities laws. As the New York Times reported, all alleged violations were dismissed, and the office reopened.

### Insurance and Risk

Early on in his legal career, Michael was invited to undertake the Sedgwick insurance broking course and then worked for several Lloyd's underwriters (primarily the MWP syndicate) before joining Barlow Lyde & Gilbert in London.

On his return to Australia, Michael led the Phillips Fox insurance team in Perth for many years, before being headhunted by Freehill Hollingdale & Page to lead its insurance and commercial liability practices, initially in Perth and then nationally from Sydney.

Across these practices, Michael has acted for many leading local and international insurers, as well as regularly advising ASX50 companies and directors and officers on their insurance programs, commercial risks and mitigation options. In recent years, this has extended to acting on behalf of companies in policyholder recovery actions and advice. Some of his matters have included:

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- *Administrator of Greenshill v IAG* – Michael was instructed by the Administrator of Greenshill Bank and instituted recovery proceedings in the Federal Court against the insurers, for what is reported to be \$7 billion in legal claims.
- *Idemitsu v insurers* – Michael was the lead partner for the successful recovery action for Idemitsu following the flooding of its Ensham coal mine, in what its insurance broker described as the then largest insurance recovery achieved in Australia against foreign insurers.
- *Forge class action v Forge directors* – Michael and his team acted on behalf of two of the Forge directors (and their insurers). The litigation was settled at mediation for no personal liability or admission by our clients.
- HIH (in liq) collapse – Michael acted on behalf of the Lloyd’s insurance market (HIH Directors and Officers insurers) in the resulting Royal Commission, regulatory investigations and class action.
- Directors’ and Officers’ liability advice and representation – Matters have included, in addition to HIH: ABC Learning, Babcock & Brown, Hastie Group; plus many others which fortunately never became a matter of public record.

### Commercial Experience

#### Corporate roles

- See *above* under Advisory - Commercial

#### Professional Memberships and Activities

- Member of the Federal Court of Australia Class Actions committee.
- Member of the NSW Law Society ADR Committee.
- An honorary life member of the Resolution Institute of Australia.
- Lecturer in “Resolving Civil Disputes” at UNSW, as well as being a guest lecturer at other local and overseas law schools.
- The author of *Dispute Resolution* (2018) a text which The Honourable JLB Allsop AO, Chief Justice of the Federal Court of Australia described as: “of immense value to current and future practitioners, academics and students.”

#### Admission to Practice

- Supreme Court of NSW, Victoria, Western Australia
- Federal Court of Australia

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### Publications

- High Court of Australia

“China: Some Lessons in Mediation”,  
Australian International Law News, 1993

“The Laws of Australia (Chapter 3 - Torts)”,  
The Law Book Company Limited, 1993 And Update Texts Till 2003

“Lessons From America: Professional Liability and Tort Reform”, Australian  
Bar Review, Vol. 12, 1995

“Crisis Management – Liability and Insurance Issues”,  
Insurance Law Journal, Vol. 12, 2001

“Insurance And Risk Solutions for Commercial Projects”,  
Australian Mining and Petroleum Law Journal, Vol. 20, 2001

“Duty Of Good Faith: The ‘Sleeper’ Of Insurance Obligations?”,  
Australian Law Journal, Vol. 80, No. 6, 2006

“Many Ways to Resolve Disputes”,  
The Australian Newspaper, 15 September 2017

“Onus On the Few to Prove They Are Eligible to Represent The Many In  
Parliament”, The Australian Newspaper, 10 November 2017

*Dispute Resolution - A Practitioner's Guide to Successful Alternative Dispute  
Resolution* (2018, Thomson Reuters)

“Overview Of Dispute Resolution Suggestions, Solutions and Options”,  
The Arbitrator & Mediator, Vol. 38, No. 1, 2019

“Successful Mediation Advocacy” (2022) 32 ADRJ 35

### Reviews

Michael is regularly identified year upon year as a leading lawyer by various domestic and international guides to lawyers and legal firms, including:

- *Best Lawyers* – Alternative dispute resolution, Class Action Litigation, Insurance Law, International Arbitration, Litigation, Product Liability Litigation and Regulatory Practice, plus 2016 Class Action Litigation ‘Lawyer of the Year’ and 2017 Product Liability ‘Lawyer of the Year’
- *Who's Who Legal* – Insurance and Reinsurance, Litigation; Litigation - ‘Most Highly Regarded Individual Asia Pac’ 2014 and 2015, a ‘World’s leading practitioner’ in litigation and ‘Most Highly Regarded’: Commercial Litigation Report 2022
- *Doyles Guide* - Leading Commercial Litigation & Dispute Resolution Lawyer
- *Asialaw and Benchmark Litigation* – ‘Disputes Star of the Year’ – Australia 2018



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### Education

- *Chambers & Partners Global and Chambers Asia Pacific* – Dispute Resolution and Insurance.

University of Western Australia  
(B.Juris 1980, LLB 1981)  
Teaching fellow till 2002

Stanford University  
(JSM., Law, 1992)

### Contact

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**Principal**

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