

EXPERT ANALYSIS:

ALL 3 LOCATIONS:

- David Bergman, *Assistant Secretary, Bankruptcy Policy Branch, Attorney General's Department*
- Adrian Brown, *Partner, Ferrier Hodgson*
- Leigh Adams, *Principal, Leigh Adams Lawyers*
- Danielle Roche, *Director, Vince & Associates*

BRISBANE:

- Scott Butler, *Partner, McCullough Robertson*
- Michael Illot, *Partner, Allens Arthur Robinson*
- David O'Farrell, *Partner, Minter Ellison*
- Domenic Calabretta, *Partner, Hall Chadwick*
- Richard Cowen, *Partner, Tucker & Cowen*
- Matthew Broderick, *Partner, Gadens*
- Alicia Hill, *Partner, DibbsBarker*
- Paul Evans, *Partner, Piper Alderman*
- Greg Rodgers, *Director, Rodgers Barnes & Green*
- Robert Hutson, *Partner, KordaMentha*
- Dr Gillian Dempsey, *Barrister, 30West Chambers*
- Alex King, *Partner, Arnold Bloch Leibler*
- Chris Hatfield, *Senior Manager, PPB*
- Grant Sparks, *Partner, PPB*
- Ian Innes, *Senior Associate, Blake Dawson*
- Graham Roberts, *Partner, Cooper Grace Ward Lawyers*

SYDNEY:

- James Marshall, *Partner, Blake Dawson*
- Wendy Jacobs, *Partner, DibbsBarker*
- Michael Quinlan, *Partner, Allens Arthur Robinson*
- James Beaton, *Partner, Minter Ellison*
- David Kenney, *Partner, Hall Chadwick*
- Stephen Mullette, *Executive Lawyer, Bartier Perry*
- Michael Lhuede, *Partner, Piper Alderman*
- Gerard Breen, *Partner, DibbsBarker*
- Mark Addison, *Partner, DibbsBarker*
- Peter Agardy, *Barrister*
- David Merryweather, *Partner, KordaMentha*
- Jane Bowd, *Senior Associate, Clayton Utz*
- John Mitchell, *Partner, Arnold Bloch Leibler*
- Chris Hatfield, *Senior Manager, PPB*
- Chris Hill, *Partner, PPB*
- Guy Moloney, *Senior Associate, TressCox*
- Sally Nash, *Principal, Sally Nash & Co Lawyers*

MELBOURNE:

- Leon Zwier, *Partner, Arnold Bloch Leibler*
- Nigel Watson, *Partner, TressCox Lawyers*
- Peter Agardy, *Barrister*
- Matthew Whittle, *Senior Associate, Allens Arthur Robinson*
- Nick Anson, *Partner, Minter Ellison*
- David Ross, *Partner, Hall Chadwick*
- Carrie Rome-Sievers, *Barrister, Lonsdale Chambers*
- Michael Lhuede, *Partner, Piper Alderman*
- Simon Nelson, *Partner, Romanis Cant*
- David Merryweather, *Partner, KordaMentha*
- Andrew Kirby, *Barrister, Aickin Chambers*
- Andrew McLeish, *Senior Manager, PPB*
- Craig Crosbie, *Partner, PPB*
- Michael Sloan, *Partner, Blake Dawson*
- Michael Johns, *Partner, Maddocks*

10th ANNUAL

INSOLVENCY PRACTICE

SYMPOSIUM



BRISBANE

• 18th - 19th February, 2010 • Brisbane Marriott

SYDNEY

• 22nd - 23rd February, 2010 • The Grace Hotel

MELBOURNE

• 25th - 26th February, 2010 • The Stamford Plaza

- Analyse the **practical implications of recent case law** such as **Octaviar** and **Timbercorp** and understand how to apply the lessons to your practice
- Assess recent uses of **DOCAs, creditors' trusts**, rights & protections for creditors and key issues to consider when setting up an arrangement
- Understand **proposed changes** to the **Bankruptcy Act**, the **reform agenda** and how these amendments will impact your business
- Understand **director duties** and **practitioner liabilities** under **s79** of the **Corporations Act** and take steps to minimise risks across your organisation
- Discuss recent cases regarding **practitioner remuneration** and circumstances where **equitable lien** may apply for payment of remuneration

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SYMPOSIUM - DAY ONE

8:30 Registration & Coffee

9:00 Opening Remarks from the Chair:

Richard Cowen, *Partner*, **Tucker & Cowen (Brisbane)****Wendy Jacobs**, *Partner*, **DibbsBarker (Sydney)****Peter Agardy**, *Barrister*, **(Melbourne)**9:05 **The re-emergence of schemes of arrangements and the case of Opes Prime**

CASE STUDY

- Review the scheme of arrangement used in the Opes Prime case and consider how such arrangements can be used to resolve litigation claims
- Address the requirements and aspects that need to be considered when schemes are put forward and applied to all stakeholders
- Discuss other recent cases where s411 of the Corporation Act has been used, and its likely use in class actions

Adrian Brown, *Partner*, **Ferrier Hodgson (all 3 locations)***Ferrier Hodgson was appointed liquidator of Opes Prime*9:45 **Implications of the Federal Court's decision in the Lehman Brothers collapse**

- Examine the lessons from the Lehman Brothers corporate collapse: can a DOCA release claims against third parties?
- Assess the implications: will every DOCA that does release third parties be void?
- Clarify when a DOCA with such releases will survive a challenge

Michael Illot, *Partner*, **Allens Arthur Robison (Brisbane)****Michael Quinlan**, *Partner*, **Allens Arthur Robison (Sydney)****Matthew Whittle**, *Senior Associate*, **Allens Arthur Robison (Melbourne)**

10:25 Morning Tea

10:55 **Reliance on the Universal Distributing Principles (equitable lien) for payment of remuneration**

- Understanding the operation of the equitable lien
- Discuss circumstances where you may need to rely on the lien
- Review recent case law, including:
 - Interaction with administrator's lien under s443E (*Coad v Wellness Pursuit*);
 - Priority over secured creditors (*IMF v Meadow Springs Fairway Resort*)
 - Distinction between 'salvage costs' and general administration duties (*Re S&D International Pty Ltd (in liq) (recs and mgrs apptd) v MIG Property Services Pty Ltd*)

David O'Farrell, *Partner*, **Minter Ellison (Brisbane)****James Beaton**, *Partner*, **Minter Ellison (Sydney)****Nick Anson**, *Partner*, **Minter Ellison (Melbourne)**11:35 **Providing restructuring and cash flow advice to a struggling business**

- Understand the balance sheet and forecast cash flow
- Redesign financing arrangements and know how to access alternative sources of internal finance
- Learn from recent successes with turnaround and working capital restructure

Domenic Calabretta, *Partner*, **Hall Chadwick (Brisbane)****David Kenney**, *Partner*, **Hall Chadwick (Sydney)****David Ross**, *Partner*, **Hall Chadwick (Melbourne)**12:15 **An update on case law regarding voidable transactions**

- Discuss recent case law involving unfair preferences, uncommercial transactions, and unfair loans
- Outline what debts are caught by voidable transactions

- Analyse market valuations of property, ss120, 121 and 139ZQ of the Bankruptcy Act, and the implications of the High Court's decision in *Vale v Sutherland*

Matthew Broderick, *Partner*, **Gadens (Brisbane)****Stephen Mullette**, *Executive Lawyer, Commercial Litigation, Insolvency and Finance Recoveries*, **Bartier Perry (Sydney)****Carrie Rome-Sievers**, *Barrister*, **Lonsdale Chambers (Melbourne)**

12:55 Lunch

1:55 **An overview of the Personal Properties Securities Bill**

- Discuss the need for reform and the Bill's impact on the securing of payment obligations
- Outline what tangible and intangible property is caught under the new regime
- Grasp the terms established by the PPS Bill, including the Default Priority Rules, Perfected Security Interests, and Subordination Agreements
- Review retention of title arrangements

Leigh Adams, *Principal*, **Leigh Adams Lawyers (all 3 locations)**2:35 **Garnishee notices and tax-related liabilities**

- Review *Bruton Holdings v Commissioner of Taxation*, including garnishee notices and winding up provisions under s 260-5 of the Taxation Administration Act
- Consider *Deputy Commissioner of Taxation v PM Developments* and its impact on the GST liabilities for liquidators and companies in liquidation
- Examine proposed regulatory changes regarding the GST liability of insolvency practitioners and the impact of the proposed priority to be given to the Commissioner of Taxation over other creditors
- Review lessons to be learnt from the *Deputy Commissioner of Taxation v Broadbeach Properties* case, including the ATO's powers to collect revenue and creditor's statutory demands

Paul Evans, *Partner*, **Piper Alderman (Brisbane)****Michael Lhuede**, *Partner*, **Piper Alderman (Sydney & Melbourne)**

3:15 Afternoon Tea

3:45 **Duties to prevent insolvent trading**

- Defining what debts are covered under s588G of the Corporations Act
- Minimising risks associated with Director Penalty Notices
- Examine defences available to directors, and what is necessary to prove insolvent trading
- Responding to calls for a review of insolvent trading laws to include a 'business judgement' defence to facilitate restructuring
- Review recent case law, including *Williams v Scholz* and *Green v CGU Insurance*, re *Octiviar* and *Bell Group in Liquidation*

Alicia Hill, *Partner*, **DibbsBarker (Brisbane)****Gerard Breen**, *Partner*, **DibbsBarker (Sydney)****Simon Nelson**, *Partner*, **Romanis Cant (Melbourne)**4:25 **Director duties and phoenix activities**

- Discuss the framework of the investigation
- Examine potential liability of advisors under s79 of the Corporations Act
- Analyse the interaction with the insolvent trading provisions of the Act
- Explore the legal obligations of directors
- Working with ASIC to maximise recoveries
- Setting aside transactions as uncommercial or unreasonable director related under the voidable transaction provisions of the Act

Danielle Roche, *Director*, **Vince & Associates (all 3 locations)**

5:05 Close of Day One

SYMPOSIUM - DAY TWO

- 8:30 Registration & Coffee
- 9:00 Opening Remarks from the Chair:
Greg Rodgers, Director, Rodgers, Barnes & Green (Brisbane)
Mark Addison, Partner, DibbsBarker (Sydney)
Peter Agardy, Barrister (Melbourne)
- 9:05 **Staying ahead of Bankruptcy Act and personal insolvency changes**
- Discuss current issues relating to personal insolvency and how the system has responded to the global financial crisis
 - Outline proposed changes to the Bankruptcy Act and the reasons behind policy changes
 - Examine family law and bankruptcy amendments: how are they really working in practice?
- David Bergman, Assistant Secretary, Bankruptcy Policy Branch, Attorney General's Department (all 3 locations) & Greg Rodgers, Director, Rodgers Barnes & Green (Brisbane)**
Peter Agardy, Barrister (Melbourne, Sydney)
- 10:00 **Adopting Chapter 11 of the US Bankruptcy Code: Would it work in Australia?**
- Outline how the US bankruptcy system works
 - Discuss the GM, Chrysler and other cases and lessons from them
 - Analyse the aspects of the US bankruptcy system that would be effective in Australia
- Robert Hutson, Partner, KordaMentha (Brisbane)**
David Merryweather, Partner, KordaMentha (Sydney & Melbourne)
- 10:40 Morning Tea
- 11:10 **Gain clarity on liabilities for misleading or deceptive financial advice**
- Discuss the provisions in the Corporations Act and Trade Practices Act by which financial advisers will be held liable for misleading and deceptive advice
 - Understand long-term liabilities and cases where loss and damages accrue over time
 - Identify common forms of defective advice and discuss how to avoid commonly made errors in litigation
- Dr Gillian Dempsey, Barrister, 30West Chambers (Brisbane)**
Jane Bowd, Senior Associate, Clayton Utz (Sydney)
Andrew Kirby, Barrister, Aickin Chambers (Melbourne)
- 11:50 **The winding up of managed investment schemes: Timbercorp**
- CASE STUDY**
- Examine the use of directions powers in the winding up of managed investment schemes
 - Discuss when courts should wind up investment schemes on just and equitable grounds
 - Investigate whether investors interests are paramount in the winding up of managed investment funds
 - Determining how the proceeds from the sale can be divided between stakeholders
- Alex King, Partner, Arnold Bloch Leibler (Brisbane)**
John Mitchell, Partner, Arnold Bloch Leibler (Sydney)
Leon Zwier, Partner, Arnold Bloch Leibler (Melbourne)
Arnold Bloch Leibler was appointed advisers for the liquidators of Timbercorp
- 12:30 Lunch
- 1:30 **Administrators' responsibility to take control of electronic records**
- Outline responsibilities for insolvency practitioners to take possession of a company's books and records, with reference to recent ASIC guidelines
 - Determining how to take possession of electronic records
 - Copying v imaging: what are the benefits?
 - Examining how IT forensics can assist in investigations through a case study analysis
- Chris Hatfield, Senior Manager, PPB;**
Grant Sparks, Partner, PPB (Brisbane)
Chris Hatfield, Senior Manager, PPB;
Chris Hill, Partner, PPB (Sydney)
Andrew McLeish, Senior Manager, PPB;
Craig Crosbie, Partner, PPB (Melbourne)
- 2:10 **Weighing up the benefits of creditors trusts in a voluntary administration**
- Discuss how creditors trusts work, the pros and cons, and the issues to consider when setting up a creditors trust
 - Examine the risks, and rights and protections for creditors
 - Review recent amendments to the Corporations Act and whether the changes mean creditors trusts are no longer required
 - Scrutinise the obligations of administrators, including the disclosure of material information
 - Learn from recent case law, including Parkview Constructions v Tayeh & Ors
- Ian Innes, Senior Associate, Blake Dawson (Brisbane)**
James Marshall, Partner, Blake Dawson (Sydney)
Michael Sloan, Partner, Blake Dawson (Melbourne)
- 2:50 Afternoon Tea
- 3:20 **Minimising risks regarding independence and choice of administrator or receiver**
- Examine the Octaviar case and the lessons for choice of replacement liquidator
 - Consider the perceptions of being a creditors "preferred liquidator", with reference to Glenwood Village v Glen Alpine Constructions
 - Review the appointment of investigative accountants as administrator/liquidator, and the appointment of same solicitor, with reference to Flynn v Theobald
 - Scrutinise the giving of prior advice to the company with reference to Workers Compensation Nominal Insurer v Denny Earthmoving & Bulk Haulage
- Graham Roberts, Partner, Cooper Grace Ward Lawyers (Brisbane)**
Guy Moloney, Senior Associate, TressCox (Sydney)
Nigel Watson, Partner, TressCox Lawyers (Melbourne)
- 4:00 **Case update on creditors' meetings**
- Review liquidator's use of the casting vote, with reference to Brisconnections Management Co Ltd, Re Thames Blund Holdings Pty Ltd and Grocon Constructors Pty Ltd v Kimberley Securities Ltd
 - Examine the use of special proxies with reference to Maylord Equity Management Pty Ltd v ReelTime Media Ltd and Donglyn Trading Pty Ltd v Mannerling Ltd
 - Assess the electronic publication of notices of meetings and reports to creditors with reference to the Timbercorp administration
 - Discuss creditors' meetings in bankruptcy and conflicts issues
- Scott Butler, Partner, McCullough Robertson (Brisbane)**
Sally Nash, Principal, Sally Nash & Co Lawyers (Sydney)
Michael Johns, Partner, Maddocks (Melbourne)
- 4:40 Close of Day Two

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