

Representative Legal Matters

Mark D. Chapple

Arrium Group

Mark has continuously acted for former directors and other officers of the Arrium Group since 2016 in various matters arising from the financial collapse of the Arrium Group in 2016, which resulted in one of Australia's largest and most complex insolvencies. Those matters include:

- extensive public examinations by liquidators and a major creditor;
- defending NSW Supreme Court proceedings commenced by a major Australian bank, a global bank and three US hedge funds against the former CFO and four other defendants, and prosecuting a cross-claim against a major global law firm, in respect of over AUD 350 million in Arrium borrowings, and over AUD 1.7 billion in Arrium debt rollovers;
- defending NSW Supreme Court proceedings commenced by another major Australian bank and two global banks against the former CFO and two other defendants, and prosecuting a cross-claim against a major global law firm, in respect of over AUD 285 million in Arrium borrowings between December 2015 and February 2016;
- defending NSW Supreme Court proceedings commenced by three Arrium entities in liquidation and their respective liquidators against eight clients and two other parties, and prosecuting a cross-claim against a major global law firm, in respect of alleged insolvent trading involving over AUD 480 million in Arrium borrowings between December 2015 and February 2016, which is understood to be the largest insolvent trading proceedings to go to trial in Australia; and
- defending a Victorian Supreme Court securities class action commenced on behalf of Arrium shareholders against three former directors and the estate of the late former Chair, and also KPMG, in respect of the carrying values of assets in financial statements and a AUD 700 million capital raising.

The three NSW Supreme Court proceedings (which were heard together in a 10 week trial commencing in March 2021) involved many novel issues, including whether purported assignments of 'ancillary rights' under globally applied LMA standard documentation are void against Australian public policy, whether a borrower's executives owe a duty of care to lenders, how solvency is to be determined where an entity is paying its debts as and when they fall due but has billions of dollars of debt due in the relatively distant future, causation and whether damages could be calculated by reference to a hypothetical earlier administration and, if so, how.

ALS Limited

Mark is acting for ALS Limited (an ASX listed global leader in laboratory testing), in proceedings commenced by ALS and a subsidiary in the NSW Supreme Court against two KPMG entities alleging negligent tax advice in connection with a USD 533 million global acquisition.



M&A closing disputes

In 2020, Mark acted for a leading global bank in a successful expert determination, and for a leading ASX-listed company in a successfully negotiated resolution, of separate complex disputes over closing financial statements for multi-billion dollar M&A transactions, again demonstrating Mark's extensive knowledge of complex financial and accounting issues (including Australian Accounting Standards).

ASIC investigations

In 2020/2021, Mark acted for both ASX-listed companies and directors and officers in respect of separate investigations by the Australian Securities and Investments Commission concerning continuous disclosure issues, compliance with anti-money laundering legislation and employee fraud.

AECOM Australia and CLEM7 Tunnel

Between late 2011 and May 2016 Mark was the full time lead partner acting for AECOM Australia (an Australian subsidiary of AECOM) in its defence of multiple Federal Court claims arising from the financial collapse of the tolled CLEM7 Tunnel in Brisbane, comprising:

- a USD 2 billion+ claim by members of the RiverCity Motorway Group as former owners of the CLEM7 Tunnel;
- an USD 80 million+ claim by a secured lender;
- USD 250 million+ securities class action brought on behalf of IPO investors, funded by IMF Bentham; and
- USD 360 million+ in claims by two groups of US hedge funds.

In turn, AECOM Australia brought cross-claims in the securities class action against, amongst others, CPB Contractors (formerly Leighton Contractors), RBS Group Australia (formerly ABN AMRO Australia), Bilfinger RE Asset Management (formerly Bilfinger Project Investments Australia), Lend Lease Building Contractors (formerly Baulderstone Hornibrook), certain directors (including in respect of alleged breaches of directors' duties) and a leading Australian law firm.

The US hedge fund proceedings were discontinued in 2012 after successful submissions as to their invalidity. The RiverCity Motorway Group and secured lender claims were successfully resolved by settlement in mid-2015. The securities class action were finally resolved in August 2016 after extended, complex mediations.

Mark led a core team of two Senior Counsel, two junior Counsel and eight Baker & McKenzie lawyers, supplemented as required on labour intensive tasks (such as discovery), both from within Baker & McKenzie and with up to 45 lawyers based in India. Baker & McKenzie had up to 15 opposing law firms across the various proceedings and more than 30 opposing Counsel (including more than 15 Senior Counsel).

Mark was named Partner of the Year at the 2016 Lawyers Weekly Australian Awards in significant part for his work for AECOM.



Andersen and HIH/FAI Insurance Groups

Between 2000-2005 Mark acted for Andersen (formerly Arthur Andersen) (as auditors) and certain individual partners (as auditor and audit team members) in various matters arising from the financial collapse of the HIH/FAI Insurance groups, including:

- investigations into the audit and collapse of the HIH/ FAI Insurance groups (including extensive work with respect to director conduct, Australian Accounting Standards and audit and insurance practice);
- preparing evidence and witnesses for, and representing Andersen before, the HIH Royal Commission over more than 100 hearing days;
- preparing Andersen partners and staff for, and appearing in, extensive ASIC and APRA examinations; and
- in defence of a major audit negligence claim and a securities class action.

AMP Group

Mark regularly acted for AMP Group entities in complex commercial disputes from 2003, including:

- in proceedings against two major investment banks relating to the GIO takeover;
- in relation to a major unit mispricing claim;
- in respect of a significant fraud claim;
- in defence of a claim concerning the establishment of a Korean investment fund;
- with respect to proceedings against traffic advisers arising from the financial collapse of the Lane Cove Tunnel; and
- in US proceedings defending a claim by former advisers.

Prime Super

Between 2016-2018 Mark acted for Prime Super (a leading Australian superannuation fund) in SA Supreme Court proceedings for the removal of a trustee of a single purpose property trust and in the successful defence of claims for significant trustee remuneration.

Global technology company

In 2010/2011 Mark acted for a global technology company in the resolution of a major technology dispute with Virgin Airlines.

Major insolvencies

Mark has also provided advice to banks and other financial institutions, liquidators, receivers, directors, creditors and debtors or defendants in relation to many of Australia's major insolvencies over the last 40 years, including:

Baker McKenzie.

- National Safety Council (charity–secured creditor and receiver);
- Rothwells (merchant bank-major creditor), including preparing, and appearing for, witnesses in ASIC examinations;
- Equiticorp (finance group-major creditor and liquidator), including in a complex financial restructuring (contractual moratorium) and major Australian and New Zealand litigation;
- Westmex (listed conglomerate, including oil and gas and manufacturing–liquidator), including in complex financial restructuring (contractual moratorium), extensive investigations, asset sales, publicly examining directors and claims against auditors;
- Girvan (construction-company-receiver);
- Channel 10 (television-receiver);
- Qintex (Christopher Skase listed property development–a bank syndicate);
- John Fairfax (newspaper publisher– leading Australian Bank as major creditor, and receiver), including defending Bank against Federal Court litigation commenced by "junk-bond" holders;
- Budget Car Rental (listed car rental–the company), including in complex Federal Court litigation against a major international accounting firm and a major Australian law firm;
- Dallhold Investments (Alan Bond conglomerate including mining-main bank syndicate);
- Abe Goldberg/Entrad (textiles, finance-liquidator), including in complex litigation concerning directors duties, breaches of fiduciary duty and constructive trusts;
- The Regent Hotel, Sydney, the Sheraton Airport and Office Tower, Sydney, Milton Park Resort and the Marriott Gold Coast (tourism-secured lenders and receivers);
- New South Wales Grains Board (NSW statutory agricultural corporation–statutory corporation and scheme manager);
- HIH/FAI Insurance Group, including HIH Royal Commission (general insurance-Arthur Andersen as auditors);
- Lehman Brothers Australia (executive and non-executive directors);
- RiverCity Motorway Group (listed toll road owner- traffic adviser and creditor);
- Arrium Group (global mining and materials leader - former Chairs, Managing Director, non-executive directors, CFO, Head of Strategy and Head of Legal)