

Representative Legal Matters

Mark D. Chapple

Arrium Group officers

Mark has led a large team which has 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 multiple 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.

The insolvent trading proceedings were settled on favourable terms near the end of the long trial, while both lender proceedings went to judgment, with our clients being completely successful in resisting the lenders' claims (with costs). Lender appeals to both the New South Wales Court of Appeal and an application for special leave to appeal to the High Court were also successfully resisted (with costs).

The securities class action is scheduled to go to trial in August – October 2026.

M&A closing disputes and M&A warranty claims

Mark regularly utilizes his extensive knowledge of complex financial and accounting issues (including Australian Accounting Standards) in the resolution of a broad range of M&A closing and warranty disputes, including acting for:

- a leading global bank in the successful expert determination of disputes relating to draft closing financial statements for a AUD4 billion+ acquisition, addressing, amongst other key issues, various contractual interpretation issues (which were the subject of a separate legal expert determination), the effect and application of AASB 118-Revenue, a requirement that the standard be applied on a basis which was consistent with the accounting policies, principles, procedures, methodologies and estimation techniques used by the target entities, whether certain revenue could be "reliably estimated" so as to be "earned", the basis and calculation of various contractual adjustments and the required corrected form of closing financial statements;
- a leading ASX-listed company in the analysis, prosecution and successfully negotiated resolutions of separate complex disputes over closing financial statements for a USD1.7 billion sale, including with respect to working capital (including the adequacy of provisions for doubtful debts, the carrying value of trade receivables, closing stock-take outcomes, the value of energy certificate credits, supplier finance liabilities and "wrong pocket" adjustments), completion net debt (including underspent CAPEX and employee entitlements) and post completion "cash sweeps";
- a leading ASX-listed telco in various warranty and "earn-out" disputes across multiple acquisitions;
- a leading global energy company in relation to a AUD100 million+ dispute over tax provisions in closing adjustment statements for a major Australian resources acquisition;
- a purchaser in a successful W&I insurance claim for breach of tax warranties where underpaid tax was booked as revenue, resulting in an overstatement of EBITDA;
- a leading private US group in relation to separate claims arising from a USD400 million acquisition, including for misleading and deceptive conduct with respect to project income and EBITDA forecasts and insured claims over warranted audited accounts, "locked box" accounts and management accounts.

ALS Limited and subsidiaries

Mark led a team acting for ALS Limited (an ASX listed global leader in laboratory testing) and a subsidiary in successful claims in the NSW Supreme Court against two KPMG entities over tax advice provided in connection with a USD 533 million global share acquisition, which required consideration of cross-border acquisitions in Canada and the UK, complex Canadian withholding tax provisions and Canadian/UK tax treaties and tax treatment (including provisions) in target financial statements.

Mark is currently leading a team acting for another ALS subsidiary in two on-going Federal Court proceedings concerning coal testing and certifications.

ASIC investigations

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:

- USD 2 billion+ claim by members of the RiverCity Motorway Group as former owners of the CLEM7 Tunnel;
- 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.

Baker & McKenzie had up to 15 opposing law firms across the various proceedings and more that 30 opposing Counsel (including more than 15 Senior Counsel).

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 and the securities class action were resolved in August 2016 after extended, complex mediations.

Mark was named Partner of the Year at the 2016 Lawyers Weekly Australian Awards in significant part for this 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;

Baker McKenzie.

- 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, 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

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

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:

- 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)