

# 9th Annual Corporate Insolvency Conference

*The premier annual conference for corporate insolvency  
and recovery practitioners*

**3, 4 & 5 MARCH 2010**

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3 February 2010

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## Leading international and national speakers:

- Chaired by The Honourable Justice Paul Heath
- Corinne Ball, Partner, Jones Day (New York)
- Harvey R. Miller, Partner, Weil, Gotshal & Manges LLP (New York)
- Jane Sheridan, Partner, Arnold Bloch Leibler (Australia)
- Adam Feeley, Director and Chief Executive, Serious Fraud Office
- Jenny Clift, Senior Legal Officer, UNCITRAL Secretariat (Vienna)

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# 9th Annual Corporate Insolvency Conference

## Message from David Perry

### Chairman of INSOL New Zealand

Dear Colleagues,

I am delighted to again be introducing our leading corporate insolvency conference for industry participants, *Corporate Insolvency 2010*.

After a turbulent and busy twelve months the global economy is showing continued fragility. In our 2010 conference programme we have endeavoured to include topics and speakers that reflect on the "GFC" and explore some of the lessons learned from this unique period in global history. We have included a variety of topical discussions, including the banks analysing their current approach to distressed loans, an update on prosecutions and a detailed examination of insolvencies in the rural sector.

We are pleased to welcome a strong line up of international and national speakers this year. From the United States, Corinne Ball, leading restructuring and bankruptcy expert and partner at Jones Day in New York will discuss the Chrysler bankruptcy and how debtor in possession financing works in the context of the Chapter 11 process. We are also very fortunate to hear from Harvey R. Miller, who leads the Lehman Brothers bankruptcy, via live video conference link. Jane Sheridan, Partner at Arnold Bloch Leibler in Australia and leading restructuring lawyer will join us to provide an update on what has been happening across the Tasman in the past 12 months. It is also a great pleasure to include Jenny Clift, cross border insolvency expert of the UNCITRAL secretariat in our speaking line up in 2010.

The conference dinner at the 2009 event was sold out and I am expecting this popular event to be sold out again for the 2010 conference. The gala dinner is one of the enjoyable aspects of the conference and provides an opportunity for delegates to meet up with colleagues and to meet the speakers from the conference. Please come and join us for some terrific New Zealand wine and food at the conference dinner on the evening of 4 March. This year we will be entertained by the extraordinary adventurer and renowned after dinner speaker, Kevin Biggar. Kevin's stories are guaranteed to inspire.

Please read through the conference programme enclosed and register early to secure your place at what promises to be another great conference.

I look forward to seeing you in March 2010.

David Perry

Chairman, INSOL New Zealand

International speakers sponsored by:



**Corinne Ball**, Partner, Jones Day has 30 years of experience in business finance and restructuring, with a focus on complex corporate reorganizations and distress acquisitions, both court-supervised and extra judicial, including matters involving multijurisdictional and cross-border enterprises. She is co-head of the New York Office's Business Restructuring & Reorganization Practice and leader of the Firm's global restructuring practice. Corinne led a team of attorneys representing Chrysler LLC in connection with its successful chapter 11 reorganization in 2009.



**Harvey R. Miller** is currently a partner in the New York City based international law firm of Weil, Gotshal & Manges, LLP where he had been a member of the firm's management committee for over 25 years and created and developed the firm's

Business Finance & Restructuring department specializing in reorganizing distressed business entities.

From September 2002 to March 2007, he was a managing director and vice chairman of Greenhill & Co.; adjunct associate professor of Law 1974-76, and adjunct professor of Law 1976 to present, New York University Law School; visiting lecturer, Yale Law School, 1983-84; lecturer in Law 2000 to present, Columbia University School of Law; member, board of visitors Columbia University School of Law through 2002; member, Dean's Council Columbia University School of Law 2003-present; member, National Bankruptcy Conference; fellow, American College of Bankruptcy; fellow of the American Bar Foundation; trustee, Committee on Economic Development.

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## DAY 1 3 MARCH 2010

### Pre-conference Interactive Forums

#### 11.00 Interactive Forums Registration

#### 11.20 Opening Remarks from the Chair

David Perry, Partner, **Buddle Findlay**

### Interactive Forum One

#### 11.30 Navigating Employment and Union Issues In the Course of an Insolvency

Whether an insolvent company is large or small employment issues often create a minefield for receivers and on a practical level can take an enormous amount of time to work through. This first interactive session will take you step by step through the legal and practical employment issues.

- Dealing with redundancy payments during an insolvency – latest cases
- Best practices for working with the unions/employee representatives
- How best to approach collective agreements
- Pension fund issues
- What happens to employees and employment related liabilities when the insolvent company is sold?
- Personal grievance claims in the context of an insolvent company

**Don MacKinnon**, Partner, **Swarbrick Beck MacKinnon**  
**John Lerner**, Associate Director, **PricewaterhouseCoopers**

#### 1.00 Networking Lunch for speakers and delegates

### Interactive Forum Two

#### 2.00 Achieving a Successful Deed of Company Arrangement in a Voluntary Administration

Voluntary administrations are still relatively new to New Zealand and since being introduced very few successful deed of company arrangements have been concluded. However, there are circumstances when a deed could and should be utilised to successfully rehabilitate a business. This forum provides a practical analysis of the voluntary administration process

- Advantages of a deed of company arrangement
- Working through the terms of the deed
- Challenges that arise in a creditor's meeting in the voluntary administration context
- Valuing a creditor's claim
- Dealing with competing interests
- Examine a case study in New Zealand where a successful deed of company arrangement was concluded

**Michael Arthur**, Partner, **Chapman Tripp**  
**Gareth Hoole**, Director, **Staples Rodway**

#### 3.30 Close of Interactive Forums

## DAY 2 4 MARCH 2010

#### 9.00 Opening Remarks from the Chair

The Honourable Justice Paul Heath

### International Keynote Address

#### 9.10 The Chrysler Bankruptcy, the Role of the Government and Debtor-in-Possession Financing

Corinne Ball, one of the leading bankruptcy and restructuring lawyers in the United States, was lead counsel to Chrysler in the 2009 bankruptcy proceedings. The Chrysler bankruptcy was unusual in that the company was sold to a new entity "New Chrysler" only 30 or so days after filing for bankruptcy. Being at the heart of the global credit crisis this speaker is in a unique position to discuss:

- The Chrysler bankruptcy explained
- Why was it unique compared to other similar corporate bankruptcies?
- The use of debtor in possession financing in this bankruptcy
- Role of the United States and Canadian governments

**Corinne Ball**, Partner, **Jones Day**, New York

#### 9.50 Current Approach of the Banks to Distressed Loans and Funding Trends

BANKING  
INDUSTRY  
ROUNDTABLE

It has now been over a year since the global credit crunch occurred and it seems that New Zealand may be slowly recovering from the lengthy recession. The panel will review:

- The banking industry's current approach to loans and funding
- Bank's attitude to distressed loans
- Receivership versus workouts and/or debt restructuring
- Is there still a lack of funding available for restructuring?
- The long term forecast for New Zealand banks, consumers and businesses

**Alan Blackie**, Head of Institutional Lending Services,  
**ANZ National**

**Gerald Sare**, Head of Strategic Business Services,  
**Bank of New Zealand**

**Peter Robinson**, National Manager, Business Solutions, **ASB Bank**

**Maurice Noone**, Partner, Advisory and Assurance,  
**PricewaterhouseCoopers** (Moderator)

#### 10.40 Refreshment Break

#### 11.00 Managing an Insolvency in the Rural Sector

The rural sector has faced considerable issues regarding seasonal effects, dropping returns and increased debt levels. This, combined with the increased scale that has occurred in the last five to six years, has led to unique challenges in solving these problems. This discussion explores the unique issues faced with workouts and insolvency in the rural sector, with a focus on the dairy industry:

- Financial and management issues faced in large scale operations
- Understanding operational issues and their impact on financial, actual and forecast, performance
- Specific receivership issues such as resource management, animal welfare and dealing with different regulatory bodies

**Brendon Gibson**, Partner, **Korda Mentha**

## Investigating Fraud and Prosecuting the Offenders

### 11.40 PART ONE: Serious Fraud Office Update

The recession and increase in the number of receiverships and liquidations has been coupled with a dramatic rise in the number of directors committing fraud and being charged with wrongdoing. It has become increasingly common for liquidators and receivers to refer cases of fraud to the Serious Fraud Office for investigation.

- The latest from the Serious Fraud Office
- How insolvency practitioners might assist them in the pursuit of fraudsters?

**Adam Feeley**, Director and Chief Executive, **Serious Fraud Office**

### 12.20 PART TWO: National Enforcement Unit

It is the job of the National Enforcement Unit to investigate, and where appropriate prosecute, bankrupts and company directors on behalf of the Official Assignee and the Registrar of Companies.

- Update from the National Enforcement Unit
- Strategies for the prosecution of rogue directors

**Phil Day**, Investigation Manager, National Enforcement Unit, **Ministry of Economic Development**

### 1.00 Lunch

## Perspectives from the National and International Regulators

### 2.00 Update from the Ministry of Economic Development

There have been a lot of calls recently for greater regulation of the banking and finance industries to protect investors and prevent another financial crisis. In New Zealand the government have focused particular energy on the finance companies. The Ministry of Economic Development explain this and outline other proposed legislation that will affect insolvency practitioners:

- Proposals for licensing insolvency practitioners
- Trans-Tasman alignment with regard to Australasian cross-border insolvencies
- Finance industry related regulations that may be on the agenda

**Bronwyn Turley**, Manager Corporate Law and Governance, Competition, Trade and Investment Branch, **Ministry of Economic Development**

### 2.40 Developments in Cross-Border Insolvency

INTERNATIONAL  
SPEAKER

New Zealand adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency through the Insolvency (Cross Border) Act, which came into effect on 24 July 2008. These leading experts on the Model Law and on cross-border issues explore the following:

- The Model Law, its terms and history
- Use of the UNCITRAL Practice Guide on Cross-Border

*Insolvency Cooperation, adopted 1 July 2009*

- Why New Zealand adopted the Model Law
- Practical aspects of cross-border co-operation between Courts

**Jenny Clift**, Senior Legal Officer, **UNCITRAL Secretariat, Vienna**

**The Honourable Justice Paul Heath**

### 3.30 Refreshment Break

## Topical Legal Issues

### 3.50 Insolvent Trading Trusts

From time to time liquidators and receivers are appointed to corporate trustees. In many instances insolvency practitioners will have to grapple with the tension between trust law and insolvency law. There have been a number of recent cases and developments in this area and these are explored in detail in this presentation.

- What happens when a trading trust and/or the corporate trustee becomes insolvent?
- What are creditors rights in relation to trust assets?
- What duties do the directors of a trustee company have to creditors and to beneficiaries?
- Do the preferential creditor and voidable transaction regimes apply to trust creditors?
- Can distributions to beneficiaries of an insolvent trust be recovered?
- Review of recent case law:
  - OPC Managed Rehab Limited (in liquidation) – currently on appeal
  - Vance & Levin v Lamb & Simpson

**Mike Whale**, Consultant, **Lowndes and Associates**

### 4.30 Annual PPSA Review: Latest Cases and the Impact on Insolvencies

Insolvency practitioners and their legal advisers are regularly confronted with disputes over the priority of securities. This annual discussion examines some of the latest cases and thorny issues arising under the Personal Property Securities Act.

- Focus on current cases and issues

**Mike Gedye**, Associate Professor, Commercial Law, **University of Auckland**

### 5.20 Closing Remarks from Chair and Conference concludes

### 5.30 Networking Drinks

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### 7.00 Gala Dinner

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After Dinner Speaker, **Kevin Biggar**,  
Long Distance Rower and Adventurer

# DAY 3 5 MARCH 2010

## 9.00 Opening Remarks from the Chair

The Honourable Justice Paul Heath

### Spotlight on Restructuring

## 9.10 Avoiding Risks When Restructuring the Debt of a Distressed Entity

CASE STUDY

The Bell Group judgment in Australia found a syndicate of banks liable for hundreds of millions of dollars in relation to a debt refinancing arrangement made twenty years ago. This judgment highlights the risk that banks take when refinancing debt and taking security over assets when a company is insolvent. This session explores this case and looks at the risks involved when restructuring the debt of a distressed company.

- Risks in restructuring proposals
- Strategies to minimise risk
- Bank's bargaining position
- Bell Group case and lessons

Murray Tingey, Partner, Bell Gully

David McPherson, Partner, Bell Gully

### International Keynote Address

## 10.00 Managing the Collapse of Lehman Brothers Holdings Inc in the Midst of a Global Credit Crisis

Described by the New York Times as "maybe the best-known bankruptcy lawyer in the [United States]", Harvey R. Miller led one of the largest corporate liquidations in United States history with the Lehman Brothers collapse. In this session, live from New York, Mr Miller discusses:

- The Lehman Brothers bankruptcy under the Chapter 11 process
- Some of the key legal issues that arose
- What could have been done differently
- Predictions for future regulation of the financial services sector in the United States

Harvey R. Miller, Business Finance & Restructuring Partner, Weil, Gotshal & Manges LLP, New York (VIA VIDEO-LINK)

## 10.50 Refreshment Break

## 11.10 The Latest from Across the Tasman

AUSTRALIAN SPEAKER

There have been a number of large insolvencies and important court decisions in Australia over the past twelve months. In addition, there have been calls from insolvency practitioners and the bench for the introduction of a new defence to shield directors from being found liable for insolvent trading in some circumstances. This presentation from a leading Australia insolvency lawyer explores:

- Recent issues and court decisions in Australia eg Octaviar, Opes Prime
- The new defence proposed that would permit a director to restructure an insolvent company provided appropriate advice based on accurate accounts has been obtained to form an honest business judgment

Jane Sheridan, Partner, Arnold Bloch Leibler, Australia

### Developing a Comprehensive Strategy

## 12.00 Panel Discussion: Tactics for Running a Concurrent Voluntary Administration and Receivership

In some cases the administration procedure has been used tactically in conjunction with a receivership to the advantage of the creditors involved. The panel discuss when a voluntary administration can be used in conjunction with a receivership.

- In what circumstances might you use the voluntary administration procedure and receivership concurrently
- What are the advantages and disadvantages?
- Case studies
- Legal and practical issues

Jane Sheridan, Partner, Arnold Bloch Leibler, Australia  
Kerryn Downey, Partner, McGrathNicol + Partners  
David Perry, Partner, Buddle Findlay

## 12.50 Lunch

## 1.40 Essential Roundup of the Latest Court Decisions with Practical and Strategic Implications

This session explores the latest domestic and international case law and how those cases will impact on banks and insolvency practitioners.

John Powell, Partner, Russell McVeagh  
Matt Kersey, Partner, Russell McVeagh

## 2.30 Overcoming the Challenges of Litigation Funding

Section 260A of the Companies Act now allows liquidators to assign the rights to pursue insolvent and undervalue transactions. With litigation now being able to be funded by a litigation funding company it means that the liquidator no longer has to bear the full risk of court actions. This interactive session focuses on the practical issues and funding options available when litigating in the context of a corporate insolvency.

- Obtaining court approval of the funding
- Who covers the costs? Risks for the liquidator and funder
- What factors will a litigation funder consider when deciding whether to pursue a case?
- How successful has it been in Australia?

Greg Tilse, Managing Director, Quantum Litigation Funding

### The State of the Property Market

## 3.10 Maximising Recovery from Real Estate and Property Related Insolvencies

With a significant number of property development failures continuing to occur, this session focuses on the current state of the property market and the practicalities of having to sell property in a distressed market.

- Current state of the market
- Valuing property in the current economic environment
- Who are the buyers?
- Property market projections

Alan McMahon, Director Research and Consulting, Colliers International

## 4.00 Chairman's Closing Remarks Conference concludes

# REGISTRATION FORM

## 9th Annual Corporate Insolvency Conference

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- Conference + Dinner \$1425 + GST = \$1603.13
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- Conference + Dinner \$1425 + GST = \$1603.13
- Conference fee only \$1295 + GST = \$1456.88

#### Standard Prices

- Conference + Two Interactive Forums + Dinner \$2120 + GST = \$2385.00
- Conference + Two Interactive Forums \$1990 + GST = \$2238.75
- Conference + Dinner \$1825 + GST = \$2053.13
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(All fees include comprehensive conference documentation)

- Conference Dinner Only \$165 + GST = \$185.63
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#### CANCELLATION

Should you be unable to attend, a substitute delegate is welcome at no extra cost. Alternatively, a full refund less \$50 service charge will be made for cancellations received in writing (letter or fax) ten working days or more prior to the event. Regrettably, no refund can be made for cancellations less than ten working days prior to the event.

Please note: LexisNexis Professional Development reserves the right to make any amendments that we may deem to be in the best interests of the conference.

3, 4 & 5 March 2010

Day 1: 11.00am – 3.30pm

Day 2: 9.00am – 5.20pm

Day 3: 9.00am – 4.00pm

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