



MASTERCLASS SERIES

Contractual Risk MASTERCLASS 2010

The ALB Masterclass Series is proud to present the latest **Contractual Risk Masterclass**, the premier learning event focusing on both front-end and back-end contract risk management and the key legal issues involved.

Earn up
to 6 CPD
points!

PROGRAM HIGHLIGHTS

- Update on avoiding misleading and deceptive conduct during pre-contractual negotiations
- Minimise risk in the tender process by managing the process contract effectively
- Analyse legal developments and common problems in expert determination and arbitration
- Minimise project risk by selecting the right contract model
- Get the balance right between insurance and indemnity clauses
- Refine your drafting and negotiation skills
- In-depth analysis of liquidated damages from both sides of the bargaining table
- Negotiate and draft effective proportionate liability clauses and allocation of damages
- Update on consequential loss exclusions and life after *Peerless Holdings*

All sessions run 8:30am-4:30pm

Sydney: Tuesday 24 August 2010
Sydney Harbour Marriott Hotel
at Circular Quay, 30 Pitt St

Melbourne: Thursday 26 August 2010
Rendezvous Hotel Melbourne, 328 Flinders St

Brisbane: Thursday 9 September 2010
Marriott Hotel, 515 Queen St

YOUR MELBOURNE SPEAKER FACULTY



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partner
Corrs Chambers Westgarth



Jane Hider
partner
DLA Phillips Fox



Stephen Kerr
partner
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Cameron Roberts
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Emma Warren
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Contractual Risk

MASTERCLASS 2010

KEY BENEFITS

- Earn up to 6 CLE/CPD points
- Hear the latest case law updates and legislative reforms
- Develop new strategies and innovative practices
- Receive comprehensive course notes
- Increase your industry contacts through networking

Melbourne Agenda: Thursday 26 August 2010

8:30am **Registration opens**

9:00am **Welcome & opening remarks from the Chair**

- Opening remarks reflecting on the topic of contractual risk
- Inviting contributions from delegates about what they expect to get out of the conference

Ben Davidson, partner, **Corrs Chambers Westgarth**

9:10am **Avoiding misleading and deceptive conduct during pre-contractual negotiations - an overview and update on the current legal position and relevant case examples**

- Case studies on what constitutes "misleading and deceptive conduct"
- Role of tort of negligence in pre-contractual negotiations
- Salient reminders for lawyers from the UK: *BSkyB Limited v HP Enterprise Services UK Limited* [2010] EWHC 86

Jane Treleaven, barrister, **Isaacs Chambers**

9:55am **Selecting the right contract model for your project – minimising contractual risk by using the right model and having a clear understanding of what is involved**

- Comparing different contract models
 - > Fixed time/price model
 - > Relationship and performance based models
 - > Managing contractor model
- Selecting the right contract model – essential criteria to consider from project scope to risk distribution
- Strategies to facilitate innovation in contract performance

Nicholas Tsirogiannis, senior associate, **Clayton Utz**

10:40am **Refreshment & networking break**

11:00am **Minimising risk in the tender process**

- Understanding the process from a commercial and legal stand point
- Considering probity and procedure
- Managing the process contract effectively
- Analysing case study examples

Stephen Kerr, partner, **Freehills**

11:45am **Utilising Alternative Dispute Resolution methods in contracts – analysing the legal developments in expert determination and arbitration**

- Analysis of expert determination
 - > Common problems in drafting of expert determination clauses
 - > Role of expert determination in the dispute resolution process – where to use this method most effectively
 - > Recent court decisions on the validity of expert determination and upholding expert determinations
- Analysis of arbitration
 - > Arbitration reform – a uniform approach to arbitration for the whole of Australia
 - > What is the standard of reasoning expected from arbitration decision-makers?
 - > Comparisons of differences in Victoria and NSW - *Gordian Runoff Limited v Westport Insurance Corporation* [2010] NSWCA 57, *Oil Basins Ltd v BHP Limited* [2007] VSCA 255 and

Thoroughvision Pty Ltd v Sky Channel Pty Ltd & Anor [2010] VSC 139

Nick Rudge, partner, **Allens Arthur Robinson**

12:30pm **Networking lunch for speakers & delegates**

1:15pm **Managing risk with indemnity clauses and insurance – making sure that your drafting is effective and updating on current law**

- Common problems in drafting indemnity clauses
- Insurance or indemnity clauses – what is right for your contract?
- Legal developments - *Westina Corporation Pty Ltd v BGC Contracting Pty Ltd* [2009] WASCA 213; *Samways v. WorkCover Queensland & Ors* [2010] QSC 127

Cameron Roberts, partner, **Herbert Geer**

2:00pm **The application of proportionate liability – a review of the Victorian proportionate liability regime**

- Allocation of damages under the proportionate liability regime - *Reinhold v NSW Lotteries Corporation (No. 2)* [2008] NSWSC 187 and subsequent cases
- Negotiating limitation of liability clauses in light of the proportionate liability regime
- Case studies of current legal developments in proportionate liability

Cameron Ross, special counsel, **Minter Ellison**

2:45pm **Refreshment break**

3:00pm **Analysis of liquidated damages from both sides of the bargaining table**

- Brief refresher on relevant principles, including a recent High Court case, *viz Ringrow* [2005] HCA including a brief retrospective on the seminal case, *Dunlop Pneumatic Tyre Co* [1915] AC 79
- Application of general principles in the context of building and construction law: consideration of cases such as *Multiplex Constructions v Abgarus* (1992) NSWSC
- Consideration of impact of above cases on drafting liquidated damages clauses
 - > *J-Corp Pty Ltd v Mladenis* [2009] WASCA 157
 - > Ensuring that a liquidated damages clause does not constitute a cap on damages

Emma Warren, partner, **Allens Arthur Robinson**

3:45pm **Update on consequential loss exclusion clauses – analysis of your clauses, what you need to know and life after *Peerless Holdings***

- Analysis of your exclusion clauses to ensure that their operation is not affected by current legal developments
- What you really need to know about exclusion clauses
- The situation in NSW after *Peerless Holdings: Allianz Australia Insurance Ltd v Waterbrook at Yowie Bay Pty Ltd* [2009] NSWCA 224

Jane Hider, partner, **DLA Phillips Fox**

4:30pm **Closing remarks from the Chair & conclusion of Masterclass**

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