

ALB

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 SYDNEY SPEAKER FACULTY



Nick Abrahams
partner & head of Sydney office
Norton Rose Australia



Scott Alden
partner
DLA Phillips Fox



Stephen Dobbs
partner
Freehills



Ray Giblett
partner
Gadens Lawyers



Sydney Jacobs
barrister
L13 Wentworth Chambers



Scott Laycock
partner
Gadens Lawyers



Rashda Rana
general counsel Asia Pacific
Bovis Lend Lease



Keith Redenbach
partner
Norton Rose Australia



Michael Wright
partner
Henry Davis York

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Contractual Risk

MASTERCLASS 2010

Sydney Agenda: Tuesday 24 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

Stephen Dobbs, partner, **Freehills**

9:10am **Avoiding misleading and deceptive conduct in pre-contractual negotiations - the Customer view and the Vendor view**

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

Nick Abrahams, partner & head of Sydney office, **Norton Rose Australia**

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 (traditional)
 - > Guaranteed maximum price
 - > Relationship and performance based models (ECI and Alliancing)
 - > Managing contractor model
 - > Cost plus contract model
- Selecting the right contract model – essential criteria to consider from project scope to risk distribution
- Strategies to facilitate innovation in contract performance

Scott Alden, partner, **DLA Phillips Fox**

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

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

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

Keith Redenbach, partner, **Norton Rose Australia**

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 expert determination clauses
 - > Role of expert determination in the dispute resolution process – where to use this method most effectively
 - > Trend in NSW court decision-making – supporting expert determinations and upholding expert determination agreements
- Analysis of arbitration
 - > SCAG report – 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 Westport Insurance Corporation* [2010] NSWCA 57 and *Oil Basins Ltd v BHP Limited* [2007] VSCA 255

Rashda Rana, general counsel Asia Pacific, **Bovis Lend Lease**

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

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

- Common problems in drafting indemnity clauses
- Insurance and indemnity clauses – getting the balance right
- Legal developments - *Westina Corporation Pty Ltd v BGC Contracting Pty Ltd* [2009] WASCA 213; *Samways v WorkCover Queensland & Ors* [2010] QSC 127; *Zurich Australian Insurance Limited v Metals and Minerals Insurance Pty Limited* [2009] HCA 50

Ray Giblett, partner, **Gadens Lawyers**

2:00pm **Negotiating and drafting effective proportionate liability clauses and allocation of damages under the proportionate liability regime**

- Drafting – ensuring your clauses are enforceable
- Allocation of damages under the proportionate liability regime - *Reinhold v NSW Lotteries Corporation (No. 2)* [2008] NSWSC 187 and subsequent cases

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

- Negotiating liability clauses down and liability cap clauses
- Case studies of current legal developments in proportionate liability

Michael Wright, partner, **Henry Davis York**

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
- Forensic considerations by reference to the "ultimate submission" in a claim for liquidated damages
 - > Relevance of discovery, including preliminary discovery
 - > Pleading a claim for liquidated damages
 - > Defending a claim for liquidated damages (including using the Notice of Categories for Discovery as a scalpel)

Sydney Jacobs, barrister, **L13 Wentworth Chambers**

3:45pm **Update on consequential loss exclusion clauses – analysis of your clauses 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

Scott Laycock, partner, **Gadens Lawyers**

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

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