



L I P M A N K A R A S

Jason Karas

Principal

Direct Telephone:

Hong Kong: +852 3761 3933

Australia: +61 8 8239 4633

Email: jkaras@lipmankaras.com

Personal Assistant: Ben Carr

Email: bcarr@lipmankaras.com

Expertise and Practice

Jason Karas is a leading corporate litigator in the Asia Pacific region, with an outstanding track record of success. The investigation, litigation, resolution and pro-active avoidance of complex commercial and financial disputes is his specialty. He has successfully conducted and managed large scale 'bet the company' litigation, involving some of the most sophisticated global corporations.

Jason practices principally in company law, corporate insolvency and professional negligence in financial and commercial matters, throughout the Asia Pacific region and internationally. He has particular expertise conducting and managing claims involving professional advisers (including directors and auditors duties), shareholder and governance disputes, complex commercial contracts, trade practices, equitable remedies, financial services regulation and the identification and tracing of stolen assets.

Jason's practice is truly international, with many of the projects on which Jason is retained involving complex cross-border issues. Jason has conducted and participated in numerous successful mediations and is highly experienced in the effective use of alternate dispute resolution. He has an impressive record in obtaining urgent injunctions and freezing orders and in litigating urgent commercial cases to early trial or successful resolution. Jason is also a highly successful appellate litigator.

One of Jason's principal areas of practice is the conduct and management of investigations and litigation arising out of major corporate collapses. He has been retained in lead roles on behalf of insolvency professionals and regulators in relation to some of the largest and most complex corporate collapses throughout the common law world. These projects include the liquidation of Bond Corporation, the Royal Commission into the collapse of HIH Insurance (retained by the Australian Government), the liquidation of the Bell Group and more recently the liquidations of Akai Holdings and Moulin Global. Jason advises on the full range of legal and strategic issues arising from commencement to completion of complex insolvencies. He is also a trusted adviser to corporate clients and investment funds.

Over the last five years, Jason has led the international legal team responsible for the investigation and litigation arising out of the collapse of the Akai Holdings group in Hong Kong and Bermuda. This is one of the largest insolvencies in the corporate history of Hong Kong. It has involved working closely with the Liquidators, other lawyers and independent experts on the formulation and litigation of numerous legal actions worldwide, including in Hong Kong, Bermuda, England, the USA, Canada, the British Virgin Islands and in Europe.

Jason is also retained in consulting roles as independent counsel, to advise on legal and commercial strategy and to provide second opinion advice, including on litigation due diligence, project and cost management, litigation funding and pro-active risk minimisation. This often involves working collaboratively with other lawyers, experts and clients in urgent and challenging circumstances.

Working hands on with only a select number of clients at any one time, Jason is highly respected for his commercial acumen and creative thinking, as well as for his ability to see issues from his client's viewpoint. Jason is renowned for his tenacity and stamina, as well as for good humour and humility. He is dedicated to providing his clients superior standards of service and achieving superior outcomes.



Key Projects and Cases

Jason has conducted and managed some of the most complex and significant litigation and insolvency projects in the Asia Pacific region in the last decade. Key completed projects include:

- **Borrelli v Ting** – Successful appeal to the Privy Council in London, overturning decision of the Court of Appeal for Bermuda and setting aside a settlement obtained by the former chief executive of Akai Holdings through illegitimate means, including the use of forgeries and false evidence. The decision enables the company to pursue claims in Hong Kong against the former chief executive for breaches of fiduciary duty and misappropriation of hundreds of millions of dollars of corporate funds. [2010] UKPC 21.
- **Moulin Global v Lee** – Successful appeal to the Hong Kong Court of Appeal restoring a struck out claim by Moulin Global against a former director for breaches of fiduciary duty and negligence. Defendant sought to invoke indemnity against suit, relying upon Bermuda company Bye-laws. The decision of the Court of Appeal represents an important landmark, holding that such Bye-law indemnities are not automatically incorporated as an implied term of the contract of engagement between company and director. [2010] HKEC 642.
- **Akai Holdings v Ernst & Young** – Investigation and management of US\$800 million audit negligence claim for the plaintiff, being one of the largest and most complex cases ever litigated in Hong Kong. Commenced in 2005 and settled on record terms in September 2009, at the end of the first week of a trial scheduled for six months. This litigation involved extensive pre-trial disputes, including two successful appeals in the Court of Final Appeal of Hong Kong (legal professional privilege/use of examination transcripts and the jurisdiction to order security for costs).

As part of this action, Jason also managed successful litigation in the Southern District of New York as to the jurisdiction to order disclosure and depositions in aid of insolvency proceedings under USC 1782 (In re Hill, 2005, SDNY), in the Supreme Court of Bermuda on the enforcement of Bye-law indemnities and in the High Court in London to restrain the merger of a professional services firm retained as independent experts.

- **Akai Holdings v Ho Wing On and Grande Holdings** – Investigation and management of US\$500 million fiduciary duty and equitable fraud claim for the plaintiff, against a HK listed company and its directors over the stripping of corporate assets. Commenced in 2007 and settled on highly favourable terms in October 2009, during the pre-trial phase. This litigation also involved extensive pre-trial disputes, including in the Court of Final Appeal of Hong Kong on the scope of liquidators' powers to obtain documents under the Companies Ordinance, the largest asset freezing order (US\$200 million) granted by a Hong Kong court against an individual and successful first instance and Court of Appeal litigation to appoint Hong Kong and BVI solicitors as receivers in support of the asset freezing order. This is the first time receivers have been appointed in Hong Kong in aid of an asset freezing order.
- **Akai Holdings v Kasikorn Bank** – Investigation and management of US\$50 million banker liability claim for knowing receipt of trust assets in breach of fiduciary duty. After a five week trial, established breach of directors' fiduciary duty to act in the best interests of the company and in conflict of interest, but failed on knowing receipt by the Bank. Successful appeal in the Court of Appeal in August 2009, reversing findings on knowing receipt by the Bank and want of corporate authority. This is the first time a Bank has been held liable to make equitable compensation in such circumstances in Hong Kong.



Key Projects and Cases (continued)

- **AACo v AMP Limited** – From September 2003 to February 2007, Jason led a team conducting litigation in the Federal Court of Australia in Sydney on behalf of ASX listed Australian Agricultural Company Limited against AMP Limited alleging breach of contract and misleading and deceptive conduct leading to loss of opportunity, as a result of an allegedly inappropriately conducted tender sale process in respect of Stanbroke Pastoral Company.

Jason was responsible for the investigation and conduct of this litigation, including the seeking of urgent interlocutory injunctive relief within days at the outset of the action. After the commencement of the trial and mediation, the action was successfully settled by AMP paying AACo A\$10 million.

- **Elders Limited v IPL** – Between September 2004 and August 2006, Jason led the team representing major Australian agribusiness Elders Limited in proceedings against Incitec Pivot Limited, arising out of the proposed restructuring of the Australian fertiliser industry. This involved initially advising on proposed shareholder and joint venture agreements, legal and strategic issues relating to the termination of existing contractual arrangements and on the form of proceedings. In the litigation which followed, urgent injunctive relief was obtained to ensure continuity of supply pending determination of the dispute, followed by an expedited commercial list trial.

At first instance Elders was wholly successful in upholding its rights of termination and the valid execution of those rights (see *Elders Limited v Incitec Pivot Limited* [2006] SASC 35). The litigation was ultimately settled shortly before the hearing of the subsequent appeal by Incitec Pivot, for a confidential sum exceeding the principal sum claimed plus interest and costs.

- **HIH Royal Commission** – Between September 2001 and April 2003, retained by the Australian Government as a consultant to the Royal Commission into the financial collapse of the HIH Insurance Group, the largest corporate failure in Australian history. A three volume report was published by the Royal Commission in April 2003, to which Jason contributed extensively, making recommendations in respect of future civil and criminal actions and to make policy recommendations in respect of corporate governance and the insurance industry in Australia.

Jason was a senior member of the legal team assisting the Royal Commissioner (Justice Neville Owen of the Supreme Court of Western Australia) in all aspects of this inquiry. He was particularly involved in the investigation of potential breaches of the legal and fiduciary duties by the former directors and auditors of HIH, as well as in respect of the involvement of HIH's bankers, lawyers and other advisors.

- **Futuris Corporation v Orica Limited** – Between September 2002 and February 2003, Jason represented Australian Stock Exchange listed company Futuris Corporation Limited in litigation conducted in the Supreme Courts of Victoria and South Australia against Orica Limited in respect of their disputed shareholding in leading fertiliser producer Incitec Limited. Orica propounded a scheme of arrangement which would result in the merger of Incitec with another fertiliser manufacturer Pivot Limited, on terms which Futuris considered were discriminatory and unfairly prejudicial.

Jason led the team advising Futuris in respect of all aspects of its legal and strategic position as a shareholder of Incitec and acted for Futuris in its application to the Supreme Court of South Australia for access to Incitec's books and records as a shareholder under the Corporations Act. They successfully opposed the scheme of arrangement in the Supreme Court of Victoria which led to its abandonment by Orica and then pursued Futuris' successful minority shareholder oppression action against Orica in the Supreme



Court of South Australia. These three pieces of substantial litigation were commenced and completed in the space of less than three months, enabling Futuris to realise its investment for more than A\$300 million.

- **Bond Corporation** - Between 1994 and 2002, Jason represented the liquidators of Southern Equities Corporation Limited, formerly named Bond Corporation Holdings Limited (Bond Corp). Until the collapse of HIH Insurance in 2001, the collapse of Bond Corp was the largest corporate insolvency in Australian history. The Bond Corp group was a multinational conglomerate and its collapse required investigations and litigation internationally including against former auditors, directors and advisers. Litigation was required globally including in the English Court of Appeal (England v Smith [2001] Ch 419) which remains one of the leading authorities on cross-border mutual assistance under the UK Insolvency Act. Jason's work for the Liquidators of Bond Corp was wide ranging and included investigations and litigation in Australia, England, the USA, Canada, Jersey, Bahamas and Switzerland.
- **Bell Group v Westpac and ors** - Between 1997 and 2009, Jason has been the independent adviser to one of the Bell Group companies and its Liquidator, who have been involved in the long running Supreme Court of Western Australia litigation against 20 Australian and European banks who took security over the assets of the Bell Group in January 1990. The plaintiffs alleged breaches of fiduciary duty on the part of the Bell Group directors and knowing receipt of improper benefits by the Banks, in the form of the security taken. In October 2008, judgment was delivered in favour of the plaintiff Bell Group companies for A\$1.7 billion, which is the largest award of compensation in a civil case in Australia. An appeal is currently pending.
- **Emanuel Management v Fosters Brewing Group** – From September 2003 to mid 2004, Jason was retained as independent adviser to the Liquidator of the Emanuel Group, after unsuccessful litigation in the Supreme Court of Queensland. The dismissal of the Emanuel Group's claim against Fosters and Coopers and Lybrand gave rise to various complex issues for the Liquidator including as to the costs of the litigation and his arrangements with the funders of the litigation. Jason's retainer included advising on all of these issues and formulating a strategy which led to the Liquidator reaching a Court approved agreement with all interested parties which was highly satisfactory.
- **Sandhurst Trustees v Deloitte and ors** – In 2003, Jason was retained by the trustee for noteholders in Normans Wines Limited to investigate the conduct of Normans' former auditors and directors. Resulting litigation against these parties was settled shortly after commencement of proceedings through mediation, on terms which enabled note holders to recover over 80% of their losses.

Other Projects and Reported Cases

In addition to the projects identified above, Jason has performed and supervised numerous other retainers and conducted litigation at first instance and on appeal in numerous jurisdictions. Many of these cases have been reported, including the following:

- **Gemstone v Grasso** (1994) 62 SASR 239 – successful appeal against first instance dismissal of claim for breach of fiduciary duty in respect of failure by a director to pay a call on partly paid shares;
- **Campbell v Mount** (1995) 65 SASR 334 – successful appeal against first instance dismissal of claim for recovery of funds improperly disposed of by a receiver after commencement of liquidation proceedings;
- **Fenbury Limited v HSBC and Ors** (1996) 189 LSJS 348 – successful appeal against first instance setting aside of service of claim out of the jurisdiction;



Other Projects and Reported Cases (continued)

- **Southern Equities v Arthur Andersen** (1997) 70 SASR 166 – successful defence of appeal by defendant challenging claims of legal professional privilege in respect of company documents made by liquidators
- **Deputy Commissioner of Taxation v England** (1998) 40 ATR 34; (1997) 37 ATR 422 – successful opposition to strike out application by DCT in respect of challenge to taxation assessment and subsequent successful challenge to claims by DCT of confidentiality as grounds to resist inspection of otherwise discoverable documents;
- **Bell Group NV v Aspinall and Ors** (1998) 19 WAR 561 – successful appeal against first instance order setting aside extension of time for service of writ of summons on defendants;
- **Sengate v Southern Equity Holdings** (1998) 200 LSJS 279 – successful appeal against first instance court approval of a scheme of arrangement on the grounds that the respondent failed to disclose information material to the proposed transaction;
- **Pascoe v Lucas** (1999) 75 SASR 246 – appeal against first instance dismissal of claim for breach of statutory duty by a director alleging that his conduct in transferring assets of the company to a third party was transacted in a nominee capacity only, with shareholder approval;
- **Southern Equities v Bond** (2000) 78 SASR 339 – defence of appeal against refusal of trial judge to disqualify himself on grounds of apprehended bias based on similar judicial determination in related proceedings;
- **Bandwill Pty Ltd v Spencer-Laitt** (2000) 23 WAR 390 – application to stay proceedings for breach of fiduciary duty against a former solicitor, on grounds of abuse of process, in particular that it was being maintained pursuant to champertous arrangements entered into between the plaintiff and litigation funders – action settled shortly before scheduled hearing in the WA Court of Appeal; and
- **Caboche v Southern Equities** [2001] SASC 55 – successful defence of appeal seeking discharge of asset freezing injunction against defendants to litigation and associated third parties and orders for the delivery of affidavits requiring disclosure of assets.

Qualifications and Background

Jason commenced legal practice in 1993 with Australian firm Fisher Jeffries, having previously worked as a clerk for Justice Brian Cox of the Supreme Court of South Australia. Between 1998 and 2004, he was a partner in Fisher Jeffries. In 2004, together with Skip Lipman, he founded Lipman Karas, a specialist commercial and financial disputes practice. Jason is the principal of Karas Lawyers in Hong Kong, which operates in association with Lipman Karas.

Jason holds Bachelor of Laws (Honours) (1991) and Bachelor of Economics (1990) degrees from the University of Adelaide. Jason is admitted in South Australia, most other Australian jurisdictions and in Hong Kong. He is a member of the Insolvency Practitioners Association of Australia and an active member of INSOL International.