

# Two rare insolvencies as Australia booms



Dominic Emmett,  
Corrs Chambers Westgarth

Martin Madden,  
KordaMentha

Martin Madden of KordaMentha and Dominic Emmett of Corrs Chambers Westgarth have bagged two of the biggest insolvencies and restructurings in Australia in the last nine months, in an otherwise flat bankruptcy market.

**F**reightLink has undergone a standstill and restructuring outside any formal process, enabling the Alice Springs to Darwin railway to fulfil its potential to connect Australia's booming natural resources sector with a major northern port.

Meanwhile, a major new route under the nation's largest city entered receivership two days after Christmas as drivers gave the high tolls at Cross City Tunnel a swerve.

## FreightLink comes to standstill

FreightLink is the owner of a railway line that was built a few years ago to join the mining areas of the vast Australian Outback to the northern port of Darwin. Its 'ramp-up' or launch period took longer than expected and it struggled to meet revenue targets.

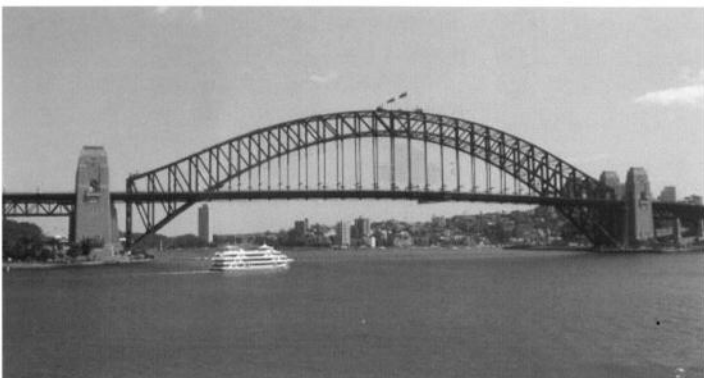
After many months last year of complicated negotiations, senior lenders and equity agreed to a standstill just before Christmas that involved a waiver of principal as well as an injection of new equity from some shareholders.

Seniors owed over A\$300 million (US\$232 million) were led by ANZ, whose representative Paul O'Hern played a key role in the rescue. Mezzanine owed a further A\$200 million (US\$155 million) were not involved in the talks.

Martin Madden of KordaMentha's Sydney office brokered the standstill covering 16 senior syndicate banks. FreightLink was advised by Dominic Emmett of Corrs Chambers Westgarth in the same city. Also involved was an associate in Emmett's firm, Sophia Bobeff.

The seniors were advised by Richard Gordon and Claire Miles of Allens Arthur Robinson in Sydney.

Unusually for a restructuring, there was no change in management. The incumbents maintained good relationships with senior lenders throughout.



## Sydney tunnel goes under

Sydney's Cross City Tunnel was put into receivership by its 18 senior banks two days after Christmas. The Government had agreed to encourage Sydney's drivers to use the tunnel by closing several alternative routes. This helped stoke the political rumpus around the project. The project envisaged 90,000 cars a day using the tunnel, yet it struggled to attract 40,000.

The final blow came when the Government caved in to angry drivers and re-opened the roads concerned. This further depressed the tunnel's figures, as a large number of people already regarded the tolls as too high.

The directors of Cross City Tunnel appointed Scott Kershaw from McGrath Nicol, another of Australia's leading insolvency boutiques, as administrator.

Literally within minutes, this prompted the banks to appoint Madden as receiver, effectively taking control of the process.

The banks are owed nearly A\$600 million (US\$464 million). The equity is owned by CKI, representing Li Ka Shing, one of Hong Kong's richest tycoons, together with certain Deutsche funds and Bilfinger/Baulderstone.

The shareholders were no longer prepared to support the project, having paid A\$97 million (US\$75 million) to the New South Wales Government for the 30-year concession to run the tunnel as part of their initial equity funding.

The receivership by the senior lenders over the head of the shareholders demonstrates the effectiveness of senior lenders' 'step-in-and-cure' rights on enforcement in projects where risk is borne by the private sector.

Madden is being advised by Dominic Emmett of Corrs Chambers Westgarth. Allens Arthur Robinson had advised the company, led by Andrew Boxhall. The Roads and Traffic Authority (RTA) is advised by David Cowling of Clayton Utz.

The receivership leaves the banks in full and effective control, although Kershaw continues in his role as administrator, advised by Matthew Kersey of Henry Davis York.

Madden will decide on an exit strategy for the banks. Observers reckon a sale of the tunnel is the most likely solution.

The political heat surrounding the tunnel saga is likely to rise further in March when New South Wales holds its State elections.