

Przemek Kucharski

Eight Selborne Chambers
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Summary of experience

2006 Admitted as **Legal Practitioner**

2022 Admitted as **Barrister**

Prior to being called to the Bar, Przemek practiced as a solicitor for 16 years at Allens, where he specialised in **commercial litigation** and **insolvency and restructuring**.

Commercial litigation

Przemek has extensive experience in medium to large litigious and non-litigious disputes, including administrative reviews, arbitrations, court proceedings and mediations relating to bankruptcy, contractual disputes, costs assessment, deceptive conduct claims, directors' duties, energy resource pricing, freedom of information requests, insolvency, personal property securities, public examinations, reinsurance, security enforcement, taxation and voidable transactions.

Insolvency and restructuring

With in-depth experience of medium to large informal workouts and formal insolvency processes, Przemek has been involved in administrations, receiverships, deeds of company arrangement, schemes of arrangement and liquidations. He has also advised clients on directors' duties in insolvency, personal property securities, safe harbour plans and enforcement.

Academic qualifications

2009 **Master of Law**, University of Sydney

2004 **Bachelor of Law** (First Class Honours), University of Sydney

2003 **Bachelor of Arts** (Major in English), University of Sydney

Career history

Allens (December 2004 to January 2022)

Jul 2018 – Jan 2022 **Managing Associate**, Insolvency & Restructuring group
Jul 2010 - Jun 2018 **Senior Associate**, Insolvency & Restructuring group
Jul 2008 - Jun 2010 **Lawyer**, Insolvency & Restructuring group
Jul 2006 - Jun 2008 **Lawyer**, Litigation & Dispute Resolution group
May 2006 - Jun 2006 **Lawyer**, Intellectual Property group
Aug 2005 - Apr 2006 **Law Graduate**, Intellectual Property group
Dec 2004 - May 2005 **Paralegal**, Litigation & Dispute Resolution group

Westpac Banking Corporation (June 2011 to December 2011)

(on secondment from Allens)

Oct 2011 - Dec 2011 **Senior Associate**, Corporate, Asset Structuring Unit, Westpac Institutional Bank, Risk
Jun 2011 - Sep 2011 **Senior Associate**, Property, Asset Structuring Unit, Westpac Institutional Bank, Risk

Coudert Brothers (November 2003 to November 2004)

Mar 2004 - Nov 2004

Paralegal

Nov 2003 - Feb 2004

Summer Clerk, including secondment to the firm's Hong Kong office

Notable matters

Dick Smith group litigation

2016 – 2022
NSW Supreme Court
~\$50 million claim

Acting for a former non-executive director of the Dick Smith group in public examinations and litigation commenced by the group's receivers alleging breaches of directors' duties. Przemek had day-to-day carriage of the matter, leading a team of three lawyers. The role encompassed all aspects of litigation, including formulating case theory and strategy, interviewing witnesses, drafting affidavits, engaging and instructing consulting / testifying experts, drafting submissions, preparing witnesses for cross-examination, briefing and instructing counsel, cooperating with fellow defendants, client management, reporting to insurers. The matter resulted in the client being found to have no case to answer and an award of indemnity costs.

Significant decisions: *DSHE Holdings (Receivers & Managers Appointed)(In Liquidation) v Abboud & Ors (No 3) [2021] NSWSC 673*; *DSHE Holdings (Receivers & Managers Appointed)(In Liquidation) v Abboud & Ors (No 4) [2022] NSWSC 91*.

ATO audit of ResMed

2016 – 2022
US\$381.7 million
settlement

Acting for ResMed in connection with an ATO audit raising complex transfer pricing issues relating to IP license royalties obtained via Singapore and the operation of the Part IVA anti-avoidance regime. Przemek had day-to-day carriage of the litigation side of the matter, leading a team of +20 lawyers, technical staff and document reviewers. The role encompassed project managing a large team, responding to document requests (involving the review of hundreds of thousands of documents), substantiating privilege claims, interviewing witnesses, drafting affidavits, engaging and instructing consulting / testifying experts, coordinating with the tax team and client management. The matter resulted in a successful settlement with the ATO.

David James group litigation

2013 – present
NSW Supreme Court
NSW Court of Appeal
Federal Court
~\$11 million claim

Acting for ANZ and receivers appointed by it to the David James group of companies. In addition to advising on all aspects of the receivership, the matter became litigious after initial investigations uncovered potential fraud against ANZ. Przemek was instructed to pursue guarantee claims and bankruptcy, while defending multiple claims brought by the group's director against ANZ and the receivers. Przemek had day-to-day carriage of multiple ongoing proceedings, leading a team of two lawyers. The role encompassed all aspects of litigation, including formulating case theory and strategy, drafting pleadings, interviewing witnesses, drafting affidavits, responding to subpoenas, drafting submissions, preparing witnesses for cross-examination, costs recovery, briefing and instructing counsel and client management.

Significant decisions: *James v Australia and New Zealand Banking Group Ltd [2018] NSWCA 41*; *James v Australia and New Zealand Banking Group Ltd [2020] NSWCA 101*.

Forge Group PPS litigation

2014 – 2018
NSW Supreme Court
NSW Court of Appeal

Acting for the receivers of Forge Group in litigating a dispute with GE / APR Energy concerning the vesting of mobile electricity turbines under s 267 of the *Personal Property Securities Act Securities Act 2009* (Cth). The Australian litigation set important

*Various US courts
~\$60 million claim*

precedents around the treatment of fittings / fixtures in the legislation. The dispute also gave rise to proceedings in various courts in the US. Przemek was 2IC to the lead Partner, overseeing briefing and instructing counsel, preparing for and attending mediation, co-ordinating a multi-jurisdictional team, drafting evidence for US proceedings (including on Australian law), preparing appeal papers and submissions, drafting settlement agreements and client management.

Significant decisions: *Forge Group Power Pty Limited v General Electric International Inc* [2016] NSWSC 52; *Power Rental Op Co Australia, LLC v Forge Group Power Pty Ltd* [2017] NSWCA 8; *Jones v. APR Energy Holdings Ltd. (In re Forge Grp. Power Pty Ltd.)* Case No. 17-cv-02045-PJH (N.D. Cal. Feb. 12, 2018) (recognition of a foreign proceeding under Chapter 15 of the Bankruptcy Code); *Power Rental Asset Co Two, LCC v Forge Group Power Pty Ltd, et al* 3:17-cv-03621-RS

Other matters

*NSW Supreme Court
NSW Court of Appeal
High Court*

Westport Insurance Corporation & Ors v Gordian Runoff Limited [2009] NSWSC 245
Gordian Runoff Limited v Westport Insurance Corporation [2010] NSWCA 57
Westport Insurance Corporation & Ors v Gordian Runoff Limited [2011] HCA 37

Formal appointments

Acting for the financiers and receivers of AirportLink in Brisbane – assets sold for \$2 billion.

Acting for the financiers and receivers of the Clem7 Tunnel in Brisbane – assets sold for \$618 million.

Acting for the financiers and receivers of the Cross-City Tunnel in Sydney – assets sold for \$475 million.

Acting for the financier and receivers of the Lane Cove Tunnel in Sydney – assets sold for \$630.5 million.

*Schemes of
arrangement*

Schemes of arrangement

Acting for Sydney Airport on the \$32 billion acquisition of its securities by the Sydney Aviation Alliance, a consortium led by Global Infrastructure Partners and IFM Investors.

Acting for the syndicate of lenders to the Alinta Finance Australia group as part of the successful 'loan to own' refinancing of the group's \$2.8 billion debt.

*Voidable
transactions*

Voidable transactions

Assisting a telco client to settle a \$155 million unfair preference claim for \$20 million.