

# David W. Mann

## Partner



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Calgary

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## Overview

David Mann is a partner with Dentons. David has over twenty-five years of experience in the insolvency area. He is the National Lead and the Calgary Chair of the Restructuring, Insolvency and Bankruptcy group.

David has extensive experience in insolvency matters, having appeared regularly before Alberta's Bankruptcy Court and Court of Appeal, as well as having made submissions to the Ontario Court of Appeal and the Supreme Court of Canada. David has acted for lenders, debtors, receivers/trustees, creditors/counterparties, DIP financiers, and acquirors in a variety of insolvency proceedings, including Principal Group, Solvex, Smoky River Coal, Air Canada, Crafts Canada, Blue Range Resources, Gauntlet Energy, Sanjel Corporation, Enron, Wilson Auto Electric, Maple Leaf Distillers/Protos, GasFrac and SemGroup.

David has also had extensive involvement with financial/derivative contracts in such insolvency proceedings as NESI, Enron, Blue Range Resources, Air Canada, and Androscoggin.

## Experience

- **Conuma Coal Resources Limited, a member of the ERP Group of Companies:** Advising on its US\$35 million acquisition of assets plus assumed liabilities including three surface mining coal complexes from Walter Energy Canada in this 2017 Cross Border Turnaround of the Year award winning transaction. The complexes were purchased by Walter Energy Canada from Western Energy in 2011 for over CA\$3 billion, *Turnaround Atlas Awards 2017*. The transaction also won the Restructuring Deal of the Year (US\$100 million to US\$250 million) at the 2017 *M&A Advisor Awards* (November 2017).
- **ERP Steel Works, LLC:** Advising on sale of approximately 52% of the shares of Conuma Coal Resources Ltd. to AMCI Euro-Holdings B.V.
- **Medican Holding Ltd.:** Advising in connection with proceedings under the CCAA.
- **Riverfront Pointe Properties Inc.:** Acting as counsel in proceedings under the CCAA.
- **Sanjel Corporation:** Advising on its acquisition by ARC Financial and STEP Energy Services of substantially all its Canadian-based fracturing and cementing operations. Dentons' clients prevailed on all

issues in this complex, cross-border acquisition requiring the coordination of Alberta CCAA proceedings and a Chapter 15 proceeding in San Antonio, Texas.

- **JED Oil Inc. and its subsidiaries:** Acting as counsel in their Canadian CCAA proceeding.
- **Lead lender and significant shareholder:** Advising in connection with CCAA restructuring proceedings of Darian Resources Ltd. and Bowview Petroleum Inc.
- **Trident Exploration Corp. and Trident Resources Corp:** Advising as Canadian counsel in connection with the cross-border CCAA/Chapter 11 restructuring proceedings.
- **EnCana Corporation:** Advising on the sale and leaseback to Centre Street Trust of "The Bow," the two million square foot office building in Calgary's downtown financial district being constructed by Centre Street Trust for EnCana's head office. This CA\$1.3 billion transaction was the largest single real estate transaction and the largest sale/leaseback transaction in Canada when completed in February 2007. Members of the real estate and municipal planning departments in our Toronto and Calgary offices, together with construction and financial services lawyers in Calgary, have been involved in all aspects of "The Bow" starting with the initial land assembly and most recently the CA\$425 million, 42 month construction facility put in place on April 23, 2009 by Centre Street Trust from a syndicate of lenders led by RBC Capital Markets and TD Securities as arrangers and including, in addition to Royal Bank of Canada and The Toronto-Dominion Bank, The Bank of Nova Scotia, Alberta Treasury Branches and Canadian Western Bank.
- **Gemini Engineering:** Advising this professional engineering group in the restructuring of its affairs after a calamitous foreign contract (sponsored in part by Canadian government agency), resulting in its return to profitability and no loss of jobs.
- **International Utilities Structures Inc.:** Advising the monitor in a multinational *Companies' Creditors Arrangement Act* reorganization of a utility pole manufacturer with operations in Canada, the US, and Europe.
- **Nicholas Lysek:** Advising in connection with the recovery of defrauded funds.
- **Octane Energy:** Advising in connection with the preservation of its credit facility, the implementation of a DIP credit facility, and full recovery of all amounts outstanding.
- **Gauntlet Energy:** Advising the purchaser of oil and gas interests in a highly competitive process run out of a *Companies' Creditors Arrangement Act* reorganization - the engagement included involvement in the liquidation of the debtor, the resolution of representative actions, and the determination of the priority of GST claims.
- **Anita Koo:** Advising in connection with the recovery of defrauded funds.
- **Sulphur Corp.:** Advising the monitor in connection with the *Companies' Creditors Arrangement Act* reorganization of a sulphur port - the engagement included the establishment and defence of *Companies' Creditors Arrangement Act* priority charges.
- **Androscoggin:** Advising for ISDA® in its intervention in the Ontario Court of Appeal regarding the interpretation of "eligible financial contracts" under the *Companies' Creditors Arrangement Act*.
- **Phantom Freightlines:** Advising the debtor in connection with the successful reorganization of an international trucking company under the proposal provisions of the *Bankruptcy and Insolvency Act*.
- **Conor Pacific Environmental Technologies:** Advising the debtor of a publicly listed company in connection with the reorganization of its debt in *Companies' Creditors Arrangement Act* proceedings completed from start to finish in 71 days.
- **Smoky River Coal:** Advising the US lenders in connection with a creditor sponsored *Companies' Creditors Arrangement Act* reorganization involving coal mining interests in northern Alberta.
- **Solv-Ex Corporation:** Advising the US purchaser of Canadian oil sands interests under *Companies' Creditors Arrangement Act* protection in a highly competitive international bidding (and "Stalking Horse")

process, conducted under a protocol between the Bankruptcy Courts of the United States and Canada.

- **Confidential clients:** Advising on insolvency matters, appearing before Alberta's Bankruptcy Court and Court of Appeal, as well as making submissions to the Ontario Court of Appeal and the Supreme Court of Canada.
- **Confidential clients:** Acting for lenders, debtors, receivers/trustees, creditors/counterparties, DIP financiers, and acquirors in a variety of insolvency proceedings, including Principal Group, Solvex, Smoky River Coal, Crafts Canada, and Sunoma Energy.
- **Confidential clients:** Acting as counsel to various private equity funded lenders with respect to the recovery of funds through enforcement of security as well as maintaining facilities through restructuring proceedings.
- **Confidential clients:** Acting in connection with financial/derivative contracts in such insolvency proceedings as NESI, Enron, Blue Range Resources, Air Canada and Androscoggin.

## Recognition

- Recognized in *The Canadian Legal Lexpert Directory* as one of Canada's leading lawyers in the areas of Insolvency & Financial Restructuring: Insolvency Litigation (2011–2019), Insolvency & Financial Restructuring Law (2005-2014)
- Recognized in *Acritas* as an *Acritas Star™*(2017–2019)
- Recognized in *Chambers Global* as a leading lawyer in the area of Restructuring/Insolvency - Canada (2008-2019)
- Recognized in *Chambers Canada* as a leading lawyer in the area of Restructuring/Insolvency (2016-2020)
- Recognized in *The Legal 500 Canada* in the area of Restructuring and Insolvency (2014-2020)
- Recognized in *IFLR 1000: The Guide to the World's Leading Financial Law Firms* as a leading lawyer in Restructuring and Insolvency (2019-2020)
- Recognized in *The Best Lawyers in Canada* as one of Canada's leading lawyers in Insolvency and Financial Restructuring Law (2006-2020)
- Named "Lawyer of the Year" by Best Lawyers for Insolvency and Financial Restructuring Law, Calgary (2017)
- Recognized by the *Lexpert Special Edition – Canada's Leading Litigation Lawyers* (2017)
- Recognized by the *Lexpert Guide to the Leading US/Canada Cross-Border Litigation Lawyers in Canada* in the area of Insolvency and Financial Restructuring (2012, 2016 and 2017)
- Recognized by *Who's Who Legal* as a leading lawyer in the area of Restructuring & Insolvency (2017)
- Recognized by *Who's Who Legal Canada* as a leading lawyer in the area of Restructuring and Insolvency (2012–2018)
- Recognized by *Who's Who Legal* as a Thought Leader in the area of Restructuring & Insolvency (2018)
- *Martindale-Hubbell* Distinguished BV Peer Review Rating

## Insights

- Focus on Insolvency | Restructuring, March 2010
- Focus on Insolvency | Restructuring Group, February 2010
- Focus on Insolvency & Workout Group, November 2009

- Asset Sales in the CCAA, October 2009
- Restructuring Under the *Business Corporations Act*
- Ancillary Foreign Proceedings in Canada
- Court Preserves Right to Sue Receiver in Respect of Court Approved Transaction
- In Recognizing a Foreign Insolvency Proceeding Canadian Court Grants Stay of Proceedings in Canada
- CCAA Court Allows Debtor To Pay Pre-Filing Unsecured Debts
- The Monitor's Power to Revise Claims After a Claims Bar Date
- Broad Interpretation Of "Wages" Under WEPPA
- Trust Claims Under a JOA
- Stalking Horses & Break Fees
- Recognition of Foreign Proceedings
- The "Hardship Fund" in CCAA Proceedings
- Debtor in Possession Charge in Priority to Canada Revenue Agency's Deemed Trust
- Supplier's Rights Under S. 81.1 Of The *Bankruptcy And Insolvency Act* Expanded
- B.C. Court Refuses to Grant Potential Defendant Standing to Resist Section 38 Application
- Due Diligence Defence for Director Liability for Unremitted Tax, EI Premiums and CPP Contributions
- Employee Severance Claim Compromised in the CCAA
- Tri-Partite Set-Off Through Agency?
- Approval of Cross Border Dip Financing Facilities
- Application of the Superintendent of Bankruptcy's Levy Carved Back
- The Priority of the Operator's Lien
- Superintendent's Levy Deducted from Repayment of Bank's Mortgage
- The Importance of Registering Name Changes
- RRSPs in British Columbia Receive Legislative Protection from Creditors
- Security Interest Prevails Over Money Paid Into Court
- Focus on Insolvency: Bankruptcy Court Allows DIP Financing in a BIA Proposal
- Focus on Insolvency: Liquidating CCAAs - The Debate Continues
- Focus on Insolvency: Ontario Superior Court Allows Late Claims to Stand in a CCAA
- Focus on Insolvency: DIP Financing in a CCAA
- Focus on Insolvency: Solicitor and Client Privilege in Bankruptcy - Revisited and Affirmed
- Focus on Insolvency: Controversial Releases Acceptable in Asset Backed Commercial Paper CCAA Plan of Arrangement
- Focus on Insolvency: Court Appoints Equitable Receiver in the Absence of Security

- Focus on Insolvency: CCAA Court Clarifies Position of Creditors with Liens Against Third Party's Property
- Focus on Insolvency: Examining a Bankrupt...Again
- Focus on Insolvency: BCE - The Québec Court of Appeal Strikes Down BCE Plan of Arrangement
- Focus on Insolvency: And Now For A Bit About Procedure ...
- Focus on Insolvency: Case Update - Asset Backed Commercial Paper Plan of Arrangement Approved
- Focus on Insolvency: Effect of A Proposal in Bankruptcy on A Claim to Trust Property
- Focus on Insolvency: Court Adjourns Sanction Hearing in Asset Backed Paper CCAA Proceedings
- Focus on Insolvency: The Role of The Monitor and The Monitor's Report in A Contested Claim
- Focus on Insolvency: The Importance of Compliance with the *Guarantees Acknowledgement Act* (Alberta)
- Focus on Insolvency: Commercially Reasonable Realizations
- Focus on Insolvency: CCAA Protection No Guarantee - Ontario Court Refuses to Grant CCAA Protection Sought for Ulterior Motive
- Focus on Insolvency: Legal Fees of Directors Incurred on Behalf of Bankrupt Corporation Rank with Unsecured Creditors
- Focus on Insolvency: Leave Granted to Proceed Against Receiver for Gross Negligence and Breach of Fiduciary Duty
- Focus on Insolvency: Alberta Receiver Recognized in Colorado Under Chapter 15 of the U.S. Bankruptcy Code
- Focus on Insolvency: Corn Producers Not Able to Rely on Their Supplier Rights Under the BIA
- Focus on Insolvency: Alberta Court Finds a Dip Charge Can Be Granted in Priority to the Deemed Trust Claims of CRA
- Focus on Insolvency: A Junior Secured Lender may be able to Recover its Costs for Appointing a Receiver Ahead of Senior Secured Lenders
- Focus on Insolvency: Section 215 of the *Bankruptcy and Insolvency Act*
- Focus on Insolvency: Agreements versus Plans
- Focus on Insolvency: Fraud Claims that Survive Bankruptcy
- Focus on Insolvency: Minority Shareholder Has Standing To Apply To Annul A Bankruptcy
- Priority of Operator's Liens
- Banker Beware - Joint Operating Agreements and Trust Funds
- Focus on Insolvency: CCAA Court Upholds Claims Officer's Decision to Determine Claims Without Oral Hearing
- Focus on Insolvency
- Focus on Insolvency: Military Danger Pay Not "Income" Under BIA
- Focus on Insolvency: Leave of Court Required
- Focus on Insolvency: Secured Creditor Prevails
- Focus on Insolvency: Stay of Proceedings Lifted

- Focus on Insolvency: Restructuring
- Focus on Insolvency: Securities Firm Bankruptcy
- Pension Jurisdiction Found to Exist Notwithstanding CCAA
- Focus on Insolvency: Court Refuses Insurer's Application to Terminate Policy Due to the Receivership of the Insured
- Focus on Insolvency: Secured Creditor v. Minister of Environment v. Pension Fund Administrator
- Thoughts on Section 13.4 of the *Bankruptcy and Insolvency Act* (Canada)
- Androscoggin Reorganization – Blue Range Revisited
- Credit Provisions for Gas and Power Contracts
- Treatment of Executory Contracts in Insolvencies
- Claims Bar Dates: The Debate Continues
- CCAA vs. BIA: A Comparison of Reorganization Processes
- Beating the Odds in the Credit Gamble
- Consumer Bankruptcies and Proposals Under the *Bankruptcy and Insolvency Act*

## Activities and Affiliations

- Member and Director of the Insolvency Institute of Canada
- Member of Canadian Bar Association
- Member of Calgary Bar Association
- Past President of the CBA's South Alberta Insolvency Section

## Presentations

- Presenter, M&A Breakfast Seminar: Leverage Your Business in a Downturn, Calgary, April 2009
- Presenter, M&A Breakfast Seminar: Defensible M&A Options in a Downturn, Calgary, April 2009
- Contributed to a number of seminars for the Canadian Bar Association, the Canadian Institute, LESA, Lorman and others

## Areas of focus

### Practices

- Insolvency Proceeding Financing
- Hedge Funds
- Out-of-Court Restructurings and Work-outs
- Pensions and Benefits in Transactions and Reorganizations
- Restructuring, Insolvency and Bankruptcy

- Supplier and Customer Representation in Restructurings

## Industry sectors

- Accounting Firms
- Construction
- Contractors and Suppliers
- Distressed Asset Investors
- Energy
- Financial Institutions
- Private Equity
- Professional Services

## Education

- University of Alberta, 1989, LL.B. (Dean's List)

## Admissions and qualifications

- Alberta, 1990