

Dammed If I Do, Dammed If I Don't

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With all of the recent summer rains that we have had in NSW, as well as the current round of significant flooding that has occurred in Queensland we are once again awash (pardon the pun) with ideas, discussions and pleadings relating to the construction of new dams or the expansion/replacement of old ones. Particularly worthy of note given its proximity are the discussions about Warragamba and the potential for the "wholesale destruction" of the Nepean/Hawkesbury valley if no action is taken. The days when the Windsor/Richmond area went under water two or more times a year are still a recent memory.

Dams are oft considered marvels of engineering, representations of man's ability to control nature, but interestingly there are in essence two fundamental reasons to build a dam; one is flood mitigation and the other water storage. Having accepted this precept, then the other factor that must be noted is that each is essentially mutually exclusive.

In the first case you build a dam, keep it empty and when the rains come it fills up, once the rains have stopped, you control release the water so as to protect the surrounding areas and communities and possibly additionally use it for power generation or agriculture. In the pure storage model the dam is built and allowed to fill and then is maintained as full as it can be so as to provide a ready source of water to a community. It is illogical to keep a flood mitigation dam full because it will simply mean releasing water when rains are potentially at their peak and thus compounding the problem already being caused by those rains.

What has often struck me about this issue is the similarities it shares with the demands most commonly placed upon insolvency practitioners. When a company or business collapses there are in essence demands for two fundamental areas to be dealt with. One simply (and obviously) is that people caught up in the matter want their money back, and generally sooner rather than later, and the other is possibly best summed up as "the guilty bastard must hang," i.e. there needs to be an investigation of who was at fault with a resulting effective and visible action taken against those parties.

Presented with a limited supply of 'water' the practitioner must decide whether it is to be distributed or expended. Generally regardless as to the allocation by the practitioner there will be many stakeholders who remain not happy. Those that wanted their money back didn't get enough, whilst those that wanted blood were also left disappointed. The situation is also exacerbated by the fact that given the legal framework in which we operate in a significant number of situations, regardless of how much is spent, you will never achieve a categorical strike against those that are or were responsible.

In such an environment it can therefore be easy for a practitioner or adviser to create a real fever of passion for action amongst the creditors as a whole that ultimately sees significant funds expended on a pursuit. However, the pursuit mostly results in no concrete result ultimately being achieved, either in terms of the future return of funds or a meaningful prosecution of the "rogues."

Whilst it is my aim to allow Creditors to make the final informed decision, my preference has been to return the funds that you have now; as bitter experience has shown that the erosion that follows mostly does more for experts than it does for creditors or the sustainability of a respected and effective legal and commercial system. Yes, that old adage, "*a bird in the hand is worth two in the bush.*"

Alas however, without some fundamental changes to the overall process and approach I fear we shall continue to be "***damned if we do, and damned if we don't.***"