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# THE AUSTRALIAN LAW JOURNAL

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### **THE INTOLERABLE WRESTLE: DEVELOPMENTS IN STATUTORY INTERPRETATION**

**Hon J J Spigelman AC**

Statutory interpretation is a constant wrestle with text and context, words and meaning. In this address, Chief Justice Spigelman considers recent cases on statutory interpretation in the High Court. The basic principles of interpretation are not in dispute, but there are indications of a shift in nuance and emphasis requiring a refocus on the text. .... 822

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THE UNSECURED CREDITOR’S PERILOUS PATH TO A TRUST’S ASSETS:  
IS A SAFER, MORE DIRECT US-STYLE ROUTE AVAILABLE?

**Nuncio D’Angelo**

As we face the consequences of the global financial crisis, financiers who provided unsecured financial accommodation to Australian trading trusts and managed investment schemes (and, indeed, their other substantial unsecured creditors) are nervously considering their position, many having received qualified advice on their enforcement and recovery options. The status of unsecured creditors’ claims against an Australian trust or managed investment scheme can be precarious in insolvency. The route of access to the trust assets under established trust law (that is, subrogation to the trustee’s right of indemnity) is fragile and, if compromised by the trustee’s misconduct, can result in a total loss of the creditor’s claim and a windfall gain by the beneficiaries/unit holders, due to the “clear accounts” rule. This demands consideration of alternative avenues of recourse to those assets which bypass that rule. This article considers the evolution of US theories of direct access to trust assets (sometimes described as the trustee “binding the trust estate”) and argues that a version could, and should, be adopted into Australian trust law using existing principles. .... 833

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