

INSOLVENCY LAW JOURNAL

Volume 17, Number 4

December 2009

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ARTICLES

Know your personal liabilities: Administrators' personal liability for employee wages and entitlements – *David Walter*

The recent increase in failures of larger and more complex corporate groups has led to increased incidents of the trading on of substantial businesses during a lengthy period of voluntary administration in accordance with Pt 5.3A of the Corporations Act 2001. In any continuation of a company's business during administration, important questions arise in relation to potential personal liability of the administrator for services rendered to the company by its existing employees. Divergent views as to the extent of that personal liability have emerged from the decided cases, resulting in considerable uncertainty. This article considers those divergent views and argues that, on the proper construction of the Corporations Act and on policy grounds, the preferable approach to the construction of the existing legislation is for administrators to have no personal liability for causing existing contracts of employment to continue to be performed during the administration period.

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What price investor protection? Class actions vs Corporate rescue – *Jason Harris and Michael Legg*

The financial turmoil and share market losses generated by the global financial crisis have provided ideal conditions for increased numbers of investor class actions. The numbers of firms involved in litigation funding and law firms involved in class actions are also increasing. Australian securities law seems to be at the beginning of a wave of investor class actions based on allegations of inadequate corporate disclosure. The fallout from the global financial crisis (GFC) has also focused attention on the efficiency of Australia's corporate rescue laws as companies struggle under onerous debt levels and attempt to rebuild balance sheets and restructure operations in much tighter credit conditions than in previous years. This article considers the tension between laws that seek to compensate investors through the use of class actions and laws that aim to promote corporate rescue attempts. It suggests that reform may be needed to ensure that these two important policy goals work more harmoniously together.

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THOMSON REUTERS

© 2010 Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
Lawbook Co. Published in Sydney

ISSN 1039-3293

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW