PROTECTION OF CREDITORS:
DO EMPLOYEES DESERVE
SPECIAL TREATMENT?

Dr David B Noakes
Allens Arthur Robinson

Commentator:
Joellen Riley, Sydney Law School

Monday 15 December 2003
5.30 – 7.00 pm

Venue: Faculty of Law, 173 Phillip Street, Sydney

General Convenor:
Professor Jennifer Hill
Protection of Creditors: Do Employees Deserve Special Treatment?

Recently there have been a number of changes to the corporations legislation designed to afford employees preferred treatment, generally at the expense of other creditors. The clear implication is that employees have previously been shortchanged, and that the increase in deferred compensation has given rise to an unacceptably high risk of significant loss upon the insolvency of the employer. Yet, empirical research conducted by David Noakes (published in the Insolvency Law Journal in June 2003) indicates that loss of employee entitlements through strategic insolvency comprises a very small proportion of insolvencies in Australia. Most failures have therefore been as a result of the involuntary insolvency of the employer, and employees have arguably been adequately protected by a safety-net scheme for entitlements. The question must therefore be asked: do employees deserve special protection as unsecured creditors of a company?

This seminar critically analyses the recommendations of a number of law reform proposals to address the loss of employee entitlements after employer insolvency. The seminar also considers alternative reforms in this area proposed by David Noakes, which seek to balance the competing aims of employers and employees in situations involving strategic insolvency. The reforms discussed are designed to create meaningful protections for employees, without significantly affecting the ability of the board and senior management to make sensible entrepreneurial decisions as to the appropriate use of a firm’s capital.

Dr David Noakes completed his PhD in Law at the University of Melbourne in 2003. His PhD thesis studied the application of corporate law to the problem of loss of employee entitlements in the strategic insolvency of corporate groups. He undertook empirical analysis of judicial decision-making and the actual use of strategic insolvency and found that the decision-making had been inconclusive and strategic insolvency was a small proportion of insolvencies.

David has published a number of journal articles and presented at various conferences and seminars on topics related to his thesis. He has also been invited to comment on corporate law issues involving corporate group collapses by Australian and international newspapers (including The Australian Financial Review, The Sydney Morning Herald and The New York Times) and has contributed articles to The Australian and The Australian Financial Review.

Joellen Riley will provide a commentary. Joellen Riley was originally a journalist with the Australian Financial Review and is now a member of the Faculty of Sydney Law School. She has written widely in the area of the effect of corporate insolvency and restructuring on employees.
Protection of Creditors: Do Employees Deserve Special Treatment?

Date: Monday 15 December 2003
Time: 5:30 - 7:00 pm (seminar commences at 6.00pm)
Venue: Faculty of Law, University of Sydney, 173-175 Phillip Street, Sydney NSW 2000
Cost: $70 (including GST)(includes light refreshments)
Registration Form

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  (15 December 2003)

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