

## 18<sup>th</sup> Annual Practical Insolvency Conference and Gala Dinner

Monday, 25 and Tuesday, 26 March 2019

L'Aqua, Cockle Bay, Sydney

### MEETING YOUR ILRA EDUCATION REQUIREMENTS - 13 HOURS CPD/CPE \*

**CHAired BY:** Richard Fisher AM, *General Counsel, Adjunct Professor, Faculty of Law, Office of General Counsel, University of Sydney*

#### **DRAFT WORKING PROGRAM ONLY - FOR DELEGATE/SPEAKER FEEDBACK**

Topics not in any particular order

<p>1</p>	<p><b>**Stop Press** Restricting Creditor Voting Rights</b></p> <p>On 30 November the Government tabled the <i>Insolvency Practice Rules (Corporations) Amendment (Restricted Related Creditor Voting Rights) Rules 2018</i> which restrict the rights of related parties to vote at creditors meetings using debt that they have purchased.</p> <p>This is a simple change conceptually, but it does throw up a number of practical issues for insolvency practitioners, and so I will be asking our speaker to explain:</p> <ul style="list-style-type: none"> <li>● Which forms of corporate insolvency administration are affected?</li> <li>● The appointee's obligation to inquire about assignment of debt</li> <li>● What forms of assignment are caught? Will sub-participation arrangements or risk sharing structures be affected?</li> <li>● What does "Related party" capture?</li> <li>● Do the rules only apply to physical meetings?</li> <li>● The extent of an appointee's obligation to identify related party status</li> </ul>
<p>2</p>	<p><b>Attacking (or defending!) Subrogation Claims</b></p> <p>Most practitioners are familiar with the concept of subrogation, most commonly seen when a guarantor claims the benefit of a secured lender's security. But on 28 November, a judgment of <b><i>Marra Capital Investments Pty Ltd, in the matter of Tri-City Trucks (NSW) Pty Ltd (in liq) v Smith (liquidator) [2018] FCAFC 211</i></b> provides a very interesting example of a liquidator successfully challenging a subrogation, and achieving a very big win for unsecured creditors.</p> <p>Our speaker will review the case and help you to understand how badly constructed global settlements might inadvertently damage standing to claim the benefit of subrogation, and what insolvency appointees should do to confirm that a claim is valid.</p>

<p>3</p>	<p><b>Using Barnes v Addy To Attack Phoenix Transactions Property</b></p> <p>The High Court decision in <i>Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited [2018] HCA 43 (10 October 2018) 2018] HCA 43</i> is not a insolvency matter per se - but it does deal with the situation that many insolvency practitioners will be familiar with, where key staff move to a business rival to utilise:</p> <p><i>“valuable confidential information of their employer...to attack the commercial base of that employer...to take as quickly as possible the business presently enjoyed by [their former employer] and replicate its success for the benefit of the new prospective employer”</i></p> <p>I will be asking our speaker to take you through the decision with a particular focus on phoenix transactions and to understand when it might provide a better way to claw back a business that has been transferred.</p>
<p>4</p>	<p><b>The High Court on Holding DOCAs</b></p> <p>The use of ‘holding DOCAs’ has not been without its critics: is there really a proposal? how can the administrator actually form an opinion? These and other questions were considered by the High Court in <i>Mighty River International Limited v Hughes Limited [2018] HCA 38 (12 September 2018) [2018] HCA 38</i></p> <p>I have asked <b>Robert Newlinds SC</b> - counsel for the successful applicant to give you the background to the decision and tell you about the practical implications of the case.(TBC)</p>
<p>5</p>	<p><b>Claims Against Directors</b></p> <p>I work hard to keep my programs timely and topical, and so they very much reflects judgments and Court cases over the preceding twelve months. There haven’t been many 420A decisions so that is a topic that “fell off” the program. By contrast claims against directors has forced its way back on with a flurry of cases.</p> <p>Our speaker will take you through a number of recent decisions including:</p> <ul style="list-style-type: none"> <li>● <b>Re Ezyfix Caravan Repairs Pty Ltd (In Liq) [2018] VSC 343 (22 June 2018) [2018] VSC 343</b> - redirection of insurance claim proceeds and de facto director status</li> <li>● <b>Simpson v Tropical Hire Pty Ltd (in liq) [2017] QCA 273</b> Alleged breaches of duties as a director of the respondent in distributing the proceeds of the sale of company’s business</li> <li>● <b>Australia's Residential Builder Pty Ltd (In Liq) &amp; Anor v Robert Wiederstein &amp; Ors [2018] VSC 37 (9 February 2018) [2018] VSC 37</b></li> <li>● <b>Peter Hillig in his capacity as liquidator of ACN 092 745 330 Pty Ltd (in Liquidation) &amp; Anor v Battaglia &amp; Ors [2018] NSWCA 67 (10 April 2018) [2018] NSWCA 67</b>– payments to senior employee’s spouse and family company, de facto director status</li> <li>● <b>Lewis Securities Ltd (in liq) v Carter [2018] NSWCA 118 (7 June 2018) [2018] NSWCA 118</b> - fraudulent scheme by director to create appearance that his personal indebtedness to the company had been repaid.</li> </ul>
<p>6</p>	<p><b>Dealing With Claims For Special Purpose/Quistclose &amp; Express Trusts</b></p> <p>This is another topic which has forced its way back on to the program. Very clearly, appointees are increasingly having to deal with claims that assets are held in trust for other parties. Our speaker will review a number of recent cases, including:</p> <ul style="list-style-type: none"> <li>● <b>AAD Services Pty Ltd (In liq) v ALD Wholesale Pty Ltd &amp; Anor [2018] VSC 585</b></li> </ul>

	<p><b>(8 October 2018) [2018] VSC 585</b> – Whether an advance was made to borrower company or to effective controller of the borrower company personally.</p> <ul style="list-style-type: none"> <li>● <b><i>Braham Investments v Sovereign MF [2017] VSC 801 (22 December 2017) [2017] VSC 801</i></b> - Whether a transfer to solicitor’s trust accountant was an express trust</li> <li>● <b><i>In the matter of Courtenay House Capital Trading Group Pty Limited (in liquidation) [2018] NSWSC 404</i></b> Whether funds held in an unregistered managed investment scheme were held on trust for investors or part of general assets.</li> <li>● <b><i>In the matter of Stream Customised Claims Pty Ltd (recs &amp; mgrs apptd) (in liquidation) [2018] NSWSC 1812 (27 November 2018) [2018] NSWSC 1812</i></b> whether reference in correspondence evidenced an intention to create a trust or a proprietary interest</li> <li>● <b><i>In the matter of Australian Institute of Professional Education Pty Limited (In Liquidation) [2018] NSWSC 1028 (4 July 2018) [2018] NSWSC 1028</i></b> whether the <i>Education Services for Overseas Students Act 2000</i> (Cth) operated to create a constructive trust.</li> </ul>
<p><b>7</b></p>	<p><b>Special Purpose Liquidators</b></p> <p>There is an increasing use of special purpose liquidators, with a number of cases this year, including:</p> <ul style="list-style-type: none"> <li>● <b><i>in the matter of Italian Prestige Jewellery Pty Limited (in liq) [2018] FCA 983</i></b>– where a creditor would only fund an investigation in conducted by the special purpose liquidators</li> <li>● <b><i>in the matter of ACN 093 117 232 Pty Ltd (in liquidation) [2018] FCA 1922</i></b> – application to appoint special purpose liquidator to investigate a company restructure which ‘resembled impermissible phoenix activity.</li> <li>● <b><i>in the matter of Umberto Pty Ltd (in liq) [2018] FCA 541</i></b> - where the appointment of special purpose liquidators was sought to investigate and prosecute claims arising from transactions with related companies</li> </ul> <p>I will be asking our speaker to look at the use of SPL appointment to see when it can be an alternative to an outright replacement, the factors that the Court will take into account, and consider whether it might lead to a different initial assessment of independence.</p>
<p><b>8</b></p>	<p><b>Intellectual Property &amp; Insolvency</b></p> <p>As the world moves towards automation and digitisation, ideas, apps and computer code becomes increasingly valuable. I have asked <b>Peter Francis, Partner, FAL Lawyers</b>, a specialist Intellectual Property expert to help you to understand:</p> <ul style="list-style-type: none"> <li>● how ideas are protected through patents, copyright, and trademarks</li> <li>● how insolvency practitioners can ascertain ownership of IP</li> <li>● how to determine whether intellectual property assets are caught by security structures</li> <li>● when an appointee might consider initiating IP protection.</li> </ul>
<p><b>9</b></p>	<p><b>Insolvency, Data Protection &amp; The Privacy Act</b></p> <p><b><i>Biondo v Baycorp Collections PDL (Australia) Pty Ltd &amp; Anor [2018] FCCA 1853</i></b> highlights a practical problem for insolvency practitioners. A practitioner found themselves dealing with the son of a bankrupt - and no doubt at that time it appeared that the son was trying to assist - but roll forward however, and the trustee is dealing with claims of maladministration including breaches of the Privacy Act.</p> <p>Using <b>Biondo</b> as a base, I’ve asked the leading expert, former Victorian Commissioner for</p>

	<p>Privacy and Data Protection <b>David Watts, Professor of Information Law and Policy, La Trobe University</b> to take you through a more wide-ranging discussion of how the Privacy Act and insolvency/bankruptcy legislation interacts to ensure that you understand and comply with your personal obligations at law.</p>
<p>10</p>	<p><b>Selling Assets <u>Without</u> A Secured Creditor's Consent</b></p> <p><b>Caledon Coal Example</b> (Topic content to be confirmed)</p>
<p>11</p>	<p><b>Voidable Transactions</b></p> <p>Voidable preferences might not be the sexiest part of insolvency practice (although our speaker might beg to differ) but for many practices they can be the difference between a job being good or bad, and so this session is always one of the best attended and most listened to. Yet again there are a number of cases to keep up with, this year including:</p> <ul style="list-style-type: none"> <li>• <b>Stone v Melrose Cranes &amp; Rigging Pty Ltd, in the matter of Cardinal Project Services Pty Ltd (in liq) (No 2) [2018] FCA 530 (19 April 2018) [2018] FCA 530</b></li> <li>• <b>Melrose Cranes &amp; Rigging Pty Ltd, in the matter of Cardinal Project Services Pty Ltd (in liq) (No 3) [2018] FCA 863 (12 June 2018) ) [2018] FCA 863</b></li> <li>• <b>Re N.W.E.L. Pty Ltd (In Liq) [2018] VSC 634 (31 July 2018) [2018] VSC 634</b></li> <li>• <b>Re Cyberduck Software Pty Ltd (In Liq) &amp; Anor [2018] VSC 122 (23 March 2018) [2018] VSC Quigley (Liquidator) v Minesite Maintenance Pty Ltd, in the matter of Perthmetro Pty Ltd (in liq) [2018] FCA 316</b></li> <li>• <b>Hayden Leigh White In His Capacity As Joint And Several Liquidator Of Port Village Accommodation Pty Ltd (In Liq) -V- Acn 153 152 731 Pty Ltd (In Liq) [2018] Wasca 119</b></li> <li>• <b>Featherstone v Ashala Model Agency Pty Ltd (in liq) &amp; Anor [2017] QCA 260</b></li> <li>• <b>Shot One Pty Ltd (in liq.) &amp; Anor v Day &amp; Anor [2017] VSC 741 [2017] VSC 741</b></li> <li>• <b>In the matter of Heavy Plant Leasing Pty Ltd (In Liquidation) (ACN 151 786 677) [2018] NSWSC 707 (8 February 2018) [2018] NSWSC 707</b></li> </ul>
<p>12</p>	<p><b>Regulator /Legislator Panel – ASIC, AFSA, FEG, Treasury</b></p> <p>Please send me the topic areas you most would like addressed by our expert panel comprising of:</p> <p><b>Thea Eszenyi, Senior Executive Leader, Insolvency Practitioners, ASIC</b>  <b>Henry Carr, Senior Executive Lawyer/Branch Manager, Recovery and Litigation Branch, Australian Government Department of Jobs and Small Business</b>  <b>Paul Shaw, AFSA</b></p>

13	<p><b>State Of The Market Panel</b></p> <p>I'm not sure whether it is the continued good health of the economy which means that banks don't need to appoint, or perhaps the shadow of the Royal Commission making them slow to appoint, but it is true that activity from the banks is at a very low level.</p> <p>To highlight the new paradigm, this year my State of the Market is going to be comprised wholly of non-banks who will give you some perspectives on where you might find opportunities for additional sources of work in this tough market for the profession.</p>
14	<p><b>PPSR Review</b></p> <p><b>Are you prepared for the 7 year re-registration? Where are your greatest exposures?</b></p>
15	<p><b>ILRA Review Update on any new developments</b></p>
16	<p><b>Personal Insolvency Update for Corporate Practitioners - <i>Sally Nash, Consultant, O'Neil Partners</i></b></p>
17	<p><b>Calculating &amp; Approval of Remuneration</b></p> <p>I like a long list of cases in my program to provide readers with a glimpse of the detailed research that goes into my conferences, and in all honesty some of the cases are routine, but some such as <b><i>Provident, Beechworth, and Westpoint</i></b> are very clearly not..</p> <p>Although the Court may decide in some cases that "It would be entirely impracticable...to undertake a line-by-line examination of the administrators' administration claims" (Ross J in <b><i>re Beechworth</i></b>), in other cases the Courts are quite prepared to do so!</p> <p>Our speaker will spend my time on the most significant cases, from at least the following:</p> <ul style="list-style-type: none"> <li>• <b><i>Re Firebrace Life Pty Ltd (in liquidation) [2018] VSC 252 (18 May 2018) - [2018] VSC 252</i></b></li> <li>• <b><i>Re Alternate Dwellings Pty Ltd (in liquidation) [2018] VSC 653 (1 November 2018) - [2018] VSC 653</i></b></li> <li>• <b><i>Australian Executor Trustee Ltd v Provident Capital Ltd [2018] FCA 439 (3 April 2018) [2018] FCA 439</i></b></li> <li>• <b><i>In the matter of Beechworth Land Estates Pty Ltd (in liq) and Griffith Estates Pty Ltd (in liq) (No 5) [2018] NSWSC 959 (22 June 2018) [2018] NSWSC 959</i></b></li> <li>• <b><i>Westpoint Corporation Pty Ltd (in liq) v Yeo [2018] VSC 705 (16 November 2018) [2018] VSC 705</i></b></li> <li>• <b><i>Re Matthew Forbes Pty Ltd (in liq) [2018] VSC 331 (19 June 2018) [2018] VSC 331</i></b></li> <li>• <b><i>In re Specialist Australian Security Group Pty Ltd (in liquidation) [2018] VSC 199 (27 April 2018) [2018] VSC 199</i></b></li> <li>• <b><i>Re Custometal Engineering Pty Ltd (in liquidation) [2018] VSC 726 (23 November 2018) [2018] VSC 726</i></b></li> <li>• <b><i>Re Tuscan Property Development Pty Ltd [2018] VSC 511 (7 September 2018) [2018] VSC 511</i></b></li> <li>• <b><i>In the matter of Banksia Securities Limited (in liquidation) (receivers and managers appointed) [2018] NSWSC 229 (28 February 2018) [2018] NSWSC 229</i></b></li> <li>• <b><i>In the matter of Say Enterprises Pty Ltd [2018] NSWSC 396 (29 March 2018) [2018] NSWSC 396</i></b></li> <li>• <b><i>In the matter of Idyllic Solutions Pty Ltd as trustee for Super Save Superannuation Fund and Others [2018] NSWSC 700 (17 May 2018) [2018] NSWSC 700</i></b></li> </ul>

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|  | <ul style="list-style-type: none"><li>• <i>Re Houben Marine Pty Ltd (in liq) [2018] NSWSC 745 (24 May 2018) [2018] NSWSC 745</i></li></ul> |
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**\*Meeting your ILRA annual CPE Requirements. Under Practice Rule 20-5 you need at least 40 hours of CPE every year. You can count self-study towards that total but you need at least 10 hours “capable of being objectively verified by a competent source”. In other words, external study. This conference offers 13 hours if you attend every session.**

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