

INSOLVENCY LAW JOURNAL

Volume 23, Number 3

November 2015

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ARTICLES

Raiders of the secured asset: The doctrinal rationalisation for the liquidator's lien or charge over a secured asset post-*Stewart v Atco* – Nicholas A Tiverios

The High Court's decision in *Stewart v Atco Controls Pty Ltd (in liq)* is important for insolvency practitioners because it clarifies the basis for the creation, by operation of law, of a liquidator's charge or lien over a secured asset to secure the liquidator's expenses in the preservation, care or realisation of that asset. This article argues that post-*Atco*, the only justifiable doctrinal rationalisation for the creation of the liquidator's charge or lien is that a liquidator, as a fiduciary and officer of the court, who has not acted in breach of her duties, ought to be remunerated for expenses reasonably and properly incurred in preserving or realising a secured creditor's right. 101

The conundrum of phoenix activity: Is further reform necessary? – Anne Matthew

Phoenix activity presents a conundrum for the law and its regulators. While there is economic cost associated with all phoenix activity, the underlying behaviour is not always illegal. A transaction with indicators of phoenix activity may be an entirely innocent and well-intentioned display of entrepreneurial spirit, albeit one that has ended in failure. Restructuring post business failure is not illegal per se. Recent reforms targeting phoenix activity fail to grapple with the vast range of behaviour that can be described as phoenix activity since they do not differentiate between legal and illegal activity. This article explores the importance of the distinction between legal and illegal phoenix activity, the extent to which the existing law captures a range of behaviour that can be described as illegal phoenix activity and the response of key regulators and governmental bodies to the absence of single law that attempts to define illegal phoenix activity. 116

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