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ARTICLES

Assessing the status of rent in corporate insolvencies – why the Lundy Granite principle may not be written in stone – *Jason Ellis*

A tension has existed for over 150 years regarding the extent to which landlords must prove for rent in an insolvency and the extent to which rent can be classified as an expense. In the absence of effective statutory guidance, the courts have in modern times been forced to reassert principles whose origins lie in 19th-century case law. Such a situation is unsatisfactory, both because those principles do not stem from consistent judicial analysis and because the onus is on the courts to strain doctrine to generate sensible outcomes. The appropriate solution is clarification through statutory intervention. 237

Evidentiary challenges for the insolvency practitioner: The use of public examination transcripts at trial – *Kathryn Smith*

Public examinations are a powerful tool available to insolvency practitioners for gathering information and deciding whether any substantive claims can or should be made against examinees. In this context, it is at odds with public policy that the courts have interpreted s 597(14) of the *Corporations Act* to mean that a transcript of a person's public examination is admissible only against that person in subsequent legal proceedings. In the complex, multi-defendant litigation which often follows a major corporate collapse, this position can cause significant issues of cross-admissibility of evidence. A redoubling of effort by the insolvency practitioner in establishing the case against co-defendants can ensue. The cost of this repeated work is ultimately borne by creditors. Fortunately, s 597(14) does not operate as an exclusive code to admissibility of transcripts in subsequent legal proceedings. A number of other exceptions to the hearsay rule may operate to render transcripts of examination admissible at trial. This article considers the extent to which transcripts of examination may be admitted at trial and explores strategic decisions available to insolvency practitioners to maximise the use of transcripts of examination and minimise litigation costs. 256

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