

## **Corporate Recovery Bulletin – 09/08/05**

### **Employee claims rank as an expense in administration!! – Re Globe Worsted Co Ltd (In Administration)**

In a shock decision a court at first instance has held that payments in lieu of notice and protective awards (for lack of consultation on redundancy) due to employees, retained after the initial 14 days whose contracts are adopted, rank as administration expenses for the purposes of paragraph 99(4) Schedule B1 Insolvency Act 1986. On that basis such claims will have to be paid in priority to the administrator's remuneration and expenses and sums due to floating charge holders.

The reasoning seems to be that "wages and salary" in paragraph 99(5) (c) should be given a wider interpretation in line with social security legislation. The judge (Peter Smith J) distinguished the case from the decision in *Allders (In Administration)* [2005] EWHC 172 as this dealt with statutory claims ie. redundancy and unfair dismissal. However whilst payments in lieu of notice are contractual claims the same cannot be said of protective awards which are statutory claims under s.189 TULR(C)A 1992.

However, it is understood that in another first instance decision today (*Ferrotech Limited - in administration*) (as yet unreported) where administrators applied for directions in the light of the *Globe Worsted* decision, the judge held that payments in lieu of notice and protective awards are not wages and salary for the purposes of paragraph 99.

As there are now two conflicting decisions, we understand that leave to appeal to the Court of Appeal has been granted and so hopefully the matter will be clarified soon. In the meantime administrators need to exercise considerable care in dealing with dismissals.

The outcome of the appeal will affect whether administrators are deterred from retaining employees after the initial 14 day period and may mean a reduction in the number of trading administrations. The outcome will also have implications for administrative receivers and their liability for employee claims under section 44 Insolvency Act 1986.

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