

(4) the proposed schemes would not contravene the Employers' Liability (Compulsory Insurance) Act 1969. Therefore creditors' meetings under section 425 were convened.

[William Trower QC, Stephen Robins]

INSOLVENCY – CROSS-BORDER

Re Collins & Aikman

Europe SA & Ors

Chancery Division

(Lindsay J). [2006] EWHC 1343 (Ch).

Ten companies incorporated in various European jurisdictions had been placed into administration in England as "main proceedings" under Article 3(1) of the EC Regulation. The administrators applied for directions to make distributions and payments to the creditors of the companies and that, in so doing, they should apply the priorities and rules of the foreign law where the company in question was incorporated rather than English law. In particular, the administrators had given assurances to creditors at the outset of the administrations that their rights under the relevant foreign laws would

be respected and wished to give effect to these assurances. The Court held that it had jurisdiction to give the directions sought pursuant to paragraph 66 of Schedule B1 of the Insolvency Act 1986 and that it should exercise its discretion to do so. It noted that further support for this conclusion came from the application of the rule in *Ex parte James*. The Court also held that, in addition to paragraph 66, there remained an inherent jurisdiction in the Court to give directions to the administrators as its officers. However, it was unnecessary to consider the ambit of that jurisdiction further in this case since the directions sought could be given under paragraph 66.

[Gabriel Moss QC, Tom Smith]

Re HIH Casualty and General Insurance Ltd

Court of Appeal

(Sir Andrew Morritt C, Tuckey and Carnwath LJJ). [2006] EWCA Civ 732.

The Australian court issued a letter of request seeking the assistance of the English court pursuant to section 426 of the Insolvency Act 1986 in respect of four companies which were incorporated in Australia and

in liquidation there and in provisional liquidation in England. The request sought, amongst other things, the turnover of assets collected in and to be collected in by the English Joint Provisional Liquidators to the Australian Liquidators. It was held that the English Court had jurisdiction to direct such turnover notwithstanding that the scheme for distribution to creditors which would apply in Australia was materially different from that which would apply in English liquidations. The statements of principle by the judge that the English court would not have jurisdiction in these circumstances went too far. However, the test was whether a countervailing advantage could be shown to offset the disadvantage which would be suffered by those creditors who would do worse in an Australian liquidation than in an English one. On the facts no such countervailing advantage had been shown and therefore the Court would not exercise its discretion to direct remission.

[Simon Mortimore QC, Richard Adkins QC, William Trower QC, Jeremy Goldring, Tom Smith]