

Inland Revenue commissioners v Lewis

This demonstrates that insolvency practitioners cannot use funds in an insolvent estate to fund litigation brought in the liquidator's name without the consent of creditors.

In this case, the liquidator wished to bring proceedings against the company's directors for misfeasance and/or wrongful trading. There were sufficient funds in the company to pay dividends to the preferential creditors, but the unsecured creditors wished the liquidator to bring these proceedings, which would in effect benefit them.

The liquidator applied to court for permission to use these monies and the judge concluded that the expenses of bringing the litigation would not be included in or of the winding up within the meaning of the relevant sections of the Insolvency Act. The only way that the costs would fall under the relevant provisions would be if the court action was successful.

Is effectively means that liquidator's may be hesitant in bringing action against directors or other parties unless the consent of creditors is obtained (most probably preferential creditors) or if a third party funds the litigation.