

17 April 2014

Senate Economics Committee

Federal Parliament Canberra

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### Inquiry into the Performance of ASIC

Dear Senators,

Thank you for giving me the opportunity to appear before you on 2 April 2014. I would like to clarify one point that I made about ASIC's role in insolvent trading enforcement and SME businesses which appears in the last paragraph on page 26 of the draft Hansard record. I said: "ASIC has not brought an insolvent trading case that has gone to trial in the last 10 years." Mr Lombe speaking as part of the ARITA panel that appeared after lunch corrected my statement by referring to ASIC's criminal prosecution of the Kleenmaid directors. Mr Lombe was one of the Kleenmaid administrators now liquidators and his statement is entirely accurate and appropriate. The announcement of their pending criminal trial was on 1 April 2014 and should have been fresh in my mind. This was an error on my part.

However, what I intended to say was that ASIC had not brought an insolvent trading case *seeking civil sanctions* in the last 10 years. I am fully aware that ASIC has been involved in a small number of criminal cases on insolvent trading. There have been at least 4 other criminal insolvent trading cases in the past 10 years (see ASIC MR 02/208, 04/200, 07/187 and 11-273). I meant to refer to civil cases, particularly in relation to SMEs where ASIC could be taking action to recover compensation for creditors where there are insufficient funds for liquidators to take action, and to ban directors, but is failing to do so. The result of this is that the vast majority of insolvent trading goes unnoticed and unsanctioned which is well-known and abused by illegal phoenix operators.

I apologise for my misstatement, which was unintended, and thank Mr Lombe for his correction.

Sincerely,

Jason Harris

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