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GLOBAL INSIGHT

News, Views and Analysis from DLA Piper's Global Restructuring Group

WHAT DOES THE DELAWARE CHANCERY COURT'S *RURAL/METRO* RULING MEAN FOR ADVISORS TO DISTRESSED COMPANIES?

On March 14 2014 the Delaware Chancery Court found RBC Capital Advisors (RBC) liable for aiding and abetting the breach of fiduciary duty of the board of directors of Rural/Metro, stemming from the sale of the company to Warburg Pincus.

While the details of the court's decision are contained in Vice Chancellor J. Travis Laster's 91-page opinion, several salient points are important to understand:

- Rural/Metro, one of the leading providers of ambulance service, made a decision in 2010 to expand its business and formed a Special Committee of the Board of Directors to explore strategic options.
- One of the key options being advanced by RBC at the time was that the company could acquire its largest competitor, Emergency Medical Services (EMS). Although the acquisition failed, RBC formed the view that EMS's acquirer might wish to eventually merge EMS with Rural/Metro.
- The board subsequently authorized the Special Committee to explore a range of strategic options and to retain a financial advisor to assist. Critical to the court's determination was the fact that the board did not authorize the sale of the company at that time.
- Nonetheless, the only option explored by the Special Committee and its retained financial advisor, RBC, was the sale of Rural/Metro on an expedited timeline.
- Of critical importance, as the court found, was that the board did not have a meaningful role in the ultimate sale decision and had authorized the sale based upon limited information. Most significantly, the board had scant valuation information even at the time it determined to sell the company. As for RBC, the court was particularly concerned by its decision to sell the company at the same time as the EMS sale, which had the effect of limiting the field of potential buyers. Moreover, RBC failed to disclose that it was seeking the buy-side role in the EMS sale, while simultaneously undertaking the sell-side role for Rural/Metro. Finally, RBC failed to disclose that it was attempting to provide staple financing to Warburg for the acquisition, at the same time it was recommending that other potential bidders (including most significantly, the purchaser of EMS) be excluded because they could not meet the expedited timeline.
- Both the members of the board and the secondary financial advisor settled the shareholder claims that had been brought against them, with the aiding and abetting claims against RBC proceeding to trial.
- Following the trial, the court concluded that the board's decision to approve the sale lacked reasonableness and that RBC knowingly participated in the board's breach of its fiduciary duties by creating an unreasonable sale process and by failing to provide the board with adequate valuation information or proper disclosure of its alternate roles in the transactions.

LESSONS LEARNED

Whether one agrees or disagrees with the Delaware Chancery Court's March 7 ruling in the Rural/Metro litigation, it cannot be disputed that the court delivered a very stern warning to financial advisors, investment bankers and other advisors in corporate America. And, while there is nothing in the court's decision that would make it any less applicable to the myriad consultants advising distressed companies, owing to the different landscape and far more transparent process, many of the lessons from Rural/Metro have in fact been learned in the distressed market.

First, in the distressed market, often the range of options and timing are far more limited than available in healthy situations such as Rural/Metro. Moreover, with distressed companies, fiduciary duties have altered and the economic realities focus on fulcrum creditors (rather than equity holders). This group and its advisors are keenly focused on the efforts and compensation of the company's professionals.

1. In the distressed world, advisors generally proceed into the engagement recognizing that their engagement (and compensation) will be scrutinized in the relatively transparent chapter 11 environment. Advisors must satisfy the 'disinterestedness' standard, and all facets of their engagement will be scrutinized not only by their client, but by the United States Trustee, creditors' committees and the ultimate arbiter, the bankruptcy court.

2. Indeed, certain lessons learned by advisors in the distressed market would likely have avoided the Rural/Metro situation. Finally, the advisor needs to ensure that it avoids even the appearance of a conflict. Not only will these steps avoid the situation addressed in Rural/Metro, but it will allow advisors to continue to serve their critical gatekeeping role.

"First, clear authorization in the engagement from the board, and detailed reporting mechanics are critical. Second, the scope of the engagement must be clearly delineated. Third, the fee structure must be 'agnostic' as to result, so as to align the advisors' economic interests with that of the company."

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US: OUTLOOK FOR CORPORATE RESTRUCTURING

Interest rates that remain near zero and debt maturities that have been pushed out to 2017 and 2018 have helped drive chapter 11 filings to historic lows. Has this difficult environment put corporate restructuring on life support?

To call the current macroeconomic climate difficult may strike some as cynical. Nonetheless, for the restructuring market in the US and abroad, the current outlook does indeed remain bleak. While some 'patients' will require restructuring care over the next two years, it may well be that the industry will not regain its health until 2016 or even later; and, even then, the patient will not likely fully recover to its halcyon days of the past.

Low interest rates and extended debt maturities tell only part of the story. Consumer sentiment in the US and much of Asia continues to rise, and with the easing of fiscal policy in Europe, the consumer has returned to the European market. On the corporate side, many businesses continue to hoard cash, which for now makes them virtually immune to any restructuring prospects regardless of fundamental weaknesses.

The restructuring industry need not fear, as there are signs on the horizon. The global economic recovery has generally been unspectacular and growth in the emerging markets has been lagging and shaky. Demographic shifts will continue to weigh on long-term growth in key economies. Interest rates will surely begin to climb in the US, UK and Asia in 2015, and in the Eurozone the following year. And, bank stress testing in Europe during 2014 could uncover additional weakness.

Private equity is sitting on over US $1 trillion, some of which is certain to be invested in highly leveraged distressed situations. And of course, fraudsters will find new ways to create distressed opportunities despite new regulatory schemes.

What this likely means is that more companies will fail to navigate the modest bumps in the road that lie ahead. Yet their restructurings will not be marked by extensive reorganizations, but rather by quick re-financings or sales either outside of, or in, truncated bankruptcies.

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RABOBANK DECISION — SPECIAL DUTY OF CARE

The duty of care of banks has been a hot topic in the Netherlands for quite some time. Although under Dutch law all contract parties have a regular duty of care towards each other, under certain circumstances a 'special duty of care' may apply for banks. This special duty of care applies only towards private persons and in case of high-risk investment products.

CASE OVERVIEW

On 26 March 2014, the District Court of Oost-Brabant delivered a judgment in which it appears to stretch the boundaries of the special duty of care, in particular relating to derivatives and SME clients. This case concerned a dairy farmer who had obtained financing from Rabobank. In 2008, he entered into an interest swap agreement with Rabobank, exchanging his floating interest rate for a fixed interest rate. In 2010, the dairy farmer notified Rabobank that he was planning to emigrate. For the mid-term termination of the interest rate swap he incurred a premium of €275,000. He paid the premium but subsequently lodged a claim against Rabobank, stating, among other things, that the bank had violated a special duty of care towards him and was therefore liable to pay damages.

JUDGEMENT

The court ruled that a special duty of care does not solely apply to private persons. It stated that the bank could not reasonably assume that the dairy farmer, having no experience with financial derivatives, fully understood the risks of an interest rate swap. Furthermore, the judge found that Rabobank had the obligation to inform its client in no uncertain terms about the risks of the product, and furthermore had an obligation to check whether the client was actually aware of the risks involved. Rabobank was therefore found liable to pay damages. However, 40 percent of the damages were to be borne by the farmer on the basis of contributory negligence on his part. He should have made sufficient effort to understand the product. Lastly, he should have known that the decision to emigrate could impact his financial obligations towards Rabobank under the interest rate swap.

"The court ruled that a special duty of care does not solely apply to private persons."

COMMENT ON RULING

The ruling on the special duty of care towards non-private-persons seems contrary to the previous decisions of the Dutch Supreme Court and has therefore been met with a critical response by banks as well as scholars. Based on MiFiD and its Dutch legislative counterpart stipulation in the Financial Supervision Act, a warning with regard to risks may be given in standardized form. In this case, the court effectively ruled that this was not sufficient. It is debatable whether the Dutch court has the authority to deviate from MiFiD in this way, considering that MiFiD seeks maximum harmonization.

As many SMEs in the Netherlands have entered into interest rate swaps, it is expected that more decisions on this topic will follow.

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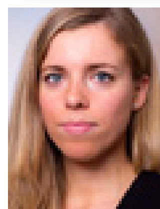

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WHY GLOBAL INVESTORS PREFER AUSTRALIAN REAL ESTATE

Over the last 24 months, key global real estate markets have emerged from a period of severe global economic turmoil into a period of accelerated growth, fuelled by an unprecedented shift to globalisation of real estate capital, where investment is now dominated by cross-border international investors.

Throughout the period of turmoil and ever since, the Australian real estate market has remained a destination of choice for global real estate investors seeking a safe haven for capital in a well-regulated and highly transparent growth-oriented market for doing business.

BACKGROUND

Until late 2008, the real estate market in Australia was highly securitised. Owners were dominated by A-REITs and Unlisted Wholesale Funds. High gearing levels and sudden dips in asset values between 2008 and 2009 precipitated a series of recapitalisations at significant discounts as well as urgent asset sales, as A-REITs and wholesale funds urgently sought to appease lenders seeking to address pressure on asset LVRs and investors in funds seeking to redeem their capital. Fundamentally, however, the market itself was structurally sound, so major big-ticket failures were limited to a spectacular few, such as international retail shopping centre owner and manager Centro Property Group.

Major non-performing loan books were also limited to largely foreign banks, which entered the market late in the cycle, lending against development projects caught in the 2008-2009 period.

The major non-performing loan books were acquired by the likes of Goldman Sachs, Morgan Stanley and Blackstone, which harvested most of these during 2011 and 2012. The major Australian banks had limited exposure – they continued to be well capitalised, continued to trade well and had managed their real estate exposure extremely efficiently.

While asset values dropped, these drops were mild in comparison to what happened to markets in Europe and the US. The resilience of the market was helped along by a resources boom, which underpinned a very quick economic recovery.

While the market has rebounded strongly, offering limited opportunities to invest in distressed assets, restructuring of funds to assist liquidity to trapped investors continues to be the one area where we regularly see special situations investors offering structured alternatives to regular bank refinancing and asset sale programmes.

THE AUSTRALIAN REAL ESTATE MARKET TODAY

Overall, this market is now considered well priced by global standards, adding to its appeal. This is especially true for investors from Asia, particularly those who hail from Korea, China, Malaysia and Singapore. As an example, in 2007, just 31 percent of investment flowing into Australia's industrial property market originated from Asia. By comparison, over the past 24 months that number has more than doubled to 79 percent. It's a similar story in the office sector, where the numbers are 32 percent in 2007 versus 65 percent today.

In recent times, we have seen US gateway cities (New York, San Francisco and Los Angeles) and European destinations such as London and Paris now attracting increasing volumes of offshore capital, particularly from Asia. Yet the Australian real estate market appeals to these same investors for the following reasons:

- First and foremost, Australia trades heavily off a strong reputation as a highly transparent real estate market underpinned by a sophisticated legal system and stable economic and political environment
- Second, what has also assisted in recent years is the introduction in 2008 of the Managed Investment Trust Regime, which offers qualifying foreign investors a concessionary rate of withholding tax. Other changes have helped, such as the introduction of the Significant Investor Visa in 2012, which provides high-net-worth individuals the ability to apply for an Australian visa and ultimately permanent residence on the basis of a minimum investment in Australia of AU$5 million
- Third, favourable pricing has a significant effect. Locally, until recently the competition for investment-grade assets from domestic capital sources has been thin and certainly contributed to yields remaining at attractive rates for investors. Interestingly, pricing remains attractive by global standards, particularly when compared to key US and European gateway cities
- Finally, at the micro level informed investors are aware that Australia's real estate market entered this period with almost no oversupply in most sectors.

Amid current consensus that Australia's resources boom has seen its peak, the commercial, residential, retail and industrial real estate sectors continue to be preferred investment destinations for real estate capital, particularly from Asia and North America, with many being first-time investors.

> ***"Amid current consensus that Australia's resources boom has seen its peak, the commercial, residential, retail and industrial real estate sectors continue to be preferred investment destinations for real estate capital..."***

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COMMERCIAL RENT ARREARS RECOVERY: AN INSOLVENCY PRACTITIONER'S PERSPECTIVE

The threat of a landlord levying distress over goods owned by a tenant in financial difficulty – entering premises and seizing goods found therein – has always caused concern for insolvency practitioners seeking to provide business rescue solutions. It has often been one of the reasons for tenants to seek the protection of a moratorium. However, ever since the courts have interpreted a walking-possession agreement to grant security rights to a landlord, sometimes even a moratorium has proved to come too late to preserve the tenant's assets for the benefit of the company's general body of creditors.

On 6 April 2014, the UK's remedy of distress for rent was replaced with a new statutory mechanism – Commercial Rent Arrears Recovery (CRAR).

KEY DIFFERENCES BETWEEN DISTRESS AND CRAR

The most significant change, from a business rescue perspective, is the introduction of a notice period which requires a landlord to give at least seven clear days' notice before the landlord's enforcement agent attends the premises to exercise CRAR.

Legislation from 1737 provided that where tenants 'fraudulently or clandestinely' removed goods from the premises to prevent them being distrained upon, landlords were entitled to seize the goods from wherever they had been relocated and, as a penalty, recover double the value of the goods removed. The new CRAR regime eliminates this remedy. Now, if landlords fear that the goods will be removed, they can apply to court for permission to give less than seven days' notice; to recover goods from premises other than those demised, they will need to apply to court for a warrant entitling an enforcement agent to do so.

OTHER KEY CHANGES INCLUDE:

Premises
Landlords used to be able to levy distress at premises which comprised residential and commercial use. CRAR may only be exercised over goods at 'commercial premises' or over vehicles belonging to the tenant on the public highway.

Lease
Distress required a relationship of landlord and tenant to exist without the need for a written lease. For CRAR to apply, a tenancy must be evidenced in writing.

Level of arrears
Previously, there was no minimum level of arrears that was required in order to levy distress. Now, at least seven days' rent must be outstanding.

Type of arrears
CRAR procedure restricts the recovery of arrears to 'basic rent' only (including interest and VAT), unlike the distress regime, which enabled landlords to recover any sums due under the lease that were defined as 'rent' (e.g. service charge, insurance payments and rates).

Time
CRAR can be exercised between 6 am and 9 pm any day of the week or during the tenant's business hours should these fall outside the permitted hours.

Sale of goods
Under CRAR, goods seized by an enforcement agent must be sold at a public auction after giving the tenant at least seven clear days' notice. Under the old regime, seized goods could be sold by any method preferred by the landlord after five days of seizure.

Who can seize?
CRAR can only be carried out by an authorised 'enforcement agent' - this term now replaces 'certificated bailiffs'. Landlords will therefore no longer be able to levy distress themselves. Enforcement agents cannot use force to enter premises or to gain access to a vehicle for the first time, without first obtaining a warrant permitting them to do so.

Whose goods?
A landlord is no longer able to seize any goods found on the premises. CRAR can only be exercised over goods in which the tenant has an interest. Consequently goods owned by a third party should not now be taken in exercise of CRAR, but goods which the tenant owns jointly with another party can be seized. The co-owner will be entitled to receive an inventory of the goods seized.

Keeping goods on the premises
Walking possession agreements have been replaced by 'controlled goods agreements'. By signing the agreement, the tenant is permitted to keep the goods in his possession, but undertakes not to remove or dispose of them, nor to permit anyone else to do so before the debt is paid.

Undertenants
Most insolvency practitioners were familiar with the rights of a landlord to serve a notice on sub-tenants, requiring them to pay rent directly to the landlord. Those rights have been replaced by similar ones under section 81 of the Tribunals Courts and Enforcement Act 2007, although the recipient sub-tenant now has 14 clear days before being obliged to start making payments directly to the landlord.

WHAT DOES THIS MEAN FOR LANDLORDS, TENANTS AND INSOLVENCY PRACTITIONERS?

Although the new CRAR regime still enables a landlord to seize a tenant's goods, the seven-day notice period gives a potentially insolvent tenant important breathing space in which to seek professional advice. It seems likely that the courts will interpret the landlord's rights under a controlled goods agreement in the same way as a walking possession agreement and thus capable of elevating a landlord from the position of unsecured creditor to one whose claim takes priority over other creditors. However, the question is likely to be of less relevance, provided tenants seek urgent advice and, where appropriate, use the breathing space to obtain a moratorium or to pass a winding-up resolution (landlords rarely bothered to distrain following notice of liquidation).

CRAR provides a better opportunity for solvent tenants to reach constructive agreements in relation to arrears without the potential interruption to their business imposed by the levying of distress. However, the requirement for landlords to give notice before exercising CRAR is likely to result in greater losses on their tenants' insolvency; it seems likely that they will seek additional security from tenants at the outset of the lease in the form of rent deposits and guarantees.

From a business rescue perspective, it is to be hoped that the receipt of notice of impending CRAR will encourage financially distressed tenants, who have not already done so, to seek urgent advice, at a time when alternatives to liquidation or bankruptcy might still be possible.

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INSOLVENCY IN THE UK FASHION RETAIL SECTOR – RISKS AND OPPORTUNITIES

In this article on the changing landscape of UK fashion retail, we consider the challenges and changes faced by the industry and comment on the opportunities available for existing players and potential new entrants to the market.

The UK fashion industry is estimated to contribute over £21 billion annually to the UK economy. Of this figure, an estimated £2.5 billion comprises retail spending. With over 800,000 people employed in the industry, fashion retail is a significant and vibrant part of UK Plc.

THE FASHION INDUSTRY REMAINS IN DISTRESS

However, in recent years, UK fashion retail has been peppered with tales of financial failure and in many cases rescue. Even today, the UK market continues to see significant levels of financial distress and business failure. Established businesses across the fashion retail spectrum are still struggling to adapt to tough post-recession realities.

Businesses operating in both the value segment (such as Peacocks and Internaçionale) and high-end segment (such as Nicole Farhi and Aquascutum) are finding themselves vulnerable to financial distress.

Challenges for the retail sector arise on a number of fronts. Many retailers (whether in fashion, entertainment or hospitality) are having to manage the costs of rents across their premises portfolio while addressing profitability challenges on marginal stores. Pressure from online competition, employee costs, continuing development of quality ranges and the impact of seasonal weather on consumer demand have all contributed to the insolvency of prominent fashion retail names.

INSOLVENCY OF A UK BUSINESS

In broad terms, 'insolvent' means that the business is unable to pay its debts and liabilities as they fall due. Very often, the insolvency of a business in the UK involves the appointment of an accountant by the company or its creditors to act as the administrator of the company which owns the business. Once an administrator is appointed, the company is in administration and this (in general) prevents any creditors from taking action against the company.

Insolvency is perceived by many to be the end of a business. But while the initial impact on customers, suppliers and employees of a business undergoing a corporate insolvency process can be difficult, there are significant opportunities for competitors and/or new entrants to the market to acquire strategic assets and business when a fashion retailer undergoes an administration or other insolvency/restructuring process.

OPPORTUNITIES FOR PURCHASERS OF A FASHION RETAIL BUSINESS

The insolvency of a business in this sector and the appointment of administrators does not necessarily mean loss of brand value. The insolvency regime in the UK aims to facilitate business recovery and provide an opportunity for financially distressed businesses to trade profitably in the future. A large proportion of those brands/businesses have emerged from administration under new ownership as leaner, more dynamic and more competitive businesses with a prospect of trading profitably for years into the future, typically with a smaller store portfolio, reduced employee costs and a strengthened management team to drive the business forward.

A successful acquisition in these circumstances requires a purchaser to move quickly, so early notice of an opportunity is key. The absence of any warranty or representations from the administrator on issues of title to the business/assets being sold will mean the purchaser will have to price risk into any offer.

When making an acquisition, consideration must also be given to the future structure of the business and to the ownership of the assets. Appropriately structuring a business can be crucially important in managing the risk of insolvency within a corporate group operating under different brand names in different sectors and jurisdictions. The use of distinct legal entities to hold particular assets or businesses can isolate unprofitable elements of a group or business in the event of trading difficulties in a particular market or sector. This is a very valuable tool and can allow a purchaser to avoid the 'bear traps' which affected the insolvent company. For example, holding trading operations, property assets and intellectual assets in separate legal entities may mitigate the risk to assets of the group in the event of trading difficulties in a particular area.

CONCLUSION

In the fashion retail sector, where brand value is difficult and costly to establish, increasingly the insolvency of an established business in the market is seen as a strategic opportunity to acquire valuable intellectual property assets and skills without having to pay the premium that would apply to a solvent asset or share purchase. What might once have been deemed a business failure is increasingly viewed as an opportunity.

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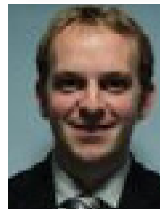

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THE GAME CHANGER – HIGH COURT JUDGMENT ON RENT PAYMENTS UPON ADMINISTRATION

Overturning two significant recent decisions, the Court of Appeal has held that whenever a rent payment day falls, from the moment a company in administration beneficially retains property, it will ordinarily be liable to pay rent as an expense for the period of that beneficial retention.

This unanimous judgment in *Pillar Denton Limited & others (1) Jervis, (2) Maddison and (3) Game Retail Ltd ([2014] EWCA Civ 180)* overthrows *Goldacre (Offices) Limited v Nortel Networks UK Limited ([2009] EWHC 3389 (Ch)) and Leisure (Norwich) II Ltd v Luminar Lava Ignite Limited ([2012] EWHC 951 (Ch)).*

THE FACTS

On the day after the Game group of companies entered administration, £10 million of rent fell due. The administrators quickly closed approximately 300 stores, but continued trading from a number of other stores, which they subsequently sold to Game Retail Ltd. The rent went unpaid.

THE HIGH COURT DECISION

The key question the court had to address was whether part of the rent (which was payable in advance) could be treated as an expense in the context of administration.

Generally prior to *Goldacre*, an accommodation would be reached between office holders and landlords so that rent was paid for the period during which the premises were occupied for the benefit of the insolvency process. However, *Goldacre* and *Luminar* radically altered the position to an 'all or nothing' outcome, depending on the date of appointment, which was seen by the restructuring profession as unhelpful to the rescue culture.

Following *Goldacre* and *Luminar*, it became a common tactic for appointments of office holders to be made the day following the rent quarter day to avoid paying a full quarter's rent and leaving the landlord in the position where his property was occupied and his only remedy to recover rent was to prove in the insolvency.

When *Game* was heard at first instance, the court was obliged to follow those decisions and in doing so reached the following decision:

1. All rent which fell due while the administrators were occupying the properties for the benefit of the administration was an administration expense and payable in full (regardless of the duration and extent of the occupation) and
2. The March quarter rent, payable the day before the appointment of the administrators but relating to the period after the appointment, was treated as a provable debt.

> ***"The Court of Appeal has held that whenever a rent payment day falls, from the moment a company in administration beneficially retains property, it will ordinarily be liable to pay rent as an expense for the period of that beneficial retention."***

THE GAME CHANGER

Lord Justice Lewison, who gave the leading judgment in the Game appeal, sought to redress the balance. His approach was to go back to the starting point by revisiting *Lundy Granite Co ex p Heavan ((1870-71) LR 6 CH App 462)*. In that case, it was held that if a company, for its own purposes and with the aim of maximising realisations, remains in possession of the property, 'common sense and ordinary justice' determine that the landlord must be paid full value for that period. This doctrine based in equity became known as the Lundy Granite principle or the salvage principle.

However, recent case law applying the salvage principle progressively removed it from its equitable origins, producing unjust outcomes which did not necessarily follow common sense. Lord Justice Lewison's view was that as the salvage principle was founded in equity, equity should determine the payment of rent in insolvency and not common law. This being so, he held that while rent is a provable debt, the salvage principle can intervene in order that the full amount of the rent be paid for the company's 'beneficial retention' of the premises as if it were an administration expense.

In summary, the conclusions which can be drawn from the Game appeal are:

1. The office holder is to pay rent for the period during which he beneficially retains the property.
2. The rent will accrue from day to day.
3. Such rent is payable as if it were an expense of the administration or liquidation.
4. The period during which rent is payable is a question of how long the company in administration/liquidation retains the premises for the benefit of the insolvency process and is not determined by reference to the date upon which the rent falls due.

WHAT NEXT

What is 'beneficial retention'?

Although the judgment refers to it, there is no express statement as to what constitutes 'beneficial retention'. This therefore leaves us with some uncertainty as to when rent starts to become payable as an expense.

WILL THERE BE CLAWBACKS?

Since *Goldacre*, administrators have agreed with landlords to pay part of the rent or all of the rent if it was not possible to appoint after the quarter day. No doubt consideration will need to be given to the nature of such payments i.e. whether they were made as a 'commercial accommodation' or whether they were made pursuant to the law applicable at that time. The effect of *Re Kleinwort Benson Limited v Lincoln City Council* and other appeals ([1998] 4 All ER 513) means that payments made as a result of a mistake of law (i.e., those falling into the latter category) could be vulnerable to a claim in restitution.

CONCLUSION

The decision appears to have been well-received by landlords and the restructuring community as recreating, what is generally perceived to be, the least worst solution. For the time being, it re-establishes a fair balance that allows administrators to achieve the purpose of administration irrespective of the timing of the appointment.

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APCOA: FOREIGN COMPANIES INCREASINGLY USING ENGLISH SCHEMES OF ARRANGEMENT

With APCOA Parking, the English High Court sets out the latest line of authority in the increasing use of schemes of arrangement by foreign companies.

This case, *APCOA Parking (UK) Limited & Ors [2014] EWHC 997 (Ch),* presents two novel aspects:

- First, the acceptance by the court that a change of the governing law and jurisdiction clause in the financing documentation from German to English law, in contemplation of a foreign company pursuing a scheme in the English courts, can still provide sufficient connection to enable the Court to invoke its jurisdiction and
- Second, that creditors with different priority rankings could vote together in the same class.

FACTS

APCOA is a leading European parking manager, which operates in 12 countries and has 39 subsidiaries. The group is centrally managed by a holding company based in Germany. Nine of its subsidiaries were involved in the scheme, comprising a German-incorporated holding company, two English-incorporated companies and five other subsidiaries incorporated variously in Austria, Belgium, Denmark, Germany and Norway (the 'Scheme Companies').

Each Scheme Company is a borrower and guarantor under a facilities agreement consisting of a first tranche A facility of €595 million and £33.83 million, and a subordinated term loan facility of €65 million (the second lien) (together, the 'Facilities Agreement'). These facilities, together with liabilities under some additional facilities, were due to mature on 25 April 2014. The Scheme Companies considered that they would be unable to repay the indebtedness in full on the maturity date.

The Scheme Companies had been in discussions with its lenders with a view to negotiating a restructuring. However, near the end of March, they arrived at the conclusion that negotiations were unlikely to be finalised prior to the termination date. The Facilities Agreement required unanimous consent to secure an extension of the termination date, but this could not be achieved. In the absence of an extension, there was a high likelihood that the directors of the German parent company would be obliged to commence insolvency proceedings, thereby causing a cascade effect throughout the entire group.

A scheme of arrangement under Part 26 of the Companies Act 2006 was therefore proposed as a means of achieving an extension of the termination date under the Facilities Agreement without the need for unanimous approval by all of the lenders. The purpose of the schemes was very limited: simply to provide more time for the companies to attempt to agree a restructuring with its lenders without a potentially value-destructive insolvency process that the directors may otherwise have had to pursue.

SCHEME OF ARRANGEMENT

A scheme of arrangement requires the support of 75 percent in value of the scheme creditors' claims (or any class of them) and a majority in number of the creditors present and voting in person or by proxy at the meeting. If the requisite majorities are obtained, the scheme will bind all the relevant company's creditors (or relevant class or classes of them) whether they were notified of the scheme and/or whether or not they voted in favour of the scheme. It therefore provides a useful mechanism to cram down minority creditors who either oppose a scheme or do not participate in the voting.

In summary, a scheme of arrangement involves the following stages:

1. A court order convening meetings for the purpose of allowing creditors to vote on the scheme
2. Meeting(s) of members and/or creditors to consider and vote on the proposed scheme and
3. If the scheme is approved, a further hearing in which the company asks the court to sanction the proposed scheme.
4. At the initial court hearing for the purposes of convening the meeting(s), the court has to be satisfied that the proposed voting classes are correctly constituted and that the proposed scheme has a chance of being approved.

HOW ARE CREDITOR CLASSES CONSTITUTED?

A class of creditors must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

The APCOA scheme proposed that the priority senior lenders and the second lien lenders should vote together in a single meeting. Notwithstanding their differing priorities and the general presumption that creditors who rank differently should vote in separate classes, the justification for them voting in a single class was as follows:

- The maturity date for all facilities was the same
- The maturity date for all facilities would be extended in the same way
- Each lender would be entitled to the same pro-rata consent fee if the scheme was approved and
- The differences in the lenders' respective rights as against the company in relation to fees and margins payable were considered by the court to be not so dissimilar as to make it impossible for them to consult together.

SUFFICIENT CONNECTION

As most of the Scheme Companies are neither English-incorporated nor have their centre of main interest (COMI) in England, the Court had to be satisfied that there was otherwise sufficient connection to English jurisdiction to warrant the Court's intervention.

In the case of Mobile-8 Telecom Finance Company BV, a company registered under the laws of the Netherlands with its main business operations in Indonesia, the English court approved a scheme involving the company changing both its COMI from the Netherlands to England and the governing law of its indenture from New York law to English law, in part, to gain access to the scheme process. Despite Mobile-8 openly acknowledging that it was engaged in forum shopping, the English court ultimately approved Mobile-8's scheme.

In APCOA Parking, however, the Court followed the analysis in *Re Drax Holdings Ltd [2004] 1 WLR 1049* as adopted in *Re Rodenstock GmBH [2011] EWHC 1104* and in a variety of cases which have followed in quick succession since. These lines of authorities provide that foreign companies (such as the non-English incorporated scheme companies) will have a sufficient connection with the jurisdiction where the facilities agreement is to be restructured by way of a scheme of arrangement if it is governed by English law and is subject to the jurisdiction of the English court without the need for an English COMI to also be established.

COURT CONSIDERATIONS

The court had to consider whether the change of the governing law and jurisdiction clause was either ineffectual under the law governing the Facilities Agreement or such as to preclude the intervention of the English court because of the subsequent change. Changes to such clauses in the Facilities Agreement could be made with the approval of not less than $66^{2/3}$% of lenders, representing a lower voting threshold than that required to approve a scheme and much less than the unanimous approval required to amend a maturity date.

Expert opinions were admitted in respect of each of the relevant jurisdictions, confirming that the changes were valid. The court was also provided with reassurance that the creditors were made aware the purpose of altering the governing law and jurisdiction clauses which included the ability to enable the implementation of a scheme of arrangement under English law.

INTERNATIONAL RECOGNITION

Lastly, the court had to be satisfied that its sanction of the proposed scheme would be recognised and enforced in the countries where the Scheme Companies are resident. Expert opinions dealing with each jurisdiction were produced for the court, which affirmed that the courts in those jurisdictions would give effect to a scheme formally sanctioned by the English court.

CONCLUSION

The change of the governing law and jurisdiction clause in the Facilities Agreement provided a convenient gateway to the implementation of an English law scheme of arrangement for a number of the foreign companies within the APCOA group. While aspects of this case will no doubt be of relevance and interest to other companies, a note of caution should be raised:

- The scheme implemented in APCOA was basic providing merely for an extension of the maturity date to enable further discussions with its creditors to take place
- No opposition was presented by any creditor at the first hearing, in fact the scheme was broadly supported by lenders holding more than 50 percent of the outstanding senior debt The Court was concerned that creditors were fully informed as to the reasons for the alteration to the Facilities Agreement. Parties in the future seeking to make similar amendments to the finance documents, without the purpose being made clear to relevant counterparties, may find a Court is less willing to grant jurisdiction than it did here
- As the European Commission has published a proposal for the amendment of the Council Regulation (EC) 1346/2000 on Insolvency Proceedings (as covered by David Ampaw in his article *'Proposed Amendments to the EC Insolvency Regulation',* in the Q1 2014 issue of Restructuring Global Insight), depending upon how the amendments are eventually agreed, this may require a company to establish its COMI in the UK in order to avail itself of a scheme, thereby raising the threshold from the simple 'sufficient connection' test which currently applies.

"The change of the governing law and jurisdiction clause in the Facilities Agreement provided a convenient gateway to the implementation of an English law scheme of arrangement for a number of the foreign companies within the APCOA group."

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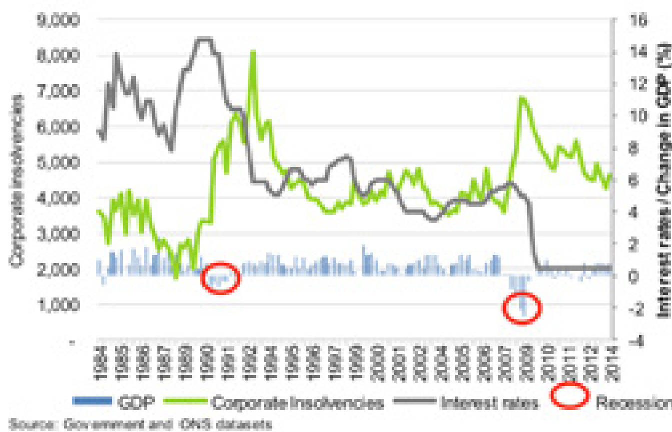
WINDS OF CHANGE?

We are experiencing a quiet restructuring market and relatively high corporate survival rates at a time when historical trends would suggest a period of increasing insolvency activity. Historically there has been an uptick in the number of corporate insolvencies when exiting recession (largely driven by growth funding needs, over-trading and high interest rates) whereas we are currently seeing a less pronounced impact (figure 1) – principally by virtue of interest rates being kept at historical lows (since March 2009) and a push by the UK government for banks to lend to SMEs in order to stimulate growth.

Figure 1: UK insolvencies, GDP and interest rates



This is perhaps an appropriate time to take stock - I consider below a number of the key market characteristics that we have seen in recent years, combined with current trends in the broader economy and financial markets and, importantly, what this may mean for the shape of the restructuring market in the coming years.

RESTRUCTURING OF THE FINANCIAL SERVICES SECTOR ITSELF

Issues within the financial sector sat clearly at the heart of the global financial crisis which has led many commentators to badge it a 'different kind of recession' to those seen before. The most recent recession, driven by optimistic lending combined with intertwined investment structures and derivative instruments traded across financial institutions, has fundamentally changed the face of the banking sector as we know it. The level of systemic risk in existence at the time of the global financial crisis is now considered unpalatable for the regulators and this is likely to impact on the shape of financial markets and, as a result, the restructuring industry, going forward.

We have seen: the failure of two large US investment banks; a bail out of the world's largest insurer; the government rescue of two UK clearing banks; the deployment of quantitative easing; and a wholesale bank deleveraging programme across the UK of unprecedented proportions. The Asset Quality Review ('AQR') process across Europe is now fully underway and will undoubtedly drive increased activity in the financial sector. Whether we will see the failure of further financial institutions remains to be seen and will largely be driven by the extent to which local governments are minded to take a harder line as advocated by the European Central Bank as opposed to potentially opting for softer landings by way of 'bad bank' structures or consolidation. At the very least, we are likely to see portfolio sales to deleverage, fundraising to help shore up stressed balance sheets and some large single ticket restructuring work. The UK should be largely insulated from any pan-European fallout by virtue of the fact that we sit outside the Euro and have already taken steps to strengthen the UK banking sector, albeit we will watch with interest at developments on the continent.

AN EVOLVING CLIENT BASE

Prior to the global financial crisis the UK restructuring market was dominated by the main clearing banks as the lenders to most mainstream UK corporates. This is changing by virtue of three important factors:

- The deleveraging exercise referred to above (ultimately driven by increased bank regulation);
- The emergence of the alternative capital providers (both distressed players and alternative par lenders seeking to fill a funding gap for British corporates). Ultimately, there is an increasing level of liquidity in the market which has facilitated ease of exit for a traditional clearing bank in the event that they sense a distressed borrower – the market to trade out of a position is now a lot more advanced than it was previously and the decision as to whether to sell out or back a turnaround is coming at a much earlier stage; and
- The ability of the borrower to refinance through less traditional channels is increasing all the time (the high yield bond market on bigger ticket deals, the re-emergence of CLO activity in the upper mid-market down to smaller mid-market debt funds and even peer to peer lending in the SME space).

The clearing banks are increasingly conscious of their PR and (rightfully) wish to treat customers fairly and avoid precipitive insolvency action where possible. This plays to a trend of considering an early exit through a debt sale where possible – it is ultimately a brave credit sanctioner who supports the backing of a difficult five year turnaround as opposed to pursuing an exit of their position at a reasonable level (to a credible purchaser with good intentions and capital to invest in the business) which is increasingly possible in the current market given existing levels of liquidity and demand for assets – the relatively high cost of capital for banks in respect of distressed assets will also be a consideration here. The sell/hold decision is now featuring much earlier in a lender's options analysis – often on entry to their work-out team (and a sale is potentially more likely in situations whereby a particular lender is unable to influence the ultimate outcome).

From an origination perspective, whilst we are seeing an increased issuance of high yield bonds in the bigger ticket space, the traditional lenders are likely to continue to hold prominence in the more traditional mid-market given their existing origination channels (albeit this is a clear area of emerging focus for private debt funds).

An interesting dynamic on the Big Ticket side will come when any of the recent European High Yield Bond deals start to falter. The structural issues around those are noteworthy and widely commented upon (generally governed by US documents but with their own local jurisdictional restructuring and insolvency regimes at times of distress i.e. potentially conflicting legal jurisdictions). Failure in this space in relation to recent high yield bond transactions is, as yet, largely untested but the complexities involved could lead to substantial restructuring work.

The impact of all of this on the restructuring market is that it has widened our potential client base previously dominated by the traditional clearing banks and corporates to include increasing numbers of alternative investors. The traditional clearing banks will continue to be important providers of capital and transactional capabilities and, as such, restructuring opportunities. However, work flow will be less concentrated than it has been historically, which is likely to be encouraged by the regulators who will be keen to keep some higher risk lending away from the providers of day-to-day clearing facilities (thus seeking to mitigate the systemic risk we saw at the height of the global financial crisis).

THE RETURN OF THE INSOLVENCY PRACTITIONER

If you cast your mind back six years to the pre-crisis period where liquidity was abundant and it was considered that stressed/distressed situations would simply be refinanced as opposed to restructured, the prospect of large scale insolvencies was scarce and, as a result, the role of the Insolvency Practitioner somewhat unfashionable.

Then came Lehman, which is clearly a key broader reference point in the Global Financial Crisis, but also, through the crisis we have had the insolvencies of MF Global, The Structured Investment Vehicles, hmv, Nortel, Woolworths and Blockbuster to name but a few.

Nowadays, insolvency is slightly more 'in vogue' than pre crisis and a particular driver of this is the approach of the alternative and distressed investor community who:

- Perhaps place greater emphasis on the input of an Insolvency Practitioner when considering exit strategies prior to entering a deal (be it a portfolio or single ticket transaction) – ultimately to understand fall back value to assist in their pricing decisions;
- Will be less concerned at sub-par recoveries driven by insolvency sales given the discounted values at which they will have bought in; and
- Are likely to be less averse to taking enforcement action to maximise value for their own stakeholders than traditional lenders, to whom PR is of increasing importance.

It is increasingly acknowledged that, in the modern market, Insolvency Practitioners can add significant value in structuring innovative solutions using insolvency as a delivery mechanism for a transaction where a fully consensual deal is, for whatever reason, not possible/desirable from their client's perspective – additionally, modelling likely insolvency outcomes is fundamental to understanding the fall back positions of various stakeholders which will always be a key consideration in restructuring negotiations.

Other jurisdictions across Europe are developing their restructuring and insolvency rules to try and facilitate more of a rescue culture, however, the UK remains the 'jurisdiction of choice' for implementing complex restructurings given the relative certainty afforded by our regime.

Given the shift in the nature of those creditors sitting at the value break in a deal and the difference in mind-set between a traditional par lender and alternative capital providers (generally more driven by a desire to maximise short term return), combined with an inevitable interest rate rise (now looking increasingly likely for late 2014), the potential for an increase in insolvency activity is clear.

LEGAL INNOVATION

It used to be taken as a given that a bank's security would be of a relatively standard nature and all worked correctly – in recent times this has been subject to greater and greater challenge and in instances where things have not worked as they should, this has fundamentally changed the restructuring dynamic. The last few years has seen a growing number of cases brought to court challenging financial structures and their related documentation prepared in the heat of the pre-financial global crisis era. This has resulted in various clarifications on insolvency law - the terms agreed between competing secured creditors, the rights of high street landlords under the insolvency priority waterfall, the determination of when a company is 'insolvent' and the validity of the appointment of the insolvency practitioner. Weaknesses in documentation and structures provide leverage.

These recent cases have shown that stakeholders in the market today have been willing to challenge the traditional senior creditor friendly protections that the UK insolvency laws provide. So whilst it is difficult to see where legal innovation in the restructuring space will go next, it would not be surprising to see a further push on the introduction of a more chapter 11 type restructuring process across Europe. This is already seen in the more prevalent use of schemes of arrangement across Europe and the push to widen the use of CVAs.

In any event, the increasing involvement of alternative capital providers in the restructuring market is likely to continue to encourage the use of innovative legal structuring to drive value.

SUMMARY

We are experiencing a period of change in the world economy and the financial sector. Whilst it is difficult to be specific on how this will drive the restructuring market over the next couple of years, I set out below a few predictions on what we may see:

- A significant focus on Europe driven by the AQR. This is inevitable given the current stress testing work. To fully capture this opportunity, it will be key that practitioners have experienced teams focussed on portfolio and single asset positions with broad cross firm expertise on a pan-European basis.
- A continued shift in the structure of funding for mainstream UK businesses. In the UK, traditional clearing banks still provide much of the finance in the market, whereas the US has seen a shift since the last banking crisis such that clearing banks now provide only c.20% of finance (the balancing 80% being private debt providers – Figure 2) – many commentators feel that we will move closer to such a model and we are already starting to see evidence of the increasing involvement of the Alternative Lender community across Europe (Figure 3). Increased regulatory pressure driving up banks' cost of capital and low interest rates will be the key drivers and with the market currently awash with alternative liquidity, borrowers are pushing harder on leverage and other traditional lender controls making the more flexible private debt fund alternatives more appealing to them (albeit private debt funds have no track record of supporting businesses through the cycle, which will be an understandable concern for some borrowers).
- Teaming of traditional clearing banks and private debt funds. The traditional clearers will remain a key source of capital, however, as noted, ongoing regulatory pressure is likely to broaden the playing field. Whilst traditional banks and alternative lenders are competitors in one sense, given the clearing banks' origination channels and transactional/clearing capabilities, they are likely to be key allies for the alternative lender community and some form of teaming/alliance relationships as the market develops is a clear possibility.

Figure 2: Evolution of the US leveraged debt market

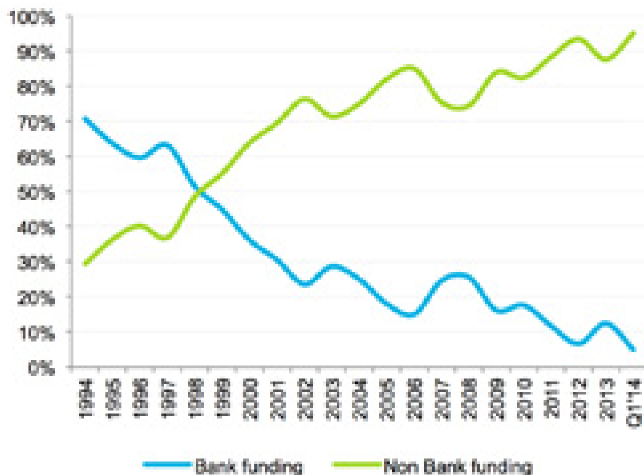


Figure 3: Alternative lenders - deals completed

- An increase in insolvency and restructuring activity in the mid-term. With interest rates now clearly signalled to rise by the end of the year from an historic low of 0.5% (since March 2009), an increase in restructuring and insolvency work over the mid-term would be logical. Additionally, we cannot forget that whilst the economy is growing, consumers have been buying more on credit and have had an enormous windfall from mis-selling claims (£14.7 billion has been paid to consumers in PPI compensation since January 2011, which is enough to finance half of the increase in consumer spending over that period). As such, there is an obvious question as to whether we are seeking 'real' growth in the economy or simply opportunistic purchases on the back of unrealistically low interest rates and indirect bank funding in the form of PPI compensation – that being said, we are seeing a fall in unemployment, decreasing inflation and real growth in wage rates, which are all positive signs. Ultimately the extent to which a rate rises translate to restructuring or insolvency work will be driven by available liquidity in the market, however the increasingly borrower-friendly nature of funding packages we are seeing (covenant lite, leverage multiples increasing, equity contributions decreasing etc) indicates that this round of refinancing may again be storing problems up for the future– albeit this time around shared between a broader set of stakeholders – more institutional investors and less bank concentrated.
- The increase of a company led restructuring and insolvency model. Whether or not we adopt a wholesale shift to more of a chapter 11 approach or not remains to be seen, however, I envisage more company control on the driving of any insolvency action going forward. At the smaller end this will be driven by the PR concerns of traditional lenders and in the bigger ticket space the structural considerations around the current high yield bond issuances (mainly the absence of traditional early warning covenant structures that may hinder a lender's ability to undertake effective contingency planning) means that the major creditors may not know that of a distress position until the point of payment default, which will either result in a missed opportunity to appropriately restructure a business pre insolvency or provide the corporate with clear leverage in restructuring discussions.

Whether all of these observations represent permanent winds of change or just temporary gusts in alternative directions is difficult to say, but it is clear that we are at a time of change in the restructuring market.

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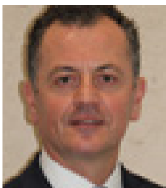
Footnote (Deloitte Alternative Lender Deal Tracker): The tracker run by the Deloitte Debt Advisory team covers 33 leading alternative lenders, who have participated in 93 UK and 105 European mid-market deals in the previous six quarters. Only primary mid-market UK and European deals with debt up to £300m or €350m are included in the survey.

If you are interested in submitting a guest article to a future issue of *Global Insight* please email restructuring@dlapiper.com

GLOBAL RESTRUCTURING GROUP NEWS ROUNDUP

NEW PARTNER HIRE

Melbourne – Kon Tsiakis has been appointed as a partner within our Melbourne restructuring practice, demonstrating our commitment to developing our Australian practice. He joins DLA Piper from HWL Ebsworth where he was also a partner. Prior to that he spent 10 years at Freehills (now Herbert Smith Freehills). Kon also has international cross-border insolvency experience gained while employed by a major US law firm in London.



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LAWYER PROMOTIONS

Lawyers Promoted to Senior Lead Lawyers

- **David Ampaw**, London
- **Lucy Banham**, London
- **James Morris**, Leeds
- **Neil Riley**, London
- **Emma Widdowson**, Leeds

Lawyers Promoted to Lead Lawyers

- **Kerry Barnard**, Manchester
- **Robert Chidley**, London
- **Jared Green**, London
- **Sarah Letson**, London
- **Michelle Ni Ghaboid**, London
- **Arnaud Moussatoff**, Paris
- **Erik Schuurs**, Amsterdam
- **Andrea Unwin**, Leeds

PARTNER PROMOTIONS

Sydney – Amelia Kelly was promoted as a partner of the Sydney restructuring practice on 1 May 2014, having been in practice for almost 15 years. She joined DLA Piper in 2011 after working with leading practitioners in boutique and niche insolvency firms. Amelia's practice focusses predominantly on contentious insolvency and restructuring matters.

Dubai – James Iremonger was promoted as a partner of the Dubai restructuring practice on 1 May 2014, having been part of that department since its inception in 2010. James started his career with DLA Piper and qualified into the London office. He has been involved in some of the largest non-contentious restructuring assignments in the Middle East over the past four years.

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NEWS ROUNDUP

NEWS

- Writing for the Wall Street Journal's 'Bankruptcy Beat', our partner Richard Chesley explores various issues each month:

  "The Examiners: Richard A. Chesley on GM's Liability," Bankruptcy Beat, The Wall Street Journal, May 30 2014.

  "The Examiners: Richard A. Chesley on the Rural/Metro Ruling," Bankruptcy Beat, The Wall Street Journal, April 30 2014.

  "The Examiners: Richard A. Chesley on the Outlook for Corporate Restructuring," Bankruptcy Beat, The Wall Street Journal, March 24 2014.

- DLA Piper has been invited to join INSOL's G36 membership association, a prestigious, international group of firms and organizations from around the world involved in restructuring and insolvency, and engaged in cross-border transactions.

EVENTS

Forthcoming

Global Restructuring Seminar

- DLA Piper New York
- October 28 2014, 1300-1600 (followed by networking reception).

We are organising a seminar to discuss key trends and drivers in today's global distressed investment market. Our panel, comprising partners from our global restructuring group and other leading industry professionals, will share their insight on the key restructuring markets in Asia-Pacific, Latin America and Europe.

To register your interest in the seminar, please email restructuring@dlapiper.com.

Recent

World View Series Breakfast Briefing

- HE Otabek Akbarov, Uzbekistan Ambassador to the UK, London, May 15 2014.

What In-House Lawyers Need (WIN): Future Legal Leaders

- Perfecting your presentation skills: De Burgh Group, June 4 2014.

What In-House Lawyers Need (WIN): Future Legal Leaders

- Secret Garden Party, June 18 2014.

What In-House Lawyers Need (WIN): Future Legal Leaders

- Difficult Situations, Positive Outcomes: Empathy Communications, September 30 2014.

Spectator Breakfast Debate

- Referendums: good for democracy, bad for economy? June 19 2014.

10th Annual ABI Mid-Atlantic Bankruptcy Workshop

- Stuart Brown is on the advisory board for the 10th Annual ABI Mid-Atlantic Bankruptcy Workshop, July 31 - August 2 2014.

SIGNIFICANT RECENT MATTERS

Leading UK Insurer

- Advising a leading UK insurer on a major distressed real estate portfolio sale to a sole purchaser via an accelerated bidding and due diligence process. The portfolio comprised more than 130 mixed use retail, hotel and industrial properties across the United Kingdom with multinational distressed proprietors. We worked with numerous stakeholders to place the entire portfolio under the control of an investor.

Hearts Takeover

- Acting for Edinburgh businesswoman Ann Budge on her takeover of Hearts of Midlothian Football Club (based in Edinburgh) which will save the club from administration. We advised the Bidco, the special purpose vehicle set up for the acquisition.

NEWS ROUNDUP

Comcast

- The US Bankruptcy Court Southern District of Texas, Houston Division rules in favor of Comcast on removal issue. Our clients Comcast Corporation and NBC Universal removed a state court fraud and negligent misrepresentation filed against them by the parent company of the Houston Astros, asserting that the state court case was related to the Houston Regional Sports Network pending chapter 11 case.

Ageas Bowl

- Advising the Co-operative Bank on the redevelopment of Hampshire County Cricket Ground. Following the insolvency of the principal subcontractor in late 2013, work on the Ageas Bowl site in Southampton halted. We acted for the original funders, The Co-operative Bank, alongside stakeholders including Eastleigh Borough Council to secure a new funding structure and contractor to ensure that construction could recommence as soon as possible.

J.Rainford and Sons Limited

- Acting for Barclays Bank PLC on the sale of J.Rainford and Sons Limited, an egg production business based in the North of England. The team worked under significant time pressures to save the group companies from entering administration, securing 45 jobs and ensuring the value in the business was retained in a solvent sale.

Albemarle & Bond

- We have announced our involvement in the sale of AIM listed group, Albemarle & Bond Holdings plc and its subsidiaries, Albemarle & Bond Jewellers and Pawnbrokers Ltd and Herbert Brown & Son Ltd, to Promethean Investments LLP, preserving over 600 jobs. The sale will see Promethean acquire 128 of the 187 Albemarle & Bond stores across the UK.

Sears Methodist Retirement System

- Representing Sears Methodist Retirement System and its affiliates, the largest not for profit senior living provider in Texas with eleven facilities in eight cities, in its chapter 11 filing in the US Bankruptcy Court in the Northern District of Texas.

AWARDS

- The Deal ranked DLA Piper ninth by number of cases in its 2014 bankruptcy league table for the first quarter.
- Gregg Galardi is recognised as one of the Top 100: Global Restructuring & Turnaround Dealmakers - Global M&A Network.
- DLA Piper received nine individual lawyer rankings for Bankruptcy in the newly published Chambers USA: America's Leading Lawyers for Business.
- On June 24, Global M&A Network honored DLA Piper with four Turnaround Atlas Awards at the annual awards gala, held at the Standard Club in Chicago after the Restructuring and Turnaround Intelligence Forum. DLA Piper won:
- Mid Markets Restructuring Law Firm of the Year.
- Chapter 11 Reorganization Deal of the Year – Middle Markets for the Ahern Rentals reorganization.
- Pre-Pack Restructuring – Middle Markets for the Education Holdings prepack reorganization.
- Consumer Goods Turnaround of the Year – Orchard Supply Hardware Store's reorganization and sale to Lowe's Companies.

GLOBAL RESTRUCTURING GROUP

DEDICATED RESTRUCTURING LAWYERS WORKING ACROSS BORDERS

Our Global Restructuring group is one of the largest in the world, with over 200 dedicated restructuring lawyers across the Americas, Asia Pacific, Europe and the Middle East. We have the knowledge, experience and resources to address our clients' restructuring and insolvency needs on a national and international basis.

We serve a diverse client base encompassing debtors, lenders, government entities, trustees, shareholders, directors, and distressed debt and asset buyers and investors. We advise clients across a wide range of industry sectors and have particular strength in energy, financial services, health care, hospitality and leisure, real estate, retail, sports, technology and transportation.

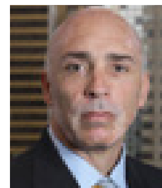
ADEPT AT ALL LEVELS OF COMPLEXITY

We advise on all matters relating to public and private companies in underperforming and distressed situations. We manage assignments from the mid-market to the largest national and international restructurings and insolvencies. Our experience also extends to any contentious issues arising from restructurings and insolvencies. We have significant experience of advising clients on, investigation, enforcement, litigation and asset recovery on a multijurisdictional basis.

GLOBAL REACH, LOCAL RESTRUCTURING EXPERIENCE

With our global team of dedicated restructuring lawyers we have detailed knowledge of local markets and the associated challenges our clients face. We are passionate about what we do and our clients see this in the quality of work our lawyers provide. Our Global Restructuring group is part of one of the world's largest law firms with 4,200 lawyers located in more than 30 countries. As a full-service business law firm, we offer clients the benefit of the collective knowledge and experience of all our practice groups.

GLOBAL LEADERSHIP TEAM



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