

SPRING NEWSLETTER

Welcome to our Spring Update. With Covid-19 restrictions predicted to ease over the coming months, we are looking forward to what the rest of the year will bring.

In this first update of 2021, we are sharing insights and reflections from our departments on this first quarter and some exciting company developments including the expansion of our Real Estate team. We are also delighted to introduce a new feature "Legally Speaking", our legal insights section kindly inaugurated by Wedlake Bell LLP.

As always, we are on hand to help and advise during this time and are contactable through email, phone and video calls.



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 **Hilco**
Valuation Services

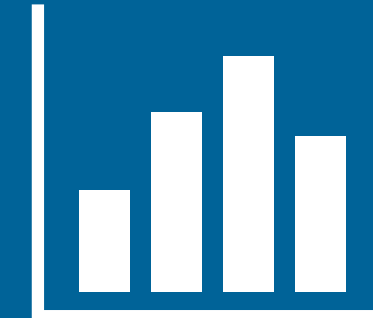
HILCO
VALUATION
SERVICES
EUROPE



**MACHINERY
& BUSINESS
ASSETS**



INVENTORY



**ACCOUNTS
RECEIVABLE &
INVENTORY
FIELD EXAM**



**REAL
ESTATE**



**INTELLECTUAL
PROPERTY**

MACHINERY & BUSINESS ASSETS

The end of 2020 has seen an increase in new corporate recovery and disposal instructions, but perhaps not to the extent that had been anticipated. The extension and continuation of the various UK Government support schemes to businesses has likely tempered any expected marked increase in formal restructuring instructions.

Asset disposal instructions towards the end of 2020 were across several sectors and included notable sales such as: Wrexham Wire, Tomlinson Dairies, Intu Properties and Casual Dining Group. In collaboration with one of our strategic partners, we also organised a significant asset sale in the aviation sector for the Joint Administrators of Flybe Ltd.

Retail has certainly been a major theme in our current case work, and recent high-profile sector names such as Debenhams and Arcadia, continue to keep the wider Hilco team busy. The general view is that, unfortunately, the high street will likely experience further casualties as we progress through 2021.

With insolvency keeping us busy, we have also noticed an upturn in asset-based lending enquiries and instructions, including collateral review projects. The importance of assessing collateral value status, including residual positions, and undertaking mark-to-market analysis, is crucial for effective asset management, especially with understanding the potential impact of current market dynamics. Having access to current market data to undertake appropriate analysis, together with links and relationships with sector traders/dealers allows for an effectual approach to be adopted.

As the 2020/2021 financial year reaches its end, a flurry of valuation advisory work for financial reporting purposes on behalf of Local Authorities keeps us focused, and as 2021 progresses, we anticipate the increase in corporate recovery instructions and asset finance work to continue.



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INVENTORY

The team continues to be busy on both new instructions and collateral reviews, across all sectors.

The most noticeable changes in the first quarter of 2021 have been a move away from smaller lends as a result of the changes in Crown Preference, which came into effect in December 2020. An increasing number of lenders looking to increase the frequency of collateral reviews; to as regular as quarterly in some instances. Sustained uncertainty within the retail sector, particularly high end and niche retailers continues to drive new instructions.



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ACCOUNTS RECEIVABLE & INVENTORY FIELD EXAM

We have had a very busy start to 2021, working on a number of transactions in the UK, Europe, the Far East and Australia. Our field exams service is being utilised by our clients to support acquisition finance and re-financings as well as recurring reviews for existing lenders.

The team continues to excel at working remotely, ensuring we have been able to carry out our work for our clients during the pandemic without reservation, but we are available to conduct site visits if required, subject to adhering to government guidelines. In the first quarter of this year we have worked across a wide range of industry sectors including construction, manufacturing, fuel, plant hire, wholesalers and recruitment.



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REAL ESTATE

Having previously reported that London City was getting noticeably busier, that statement was very soon to be reversed due to 'Lockdown 2'. However, from recent conversations with clients and other colleagues increasingly the attention is returning to when, how and to what capacity offices will reopen and until that is known in 'real time', the future of some businesses remains uncertain.

Nevertheless, the months prior to Christmas and the early months of 2021 have seen the growing Real Estate Advisory team involved in an increasingly diverse range of engagements both in the UK and Europe, acting for lenders and insolvency practitioners. These engagements have included lease advisory in the negotiation of rent forgiveness and future rent concessions to allow private equity investment in a distressed TV production business from multiple leased premises and a continuation of focussed pre-lend and post-lend valuation exercises for asset based and other lenders advising on exit and route to market.

In the last few months it has been noticeable that some lenders are reviewing their existing real estate lending portfolios, some of which individual loans can be in varying degrees of stress with a view to formulating early exit strategies through consensual intervention if possible or, if not achievable, more formal processes. Recent review engagements have included part-completed residential developments and proposed hotel/leisure developments, which are unlikely to be commercially viable 'post lockdown'.

It is unclear how the economy and our markets will fare over the coming months but we remain confident that the skill sets of expertise, knowledge and restructuring skills of our team will continue to be of paramount to our lending and restructuring clients.



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INTELLECTUAL PROPERTY

Record-breaking prices for one of the most unique asset classes which we deal with – IPv4 Internet Protocol (“IP”) addresses - were reached this quarter. This coincides with our appointment to monetise over 60,000 excess IP addresses owned by a large UK-based financial services company. In the early days of the Internet many businesses, academic institutions and government bodies received large blocks of IPv4 addresses for free, and many of those allocations are not in use.

Our clients are now recovering anywhere from several thousand to tens of millions of pounds for their IPv4 space. This is an often-hidden asset that corporate clients and insolvency practitioners could be sitting on, and which we are always happy to investigate.

Other recent and ongoing disposal instructions have included: the business and assets of fashion brand Ralph & Russo which was worn by Meghan Markle in her official engagement photo; online wine & spirits retailer Winebuyers.com; and educational app developer Mrs Wordsmith.

All of these IP-rich opportunities have generated international interest, demonstrating that there are opportunities arising for buyers from the current crisis and significant returns can be generated from intellectual property assets for creditors.

On the valuation front, in line with other teams, we have seen an upturn in enquiries from lenders. In addition, an increase in instructions from insolvency practitioners to assist with the provision of intellectual property valuation advice in the context of pre-pack scenarios has perhaps been prompted by the attention being given to the upcoming new pre-pack regulations.



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LEGALLY SPEAKING

We are delighted to introduce a new section to our newsletter which debuts in this edition and titled "Legally Speaking". This will be a regular feature in which we invite representatives from law firms to provide latest updates, insights and information on legal issues focusing on the sectors in which our clients operate.

Lucy O'Brien from Wedlake Bell LLP has agreed to open the batting with a topical piece relating to business interruption insurance in the context of the pandemic. Our thanks to Lucy and all at Wedlake Bell.



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Supreme Court rules in favour of Covid-related business interruption insurance pay-outs

Lucy O'Brien writes:

Business Interruption ("BI") insurance policies provide a lifeline to businesses where unforeseen events (like a pandemic) cause disruption or termination of revenue. Or so business owners might think. But like all insurance policies, BI policies only cover a defined area of risk. Faced with a wave of claims in early 2020, insurers often responded to pandemic-related BI claims by declining some or all cover on the grounds the claim did not fall within the defined risk. Some 370,000 businesses are thought to be affected.

Given the potential economic fall-out from this, the FCA stepped forward and (with insurer cooperation) brought a test case.

Expedited hearings of the test case meant a High Court decision in September 2020 and a Supreme Court appeal decision in January 2021. The case sampled and scrutinised a variety of policy wordings from BI policies issued by a number of insurers.

The aim was to swiftly provide some clarity for both insurers and business owners / insureds and, as a result, to avoid each individual policyholder / insurer having to (expensively) litigate a whole host of issues from a standing start. Or even avoid litigation altogether.

What did the Supreme Court decide?

The Supreme Court confirmed that there will be cover under "disease clauses" and adopted a broad interpretation of "prevention of access" and "hybrid" clauses, concluding, *inter alia*, that:

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LEGALLY SPEAKING

- "disease clauses" are triggered in the event of an interruption of business following an occurrence of a "Notifiable Disease" (which Covid-19 now is) within the specified geographical radius – typically 25 miles. Any insured person would have to prove at least one case within the radius to trigger the clause, but given the national nature of the pandemic, this criteria is likely to be met; and
- whilst "prevention of access clauses" and "hybrid clauses" require that a restriction be imposed by a public authority preventing businesses from using the insured premises, (i) such restrictions do not have to have the force of law provided that compliance is required, such as Boris Johnson's "stay at home!" instruction; and (ii) provided the business had suffered material financial loss, closing part of the premises, or ceasing part of the business, is sufficient.

Insurers argued that but for the immediate shut down in a business's local area (and therefore the immediate and direct cause of loss), there would have been losses in any event due to the more general downturn in trade, characterised by a wider downward trend in business and revenue.

Crucially, the Supreme Court held that:

- insurers would have to answer to claims where the loss was concurrently caused by other uninsured (but non-excluded) factors;
- in respect of clauses enabling insurers to cut the level of cover in respect of losses attributable to wider business trends which they say would have operated anyway ("trends clauses"), that such clauses did not permit an insurer to cut down cover on the basis of any circumstances that are inextricably linked with the Covid-19 pandemic or which share the same underlying or originating cause.

What does this mean for businesses impacted by Covid?

The Supreme Court's decision enables business interruption policyholders to claim for business interruption losses arising from Covid and insurers will be precluded from raising certain arguments to avoid cover.

Sheldon Mills, Executive Director, Consumers and Competition at the FCA, commented:

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LEGALLY SPEAKING

Sheldon Mills, Executive Director, Consumers and Competition at the FCA, commented:

'Coronavirus is causing substantial loss and distress to businesses and many are under immense financial strain to stay afloat. This test case involved complex legal issues. Our aim throughout this test case has been to get clarity for as wide a range of parties as possible, as quickly as possible, and today's judgment decisively removes many of the roadblocks to claims by policyholders.

We will be working with insurers to ensure that they now move quickly to pay claims that the judgment says should be paid, making interim payments wherever possible.'

Whilst the judgment will certainly streamline the claims process for the insured, each claim will necessarily need to be viewed in the context of its own facts, circumstances and policy wording; and policyholders will still be obliged to prove their claims.

Those that have been waiting for the outcome of the test case should now take urgent steps to determine whether they have a valid claim and ensure that they are within relevant time limits for providing notification to their insurer.

That being said, the judgment is undoubtedly a win for many businesses who have been forced to shut their doors during the pandemic.



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HILCO GRANTED AWRS

We are pleased to advise that Hilco Valuation Services is licensed under the Alcohol Wholesale Registration Scheme (AWRS) and is able to value alcohol assets as well as market, buy and sell alcohol to other UK AWRS registered traders.

Since the HMRC scheme came into effect on 1 April 2017 to tackle alcohol fraud it has been an offence to purchase alcohol to sell if unregistered and doing so can lead to both criminal and civil penalties being incurred.

Hilco Valuation Services can assist clients in distressed / insolvency situations by acting as agent to market and sell these assets to other UK registered businesses included with the AWRS scheme.

Businesses within the scheme include:

- breweries and microbreweries
- wine producers and vineyards
- spirit producers
- cider producers who make more than 70 hectolitres of cider a year
- wine importers
- general wholesalers selling alcohol, including cash and carry businesses
- specialist wine wholesalers

COMPANY NEWS

STAFF WELCOME

We are delighted to announce that Roland Cramp and Nick Hughes have joined us in the capacity of Senior Director and Director respectively in our growing Real Estate team.

Between them they have over fifty years' experience in real estate restructuring and business advisory and we look forward to you working with them as our Real Estate and Business Advisory platform continues to service the needs of our clients.



Roland Cramp



Nick Hughes

CONGRATULATIONS SIMONE

Simone Probyn, our Managing Director of Finance & Operations at Hilco Valuation Services Europe, is being honoured for her achievements in the finance sector and will be profiled by The Secured Finance Lender's "Women in Secured Finance" edition, distributed in May. We are thrilled Simone is being recognised for her hard work within the industry.





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