EXPERTISE

The Newsletter of GBRW Expert Witness

2010 - Another busy year

As we draw a line under a very busy 2010, we have been analysing the nature of the cases on which we were approached for expert support.

GBRW Expert Witness received more than 160 approaches last year and the chart below shows the broad categories into which they fell. Roughly a third of enquiries involved insurance – both run of the mill cases such as fire claim disputes and more highly specialised areas such as reinsurance or marine cargo. Another third involved investments and derivatives, while the balance was made up of disputes in wholesale banking, branch banking and mortgage lending.

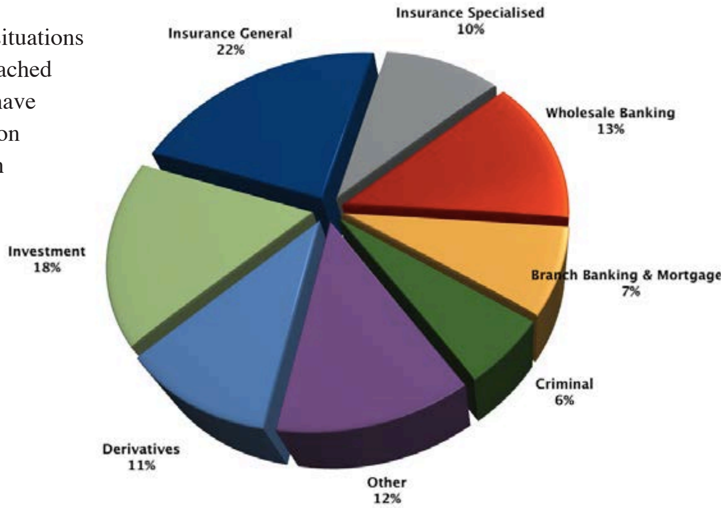
We have had a number of situations where we have been approached by both sides in a case and have now formalised our policy on potential conflicts in such situations (copies available on request). Although each expert provides his or her report in a personal capacity, GBRW will not provide experts to opposing sides in the same case, other than where a Single Joint Expert is required.

January has already shown the usual busy start to the new year with four new instructions in the past three weeks. We look forward to working with you over the course of 2011.

Paul Rex

Managing Director

GBRW Expert Witness



New Expert

Willie Clark has worked for over 36 years as an international banker and investment manager for Chemical Bank (now part of JP Morgan Chase), Prudential Insurance of America and The Royal Bank of Scotland. He currently works as a consultant advising on private equity and debt related projects and is also a Director of a UK based advisory firm.

Willie is an acknowledged expert on corporate debt and private equity, having initiated and established private equity fund investment and leveraged debt asset management programmes over the past 10 years at RBS. He worked for GBRW as a expert witness on a high value dispute before a UK Arbitration Tribunal last summer and is currently advising another of our clients on management and financial structures for an innovative international Climate Change fund

Areas of Expertise include:

BANKING & FINANCIAL:
- Corporate Lending
- Personal Lending
- Risk Management
- Investment Banking
- Corporate Finance
- International Banking
- Correspondent Relationships
- Commercial Property
- Residential Mortgages
- Syndicated lending
- Loan Workouts
- Recoveries and Realisations
- Back Office Procedures
- Trade Finance
- Letters of Credit
- Leasing
- Credit and Debit Cards
- Know Your Customer
- Anti Money Laundering
- Anti Terrorist Financing

INVESTMENT MANAGEMENT
- Investment Services
- Investment Advice
- Fund Management
- Structured Investment Funds
- Stockbroking
- Hedge Funds
- Options, Swaps, Derivatives
- Treating Customers Fairly
- Pensions

FINANCIAL MARKETS:
- Money Markets
- Commodities Markets
- Securities Trading
- Financial Instruments

INSURANCE:
- Property Insurance
- Professional Indemnity
- Life Assurance
- Broking
- Underwriting
- Reinsurance
- Regulation
- Actuarial issues
- Loss Adjustment
- Treating Customers Fairly

BUSINESS FINANCE:
- Limited Companies
- Partnerships
- Private Companies
- Sole Traders
- Mergers & Acquisitions
- Treasury Management
- Sales of businesses
- Property Finance
- Business Planning
- Company Valuation
- Venture Capital

OTHER AREAS:
- Employment Disputes
- Loss of Earnings
- Compensation Calculations
- Arbitration and Mediation

Enquiries:
Paul Rex,
Jeremy Denton-Clark
or David Croft
T: 020 7382 9900
F: 020 7382 9988
E: experts@gbrw.com

UK Register of Expert Witnesses REGISTERED 2011

The Law Society of Scotland 2011 Directory of Expert Witnesses

Sweet & Maxwell CHECKED 2011 Expert Witness

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Property Lending: Back To The Future?

Stewart Hamilton has acted as an expert in more than 70 cases. In addition to his work as an expert, he arranges finance for property transactions, so can also speak about current market conditions from a practitioner's perspective.

The international debt and credit crisis which started in 2007 has left an appalling legacy. UK banks still owe taxpayers over £500bn; there are doubts about whether banks will provide sufficient funds to the private sector, in particular SMEs, to finance the recovery; and bankers are still widely held in opprobrium. So are there common features between the present crisis and the UK's banking crises of the 1970s and 1990s?

The early 1970s

In the early 1970s, the dash for growth and easing of lending restrictions and liquidity requirements led to much property speculation. This in turn led to a huge increase in residential and commercial prices and substantially higher property lending. The economic shock brought about by a dramatic rise in oil prices led to a further increase in interest rates, followed by a property crash which led to the failures of property companies. Secondary banks, which had lent heavily against commercial property, were particularly hit by the ensuing liquidity crisis: several became insolvent and a number failed. To avert wider problems, the Bank of England organised support estimated at £1.3bn and costing it over £100m.

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The late 1980s

After the boom of the late 1980s, which again produced sharp rises in commercial and residential values and fuelled significant increases in lending, monetary policy was tightened and the UK went into recession in 1990. Commercial and residential property values fell and many borrowers experienced negative equity, exacerbated by initial loan to value ratios as high as 100%. The small banks sector, which had seen proportionately higher growth, was again affected worst as a result of its dependence on the property markets, both as a lender and where property formed security for other loans. Small banks were affected by a liquidity crisis and the process was accelerated by the closure of BCCI. The Bank of England provided some financial support: however, some small banks were allowed to fail and several building societies merged with stronger brethren.

The global financial crisis

During the apparently benign economic conditions in the late 1990s and early 2000s, Gordon Brown proclaimed "No more boom and bust." However, we saw once again significant credit growth and increasing appetite for risk-taking against a background of excessive confidence and optimism. In addition to the global crisis, some lenders had relaxed mortgage criteria dramatically against a background of rising UK house prices: loans of up to 125% of house values, up to six times' income and self-certified loans were available.

After huge growth in US sub-prime mortgages, the US housing bubble burst. The consequences were fuelled by the recent innovations of packaging, securitising and re-selling loans, many related to housing assets. In contrast to previous crises, buyers included international investors seeking higher yields from complex, highly-rated, investments who did not appreciate the risks they were assuming. Accordingly, the current crisis has been global and more severe than the earlier crises, with huge losses on toxic assets and bad loans incurred by US, European and British banks and an international liquidity crisis.

Same old, same old?

For those of us who lived through the recession of the early 1990s and the wave of litigation which ensued, a number of elements in current problem lending are depressingly familiar. They include:

- over-optimistic, and in some cases fraudulent, valuations;
- excessive loan to value ratios;
- poor control over disbursements for development lending; and
- defective legal work on Reports on Title and loan security documentation.

All the above provide the raw material for litigation which is, in many cases, virtually a carbon copy of that pursued 15 years ago.

In addition, it is becoming increasingly clear that many banks sold (or mis-sold) interest rate protection products in the form of interest swaps, collars and other derivatives and that these are exacerbating problems for many borrowers.

One major difference is that the present unprecedentedly low levels of interest rates which have enabled banks to sit on their non-performing property lending at minimal cost - by comparison, Base Rate stood at 15% between October 1989 and October 1990 and did not fall below 10% until September 1992. However, there is little prospect that property prices will increase far or fast enough to return defaulting property loans to performing status and we therefore expect to see increasing levels of litigation in this sector as problems are crystallised.

Lessons to be learned?

The victims of the 1970s and 1990s crises were smaller banks, many of which had expanded rapidly, were too dependent on the health of the property markets and were too reliant upon wholesale funding. The current crisis differs, as the scale of problem lending and the risk and complexity of traded assets have caused illiquidity on an international scale and most major banks have been affected. Common features of all three crises are that in good times there was rapid expansion; too great a concentration on property assets; relaxed, often inadequate, underwriting standards; and insufficient regard to the consequences of changes in circumstances. In each case, this has been followed by falling property values, significant bad debts and a liquidity crisis.

The gap between crises has been some 15 years, long enough for the lessons of the previous crisis to have been forgotten by a new generation of bank management. Bankers, governments, central bankers, regulators and credit rating agencies should perhaps be marking their diaries for the early 2020s!

A change of name – but not of approach

Reflecting the continuing growth of our expert practice, we have now established a new company - GBRW Expert Witness Limited - to handle expert work. GBRW Expert Witness is run from the same offices as GBRW Limited, which now focuses on our international financial consulting assignments. You should find that our approach and staffing are exactly the same as they have been for the past three years and should notice very little difference – apart from a new name on engagement letters (and invoices)!