

INSOL MALTA

DRAFT SPEECH

Good morning Ladies and Gentlemen,

As many of you will know from reading the original programme, this slot was to be filled by Christopher Morris – but he has accepted a better invitation and Insol Europe, out of its munificence, has decided to field the A Team instead.

Our topic, as printed in your programme, is posed as a question – “The Rescue Culture – Do Lawyers Help or Hinder?” However we propose

to turn it into a debate and accordingly the motion before the House is:-

“This House Believes that Lawyers Help the Rescue Culture”.

Carolyn will propose the motion, I will oppose and we will then throw it open to the floor of the House. Following that we will make mercifully short winding-up speeches (how appropriate in an insolvency forum) and then there will be a vote.

I now call upon Carolyn to propose the motion which is “This House Believes that Lawyers Help the Rescue Culture”.

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Utter rubbish – but if that level of debate is too high for you let me give you one or two other thoughts. It has long been a tradition in my firm that if we are involved in a major closing we will away the time by running a book on who will wreck the deal – who will make the transaction crater. The odds change, of course, during the

course of the long night but it normally finishes up something like this:-

Sellers - 10-1 - keen to get rid of a dog of a company.

Buyers - 5-1 - a bit suspicious of the figures but basically they believe they have a good deal.

Financiers - 5-1 - also suspicious but they haven't been doing much business later, they are way below budget and they need the deal.

Merchant Bank Advisers to Sellers - 100-1 -
desperate for their success fee.

Merchant Bank Advisers to the Buyers - 100-1 -
desperate for their success fee.

Auditors - evens - they are losing a client and are
damned if they are going to make it easy for
anyone.

Sellers Lawyers - 3-1 on - enjoy keeping
everybody out of bed for days on end by being
utterly unreasonable on the warranties.

Buyers Lawyers - 5-1 on - terrified that they have missed something and are going to get sued.

And that's a view from within our own profession!

Who is most likely to wreck a deal is largely a matter of perception but let me tell you a story of actual hindrance of a rescue.

In the UK insolvency practitioners have to take very stiff exams but nevertheless there are a handful of lawyer licensed insolvency practitioners. However the overwhelming

majority are Accountants. The Lawyer LIPs never take appointments, never become liquidators, administrators or administrative receivers, never take the jobs that they have strived to fit themselves for. And why is that? Because nobody ever asked them! It is as though the rescue culture is itself inherently inimicable to the presence of Lawyers.

Secondly, Lawyers do not know what they are doing so far as rescuing troubled companies is concerned. There is no “Rescue Law” specialisation as there is, for example, Labour Law or Tax Law. Insolvency Lawyers are

absolutely excellent at formal insolvencies – especially if they involve court appearances and active hostilities – but quite hopeless at assisting outside the graveyard. It is rather like comparing mediators with litigators. The former are uniformly witty, charming, intelligent and largely vegetarian. The latter are hairy, low browed, wash infrequently and eat raw meat.

Successful financial rescues depend on sophistication, on negotiating skills, on diplomatic expertise – where is the Lawyer who can bring all these qualities to the party? He is probably running his own firm.

My third point is this. Company doctors, of whom there are very few and even less good ones, are all ex-Accountants or ex-Businessmen never ex-Lawyers. Why is that? At least in the UK it is a case of where does the work for Lawyers come from. Principally from the money – either lenders or equity investors – and to a certain extent from Accountants but mainly from the money. That means that we grow up reflecting our client's orientation. It has been said many times and correctly that the UK's insolvency regime is creditor dominated although our Enterprise Bill is making some inroads there.

How then can we, UK Lawyers, help the rescue culture which requires balance between creditor and debtor when we have the inner life-long conviction that all creditors are saints and all debtors are sinners.

My fourth and final point is this, in the UK we hinder rescue by omission as well as commission.

We have no specialist bankruptcy bench, no Judges skilled in reading balance sheets, no Judges trained in workout techniques and principles. How can we honestly pretend that we have any intention of helping the rescue culture if we do not even take the first tiny step of

appointing a Judge whose sole responsibility would be to oversee the rescue of troubled companies.

Ladies and Gentlemen, I rest my case.