

DECISION

BUSINESS MAGAZINE

Thomas
Eggar

BUSINESS RECOVERY & INSOLVENCY

- an independent assessment

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The purpose of the following report is to identify and then validate the attributes, actual experience, and performance of the senior members of the corporate recovery and insolvency team of Thomas Eggar.

The content was sourced by DECISION and written from interviews undertaken by its senior writers. The compilation took place over a five-month period.

Thomas Eggar were not able to make any changes to the report, apart from the correction of any factual inaccuracies should they have occurred.

As a consequence, the views expressed by the interviewees are not necessarily those of the firm.



Larry Dillner, Publisher

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HOW THE ASSESSMENT IS PRESENTED

Personal Overview - extracts from an extended interview with the lawyer in question about what they consider to be their key characteristics and approach. It is meant to give a flavour of their thinking and approach, not to cover every base.

Insight - examples of the lawyer at work, how and where they are able to add value.

Reference - a consideration of the lawyer by clients or other independent third-parties.

Gazetteer - examples of assignments to represent the experience and track-record of the lawyer or team. This isn't a complete record, but is indicative for the timescale depicted, and is meant to provide an insight into the nature, sector, and scale of assignments that the lawyer or team has been involved in.

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KEY PEOPLE



GARY PLAYER,
Corporate Recovery
& Insolvency Partner
Accredited by the Solicitors
Regulation Authority as a
Licensed Insolvency Practitioner

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PERSONAL OVERVIEW

“Delivering in terms of the law is only half the picture. The skill of the lawyer is to apply it to achieve an objective. Sometimes it’s underestimated, but being technically able has to be the essential characteristic. In insolvency, both parties can be ducking and diving, so as a lawyer you know the parameters, and because of the technical complexities that means specialising in the subject. The other requirement is to be able to think commercially - not just say that you’re commercial! By its very nature, business recovery and insolvency is an area where money is tight, and if you are going to add value as a lawyer you’ve got to know what’s important commercially. Before I went into law I worked in the family’s printing business, and that’s where I got my appetite for business.”

“I am often surprised when I sit down with the other side’s lawyers and I ask questions about their client’s markets and the way they work. Some will know exactly - they’ve made it their business to know their clients - but others really won’t have the first idea. They’re just happy to do the straight up-and-down legal work. But in business recovery and insolvency, the precise legal answer is not necessarily the answer to the problem. It’s the means of being able to know how to find the right solution to a commercial issue.”

“You also need to have a bit of nerve, to make decisions quickly and to be able to stand by them. The problem is that we are often dealing with people in denial, and you have to manage the situation so they don’t stay in that state for too long! My view is that if a lawyer expresses themselves in technical language, either they’re trying to blind the client with legalese or they’re trying to look important. You’ve got to be able to communicate quite complex procedures and ideas in a way which the client really understands. And as a lawyer, you’ve got to be able to twig when they’ve really taken it on board rather than move on just because they say they’ve got it.”

INSIGHT

An **insolvency practitioner** client had a potential administration but the realisations could be anything from nil to £400k. Gary Player was

prepared to act in full knowledge that his fees could not be paid if the administration did not work, which included a dividend to the invoice discounter. After a significant investment in time by the IP’s and Gary Player, a pre-pack sale was achieved which led to strong book debt recoveries.

A **commercial partner** at Thomas Eggar said to Gary Player that a struggling storage company had mentioned that their invoice discounter was going to be sending in an accountant to review the facility and to produce a report because they were concerned that it was being run improperly. Gary Player investigated and found that the accountant was in fact an insolvency practitioner, and the intention of the invoice discounter was to put the company into administration if that was the easiest way it could achieve an exit. Working with the directors, Gary Player then liaised with an alternative finance provider, dealing with the issue upfront.

Gary Player acted for a developer who due to poor administration had a winding up petition served against his company. Despite this Gary Player was able to assist him to preserve his relationship with his bank and persuade them to advance further funds on the project – not easy in this market – once a validation order had been obtained. Gary Player then had the petition set

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aside which led to a settlement of the dispute. The other side had felt they could not lose and that the client would pay up immediately. Instead they were forced onto the back foot and had to settle for a far lower sum.

REFERENCES

“What I want is sensible, commercial advice from a lawyer. In an insolvency there’s often limited funds, so we don’t go on crusades here, which means I need the right advice at the right price, first time. It drives me around the bend when lawyers spend £15,000 telling me I’ve got an excellent case, then a further £15,000 telling me to settle! Gary Player is commercial and understands the economics of the situation. He’ll also quote me a price, say £5000, but then let me know in advance, in other words before we’ve reached that figure, if a change of requirement is going to cost more. I’ve had experience of other lawyers quoting £5000 then letting me know later that we’ve run up £12000 on the clock. Gary is also perceptive and persistent - in the past he has helped us cope with particularly difficult and unreasonable clients and, through his perseverance, made the deal happen.”

Insolvency partner, national firm of chartered accountants

“Our company had used Thomas Eggar in the past so at the point at which a major client of ours went into liquidation, we got in touch with

them for help. I was responsible for the account in question. We had a significant claim and needed to ensure we were at the top of the pecking order when it came to being considered. That’s why we went to Gary Player, so we wouldn’t be fobbed off or miss opportunities. We handed over all the communication with the client’s lawyers to him and he’d just instruct me on what data he required, and then handled everything from there on. He soon identified that we had a special clause in our contracts that we could use to pursue the company and recover some of the monies.

“What Gary did was bring experience to the party on how to handle the situation and when and where to push. He knew what was normal, and was able to say, ‘don’t worry, that often happens, and what we should do now is this’. There were significant amounts of money involved so we wouldn’t have walked away, but he gave us the confidence to keep going. We didn’t recover all of our monies, but thanks to Gary nailing down that specific part of our contract, we were more successful than most.”

Director, UK subsidiary of manufacturing group

“One of the most important qualities for a lawyer to have is flexibility, the ability to respond quickly. Gary Player does that, and he’ll approach a problem by looking at the risk areas for the IP and at the commercial aspect. Humility is also important, and Gary isn’t arrogant. He’s a

businessman, just like we are. We once worked closely on a case together where there was a long lead up to a company going into administration. I can remember that we sat for hours in one meeting while everyone there went around in circles and essentially talked drivel. I thought it was a real waste of our time, but when we came away, I realised that Gary could understand that the people in that room had to be able to understand the best solution in their own way. That’s what I like about him. He knows how to manage people in the best way given their situation.”

Partner, corporate recovery/insolvency practitioners

GAZETTEER

Number of years covered by the information: 3 months.
Size of debt rather than turnover referred to in all cases.

ADMINISTRATION

Number of appointments: 7
Number of appointments by companies: 6
Number of appointments by creditors: 1
Largest appointment (by debt) approx £5m

ILLUSTRATIONS:

Type of company – recruitment business
Size (debt) – £500,000
Commentary – Acted for the charge holder to appoint an administrator, then acted on a pre-packed sale of the business and assets to management. Thereafter dealt

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with a number of ROT and property disputes.

Type of company – fish farm

Size (debt) – £1.5m

Commentary – Acted upon the appointment of administrators, negotiations for a sale, following the failure to sell upon an orderly trade out. There were some unique trading and property issues to resolve.

Type of company – Residential Developer

Size (debt) – £5m

Commentary – Acted for a director of a holding company and 9 SPVS. the holding company is in administration while exit strategies are being developed for the SPVS which remain under his control.

COMPANY VOLUNTARY ARRANGEMENTS

Number of appointments - 1

Largest appointment (by size of debt) - £300k

ILLUSTRATION:

Nature of work – building contractor

Size of debt - £300,000

Commentary – Advising a company on disputes with their supervisor over compliance with the terms of their CVA.

COMPANY RE-STRUCTURING/ RE-ORGANISATION

Number of appointments - 5

Largest appointment (by size of debt) - £10m

ILLUSTRATIONS:

Nature of individual's work – IT Supplier

Size of debt - £10m

Commentary – International IT Supplier with substantial offices in UK, USA and Australia.

Nature of individual's work – ice cream supplier

Commentary – Advised on a re-organisation for an equity investor.

Nature of individual's work – games software supplier

Size of debt - £1.5m

Commentary – Advised a Dutch company on the options for acquiring an insolvent target.

CREDITORS VOLUNTARY LIQUIDATION

Number of appointments - 2

Number of appointments by companies - 1

Number of appointments by creditors / directors - 1

Largest appointment (debt) 4m euros

ILLUSTRATIONS:

Type of company – Building Contractor

Size (debt) – £500,000

Commentary – Acted for a liquidator of a company, advising on potential claims that can be brought against the directors, including wrongful trading and breach of fiduciary duty claims.

Type of company – MG Rover

Size (by t/o or debt; please specify) – 4m euros

Commentary – Acting for a major creditor on a disputed claim.



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PERSONAL OVERVIEW

“An insolvency lawyer has to be analytical, to have the ability to look at case law, draw out the issues and then balance them with the commercial imperatives. Insolvency practitioners want a practical solution. Any insolvency lawyer has to

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be down-to-earth, to live in the real commercial world. So if an insolvency practitioner picks the phone up just to ask my opinion, it doesn't result in a bill. You've also got to have the mind-set that you want to resolve matters, to cut to the chase and quickly."

INSIGHT

After the liquidator of a partnership got judgment for £500,000 against the two partners, they promptly went missing. Thomas Eggar located them, and served a bankruptcy petition on one. Then Sandra Bayne found that he had just sold a property, so she applied for an interim receiver to be appointed to take control of the assets. The receiver served the order on the bank, and assets were realised overseas. The other partner was served with a statutory demand and paid £125,000.

The director of a company which went into administration paid £650,000 to an associated company prior to the appointment. The administrator issued a preference claim to recover it, but Sandra Bayne argued that if the claim was successful, the company in question would have to go into liquidation so the creditors would receive nothing; the administrator settled for £20,000.

Acting for the trustee of a bankrupt whose name was not on a legal title, Sandra Bayne

argued that although his wife was the only name on the title register, he had made significant contributions and so the trustee had an interest in the property. The bankrupt refused to provide any information, and Sandra Bayne was concerned that going to court would be a costly risk. So she drew up a 'without prejudice' settlement proposal which she sent to the other side with the draft court proceedings, which they agreed to pay.

REFERENCES

"Not only does Sandra Bayne has a good technical background, but she is very responsive and incredibly timely with her input. There was a particularly complex case I talked to her about, and within the day she came back with some sensible options. Consistency of approach is important, and I have been able to rely on her work and her approach. She is very thorough - when I need to report to a creditors' committee, I just need to top and tail her email to me."

Partner, national insolvency practice

"Sandra Bayne acted on behalf of my company in a dispute with the administrators of another company. It was quite a routine matter, but she was there for me and dealt with it efficiently because of her knowledge and enthusiasm."

Managing Director

"I am the national head of court work at my firm and try to match the lawyer to the case in hand. I have tended to use Sandra Bayne where there are issues such as the matrimonial home. She is very good at assessing what the trustees interests are and fighting their corner. As well as being technically sound, she's knows how to explain the situation verbally and on paper."

Insolvency Partner, national firm of accountants

GAZETTEER

Number of years covered by the information: 3 months.
Size of debt rather than turnover referred to in all cases.

ADMINISTRATION

Number of appointments: 5
Number of appointments by companies: 3
Number of appointments by creditors: 2
Largest appointment approx £500,000

ILLUSTRATIONS:

Type of company – supplier of beauty products

Size (debt) – £500,000

Commentary

Acting for a creditor of Woolworths plc (in administration) and pursuing a retention of title claim against the administrator.

Type of company – mail packaging

Size (debt) – £1.3 million

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Commentary - Acting for an administrator of a large mail packaging company in potential claims against the directors and connected companies.

Type of company – wine distributor

Size (debt) - £200,000

Acted for the directors in putting the company into administration,

CREDITORS VOLUNTARY LIQUIDATION

Number of appointments - 5

Number of appointments by companies - 4

Number of appointments by creditors / directors - 1

ILLUSTRATIONS:

Type of company – environmental services

Size (debt) - £254,000

Commentary - Advising liquidator on potential claims that can be brought against the directors, including wrongful trading and breach of fiduciary duty claims.

Type of company – data management

Size (debt) - £200,000

Commentary - Advised liquidator on potential claim that can be brought to set aside preference made to a director of the company.

Type of company – food supplier

Size (debt) - £200,000

Commentary - Acted for two directors of a company in defending a claim from the liquidator to repay unlawful dividends.

**INDIVIDUAL VOLUNTARY
ARRANGEMENT**

Number of appointments - 3

Largest appointment (by size of debt) - £500,000

ILLUSTRATIONS:

Nature of individual's work – businessman

Size of debt - £500,000

Commentary - Advised a nominee on the preparation and negotiations for an IVA of an undischarged bankrupt. There were disputed debts, reluctant creditors and tax implications.

Nature of individual's work – sound and lighting engineer

Size of debt - £28,000

Commentary - Advised a supervisor dealing with an IVA, where issues arose as to potential breach and actions that the supervisor should take.

Nature of individual's work – accountant

Size of debt - £51,000

Commentary - Advised a supervisor dealing with an IVA, where issues arose as to potential breach and actions that the supervisor should take.

BANKRUPTCY

Number of appointments - 21

Largest appointment (by size of debt) - £500,000

ILLUSTRATIONS:

Nature of individual's work – businessman

Size of debt - £500,000

Commentary - Acted for a trustee in bankruptcy, where the bankrupt was embroiled in acrimonious ancillary relief proceedings as at the date of bankruptcy. This has involved dealing with the complicated clash of insolvency and matrimonial law, and finding a resolution that has maximized the return to creditors.

Nature of individual's work – office worker

Size of debt - £80,000

Commentary - Acted for a trustee in bankruptcy, in dealing with the challenge of a transfer of property to the bankrupt's partner, on the basis it was a transaction at an undervalue. The partner argued firstly that she gave consideration for the transfer and secondly that exceptional circumstances arose as the house had been adapted, so this involved some technical and interesting issues of law.

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Nature of individual's work – builder

Size of debt- £120,000

Commentary - Advised the wife of a bankrupt in negotiating the purchase of her interest in the property which she jointly owns with her husband



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PERSONAL OVERVIEW

“The corporate lawyer working with an insolvency practitioner or for a client acquiring a business or assets from an insolvency needs to have the ability to put together innovative structures to meet the aims of the various parties, recognising the regulatory issues and parameters. It can often be a complex matrix - there has to be enough in it for the creditors, the bank, and for whoever is making the acquisition.

“Usually a corporate finance deal will unfold, but with insolvency the deal is driven by time pressure and events. So part of my role is to create

a do-the-deal environment and take a robust approach to make it happen. Experience will enable you to anticipate what might happen and how to put the puzzle together.”

INSIGHT

The children of the two founders of a family-owned property business wanted to take different routes - one taking on the investment side, the other the trading activity. Insolvency procedures were used by Caroline Armitage for the tax-efficient de-merger.

An insurance company, anxious about the financial health of the sub-contract call centre and the effect that insolvency would have on continuity of service, worked up a strategy with Caroline Armitage. It meant that Thomas Eggar were able to acquire the business overnight for the insurer when administrators were appointed.

A food company was in financial trouble, but acting for a potential purchaser, Caroline Armitage knew that the bank would not appoint an administrator until after Christmas, so the business could benefit from the most positive trading period of the year. But it was clear to her that immediately after the new year, the bank

would pull the plug. From December 17th she worked with the client to enable a successful bid to buy the assets to be completed on January 3rd.

REFERENCE

“You need a lawyer who will stand up, make themselves heard, and fight your corner. Nobody gets one over on Caroline Armitage. It's not about being aggressive; just having the confidence in your ability to read a situation and then deal with it for the client, and that's what she does.”

Managing Director