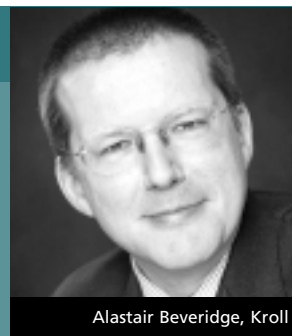


## News

# Collins & Aikman sale closes



Alastair Beveridge, Kroll

Collins & Aikman became Europe's biggest-ever COMI filing last July when the US auto-parts maker's European subsidiaries entered a single England-based insolvency covering ten countries. Then this March the administrators sold most of C&A's European companies to Wilbur L Ross, the New York-based investor who is helping to lead the consolidation of the Continent's auto parts industry.

**A**lastair Beveridge is one of the younger generation of insolvency practitioners at Kroll in London. As joint administrator of C&A's European subsidiaries alongside his boss, Simon Appell, he describes the thinking behind the seven-and-a-half month case.

### Did C&A need to file?

The way C&A was put into administration was controversial on two fronts. Firstly, some stakeholders thought that the European subsidiaries didn't need to file at all. Secondly, the administrators managed to use the European Insolvency Regulation to get the administrations in all ten European countries controlled by the one court in England.

The second point has in fact become less controversial since last year. This use of the COMI argument, that the Centre of Main Interest should determine where an insolvency is controlled from, rather than just the registered office, had been pioneered by English practitioners and objected to by their French and German colleagues.

**This opposition has faded as more people accept that the COMI argument allows businesses to be sorted out on a group-wide basis, rather than liquidated country by country, destroying value in the process.**

The acceptance of the COMI argument became complete in February when the French did a U-turn, and put a big European group into a single insolvency process controlled from France.

The administration of Emtec, a wholesaler and distributor of electrical goods, covered subsidiaries in Germany, Italy, Austria, Belgium, Poland, Spain and the Netherlands.

So the use of the COMI argument by Kroll and its legal advisers Kirkland & Ellis to base

the C&A insolvency in London now seems dramatically less controversial than it did last July.

But the first point still raises some people's ire; did C&A's European subsidiaries have to file in the first place?

Beveridge says "yes."

"Following the Chapter 11 filing by C&A in the US in March, there was no further funding for the European businesses from the US. This was a big reason why Europe had to go into bankruptcy," says Beveridge.

There was also the suggestion that liquidity was available from OEMs such as Ford to continue the operation of the European

factories. Beveridge points out that whilst Ford was a big customer of C&A and may have been prepared to put up working capital for it, this did not mean that other OEMs like GM would necessarily follow suit. This was not a realistic option in trying to fund the whole of C&A's Europe operation, he says.

### Timing is everything

Other observers contrast C&A with Delphi, another giant auto parts maker that entered Chapter 11 last year, but chose instead to keep its European subsidiaries outside of a formal insolvency process.

Beveridge says the difference is that they had

## Collins & Aikman Europe Firms & Faces

### The Administrators

**Simon Appell** and **Alastair Beveridge** of Kroll's London office were appointed joint administrators to all 24 of Collins & Aikman's European companies. Six companies were in the UK and 18 were spread around nine other European jurisdictions.

**Gary Squires** of Kroll's London office was appointed to all the non-UK companies and one UK unit. His colleagues **Anne O'Keefe** and **Andrew Pepper** were appointed to one company each.

Other members of the Kroll network were appointed around Europe.

The administrators were given legal advice by both Kirkland & Ellis and Denton Wilde Sapte, as well as a number of independent law firms around Europe.

The Kirkland team was led by restructuring partners **Lyndon Norley** and **Partha Kar**. It included associates **Graham Lane** and **Natasha Watson** and intellectual property partner **Pierre Dubois** in the London office and partners **Dr. Bernd Meyer-Loewy** and associate **Sacha Luerken** in the Munich office.

The Denton Wilde Sapte team included partners **Michael Rutstein** and **Rachel Anthony** and associates **Katharine Theobald** and **Richard Cook**, all on the restructuring side. **Chris Foxall** advised on real estate issues and **Charles Reddish** on intellectual property.

### The law firms in the rest of Europe were:

<b>Austria</b>	Herbst Vavrovsky Kinsky led by Wolfgang Schwackhoefer
<b>Belgium</b>	Lontings & Partners led by Dirk Lontings and Christine Pisvin
<b>The Czech Republic</b>	Giese & Partner led by Slavomir Cauder
<b>The Netherlands</b>	Loyens & Loeff led by Ilan Spinath and Dennis Winkel
<b>Slovakia</b>	Majeriková, Kostial Turcan & Partners led by Peter Krajcovic
<b>Spain</b>	Cuatrecasas led by Diego Bilbao and Julian Lozano
<b>Sweden</b>	Cederquist led by Claude Unge and Johan Ohlsson-Leijon

far less time to organise a course of action for C&A than Delphi.

The European side of Delphi had financing for regular trading already agreed with the US side when it filed for Chapter 11, says Beveridge.

"With C&A there was just four days between the US lawyers considering Chapter 11 and the actual filing."

Time is a vital ingredient in being able to use all the available options, he says.

## The sale

On 1 March the administrators completed the sale of most of Collins & Aikman's European businesses to corporate vehicles established by a joint venture between WL Ross & Co. LLC and Franklin Mutual Advisers.

The administrators sold twelve businesses spread over six countries for an undisclosed sum.

Lyndon Norley, head of restructuring in Kirkland & Ellis's London office said: "This sale concludes a complex process beginning with a groundbreaking application to the English high court in July 2005 and what has ultimately proved to be the largest European insolvency in the past year."

## Secondary proceedings

Although Kirkland & Ellis managed to anchor all the primary insolvency proceedings in the UK, there were three secondary proceedings in local jurisdictions.

The first, in Austria, came as an unwelcome surprise to the UK-based administrators. A local lawyer Dr Erwin Bacj was appointed by local creditors to find a local buyer. However the administrators soon established good relations with him, which was just as well since the Austrian assets fell under the main proceedings.

In the Netherlands local administrators were appointed on Kroll's application for a secondary proceeding. The UK-based



Lyndon Norley, Kirkland & Ellis



Wilbur Ross, WL Ross & Co

## Wilbur Ross

**Ross, Chairman of IAC, said of his C&A purchase: "We are delighted that the major international automobile manufacturers have been so supportive of our entry into the industry. They are the only reason our company exists."**

Ross added, "Now we will try to finalise our arrangements to acquire the European Interior Systems operations of Lear Corporation and begin consolidating the industry."

Many people were sceptical when Ross started buying up America's bankrupt steel mills in the 1990s. Then China and India developed a seemingly insatiable hunger for

steel and the price soared. Ross profited, and helped build Lakshmi Mittal's global steel empire into the bargain.

Now Ross wants to do the same with European car parts makers.

For instance in March he merged his Oxford Automotive with Wagon, a London-listed car-parts firm, in a UK£128 million deal.

## OEMs and Tier 1 suppliers

**There has been a game of cat and mouse between the car makers and their big suppliers in recent years. The OEMs have pushed ever more cost onto the shoulders of suppliers.**

This policy has back fired, however, as when the suppliers collapse under the financial strain, the OEMs cannot afford to let them go under, or they risking having empty factories.

Beveridge says the OEMs have even demanded that Tier 1 suppliers develop new parts, including engineering and design work for the machine tools which produce them, the testing of them and preparation for production.

"The suppliers have to pay out all this working capital, and only then do the OEMs pay for the tools," says Beveridge. "To survive in the industry you have to invest in a lot of new programmes. If you are squeezed like this, it makes it incredibly difficult."

He adds that the scenario is not helped by the fact that the OEMs are not in great financial shape themselves.

administrators wanted to shut a factory and make some employees redundant. This necessitated an insolvency procedure, and Kroll let the local administrator deal with employee claims. This was a quick and convenient process, says Beveridge.

The local Dutch administrator Jap van der Meer of AKD was appointed to one of C&A's four subsidiaries which made floor mats for cars.

**Significantly, Van der Meer was the same man who had managed to replace the UK-appointed administrators of MG Rover last Summer.**

PricewaterhouseCoopers had also been appointed to MG Rover's Europe-wide group using the EIR to locate the COMI of the Dutch subsidiary in the UK.

Van der Meer was advised by Louise Verrill

of English law firm Addleshaw Goddard. Ms Verrill is currently President of the UK's Insolvency Practitioners Association (IPA).

In Germany, Michael Thierhoff of Thierhoff Illy & Partner, which is affiliated with Kroll, filed voluntarily for debtor in possession-type proceedings, under which Thierhoff became a court-appointed trustee.

## The conflicts administrator

The European operations had a top holding company based in Luxembourg. The London court appointed a conflicts administrator to the Luxembourg operation jointly with Kroll, Phillips Sykes of Moore Stephens.

Kroll were acting both as turnaround managers of the group in the US and as administrators in Europe. Kroll felt that since there were big inter-company debts owed by the Europe side to the US operation, there could be potential conflicts of interests, and they wanted a third party to oversee this issue.