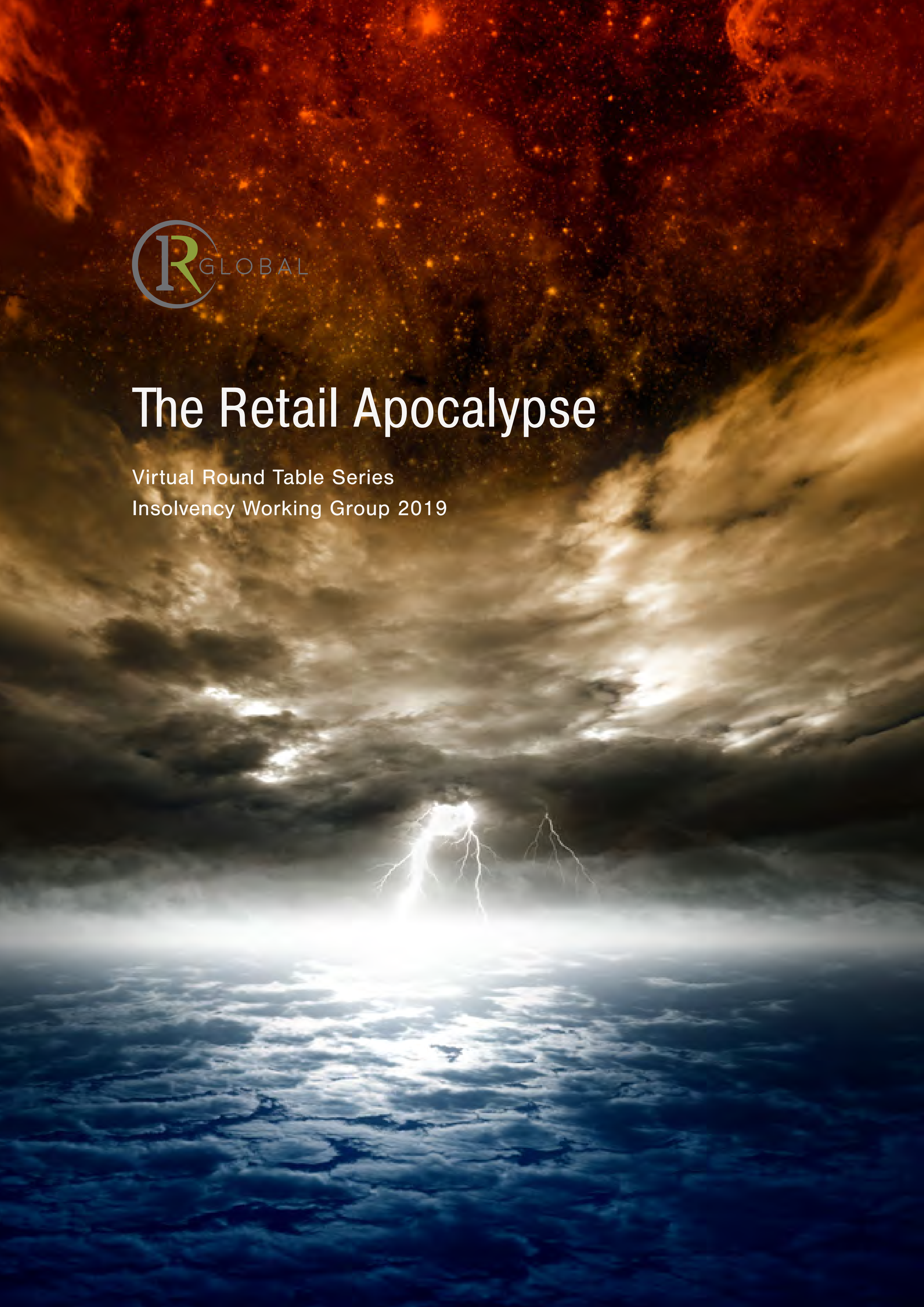

The Retail Apocalypse

Virtual Round Table Series

Insolvency Working Group 2019

The Retail Apocalypse

The retail apocalypse is real and is coming to a high street near you, although the chances are it has already shown its face.

The days of bricks and mortar retailing are rapidly coming to a close, according to most industry analysts, as the world enters an internet age where only the most innovative survive.

The numbers are terrifying. A recent report into the US retail sector by investment firm UBS, suggests that US retailers have closed more than 15,000 stores since 2017, including 1,470 Radio Shack outlets, 735 Toys R Us shops and 700 GNC stores. The report estimates that a further 75,000 stores selling clothing, electronics and furniture will close by 2026. By then, it forecasts that 25 per cent of all US retail sales will be made online.

The plight of Sears Holdings starkly illustrates this issue. At its peak in 2006, the firm had 3,843 Kmart and Sears stores across the United States and Canada, employing 312,000 staff. Following a long, complex Chapter 11 bankruptcy process in 2018, there are now just 425 stores in the US, employing approximately 45,000 staff.

The UBS report goes on to say that the average US household spent USD5,200 online in 2018, up almost 50 per cent from five years ago.

This is not just a phenomenon in the United States. In this report, we discuss the plight of the diamond industry in Belgium, the home furnishings sector in Canada and some high profile administrations in the United Kingdom.

The major reason for the apocalypse is the inability of the traditional retail model to cope with online retail. Online behemoths like Amazon have very quickly changed the rules around cost, inventory and delivery making it extremely difficult for incumbent businesses to compete. Those that survive, have developed their own powerful online sales platforms, embraced social media marketing and created better user experiences in physical stores.

For those that haven't adapted, the complexities inherent in falling into financial distress are significant, particularly for large multi-brand retailers. Debt may need to be restructured, leases renegotiated with landlords and stores consolidated. The knock-on effects for staff, pension funds, suppliers and creditors are also huge, requiring careful handling.

In the following report we hear about the global collapse of Toys R US and the distress caused to landlords, when hundreds of outlets ceased trading at the same time. We also hear about the Arcadia group in the UK and the Company Voluntary Arrangement (CVA) schemes which have resulted in steep reductions in rent for landlords.

Retailers experiencing the ill-effects of the apocalypse require the help of trusted advisors to navigate through the complexities of insolvency, if they are to avoid liquidation. Restructuring on many levels is crucial, from business models to debt repayments to save these businesses from oblivion.

Read on for the views of six IR Global insolvency experts from across the world, acting for retail businesses in their respective jurisdictions.

The View from IR

Thomas Wheeler

Founder

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.

BELGIUM

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Philippe started at Lige immediately after his education at the University of Antwerp and the European Law School of Maastricht. He has since made partner at the insolvency firm, which specialises in all matters regarding liquidation. Philippe is very knowledgeable on both aspects of insolvency (continuity of enterprises act and receivership).

FRANCE

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Yves-Marie created his firm in 1991, and is a passionate entrepreneur, with a keen sense of negotiation.

He has been advising companies and their managers for more than 30 years. His practice includes both counsel and litigation and is focused on trust as well. He assists his clients with their day-to-day corporate and contractual legal needs, as well as with their complex external growth operations (mergers, joint-ventures).

The majority of his clients are institutional creditors, which he assists in all the aspects of insolvency proceedings, debt restructuring terms, drafting schemes of arrangements. His area of expertise also covers debt recovery and judicial bid offers.

He holds a Master's in business law at Paris X university, a post graduate diploma (DEA) in British and North American business law (under the supervision of Professor Blanc Jouvan) and acted as a visiting scholar at Columbia University.

U.S – ILLINOIS

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Bob resolves difficult financial issues for clients and partners with them to find the most efficient and beneficial solution.

Chair of the firm's Financial Restructuring & Bankruptcy Department, he represents debtors and creditors through the bankruptcy process and in informal, out-of-court workouts. He has represented clients in numerous industries including health care, telecommunications, manufacturing, real estate, retail, transportation and financial services. Highly experienced, Bob has participated in all aspects of the bankruptcy process. He has represented trustees, debtors, creditors and equity committees, secured and unsecured creditors, purchasers of assets and litigants in adversary proceedings.

Bankruptcy mediation has become a significant part of Bob's practice. He was appointed the Special Mediator in the Lauth Investment Properties, LLC (Indiana) case and successfully assisted parties in reaching a global settlement that allowed for the confirmation of a Chapter 11 plan of reorganization.

CANADA EAST

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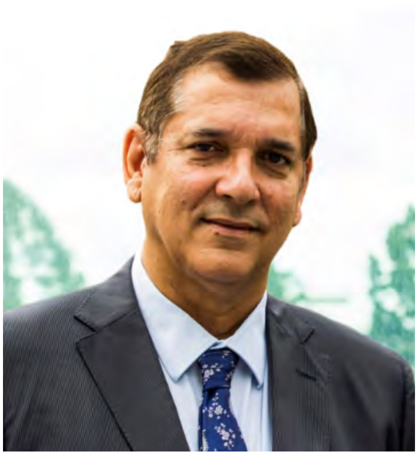
Fay is a partner at Torkin Manes, and head of the Banking, Finance and Insolvency Group. She acts extensively for institutional and private lenders and borrowers in a wide range of financing transactions, derivative products, factoring arrangements, asset securitisations and securitised loans.

She advises banks with respect to regulatory and other issues that may arise under the Bank Act, or other similar legislation, including a broad range of issues of concern, such as cost of borrowing disclosures, privacy, identification of clients, money laundering, electronic banking and other day-to-day issues affecting banks and other financial institutions.

Fay is involved in corporate restructurings, insolvency and related litigation

matters of all sizes. She offers expertise under the Bankruptcy and Insolvency Act, Companies Creditors Arrangement Act, Personal Property Securities Act, and Financial Administration Act.

Fay works closely with other members of her firm's Banking, Finance and Insolvency Group to assure clients that someone is always available to provide the advice they need, when they need it.



AUSTRALIA

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James was admitted as a solicitor in 1987, having completed a year in 1986 as associate to the then Chief Justice of the Supreme Court of Queensland, The Honourable DG Andrews. In his early years, he gained experience in a wide range of areas but quickly settled into litigation. By 1990, he was established as a commercial litigation lawyer with a keen interest in insolvency matters. He established James Conomos Lawyers on 1 July 1992 as a specialist practice in commercial litigation and insolvency.

Since 1990, he has practised as a solicitor primarily in commercial litigation, dispute resolution and insolvency matters. James has acted in and advised various parties in many insolvency administrations, both corporate and individual. He has advised a range of clients including financiers, insolvency practitioners, creditors and regulators.

James has also acted in hundreds of litigious matters, in a range of disputes from land valuation, contract disputes, breaches of fiduciary duties, fraud claims, building disputes and debt claims. He has acted in all courts throughout Australia, and represented his clients in many cases, some of which have changed the law.

ENGLAND

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David is the Head of Dispute Resolution at Barlow Robbins, a leading UK law firm. His areas of practice include insolvency, professional negligence, commercial litigation, property disputes and inheritance disputes.

David regularly handles cases in the higher courts for clients of all sizes, including banks, insurers and educational institutions. He has handled more than 300 mediations across the UK with a success rate of over 90%.

He has wide mediation experience, lecturing on mediation in Kenya and is a member of the Commercial Litigation Association, the Professional Negligence Lawyers' Association and the International Bar Association.

He is also a member of the standing conference of Mediation Advocates and a mediator member of a number of mediation groups including the ADR Group, Expedite Resolution and Law South Mediators. He is actively involved in a number of charities and organisations, including as trustee.

A recent independent guide to the UK Legal Profession named him as a 'very good lawyer' who 'gets down to the heart of an issue'. Karen Schuman, Counsel of 1 Chancery Lane said that David has a 'calm authority' and can 'find the solution' in a difficult case.

How has technology affected the retail industry in your jurisdiction. Are you seeing more insolvencies? Any examples?

U.S, Illinois - Robert Fishman (RF) There's no doubt that developments in many industries cause change, and change generally results in winners and losers.

The retail industry is certainly going through that kind of evolution right now. Ten years ago, when people wanted to go shopping, they hopped in their car, drove to a mall, walked around and shopped.

During the last 10 years there's been an incredible change in the shopping habits of people. Online shopping has become the norm and the challenge for traditional retailers has been how do they adapt to that changing environment.

I've seen various companies around the United States catch that wave early - Target and Walmart being good examples. They are retailers who seem to understand that the traditional model alone was going to be problematic and so they have combined the traditional retail approach with the online shopping approach that has become so popular.

Other companies have either been slow to react, or haven't reacted at all. The company that I have had the most experience with is Toys R Us.

Toys R Us thought it was catching the wave of online shopping, but what it discovered was that Amazon had set the bar pretty high. You cannot succeed in the online shopping world unless you are competitive with Amazon. This means tremendous selection of product, great customer service and free next day delivery.

That's a challenge for a traditional retail business because it's not the sort of structural model they have operated under. Toys R Us wasn't sufficiently successful in doing that, and I would say that its inability to compete with the Amazons and Targets of the world played a significant role in the demise of the Toys R Us franchise in the United States.

Technology is a serious challenge in the retail industry for those retailers who are not such a brand that people have to go to the store to buy that product. They're all going to have to continue to adapt to this environment and figure out a way to be competitive in an online world.

Canada - S. Fay Sulley (FS) In Canada, we also have Walmart and other large brands. Those companies have all had to develop a significant retail online experience for shoppers. That includes companies like Home Depot, because if you're supplying anything that people need for their homes you really need an online presence. For the younger demographics, that applies to clothing as well.

Our firm has just acted for two companies that ended up going bankrupt last year. One was called Bombay and the other was Bowring. They had been around in Canada in various iterations for over a hundred years.

One of them was selling furniture and one of them was selling household goods such as wine sets and glasses and dishes and anything you can imagine in an upscale home store. Those stores had not developed an online presence and they just couldn't keep up with the other competitors in the area that were selling online.

It was very sad, because they've been in Canada for so long in many secondary locations across the country. There was over a hundred stores, and it really affected the class B landlords. There was a real loss to the mid-sized towns when Bombay and Bowring went under, and there's a trickle-down effect from that in the sense that they were a lot of job losses in those areas.

The clothing sector is taking a bit of a hit here in Canada as well, since we keep seeing clothing stores go out of business. I have no idea why that is, but they are not getting the online shopping that some of the larger stores are getting.

Some of the smaller clothing chains don't know how to get into Amazon, while the cost of selling through Amazon is higher than they had anticipated. They haven't really gotten their costs or margins set correctly, so that they're able to pay the fees that are payable to Amazon.

U.S, Illinois - RF It is a complicated process and it does require the devotion of a certain amount of revenue, but I think it's probably logistics more than cost.

Cost is a factor in anything and they have to devote revenue to one thing, which means they can't devote it to another. My experience has mostly been that they don't catch on to the logistical game fast enough. They don't position themselves to have the right products available at a competitive price.

England - David Foster (DF) Technology is certainly one great factor that's influencing some of the issues arising in the UK.

The Arcadia Group is an interesting example of a giant retailer experiencing this problem. It has 520 shops and brands including Topshop, Selfridges, Wallace and Dorothy Perkins, and has seen sales decline swiftly. This is largely because younger shoppers have abandoned its brands in favour of online fast fashion rivals such as Boohoo, where sales in the UK are up 27 per cent.

Boohoo has got brands like Pretty Little Thing and Nasty Gal, which is cheap online fashion, with intensive online marketing and celebrity endorsement. It is fascinating to note that they spent GBP80 million on marketing last year and booked a GBP60 million profit.

Costs in the UK are a problem and online does help with that. Arcadia had problems with salaries, rents and pension costs under the traditional model. They were paying GBP50 million per year in pension contributions, which is quite something.

Boots is still making a profit with a traditional business model, but they're really struggling in many ways, with profits down 18 per cent this year. It's seen shop footfall reduce, as younger customers go online. It is trying to reinvent its makeup counters and has signed a deal with Rihanna to manage her beauty range.

There's also a genuine worry in the UK around zombie businesses that don't have the money to invest in meeting some of these changes.

Relative regional and geographical disparities exist in the UK in terms of areas where retail has continued to thrive. For example, particularly in former industrial towns in the North, the rate of high street store closures has been alarming, measured against the relative resilience of productivity in southern commuter towns and cities such as Guildford. Whether this trend will continue remains to be seen, particularly with the UK Government's repeated promise to inject life (and funds) into its “Northern Powerhouse”.

On the positive front, there were 34,500 independent high street shops opened in the past year in the UK, up 4.5 per cent on 2017 figures. It seems that owners with a passion for what they do and their communities will have a degree of success, but it's not easy.

Belgium – Philippe Termote (PT) I'm based in Antwerp and we're seeing the same kind of movement. Our law firm has been representing a lot of textile producing companies, and over the last 10 years we've seen a shift in retail.

There used to be a lot of multi-brand stores where production was retailed, now, since the new technology, we've seen boutique or multi-brand stores gravitate to expensive streets. Large fashion brands used to work with boutiques or multi-brand stores, but they have stopped working with them due to unpaid invoices.

Today we see that they've done a shift to retailing their own products. They get a big flagship store where it is possible for customers to buy and try on the clothes, but they have a much bigger revenue coming from their own websites. They will also sell via fashion websites with big followings, giving the potential for significant marketing and high budgets.

This has also allowed them to deal with some logistics problems, because we've seen some smaller websites which cannot cope with volume. From that point of view, the high streets are still expensive because the landlords are not willing to let the lease prices go down. In those big streets, more of the boutiques stores are empty at the moment. If demands falls further, the landlords will have to do something.

We have also seen a lot of pop up stores, which will work for those who have a good marketing concept and are passionate about their products. We have a lot of millennials buying those products, and if you're not adapted to the millennial you will be out.

England – DF Have you found pop-up stores be successful in Belgium?

Belgium – PT Only to support other forms of distribution or to raise a product’s profile in the market.

Canada – FS We see little independents using pop-up stores here in Toronto, where they're just going out to get their merchandise known. They are usually located in places that would otherwise be vacant in any event.

Australia – James Conomos (JC) In Australia, the position has been similar with globalisation hitting the Australasia region. There have been many corporate collapses including Roger David Menswear – 57 stores closed in late 2018. Other companies have used Australia’s insolvency laws to restructure either for ongoing trading or sale.

Historically, Australia was spared from global competition due to its remote location but that has changed with the advent of technology. Global brands such as H&M, Zara and Uniqlo have raided Australia providing stiffer competition.

Another significant issue for Australian retailers, apart from global competitors entering the market, has been competition from online retailers. It has been suggested that online spending in Australia in 2018 increased by 24 per cent, which is claimed to comprise AUD27.5 billion in lost sales from traditional retailers.

France – Yves-Marie Ravet (YMR) I think that the retail apocalypse that my colleagues have noticed in their respective jurisdictions is a global movement that particularly affects France. A number of dematerialised commerce and innovative applications have gradually affected physical commerce.

I would also mention the restructuring of Toys R Us, where the French subsidiary also suffered from the difficulties of the American group. The opening of a safeguard procedure (sauvegarde judiciaire) and then a judicial recovery procedure (redressement judiciaire) led to an exit from the top through the takeover of the subsidiary by PICWIC group belonging to the powerful Mulliez family.

Beyond this particular case, retail players, like in any other sectors of activity, must tackle the challenge of technological shifts or risk being pushed to the margins.

In this respect, it is worth recalling what happened to Kodak in the early 1990s when the transition from film to digital was not anticipated.

French restructuring practitioners have carefully monitored the recent bankruptcy of the Sonia Rykiel group. This is another example of bankruptcy in the retail sector resulting from the explosive mix of finance and industry. No buyer was found, so the commercial court of Paris decided to open a liquidation.

It should be noted here that the profitability logic of financial investors does not always correspond to retailer business models. The bankruptcy of the Rallye group (Casino's supermarkets) is also an example of how hyper-debt on the stock markets does work for with retail businesses.

As a fellow entrepreneur, I would advise retailers to anticipate. Anticipation is the key word in entrepreneurship. As lawyers specialising in insolvency matters, we intervene downstream to try to treat illnesses when the situation is already compromised. In this respect, anticipation is also very important because the more solutions that can be implemented upstream, the greater the chances of rescue.

In France, we have a powerful tool that allows the debtor to negotiate almost informally with his main creditors in the context of conciliation. This conciliation will result in either the establishment of a settlement protocol, or the opening of a safeguard to force recalcitrant creditors to vote on a debt settlement plan which will make it possible to reschedule claims over time (maximum 10 years).

Last but not least, a sale in the particular context of a recovery procedure (redressement judiciaire) remains the preferred remedy when the retailer's business model appears completely obsolete, but a buyer is still interested in the debtor's tangible and intangible assets.

How can these businesses avoid falling into liquidation? Are you helping any insolvent retail operations to restructure?

U.S, Illinois – RF It's quite a challenge to try to revitalize a retailer that's not effectively competing in the market. The reason is, you almost always need new money, or significant restructuring. In order to accomplish that, you have to be able to show that you have a business model that can be successful.

The real challenge for most of these enterprises is on the business model side, more than the financing side. Insolvency professionals can do a lot to help people with structure and with converting debt to equity. They can release debt through formal or informal proceedings, but you must have a business operation that is profitable. The circumstances that led these businesses to difficulties in the first instance are going to repeat themselves even after a restructure, if you haven't addressed the business deficiencies.

Insolvency professionals can't solve that problem. A business either has to downsize, or change its geographic mix or product mix. It must also figure out how to successfully and profitably implement the online side of its business. Those are the real challenges that are facing the retail industry, and I don't think it's driven by a lack of legal and financial approaches to problem-solving, rather it's about understanding how to be successful in today's marketplace.

Landlords are pretty cognizant of the fact that empty space produces no income. There's been a glut of space given back to landlords, and they're trying to figure out what to do with it, so restructuring leases is certainly not an unrealistic thing to talk about doing. The issue is showing landlords that the real business problems are solved, in addition to fixing things on the cost and expenses side. Landlords do not want to have to address lease restructuring a second or third time.

Canada – FS Canada and the US has a lot of common landlords, private equity houses and retailers. Our markets are more or less similar.

My original example of Bombay and Bowring is a good example of a failed restructuring. We restructured those companies in 2015, which isn't so long ago. They originally had about 200 stores across Canada with unsecured debt across the world, because they had a lot of suppliers in China and Indonesia and Malaysia.

They also had a lot of lease commitments with the 15 or 20 biggest property management firms in Canada. They failed following first restructuring and part of the reason for that was because they hadn't changed their business model enough.

In 2015, they went to their banks and secured creditors, their investors and their unsecured employees and said this business is going to fail unless we get these concessions. We did a very good job of restructuring the debt, restructuring the leases, restructuring all of their legal obligations, but what the client did not do was restructure its business operations and turn it into a profitable venture.

Three years later in 2018, they had to do another restructuring because they were up against their credit line and had no more credit available to them. They were borrowing in excess of a hundred million dollars at that time just for working capital purposes.

When they tried to restructure for a second time, the landlords were not happy to deal with them and neither were the banks. There was no effective restructuring the second time around.

Both companies had also looked at private equity ownership. In Canada, we have a lot of private equity shops from the US coming into Canada and buying assets, because to the US the Canadian Dollar is still a bargain.

Companies in Canada cannot attract US investment, unless they're showing a good bottom line. Canadian retailers are still lagging behind the US, and so a lot of the US investors aren't willing to invest in failing businesses or businesses with challenges.

England – DF How do people view private equity in Canada and the US? How warm do you generally feel about private equity?

Canada – FS It depends on the industry. Our law firm has a lot of private equity clients who are investing in all kinds of businesses, whether it be landlords, property or cybersecurity.

We're not seeing a lot of investment in retail though. We're even finding investment for manufacturers, but not so much in retail right now.

England – DF Footfall in the UK's high streets, shopping centres and retail parks has seen its biggest reduction in six years.

Some people have been quite successful in terms of raising money, a good example being retailers that do generally one thing well rather than trying to be all things to all people. JD Sports has just joined the FTSE 100 Index on this model.

Experience-led stores have also been successful. Primark has got a 160,000 square foot Birmingham store, which has got a beauty clinic, three dining venues and mobile charging points.

Avoiding the squeezed mid-market is another strategy. Debenhams is a good example of a model where they're trying to restructure at the moment, recognising that people do combine purchasing cheap items with expensive pieces such as shoes and handbags.

The ability to respond to trends is important and a good reason why online has been successful. Online shopping is worth about 18.7 per cent of UK retail sales. I recently dealt with a teddy bear store just near us that sells as much online as they do from their shop, although the shop is important because people can go and experience the teddies there.

Next is another very interesting example in the UK. They've got 500 stores and about a fifth of their staff dealing with online returns.

In terms of methods of restructuring, we're seeing six major strategies.

1. Stopping Production.

A good example in the UK is car production, where the number of cars currently produced is 20 per cent down on last year.

2. Fresh Capital.

Capital for restructuring into new areas such as automation or the client experience.

3. Private Equity.

We had a bit of an issue here with British Steel where Greybull Capital took control of the company a couple of years ago for a pound and is now asking the UK government for a GBP75 million bailout. At the same time, Greybull Capital is pumping GBP42 million into a French steel works.

4. Shareholder Control.

In January the shareholders of Metro Bank found an accounting error, which left the bank without enough capital as a buffer against certain loans. Legal & General has used its power to vote against the founder Vernon Hill having more power, while also trying to ensure that the bank cuts its ties with Hill's wife, who has been paid over GBP20 million for store fit-outs.

5. Company Voluntary Arrangements.

The Arcadia group closed 50 shops closed and saw rent reductions of between 25 and 50 per cent in a whole bunch of other stores. At the same time there was the need to pump money into pension deficits.

6. Administration.

Jamie Oliver's Italian restaurant chain is a good example of a recent administration in the UK. A thousand jobs were lost with 300 more at risk. The only bit still functioning is its Gatwick Airport restaurants. Jamie Oliver put four million pounds of his own money into it as a sort of super senior status loan to be repaid before HSBC's GBP37 million loan.

Belgium - PT We are not involved in restructuring retail businesses at present. This is a little bit unusual since we're restructuring other businesses.

The only thing we are involved in from the retail point of view are bankruptcies. We have worked with some private equity clients looking to do some bargains, but there is no interest in buying insolvent retail businesses.

We had a shop in Antwerp that went bankrupt two months ago. It was a well-known shop, in a nice location with all the high end shoe brands. They wanted to go big time and spent EUR3 million euros on decorating some prestigious new real estate. Two months after that, they transferred to the new shop, but were not able to make the business profitable.

Just a couple of minutes after the insolvency was announced, we asked one of our other retail clients whether or not they were willing to buy this store from insolvency and they said absolutely not. There is a total disinterest from industry players and private equity place in restructuring retail companies.

One point of interest here in Antwerp at present is the diamond apocalypse. We are involved in the voluntary liquidation voluntary of a traditional family diamond business. They are selling diamonds through the normal retail points, but this model is now totally collapsing.

We are seeing bigger online players and online tender organisers coming into the market and taking over diamond sales. This is really happening at the moment.

Part of this voluntary liquidation is trying to these diamonds into the market via an online platform. We have had 65 people interested in stepping into the online platform and buying the diamonds.

I tried the same exercise in a bankruptcy several years ago and it was clearly unthinkable at that time. I announced I would use an online platform and everybody said that I was stupid and that I was throwing away money and throwing away assets that we could recuperate during the liquidation. Even in really traditional sectors like diamonds, we are seeing new trends and things coming in threatening traditional retail businesses.

U.S, Illinois – RF David mentioned Jamie Oliver putting GBP4 million in on a senior secured basis. That would be an extremely difficult thing to accomplish in the US. I can't even imagine a bank that would agree to allow an owner put in new money and get ahead of them on security.

Lenders would be happy to have the owner put new money in and get behind them, or put money in as equity, or on an unsecured basis. The likelihood that you would find a major bank that would agree to subordinate to new money, is next to impossible.

Another thing that we haven't mentioned is seasonality.

The timing of your problem can be everything and can affect how your creditors view you and how the marketplace views you. One of the things that was pivotal in the downfall of Toys R Us was the fact that it was forced to file Chapter 11 in September.

Toys R Us didn't want to default on certain financial covenants, and so they decided to file, but the problem was that in September you have to build up your Christmas inventory. As soon as they filed, they encountered all kinds of difficulties with suppliers that were no longer willing to deliver on open account.

The professionals working for Toys R Us did a great job of wrestling with this problem and getting it solved, but it took them six to eight weeks to get everybody in line. This meant that the product wasn't going to be fully there in time for Christmas. If Toys R Us had filed its case in April, you might have had an entirely different story, but because they filed in September the inability to have the product on the shelves for the Christmas shopping season turned out to be a major factor in a poor Christmas season.

Some commentators said they should have run through the Christmas season, sold their inventory and then filed, except that would have been a really good time for lenders to favour liquidation, because the firm had already turned so much of its inventory into cash.

It's a bit of a two-edged sword, but for a lot of traditional retailers, seasonality is a really significant issue.

Canada – FS That's exactly what happened with Bombay and Bowring. They didn't have enough liquidity in their credit line to stock up for their Christmas and Black Friday sales.

Those are two huge seasons for anybody in giftware, and they just did not have enough credit facility to buy enough goods to stock their stores. They were very low on inventory, which really affected their ability to restructure and if you don't have the inventory in the stores, you're going to fail.

Our firm acted for a few suppliers to Toys R Us. As soon as Toys R Us filed, we renegotiated our supply contracts and the terms under which we would deliver goods.

France – YMR Beyond looking for traditional solutions such as private equity and/or business transfers, negotiation with the main creditors is very important. Solutions will emerge from these negotiations, that will reduce the liabilities owed by a retailer in difficulty.

Two opportunities present themselves when negotiations are successful. Firstly, there is the implementation of a progressive clearance of liabilities with, for example, the implementation of a trust to secure the transaction. Secondly, when the company is no longer viable because of its excessive technological backwardness, successful negotiation allows the sale of the company in order to preserve jobs and pay off creditors.

It should be noted that in France there is a special negotiation procedure with tax and social security creditors governed by the French Commercial Code. All negotiations are done with a unique institution called the Interministerial Comity of Industrial Restructuration (Comité Interminitériel de Restructuration Industrielle, or CIRI). This body's efficiency has already proved its worth and makes it possible to obtain very interesting results. These creditors benefit from important privileges that confer on them a very advantageous place in the ranking of creditors by order. Retail was particularly affected in 2018, a year in which CIRI handled 11 retail cases, eight of which were new referrals.

The Gilets Jaunes (yellow vest) protests have worsened the situation of many companies in the sector, forcing the State to proposed accompanying measures.

The CIRI negotiations are very particular and require strong negotiations skills insofar as French tax and social institutions are rather uncompromising in their nature. As a result, solving the tax and social problems of a troubled retailer is one of the keys to successful rescue.

England – DF That example of the diamond business in Antwerp is quite chilling. Why is the market collapsing there?

Belgium – PT The main reason is transparency, driven by a lot of new terrorism-related and human rights legislation.

There is now more transparency required from people in a market that was traditionally a non-transparent sector. Diamonds are only found at certain places in the world with most in areas ruled by some of the most notorious regimes in the world.

From a lending point of view, new stricter EU regulations create more requirements around transparency and identification of those who are behind companies. That started shifting some of the market points, with diamonds now going to more structured and transparent companies who are playing on these strengths and are willing to give some transparency.

We have seen a shift to tender companies, who are working to ship and transfer these diamonds and show they have a certificate from the Antwerp Diamond Office. We call this the Kimberley Certificate.

Australia – JC The story for Australia is much the same, although collapses here often occur through a mechanism under our Corporations Act 2001 known as Voluntary Administration. It is a process where the directors (and in some instances secured creditors) may appoint an independent person (an insolvency accountant) where the company is insolvent or likely to become insolvent. This is done with a view to exploring:

- if the company can continue in some form of reorganised structure (called a Deed of Company Arrangement);
- a sale of the business; or
- liquidation of the company, which all parties usually try to avoid.

The process often involves a reorganisation or sale of the business to avoid liquidation.

This process has happened to many well-known companies including Maggie T, Diana Ferrari, Gap Australia, Esprit Australia, Toys R Us etc.

Restructure and reorganisation are the name of the game in this space because collapse has often been brought about by online retail and global raiders, with many brands still having real value while unable to keep pace with the online space.

An arrangement through Voluntary Administration by Deed of Company Arrangement will require approval of creditors, with most creditors' conscious of the difficulties in the retail space, and most hoping to avoid the consequences of liquidation.

The lesson learned in Australia is that retailers have been forced to develop niche product lines as well as competing in the online space. A successful example is Mecca, which has over 80 outlets in Australia and New Zealand with significant revenue. It is successfully competing with global brand Sephora, and growing quickly.

SESSION THREE - LIQUIDATION

In the event of liquidation, what are some of the challenges specific to retail in terms of asset disposal?

Australia – JC Upon liquidation, there is very little for creditors, because most stock is secured by general securities, helped by suppliers or financiers. There is little, if any, value in taking over premises. Even then, landlords will need to provide consent and that will not be forthcoming.

There are also many other complex issues including gift cards and security disputes. These problems, encountered with little or no return in the liquidation space, drive sale or reorganisation, provided those options are available.

U.S, Illinois – RF When large retailers go out of business and hundreds of lease locations become available simultaneously, it creates a glut of real estate that exceeds the market's ability to absorb it.

With Toys R US, there were owned stores that were subject to mortgages and were being sold to end users or financial buyers. The banks that held the mortgages on everything had to make a decision on a store-by-store basis about whether they should hold the store for a while, hoping the market price rebounds, or sell, take the cash and run.

In the specific part of the Toys R US case that I was involved with, there were at least a hundred and twenty-five stores in the sale. Only about 15-20 of the locations were sold to third parties and ended up taking the rest of the properties themselves to manage and sell over time at the lender's leisure.

That was going on simultaneously with about 600 leased stores being given back to the landlords. This created an unbelievable amount of available real estate in US malls around the country, with not enough users who wanted to pay that kind of retail lease price for property.

Many of these spaces are now being used in completely different ways than they were ever used before, at rents that are much lower than what those landlords were able to extract in a traditional retail market. The leases present a particularly complex problem for the parties that are trying to realise value from them.

Canada – FS I'm working on a matter right now, which is typical from a landlord's perspective.

We're acting for a law firm here in Canada that is going into disillusion. The offices look just like any typical law firm offices look like here in Canada, where the lawyers all have typical offices with windows and the staff work on the interior of the office.

It's a big space, but the landlord cannot re-lease it to another law firm because nobody wants space that looks like an old law firm anymore. It is proving very hard to get value out of leased premises without taking it back to base building and recreating new premises that look totally different.

England – DF A lot of the companies in the UK have got space that first came onto the market in the 1960s and 1970s. Fundamentally, they are fairly ugly functional buildings that it is hard to do too much with.

Auctions have a role sometimes, but you've got to be careful about knowing you're getting the true value from a sale.

Managing the portfolio is obviously key. We have many large retail firms that are looking very hard at what leases are coming to an end and how they can divest themselves as quickly as possible of that part of their portfolio.

Larger landlords such as Intu have certainly pushed back against a lot of reductions coming from company voluntary arrangements, regarding them as unfair and possibly damaging in the future.

Belgium – PT The problem with retail bankruptcies is that, as a receiver, it's very difficult to get value out of it these days.

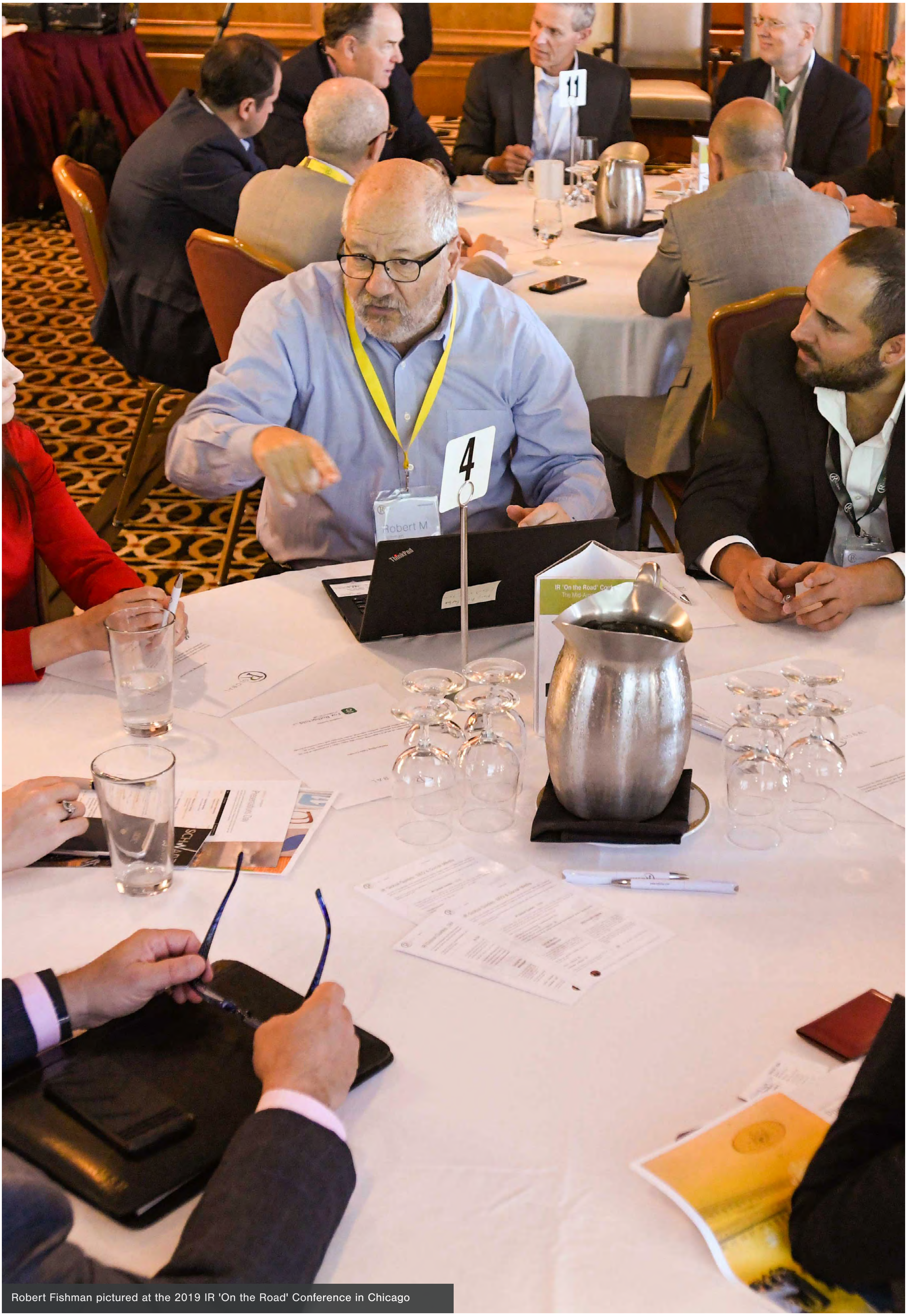
Seven or eight years ago, when retail companies went bankrupt, other competitors on the market were seeking to take over the lease, because of the good location. They were willing to pay significant amount for the possibility of taking over the lease.

Today, we get zero euros for taking over leases and we get really poor results on the sale of the assets of retail companies. This is a trend that we are seeing across Belgium.

France – YMR Judicial liquidation in France is the final step when recovery is clearly impossible. Asset disposal is a very important issue as retailers usually hold a large amount of stock.

Either the sale of the company is possible and the buyer must take over a substantial part of the stock, or a sale of individual assets is set up by mutual agreement or by auction.

The main aim is to sell stock for a fair price, often lower that outlets prices, in order to compensate for the damage suffered by employees. That is the case with the liquidation of Sonia Rykiel.



Robert Fishman pictured at the 2019 IR 'On the Road' Conference in Chicago

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