



AMERICAN
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2025 International North American Insolvency Symposium

Cross-Border Update

Rafael Klotz

The Brattle Group | Boston

Caitlin McIntyre

Blake, Cassels & Graydon, LLP | Toronto

Jason Matthew Robinson

Teneo | Grand Cayman, Cayman Islands

Cassandra Ronaldson

RISA Cayman | Grand Cayman, Cayman Islands

Richard Williams

GlassRatner Advisory & Capital Group, LLC | Toronto



INTERNATIONAL NORTH AMERICAN INSOLVENCY SYMPOSIUM

Shifting Sands: COMI, Chapter 15, and the Expanding Cross-Border Toolkit

Agenda

- Overview of Recent Trends
- Overview of COMI Determination
- Choose your own COMI Adventure (illustrative demonstration using recent cases)



Overview of Recent Trends

- 2025: More plenary filings in other jurisdictions coupled with a Chapter 15
 - Purpose of Chapter 15
 - Availability of relief not available in US / Chapter 11
 - 3rd party releases – *In re Crédito Real*, *In re Odebrecht*
 - Reverse vesting orders – *Just Energy*, *Goli Nutrition Inc.*
 - Cannabis
 - Sale of assets through a Canadian proceeding – *Elevation Gold Mining Corporation (Re)*
- US Trustee concerns with abuse of Chapter 15



Overview of COMI Determination

COMI under Part IV of the CCAA	COMI under Chapter 15
<ul style="list-style-type: none"> • Rebuttable registered office presumption • Relevant factors: (i) location of headquarters, (ii) location of management, (iii) location of primary assets, (iv) location of majority of creditors, and (v) jurisdiction whose law would apply to most disputes • Location ascertainable by third parties • Group analysis relevant, but entity level test 	<ul style="list-style-type: none"> • Rebuttable registered office presumption • Relevant factors: (i) location where corporate decisions are made, (ii) location of key business functions, (iii) existence of shared management/consolidated business operations, and (iv) integration of international operations • Location ascertainable by third parties • Group analysis relevant, but entity level test



The Scenario

- Shifting Sands Ltd. is a global investment group with operations across Canada, United States, Brazil, UK and Spain.
 - Its investment arm is based in Toronto, financed through a secured lending facility provided by RBC.
 - To fund expansion, the group also raised capital through US-law governed notes issued via a Delaware SPV.
 - The group's largest portfolio investments, oil-fields in Brazil, generate most of its income and underlying cashflows.
 - Canadian regulators discover that Shifting Sands, which also manages assets for pension funds, has improperly transferred portfolio assets to the US.
 - **Recently, however, the Brazilian assets have suffered a sharp devaluation following oil-price declines, currency weakness, and rising domestic interest rates.**
 - **Liquidity has tightened and RBC has issued a notice of default.**
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Where is COMI: Canada?

The Chief Judge Glenn Trio: *Giftcraft, Oak and Fort & Iovate* – American corporations in Canadian based restructurings

Takeaways:

1. Pre-filing activities may shift COMI.
 2. Expectations of creditors is fundamental
 3. Scope of relief should be narrow
 4. Importance of sufficient evidence
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Where is COMI: Manipulation?

- Mega Newco is a subsidiary of a Mexican financial services company (“**ODS**”).
- ODS wanted to pursue a debt restructuring that included the restructuring of New York-law governed notes such that noteholders would receive partial cash payments or equity.
- Restructuring could not occur in US outside of Ch. 11 without consent of 100% of noteholders. ODS created a new sub in UK to facilitate a restructuring of US notes under a UK scheme that is faster and cheaper than Ch. 11.
- Ch. 15 recognition granted largely because there were no objections – Bankruptcy Court argued the same structure might not be approved otherwise.



COMI: Manipulation? Valuation Considerations

Melars Group Limited (2022)

- Re-emphasizes the registered-office presumption for COMI and that lack of activity at the RO doesn’t discard the presumption.
- “Ascertainability” isn’t limited to public-domain facts: creditor-specific, non-public dealings can count. Courts shouldn’t invent a “typical creditor” to filter evidence.
- Practical pointers: English-law contracts, prior English litigation, or a UK bank account do not show COMI in England on their own.

Fossil (2025)

- Created UK company in Aug 2025 and changed the Notes’ governing law from New York to England and Wales to establish “sufficient connection” in the UK through registered-office presumption.
- The purpose was to use UK plan features not available under Chapter 11 (ability to just restructure one slice of the stack (the \$150MM notes).
- Filed Chapter 15 in S.D. Tex to recognize foreign main proceeding and enforce the UK sanction order (incl. note cancellation and releases) in the U.S.



Safeguarding Assets

Premier Assurance Group SPC Ltd. (Case No. 20-20230-RAM)

- A licensed Cayman Islands insurer writing international health and unit-linked life insurance.
 - Appointment of Joint Controllers by the Cayman Islands Monetary Authority (“CIMA”), followed by the appointment of Joint Provisional Liquidators (“JPLs”) and subsequently Joint Official Liquidators (“JOLs”) by the Grand Court of the Cayman Islands.
 - Temporary Restraining Order and Order Granting Recognition of the Cayman Islands liquidation as a Foreign Main Proceeding under Chapter 15 of the United States Bankruptcy Code (U.S. Bankr. Ct., S.D. Fla.).
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Emerging trends: Receiverships (offshore)

- Multiple Use Cases - enforcement of security, preserving value through international enforcement and a tool to achieve a desired outcome.
 - Court-appointed receiverships;
 - Out-of-court appointments by secured creditors, under the terms of security documentation; and
 - Receiverships over a segregated portfolio of an SPC.
 - Applicable in Cross-Border Proceedings.
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Emerging trends: Canada

- Options in Canada: supermonitor trend vs receiverships
 - Liability Management Transactions - Would this work with a Canadian lender?
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Emerging trends: LME UK

- Part 26A English Restructuring Plans are being used to push “amend and extend” timelines, run single-class noteholder deals, and deploy priming new-money with cross-class cram down (“**CCCCD**”).
 - But Adler case (January 2024) tightened the approach: courts must interrogate fairness, not just a broad “rationality” test. Expect more valuation/class evidence and less tolerance for brute force priming.
 - Plans cramming down HMRC also face real discretionary risk (e.g., Nasmyth plan refused despite meeting CCCC conditions).
 - Must have defensible relevant-alternative/no-worse-off and rationale for any priority departures.
 - The UK remains (for now) the go-to LME laboratory (even for US corporates, e.g., Fossil), although, post-Adler, plans need tighter class structuring, cleaner pari passu narratives, and strong valuation evidence.
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Emerging LME trends: Elsewhere

- **Netherlands:** Dutch Supreme Court held that a plan cannot compel new financing but can reorder priority if statutory tests are met, enabling priming structures when properly justified.
 - **Spain:** First major creditor-led plan (Celsa, 2023). Spanish law since 2022 allows CCCD and even “cram-up” of senior classes where safeguards are met.
 - **Germany:** Usage rising. Leoni (2023) confirmed equity wipe/delisting via Corporate Restructuring Act. Stuttgart OLG (2024) court ruled that management does not need to obtain shareholder consent where insolvency is the only alternative.
 - **Canada:** Still rare. Few cases (e.g.: Conuma, Mitel) with one-off facts (i.e.: new money participation in Conuma and NY-law credit agreement in Mitel) not otherwise common in Big Six-led financings.
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Questions

Faculty

Rafael Klotz is a principal of The Brattle Group in Boston. He is a testifying and consulting expert specializing in bankruptcy, cross-border insolvencies, commercial finance, intellectual property and contract-related disputes. Mr. Klotz's expertise stems from three decades of managing transactions with both distressed and healthy companies across the retail, commercial, industrial, transportation and technology sectors. He provides expert testimony in litigation and arbitration proceedings, drawing on his experience in U.S. chapter 11 cases, international insolvency proceedings (U.K., Europe, Latin America and Australia), cross-border secured lending, asset investments, divestitures, out-of-court restructurings, and intellectual property development and valuations. Mr. Klotz is a native Spanish speaker and fluent in English and Portuguese. He received his Bachelor's degree from Berklee College of Music and his J.D. from Boston College Law School.

Caitlin McIntyre is an associate with Blake, Cassels & Graydon LLP in Toronto and regularly acts on complex mandates involving insolvency litigation, financial restructurings and debt enforcement, in addition to providing more general insolvency advice. She focuses on cross-border insolvencies and acts for debtors, creditors, monitors, receivers and DIP lenders in some of Canada's most significant insolvency files. Ms. McIntyre regularly advises clients in multi-jurisdictional mandates and has acted across industries from retail to mining, navigating complex stakeholder dynamics and coordinating with counsel in multiple jurisdictions. She was recognized in *Best Lawyers: Ones to Watch in Canada* from 2022-25 for Insolvency and Financial Restructuring Law, and in *The Legal 500 Canada* from 2023-24 as a Rising Star – Restructuring and Insolvency, and she has co-authored a number of articles and spoken at conferences. She is a member of the Law Society of Ontario, Turnaround Management Association, Ontario Bar Association and International Women's Insolvency & Restructuring Confederation. Ms. McIntyre received her B.A. in history from McMaster University and her J.D. in 2016 from the University of Toronto.

Jason Matthew Robinson, CPA is a senior managing director with Teneo in Grand Cayman, Cayman Islands, having joined Teneo following its acquisition of KPMG's Cayman Islands Restructuring business. He has nearly 20 years of experience assisting clients in the financial services sector, having worked at KPMG in Canada and KPMG in the Cayman Islands. Mr. Robinson has played a central role in various cross-border restructuring and insolvency matters involving Cayman-domiciled entities with assets and/or recovery actions in a variety of jurisdictions. He also has been appointed as a provisional and official liquidator by the Grand Court of the Cayman Islands and controller by the Cayman Islands Monetary Authority, and he has acted as a foreign representative as part of chapter 15 recognition proceedings in U.S. bankruptcy courts. He also has acted as voluntary liquidator to several entities in the Cayman Islands. Mr. Robinson is a Chartered Professional Accountant of Canada, qualified insolvency practitioner in the Cayman Islands, and a Fellow of INSOL International. He received his undergraduate degree in finance from Western University.

Cassandra Ronaldson is a senior manager with Kalo Advisors in Grand Cayman, Cayman Islands, and her expertise includes domestic and cross-border insolvency, independent business reviews, forensic investigations and litigation support. She has eight years of experience in the Cayman Islands

and Australia managing a variety of corporate insolvency and advisory appointments. During her career, Ms. Ronaldson has worked with stakeholders of distressed entities across a wide range of industries, including investment funds, retail, nonprofit, property, mining services and agriculture. She is experienced in working with legal counsel to realize assets and maximize returns for stakeholders. Ms. Ronaldson holds a Bachelor of Commerce in accounting and is a qualified Chartered Accountant.

Richard Williams, CPA, CIRP, LIT is a managing director at GlassRatner in Toronto, where his practice focuses on financial advisory services, corporate restructuring and cross-border restructuring. He has spent more than 20 years in corporate reorganization and restructuring in a variety of roles ranging from operations management to strategic financial advisor. Mr. Williams has worked with small entrepreneurs, mid-market family businesses, multi-billion-dollar corporations and a wide range of public-sector entities. He has experience in advising banks, private debt funds and other lenders in the management of distressed loan positions. He also has advised government agencies, private boards and other stakeholders in industries ranging from film and media to aviation and manufacturing. Mr. Williams is a member of the Turnaround Management Association, the Canadian Association of Insolvency and Restructuring Professionals and the Chartered Professional Accountants of Ontario. He received his B.A. in international relations in 2002 from Mt. Allison University, his M.A. in political science in 2003 from Dalhousie University, and his M.B.A. in 2015 from Athabasca University.