

American Bankruptcy Institute

New York City Bankruptcy Conference

Cross-Border Restructuring

Barbra Rachel Parlin, Moderator
Holland & Knight LLP | New York

Hon. Martin Glenn
U.S. Bankruptcy Court (S.D.N.Y.) | New York

Steven W. Golden
Pachulski Stang Ziehl & Jones LLP | Wilmington, Del.

Madlyn Gleich Primoff
Freshfields US LLP | New York

Rick Morris
HPS Investment Partners | London

Edward H. Tillinghast III
Sheppard, Mullin, Richter & Hampton LLP | New York

CONCURRENT SESSION

2026

Cross Border Insolvency Panel
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I. Cross Border Cases:

A. Restructuring of non-US entities in the US.

B. Restructuring of US entities in proceedings outside the US.

C. Concurrent plenary proceedings in multiple countries, with or without a Chapter 15.

i. *In re Diebold Holding Company, LLC,* Case No. 23-90602 (Bankr. S.D. Tex. 2023) (concurrent chapter 11, chapter 15 and Dutch WHOA proceedings)

ii. *In re Nortel Networks Inc.*, Case No. 09-10138 (Bankr. D. Del. 2009) (filed a Chapter 11 Proceeding as well as CCAA proceeding in Canada)

iii. *In re Maxwell Commc'n Corp. PLC*, 91-15741 (Bankr. S.D.N.Y. 1991) (filed a Chapter 11 Proceeding as well as an insolvency proceeding in the United Kingdom)

D. Chapter 15 ancillary proceedings in aid of or to enforce foreign orders.

II. Non-US Entity Chapter 11 Cases

A. Voluntary Cases:

i. Industries/Examples:

a. Aviation -- *Avianca* (2x), *CHC Group*, *LATAM*, *AeroMexico*, *Philippine Airlines*, *SAS*, *GOL*, *Azul*, *JPA*

b. Shipping –*TMT Shipping*, *Excel Maritime*, *Hornblower Group*

c. Telecom -- *In re Tricom, S.A. et al.,* Case No. 08-10720 (Bankr. S.D.N.Y. 2008)

d. Offshore drilling/Oil – *Seadrill, Valaris PLC, Noble Corporation PLC*

e. Manufacturing – *Diebold Nixdorf (In re Diebold Holding Company, LLC)*, Case No. 23-90602 (Bankr. S.D. Tex. 2023)

ii. Issues:

a. Jurisdiction/Automatic Stay over major creditors – bonds, secured debt, major equipment lessors;

b. Jurisdiction over local creditors may not be necessary if the expectation is that local unsecured creditors will be paid in full

c. Venue – where to file?

d. Time for post-petition performance when 1110 does not apply (365(d)(5) and/or Cape Town Convention) --*Avianca*, *LATAM*, *AeroMexico*, *Philippine Airlines*, *SAS*, *GOL*, *Azul*

e. Follow on processes in home country may be needed to complete restructuring-- debt/equity swap provided for in plan may need to be followed by process under local law (*Tricom, LATAM*, *SAS*, *GOL*, *Azul*)

B. Involuntary cases –

i. Can it work?

a. *In re Globo Communicacoes e Participacoes SA*, Case No. 03-17814 (Bankr. S.D.N.Y. 2003); case was dismissed

b. *In re TV Azteca*, Case No. 23-10417 (Bankr. S.D.N.Y. 2023) – involuntary chapter 11 that was *dismissed* in 2023; voluntary case filed in Mexico in 2026

c. *In re Compania de Alimentos Fargo, S.A.*, Case No. 06-12128 (Bankr. S.D.N.Y. 2006) -- *involuntary* Chapter 11 proceeding was filed while Argentine insolvency proceeding pending; case dismissed.

d. *In re Bd. of Dirs. of Multicanal S.A.,* 314 B.R. 486, 520 (Bankr. S.D.N.Y. 2004), aff'd in part and remanded in part on other grounds, 331 B.R. 537 (S.D.N.Y. 2005) – dismissed competing chapter 11 case filed while Argentine proceeding was pending

e. *In re Yukos Oil*, Case No. 04-03952 (Bankr. S.D. Tex. 2004) –Russia nationalized Yukos Oil and jailed principal. American Executive escaped Russia and filed a chapter 11 petition in the US; Bankruptcy Court for Southern District of Texas abstained

f. *In re Xinyuan Real Estate Company*, Case No. 25-10745 (Bankr. S.D.N.Y. 2025) – involuntary chapter 11 case; court **denied** motion to dismiss on the ground that proceeding in Cayman does not have support of creditors

ii. What happens when management doesn't cooperate? *In re Eletson Holdings, Inc.*, Case No. 23-10322 (Bankr. S.D.N.Y. 2023) Involuntary chapter 7 petition filed in 2023; converted to a voluntary chapter 11 pursuant to settlement with petitioning creditors; petitioning creditors file competing plan after debtor filed plan to reinstate equity; court eventually approved 3 competing disclosure statements, later confirmed petitioning creditors' competing plan; subsequent disputes over implementation of plan and control of reorganized Eletson resulted

in litigation in the US and Greece; bankruptcy court issued bench warrants against individual Eletson Holdings owners and provisional board members.

III. Alternative jurisdictions for restructurings –

A. UK – Scheme of Arrangement or RP under Part 26A:

i. Differences between a Scheme of Arrangement and a Restructuring Plan

a. Numerosity test (Scheme of Arrangement, but not Restructuring Plan)

b. Cross-class Cram Down (Restructuring Plan but not Scheme of Arrangement)

ii. advantageous because permits restructuring of a single class of debt – no need to implicate the rest of the company's capital structure

iii. No numerosity requirement for approval; simply requires consent of 75% in value of the class;

iv. Jurisdictional hook – English courts have endorsed "good forum shopping"; debt governed by English law and UK entities involved coupled with releases for non-debtors – not easily obtained in the US following *Purdue*

v. Efficacy of process depends on whether follow on Chapter 15 proceeding in the US recognizes plan, and non-debtor releases

vi. Examples: *Fossil Group*; *Argo Block Chain*; *New Fortress Energy*; *Mega Newco*

B. Liquidations under Cayman, BVI law, Singapore law coupled with Chapter 15 relief

i. *Platinum Partners Value Arbitrage Fund L.P.*, Case No. 16-12925 (Bankr. S.D.N.Y. 2016) – Foreign Main Proceeding pending in Cayman Islands

ii. *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, Case No. 07-12383 (Bankr. S.D.N.Y. 2007) – Foreign Main Proceeding pending in Cayman Islands

iii. *In re Wayne Burt Pte. Ltd.*, Case No. 24-19956 (Bankr. D. N.J. 2024) – Foreign Main Proceeding pending in Singapore

iv. *In re Three Arrows Capital, Ltd.*, Case No. 22-10920 (Bankr. S.D.N.Y. 2022) – Foreign Main Proceeding pending in the British Virgin Islands

C. Canada – CCAA proceeding coupled with Chapter 15 relief

i. *In re Li-Cycle Holdings Corp.*, Case No. 25-10991 (Bankr. S.D.N.Y. 2025) – CCAA proceedings for Canadian Topco PLUS multiple US debtors. Chapter 15 filings for all entities. Property was overwhelmingly located in the US. Topco was listed on NYSE. Following a trial, court determined that the Center of Main Interests ("COMI") of the US

entities was in Canada. Contemporaneous approval by Canadian and US courts of DIP financing, sale procedures and 363 sale.

ii. *In re Cannabist Co. Holdings Inc.*, Case No. 26-10426 (Bankr. D. Del. 2026) – filed proceeding under CCAA in March of 2026 and will seek recognition in the US under chapter 15. Cannabis companies generally cannot file a plenary proceeding under chapter 7 or 11 of the Bankruptcy Code because cannabis is still illegal under US Federal law.

iii. *In re Iovate Health Sciences International Inc.*, 673 B.R. 516 (Bankr. S.D.N.Y. 2025) granting provisional relief; debtors included US entities.

iv. *In re Voxtur Analytics Corp., et al.*, Case No. 25-11996-JKS (Bankr. D. Del. Nov. 11, 2025) (Canadian CCAA Monitor granted recognition in a US Chapter 15 proceeding).

v. *In re Giftcraft Ltd.,* No. 25-11030 (MG), 2025 WL 1583480, at *1 (Bankr. S.D.N.Y. June 4, 2025) (one of debtors was formed under DE law).

vi. *In re Oak and Fort and Affiliated Entities*, Case No. 25-11282 (Bankr. S.D.N.Y.) [dkt. #31] (recognizing CCAA proceedings involving Vancouver retailer where several debtors were US entities).

vii. *In re Sinebec Group*, Case No. 25-80689 (Bankr N.D. IL) (CCAA filed in Quebec with PwC as Monitor, included US entities).

D. European Union – Luxembourg, France, Spain, Germany

i. *In re Ard Finance, S.A.*, Case No. 25-12794, 2026 WL 817458 (Bankr. S.D.N.Y.) – recognizing foreign main proceeding under Luxembourg JRP, a new restructuring law enacted in 2023

ii. *In re Altice France S.A.*, Case No. 25-11349 (Bankr. S.D.N.Y. 2025) – foreign main Proceeding pending in France.

iii. *In re Oversight and Control Commission of Avanzit, S.A.*, Case No. 07-13765 (Bankr. S.D.N.Y. 2007) – foreign main proceeding pending in Spain.

iv. *In re ALNO AG*, Case No. 18-12651 (Bankr. D. Del. 2018) – foreign main proceeding pending in Germany.

E. EU restructuring directive was designed to rebalance European bankruptcy laws to compete with chapter 11 and to give member states a common, preventative restructuring framework not capable of being blocked by out of the money shareholders. Recent examples of first debt/equity conversions over objection of equity in continental European jurisdictions include:

i. In Spain, following the first non-consensual creditor-led restructuring in Celsa, shareholders have effectively lost their veto

ii. In France, Orpea is the first major French application of cross class cramdown via accelerated sauvegarde to force through change of control equitisations without regard

to out of the money equity; People & Baby another recent example of control wrested from equity sponsor via accelerated sauvegarde

iii. In the Netherlands, use of the WHOA in Vroom allowed for a debt to equity swap over shareholder opposition; Steinhoff plan approved via WHOA over shareholder opposition.

iv. In Germany, Germany's StaRUG similarly now allows restructuring plans to include debt-to-equity swaps, capital reductions, and exclusion of existing shareholders' subscription rights, including via cross-class cramdown. Leoni AG used the StaRUG framework to implement a large-scale debt for equity financial restructuring, with dissenting shareholders crammed down

v. Out of Court -- *In re Selecta Finance UK Ltd.*, Case No. 20-34947 (Bankr. S.D. Tex. 2020)—currently being litigated, highlight a return to using the distressed disposal mechanics in lieu of an in-court restructuring following a default (or contrived default) to allow a subset of creditors almost complete control over the process and structure of the deal, including control over the post-enforcement capital stack, with ability to set up the new capital stack, put in priming money, open up new baskets for priming, and omit or suspend sacred rights of the non-Instructing Group (as was done in Selecta). If the pending challenge fails, this would become a powerful tool to effect a restructuring with very limited judicial guardrails given the very limited protections to non-instructing and junior creditors in the intercreditor agreement (beyond a valuation opinion that is never based on a going concern).

F. Issues:

i. Can this approach be used for a non-consensual deal and will it lead to international forum shopping?

ii. What happens when the absolute priority rule is not followed?

iii. Are non-debtor releases OK?

iv. Risk as to whether foreign case will be recognized under chapter 15 and enforcement of foreign plan

v. Availability/lack of discovery; loser pays for litigation and may be required to post security for costs

vi. Sealed proceedings/lack of transparency

vii. Examples:

a. *In re Credito Real*, No. 25-10208 (TMH), 2025 WL 977967 (Bankr. D. Del. Apr. 1, 2025), aff'd *United States International Development Finance Corp. v. Credito Real S.A.B. de C.V., SOFOM, E.N.R.* (*In re Credito Real S.A.B. de C.V., SOFOM, E.N.R.*), 2026 WL 881444 (D. Del. Mar. 31, 2026) Delaware bankruptcy and district court enforced foreign debtor's plan of reorganization containing non-consensual third-party releases that were approved in the foreign case.

b. *In re Odebrecht,* No. 25-10482 (MG), 2025 WL 1156607 (Bankr. S.D.N.Y. Apr. 21, 2025), SDNY bankruptcy court concluded that a US court in a chapter 15 case can approve non-consensual third-party releases

c. *In re Ard Finance, S.A.*, Case No. 25-12794 (Bankr. S.D.N.Y.) – foreign proceeding recognized, but not clear if Luxembourg or US court will enforce WHOA restructuring plan implementing pre-petition LME objected to by non-participating PIK notes holders

d. *In re Asbestos Corp. Ltd.*, 674 B.R. 855 (Bankr. S.D.N.Y. 2025).– CCAA case recognized as foreign main proceeding, stay extended to non-debtor entities (decision currently on appeal)

IV. Chapter 15 -- Issues for recognition

A. Property in the US –

i. *In re Barnett*, 737 F.3d 238, 247 (2d. Cir. 2014) – foreign debtor must satisfy Section 109(a) to file chapter 15 in the US

ii. *In re Al Zawawi*, 97 F.4th 1244 (11th Cir. April 3, 2024) – holding that a chapter 15 debtor need not satisfy the requirements of being a debtor under section 109(a)

iii. *In re Siu-Fung Ceramics Holdings*, Case No. 24-33299 (Bankr. S.D. Tex. 2026) – applying Barnett, debtor eligibility under section 109(a) is determined as of petition date. Retainer paid by foreign debtor nine months after petition date was insufficient to establish eligibility under section 109(a) of the Bankruptcy Code so case dismissed.

B. COMI issues – (see also C*OMI Chameleon* article)

a. Letter box companies where insolvency proceeding is not in place where operations are located. See, e.g., *In re Geden Holdings, Ltd.*, 674 B.R. 732 (Bankr. S.D. Tex. 2025)

i. Shifting COMI – when is COMI measured?

a. *In re Millennium Global Emerging Credit Master Fund Ltd.*, Case No. 11-13171 (Bankr. S.D.N.Y. 2011) – COMI is measured when chapter 15 is filed, not as of date the original foreign proceeding was filed – (holding overruled by Second Circuit *Fairfield Sentry* decision)

b. *Fairfield Sentry Ltd. V. Krys (In re Fairfield Sentru Ltd.)*, 714 F.3d 127 (2d Cir. April 16, 2013) – COMI measured at or around time Chapter 15 petition is filed

ii. COMI when foreign debtors are formed under the laws of various jurisdictions and main insolvency proceeding is pending in one of those jurisdictions or a totally separate jurisdiction.

a. *In re Odebrecht Engenharia e Construção S.A. – Em Recuperação Judicial*, Case No. 25-10482 (Bankr. S.D.N.Y. 2025) – foreign main proceeding pending in Brazil; certain debtors formed under laws of the Bahamas, Cayman Islands, and Brazil.

b. *In re Oi S.A.*, Case No. 23-10193 (Bankr. S.D.N.Y. 2023) – foreign main proceeding pending in Brazil; certain debtors formed under the laws of Brazil and the Netherlands.

c. *In re OAS S.A.*, Case No. 15-10937 (Bankr. S.D.N.Y. 2015) – foreign main proceeding pending in Brazil; certain debtors formed under laws of Austria and the British Virgin Islands.

d. *In re Modern Land (China) Co. Ltd.*, 641 B.R. 768 (Bankr. S.D.N.Y. 2022) – recognizing a proceeding pending in the Cayman Islands as a foreign main proceeding despite the fact that the company did most of its business in China and was reorganizing debt issued under New York law.

a. COMI when debtor is formed under US law, but main proceeding is outside the US – *see e.g.*, *Iovate Health Sciences USA Inc*. – Formed under Delaware Corporate Law; filed an insolvency proceeding in Canada under the CCAA.

C. Additional Relief:

i. "Manufactured" jurisdiction – *Fossil (UK) Global Services Ltd*., chapter 15 case no. 25-90525 (Bankr. S.D. Tx.); *Mega NewCo*, Case No. 24-12031 (Bankr. S.D.N.Y. 2024) – "Good" forum shopping? What happens when case is not fully consensual?

ii. Enforcement of foreign plan that does not comport with US law – how far apart does it have to be to result in denial of motion to enforce?

a. *In re Vitro, S.A.B. de C.V.*, Case No. 11-33335 (Bankr. N.D. Tex. 2011) (finding that foreign plan that permitted insider votes to carry class, thereby stripping creditors of their collateral, violated US public policy under section 1506)

b. *In re PT Backrie Telecom*, Case No. 18-10200 (Bankr. S.D.N.Y. 2021) (granting recognition be denying motion to enforce third party releases in foreign plan because there was no justification for granting such relief offered)

iii. Enforcement of third party/non-debtor releases post *Purdue*

a. *In re Odebrecht Engenharia e Construcao S.A.*, 669 B.R. 457 (Bankr. S.D.N.Y. 2025)

b. *In re Credito Real S.A.B. de C.V.*, 670 B.R. 150 (Bankr. D. Del. 2025) – (on appeal)

iv. Scope of discovery; Fed. R. Bankr. P. 2004/28 U.S.C. §1782

a. *In re Platinum Partners Value Arbitrage Fund L.P.*, Case No. 16-12925 (Bankr. S.D.N.Y. 2016) (authorizing broad 2004 discovery in chapter 15 case).

b. *In re Toft*, 453 B.R. 186 (Bankr. S.D.N.Y. 2011) denying recognition/additional relief in chapter 15 case filed for sole purpose of accessing foreign debtor's electronic communications; found relief requested to be manifestly contrary to US public policy; *In re Irish Bank Resolution Corporation Ltd*., 559 B.R. 629 (Bankr. D. Del. 2016) (denying foreign representative's motion for turnover of stored information in private email account)

c. *In re Ascentra Holdings, Inc.,* 2023 WL 8446208 (Bankr. S.D.N.Y. Dec. 5, 2023) (holding that foreign representative is not the only party who can seek discovery in a chapter 15 case)

d. *Banoka S.a.r.l. v. Elliott Mgmt. Corp.*, 148 F.4th 54 (2d Cir. 2025) confirmed that courts may consider forum selection clauses in weighing discovery requests under Section 1782; where parties have agreed to resolve disputes in a foreign jurisdiction, that choice can weigh against granting Section 1782 discovery

e. *Novalpina Capital Partners I G.P. S.A.R.I. v. Treo Asset Management LLC*, 2025 WL 2315896 (9th Cir. 2025) (documents produced under Section 1782 may be used in other proceedings not identified in the petition)

D. Limits on claims against Debtor/estate in Chapter 15. *See, e.g*., *In re Point Investment Ltd. (FTI GP I LLC v. Point Investment Ltd.)*, Civ. No. 23-630-CFC (D. Del. 2023) (affirming bankruptcy court dismissal of adversary proceeding brought by creditor against foreign debtor in chapter 15 court, creditor's claim had to be adjudicated in Bermuda where the foreign proceeding is pending).

E. Recognition of reverse vesting orders issued in CCAA proceedings. *See e.g. In re Goli Nutrition Inc.,* 2024 WL 1748460 (Bankr. D. Del. Apr. 23, 2024) (Court agreed to enforce CCAA court order approving RVO where there were no objections, but not clear if it would approve RVO in case of an objection).

F. Can Chapter 15 relief be granted when the foreign main proceeding has concluded?

a. *In re Oversight and Control Commission of Avanzit, S.A.*, Case No. 07-13765 (Bankr. S.D.N.Y. 2007) – Granting recognition after debtor obtained approval of repayment plan in Spanish insolvency proceeding and judicial oversight of main case is over

G. Closing the Chapter 15 case – When is it over?

a. *In re Daewoo Logistics Corp.*, 461 B.R. 175 (Bankr. S.D.N.Y. 2011) – automatic stay granted under chapter 15 terminates upon closing of Foreign Main Proceeding).

b. *In re Oi S.A.*, Case No. 23-10193 (Bankr. S.D.N.Y. 2023) – denied motion to dismiss or terminate chapter 15 proceeding because, *inter alia*, Foreign Main Proceeding remained pending

SheppardMullin



Airline Insolvencies - Where To Go Under Chapter 11

By Edward H. Tillinghast, III (Sheppard Mullin Richter & Hampton LLP)
and Aubrey Tao (Bird & Bird)

The aviation industry has been one of the heaviest hit sectors by COVID-19. Although recovery has begun to be detected in the Asia Pacific region, especially in China and Europe, some commentators project that a full recovery will be at least three years away. It is reported that governments have provided more than 100 billion US dollars of support to airlines.

Avianca Holdings and certain of its subsidiaries and affiliates filed for Chapter 11 protection in the United States on 10 May 2020. As one of the oldest airline brands in the world, which consists of multiple airline units operating primarily in the Central and Northern part of Latin America, Avianca had been in fragile financial condition for years. Following a management and shareholder change in mid-2019, the airline had made tangible and meaningful progress to improve its financial position in the second half of 2019. It was on the path to recovery and had taken many positive steps in that direction. Unfortunately, the coronavirus crisis struck in early 2020, and suspended Avianca's recovery.

This article provides a brief introduction of Chapter 11 of the U.S. Bankruptcy Code, examining how it affects aircraft lease agreements, and provides a comparison between Chapter 11 and the English and PRC insolvency laws.

I. Chapter 11 Overview

Chapter 11 of the U.S. Bankruptcy Code generally allows debtors to operate their businesses under the supervision of the Bankruptcy Court during the proceeding, and permits them to either reorganize or liquidate as a going concern to maximize value. A successful Chapter 11 reorganization permits the debtor to restructure its debt, sell off selected assets, trim costs, discharge debts, and obtain new financing, while temporarily staying most pre-petition creditors.

A Chapter 11 case starts with a voluntary or involuntary filing of a petition in the U.S. Bankruptcy Court where the debtor has assets, does business, or is incorporated. If the petition is involuntary, the debtor has an opportunity to "answer" the petition by contesting its insolvency, or consenting to relief and proceeding with the Chapter 11 case. The petition may be voluntary or involuntary. A voluntary petition is filed by the debtor. An involuntary petition is filed by unsecured creditors that meet certain requirements proscribed by the Bankruptcy Code.

Once a debtor has filed a Chapter 11 case, or consented to relief in an involuntary case, an order for relief is deemed to be entered, and the debtor is generally permitted to operate under its own management, commonly referred to as a "debtor in possession". A debtor in possession maintains control of its business operations and is tasked with reorganizing the debtor's financial affairs, examining claims and possible assets, interfacing with any committees appointed by the court, such as the creditor's committee, objecting to claims, accounting for assets, filing monthly operating reports, developing a disclosure statement and plan, and confirming a plan. Upon approval of the court, a debtor may employ professionals such as attorneys, accountants, investment bankers, and

other professionals to assist in the case. Such professionals, including the professionals of any official committee, are paid by the debtor's estate as approved by the court.

Once a petition is filed, an automatic statutory stay of most actions against the debtor and its assets is in effect. Consequently, creditors, with limited statutory exceptions, may not pursue existing or new collection activities unless the court issues a modification to the stay after notice and a hearing. This provides an opportunity for debtors to prepare a plan as to all pre-petition creditors without a need to litigate on multiple fronts.

Except where the Bankruptcy Court extends the "exclusive period", debtors have the exclusive right to propose a plan, which may provide for a reorganization or a liquidation, for 120 days from entry of the order for relief, and 180 days from entry of the order for relief, to confirm the plan. These exclusive periods are often extended by the court after notice and a hearing for cause. Plans must designate classes of creditors and interests, and provide for the treatment of such classes. Generally, a plan will classify claim holders as secured creditors, unsecured creditors entitled to statutory priorities, general unsecured creditors, and equity holders. The plan, subject to certain rules, may modify the amounts and terms for repayment of the creditors. As with other types of bankruptcy proceedings, repayment amounts are often lower than the original debt amounts. To be confirmed, a plan must be voted for by impaired creditors with at least two-thirds in dollar amount in favour and at least on-half in number in favour, and approved by the court. If a plan is not so approved by impaired creditors, a debtor may seek to confirm a plan as a "cram down" plan, in which case, the debtor must prove, *inter alia*, that creditors are receiving at least what they would receive in a liquidation, that it is fair and equitable, and at least one class of impaired creditors subordinate to an objecting class is voting in favour of the plan.

Generally, confirmation of a reorganization plan (not a liquidating plan) discharges a debtor from most pre-petition debts, except certain statutorily exempt claims. After the plan is confirmed, the debtor is required to make distributions in accordance with the plan. Essentially, the confirmed plan creates new contractual rights, replacing the pre-bankruptcy contracts.

If the debtor's plan is not approved, the court can either convert the case to a Chapter 7 liquidation, where an independent trustee takes control of the debtor and its assets, and liquidates all assets and distributes the proceeds in accordance with a statutory scheme, or permit creditors to propose a plan, or simply dismiss the case.

How Chapter 11 affects aircraft lease and financing agreements

Section 1110 of the Bankruptcy Code creates an important decision point for airlines 60 days after they file a voluntary Chapter 11 petition. Essentially, they must cure any defaults under leases or security agreements concerning aircraft, aircraft engines and aircraft spare parts, and obtain court approval of the Bankruptcy Court for all such cures. Otherwise, the lessor or secured party may exercise its rights to take possession of such items after 60 days, and the debtor must immediately surrender the items to the lessor or secured party.

More specifically, for the automatic stay to continue for more than 60 days after an order for relief is entered in a U.S. bankruptcy of an air carrier with an operating certificate for aircraft capable of carrying 10 or more individuals, or 6,000 pounds or more of cargo, as to, *inter alia*, aircraft, aircraft engines, propellers, appliances, or spare parts sold or leased to such an air carrier, the air carrier must: (a) subject to approval of the court (an "approval order"), agree to perform all obligations of the debtor under the security agreement or lease before the date that is 60 days after the order for relief, and (b) any default under the security agreement or lease that occurs before the date of the approval order must be cured before the 60-day period expires and any default that occurs after the date of the approval order and before the expiration of the 60-day period must be cured before the later of 30 days after the default or the expiration of the 60-day period. Moreover, any default under such a security agreement or lease that occurs after the 60-day period, must be cured in accordance with the relevant agreement, if a cure is permitted under such agreement. Upon a failure of an air carrier debtor to comply with these provisions, the debtor must immediately surrender the aircraft, aircraft engines, propellers, appliances, and/or spare parts to the lessor or secured party.

Application of Automatic Stay Effect

The previously mentioned automatic stay no longer protects an air carrier debtor that fails to comply with the 60-day, and other, provisions of Section 1011 of the Bankruptcy Code. Therefore, an airline debtor will need to have the financial ability to cure any defaults under any leases or security agreements concerning its aircraft, aircraft engines, propellers, appliances, or spare parts within the first 60-days of its chapter 11 case, at least as to any such items that it needs to operate. Otherwise, it will lose possession of any aircraft, aircraft engines, propellers, appliances, or spare parts that it owns or leases.

The goal of filing for Chapter 11 bankruptcy protection is usually to restructure the debtor's finances, sell off or abandon any unwanted assets, and to emerge with an stronger balance sheet and become profitable. For airlines, a significant part of any restructuring is accelerated by the 60-day rules of Section 1011. For example, in Avianca's chapter 11, it will close its Peru division, and scale back fleets elsewhere. Fourteen aircraft were listed as surplus, namely one B787-8, two A330-300s, two A321s, seven A320s, and two A319s within the 60-day period.
For affected lessors, they may have an incentive to work with the airline lessee/borrowers and consider compromises as the 60-day deadline approaches to keep their aircraft or parts operating and cash flowing, unless the aircraft are commercially marketable.

II. Primary Difference in Chapter 11 and PRC Bankruptcy Restructuring

In China, bankruptcy procedures include restructuring, settlement and liquidation. For purposes of this article, bankruptcy restructuring is to be discussed and negotiated. Bankruptcy restructuring refers to the reorganization of the business of a company that may already be in a bankruptcy but has the value of maintenance and hope of regeneration through the application of interested parties, with the presidency of the court and the participation of interested parties and debt adjustments to help debtors discharge financial distress and restore their business capacity.

Generally, a PRC bankruptcy restructuring has a number of similarities to U.S. Chapter 11 cases, both are focused on the recovery and profitability. Also, once the PRC court accepts the restructuring petition, the exercise of a security interest is suspended, the preservation measures taken against the debtor's property shall be lifted, and the execution procedure shall be stayed.

However, there are some notable differences between these two regimes, including:

i. Who can file for restructuring?
Under PRC law, the investor(s) in the business are entitled to apply for restructuring during a bankruptcy liquidation procedure and thus convert the case from liquidation into restructuring. While both the debtor and any creditor can file a restructuring petition in the court, if a creditor petitions for liquidation of the debtor, the debtor or an investor whose capital contribution accounts for 10% or more of the debtor's registered capital may file a restructuring petition; however, only creditor or debtor could file for Chapter 11 protection.

ii. Will an administrator/trustee be appointed?
Upon the PRC law bankruptcy petition being accepted by the court, an administrator will be appointed by the court, who will normally take charge of the property and the operation of the debtor. If a restructuring petition is filed and further accepted, the debtor may apply to the court and subject to the court's approval, the debtor may resume management of its property and business matters under the supervision of the administrator. Under a U.S. Chapter 11 case, however, the appointment or election of a trustee (a similar role of PRC bankruptcy administrator) occurs only in a small number of cases. Generally, the debtor in possession operates the business of a Chapter 11 debtor and oversees the operations of the debtor's business, unless a party makes a motion for the appointment of a trustee or to convert the case to a Chapter 7 liquidation case[1]

[1] The U.S. bankruptcy court, on motion by a creditor or party in interest, or the U.S. trustee, and after notice and hearing, may appoint a trustee for cause, including fraud, dishonesty, incompetence, or gross mismanagement.

iii. Who can draft the plan of restructuring/reorganization?

The PRC restructuring administrator (or the debtor in possession of the business in a U.S. Chapter 11 case) shall submit a draft restructuring plan to the court and creditors within six months after the restructuring petition being accepted by the court, which could be extended to nine months by the court. If the administrator or the debtor (as the case may be) fails to submit the draft plan within the specified period, the court will directly rule to terminate restructuring and declare the debtor bankrupt and entering into liquidation.

Under Chapter 11, as stated above, a debtor in possession has an exclusive period to file and solicit confirmation of a plan for 120 days and 180 days, respectively. If this exclusive period, or any extensions thereof by the court after notice and a hearing, expire, or is terminated by the court for cause shown, any creditor or party in interest may file a plan. Such a creditor plan may compete with a plan filed by the debtor.

iv. How could the plan of restructuring/reorganization be accepted and confirmed?

Similar to a Chapter 11 reorganization plan, a PRC restructuring plan shall also be adopted by the creditors and confirmed by the court. A PRC restructuring plan will designate classes of claims and the claim holders/creditors will be classified accordingly. Each class of creditors shall vote on the draft plan separately. Also, if more than one class (but not all) of the creditors vote to object, the plan can still be confirmed by the court as long as certain requirements are met. However, the PRC restructuring allows the debtor or administrator (as the case may be) to hold consultation with the disapproving class, and to hold a second vote thereafter.

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• ALBERTA COURT AFFIRMS SINGLE-PROCEEDING MODEL: ROYALTY ARREARS CLAIMS MUST BE PURSUED FIRST IN INSOLVENCY PROCEEDINGS •

Kelly Bourassa, Partner, and Ellen Savage, Articling Student, Blake, Cassels & Graydon LLP.

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On January 26, 2026, the Court of King's Bench of Alberta held that the Alberta Department of Energy and Minerals ("Alberta Energy") is required to first advance its claim for royalty arrears owed by an insolvent energy company within ongoing restructuring proceedings of that insolvent company, before seeking recovery from jointly liable solvent co-lessees.

This decision affirms that "claims provable in bankruptcy" against a debtor who has initiated insolvency proceedings are stayed and must be resolved within those proceedings in first instance, consistent with the single-proceeding model articulated by the Supreme Court of Canada in *Peace River Hydro Partners v. Petrowest Corp.*.[1]

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BACKGROUND

Blue Sky Resources Ltd. ("Blue Sky") is a private upstream oil and gas company with assets in Alberta, British Columbia and Saskatchewan. On September 24, 2025, Blue Sky filed a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act*,[2] thereby triggering a statutory stay of proceedings.

On September 25, 2025, the day after Blue Sky filed its NOI, Alberta Energy issued collection notices to solvent leaseholders registered on petroleum and natural gas leases (PNG Leases) alongside Blue Sky (the Royalty Default Notice). The Royalty Default Notice advised that Blue Sky's gas royalty account had an outstanding balance of approximately C$1.9-million (the Blue Sky Royalty Arrears), and that under section 20(2.1) of the *Mines and Minerals Act* ("MMA"),[3] all co-lessees were jointly responsible for the arrears. The notice further stated that unless the co-lessees remitted payment in full by October 31, 2025, Alberta Energy could pursue various remedies, including cancelling the affected

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General Editors
Dina Milivojevic, National Editor
Pallett Valo LLP
Tel: (905)273-3022
E-mail: dmilivojevic@pallettvalo.com

Michael Shakra, National Editor
Firm: Osler, Hoskin & Harcourt LLP
Tel: (416) 862-6643
E-mail: mshakra@osler.com

Please address all editorial inquiries to:

LexisNexis Canada Inc.
Tel: (905) 479-2665
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PNG Leases, setting off the Blue Sky Royalty Arrears against credits owing by Alberta Energy to leaseholders, and suspending leaseholders' electronic transfer system privileges.

Many solvent co-lessees were concerned about the issuance of the Royalty Default Notice during the pendency of the NOI proceedings, which they viewed as circumventing the statutory stay. Several co-lessees paid their proportionate share of the Blue Sky Royalty Arrears "under protest" with confirmation from Alberta Energy that it would not take further remedial action against the co-lessees until resolution of the matter by the Court.

THE COURT'S DECISION

The Court of King's Bench of Alberta held that Alberta Energy was required to advance its claim for the Blue Sky Royalty Arrears within the NOI proceedings prior to seeking any recovery from solvent co-lessees.

1. **The Blue Sky Royalty Arrears Are a "Claim Provable in Bankruptcy" and Subject to a Stay of Proceedings**

First, the Court determined that Alberta Energy's claim to the Blue Sky Royalty Arrears constituted a "claim provable in bankruptcy" and was therefore subject to the statutory stay of proceedings. The Court set out three requirements for a claim provable in bankruptcy:

i. it is a debt, liability or obligation owed to a creditor

ii. the debt was incurred before the debtor became bankrupt

iii. a monetary value can be assigned to the debt

The Court had no difficulty finding that the Blue Sky Royalty Arrears satisfied these requirements. It was a debt owed by Blue Sky to Alberta Energy, incurred by Blue Sky before it filed its NOI and to which Alberta Energy attached a monetary value of approximately C$1.9-million.

2. Proceeding Directly Against Co-Lessees Would Undermine the Single-Proceeding Model

The Court further found that allowing Alberta Energy to proceed directly against co-lessees would undermine the "single proceeding model" and the delicate balancing of creditor rights within the NOI proceedings. The single proceeding model is a core tenet of Canadian insolvency law and aims to centralize all claims related to an insolvency proceeding for efficient adjudication. The Court observed that the single proceeding model "is particularly apt" for resolution of Alberta Energy's claims, given Alberta Energy enjoys a "privileged position to recover unpaid royalties" in the NOI proceedings. This privilege arises from Alberta Energy's authority under the MMA to refuse the transfer of any PNG Lease to a prospective purchaser until all outstanding royalties are paid. By contrast, the solvent leaseholders have no ability to compel a priority distribution from sale proceeds and would be left to stand in line with other unsecured creditors.

3. Proceeding Directly Against Co-Lessees Would Obligate Otherwise Uninterested Co-Lessees to Participate in the NOI Proceedings

The Court also observed that permitting Alberta Energy to collect from co-lessees in first instance would force many co-lessees, who otherwise have no interest in the NOI proceedings, to participate at significant financial and administrative cost. The Royalty Default Notice was issued to 32 energy companies, suggesting that up to 32 involuntary unsecured creditors could unnecessarily be drawn into the NOI proceedings.

4. The MMA Framework Implies an Order of Recourse

Finally, the Court observed that the MMA and associated regulations establish a mechanism under which the Crown's royalty share is paid, in first instance, by the party who took the Crown's share of production. Although paragraph 20(2.1)(a) of the MMA provides that co-lessees are "jointly responsible," paragraph 20(2.1)(b) implies an ordering of the Crown's avenues of relief, such that co-lessees may be called upon only if the Crown's royalty share remains unpaid by the party responsible for its payment in first instance.

KEY TAKEAWAYS

This decision clarifies that Alberta Energy is required to pursue any pre-filing claims for arrears within ongoing insolvency proceedings before pursuing recovery from jointly liable leaseholders. This principle may apply more broadly to other statutory regimes that impose joint liability on industry participants.

[***Kelly Bourassa*** *is Co-Practice Group Leader of the Restructuring & Insolvency group. She is widely regarded as a leading authority in restructuring and insolvency in Canada. Her practice spans a broad spectrum of industries, and she consistently delivers outstanding results for public companies, financial institutions and stakeholders in high-stakes insolvency proceedings.*

Ellen Savage *is an articling student at Blake, Cassels and Graydon LLP in Calgary. During law school, she completed an internship at the British Columbia Securities Commission, and competed in the Davies' Corporate/Securities Law Moot, where her team won first-place factum. Ellen was also the recipient of the Insolvency Institute of Canada Prize for obtaining the highest mark in her insolvency law course.*]

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1 *Peace River Hydro Partners v. Petrowest Corp.*, [2022] S.C.J. No. 41 (S.C.C.).

2 R.S.C. 1985, c. B-3.

3 R.S.A. 2000, c. M-17.

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• CROSS-BORDER STRATEGY: O CANADA — U.S. COMPANIES LOOK NORTH FOR MAIN INSOLVENCY PROCEEDINGS[1] •

Madlyn Gleich Primoff, Partner, Alexander Rich, Counsel, and
Sarah R. Margolis, Senior Associate, Freshfields US LLP.
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This article examines the emerging trend of U.S.-based companies with Canadian ties initiating primary insolvency proceedings in Canada and seeking recognition in the United States under Chapter 15 of the U.S. Bankruptcy Code. As described herein, this two-step strategy enables debtors to take advantage of the flexibility and efficiency of Canadian restructuring regimes, while securing key U.S. bankruptcy protections.

A STRATEGIC SHIFT IN CROSS-BORDER INSOLVENCY

Recently, certain U.S.-based companies with Canadian ties have opted to file their primary insolvency proceedings in Canada and then seek recognition in the United States under Chapter 15 of the United States Bankruptcy Code. This strategy allows debtors to leverage the flexibility of Canadian restructuring regimes under either the *Companies' Creditors Arrangement Act*[2], as amended ("CCAA") or the *Bankruptcy and Insolvency Act*[3] ("BIA"), while preserving access to U.S. protections such as the automatic stay, enforcement of non-U.S. orders (including releases), and sale processes, including sales of assets pursuant to Section 363 of the U.S. Bankruptcy Code. The CCAA offers many of the attributes of Chapter 11 together with expediency. In addition, Chapter 15 has become a robust tool for facilitating sales of U.S.-based assets, the imposition of a broad stay that is effective within the United States, and the implementation of third-party releases. Specifically, this approach has become increasingly attractive in the wake of the U.S. Supreme Court decision in *Purdue*,[4] which severely limited the ability to obtain nonconsensual third-party releases under Chapter 11. In contrast, Canadian courts have shown greater flexibility in approving such provisions when they are fair and reasonable.[5]

A TWO-STEP CROSS-BORDER PLAYBOOK:

The typical structure of these cross-border filings involves two key steps:

1. *Initiation of a Canadian Proceeding*: The debtor, often a Canadian parent or a U.S. subsidiary, commences a restructuring under the CCAA or BIA. The CCAA is primarily used for large corporations to restructure their debts and requires at least C$5 million in debt, while the BIA is used for both personal and corporate insolvencies, including smaller businesses, and has no minimum debt requirement. The CCAA offers more flexibility in its restructuring plans and requires significant court oversight and approval for restructuring plans (akin to Chapter 11), while the BIA is a more structured and prescriptive process, and, as such, requires less court involvement due to its more standardized procedures.

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2. *Chapter 15 Recognition in the U.S.*: The debtor then seeks recognition of the Canadian proceeding in a U.S. bankruptcy court under Chapter 15, thereby gaining access to the automatic stay, enforcement of Canadian court orders in the U.S., and the ability to conduct sales of U.S.-based assets under Section 363 of the Bankruptcy Code.

THE COMI QUESTION

At the heart of Chapter 15 recognition is the determination of a debtor's "center of main interests" ("COMI"). While the Bankruptcy Code does not define COMI, section 1516(c) provides that "the debtor's registered office . . . is presumed to be the debtor's COMI.[6] In *Fairfield Sentry Ltd.*, the Second Circuit applied a list of non-exclusive factors to determine COMI, including: (1) the location of the debtor's headquarters; (2) the location of those who actually manage the debtor; (3) the location of the debtor's primary assets; (4) the location of the majority of the debtor's creditors, or a majority of the creditors who would be affected by the case; and (5) the jurisdiction whose law would apply to most disputes.[7] The court held that COMI "should be determined based on [the debtor's] activities at or around the time the Chapter 15 petition is filed."[8] COMI has emerged as a central issue in cases where Chapter 15 is used to achieve outcomes traditionally pursued under Chapter 11, such as court approved sales of U.S.-based assets.

WHY CANADA?

Canada offers several advantages for debtors seeking to restructure:

- Judicial Flexibility: Canadian courts have broad discretion to approve creative restructuring solutions, including third-party releases and DIP financing arrangements.
- Speed and Efficiency: The Canadian process is often faster, less procedurally burdensome, and cheaper than Chapter 11 proceedings.
- Comity and Recognition: U.S. courts have generally shown a willingness to recognize Canadian proceedings under Chapter 15, even when the Canadian plan includes provisions that would not be permissible under U.S. law.
- Monitor: Canadian proceedings often involve a court-appointed monitor, which provides oversight and transparency at a lower cost than an official committee of unsecured creditors in a U.S. Chapter 11.

SECTION 363 SALES UNDER CHAPTER 15

Debtors in Chapter 15 proceedings can utilize Section 363 of the Bankruptcy Code. Section 363 applies to sales or uses of property within the territorial jurisdiction of the United States in both Chapter 11 and Chapter 15 proceedings. Section 1520 provides, in pertinent part, that "[u]pon recognition of a foreign proceeding that is a foreign main proceeding, [Section 363 of the Bankruptcy Code applies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." Section 363(b)(1), in turn, provides that a debtor "after notice and a hearing, may use, sell or lease [its property] other than in the ordinary course of business." Bankruptcy courts have approved sale transactions for Chapter 15 debtors free and clear of any and all liens, claims, encumbrances, and other interests pursuant to Section 363(f) of the Bankruptcy Code, and afforded the purchaser all protections under Section 363(m) of the Bankruptcy Code as a good-faith purchaser.[9]

The procedures used in transferring estate property pursuant to Section 363 are subject to the debtor's business judgment, which is entitled to substantial deference, so long as the debtor articulates an adequate business justification.[10] Pursuant to Section 1520(a)(2) and (3), those same procedures apply to the sale by a foreign representative and the foreign representative's decision to effectuate a sale is likewise entitled to substantial deference.

Furthermore, Section 1521 of the Bankruptcy Code provides the statutory basis to provide relief to a foreign representative following the recognition of a foreign main proceeding. Under Section 1521 of the Bankruptcy Code, "upon recognition of a foreign proceeding . . . [and] at the request of the foreign representative," the court may grant "any appropriate relief" to "effectuate the purpose of [Chapter 15] and to protect the assets of the debtor or the interests of the creditors,"[11] "including . . . (5) entrusting the administration or realization of all or a part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative."[12] Additionally, under Section 1521(a)(7) of the Bankruptcy Code, the Court may grant the Foreign Representative any relief available to a trustee, with certain exceptions. Relief under Section 1521 of the Bankruptcy Code is conditioned on a determination that the interests of "the creditors . . . are sufficiently protected."[13]

CANADIAN RELEASES VS. U.S. STANDARDS

Canadian courts have continued to approve releases where they are integral to the restructuring and supported by creditors. Under the CCAA, Canadian courts apply a multi-factor test to determine whether third-party releases are appropriate. Factors include whether: (1) the released parties are necessary and essential to the restructuring of the debtor; (2) the claims to be released are rationally related to the purpose of the Plan and necessary for it; (3) the Plan cannot succeed without the releases; (4) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan; (5) the Plan will benefit not only the debtor companies but creditors generally; (6) the voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and (7) the releases are fair and reasonable and not overly broad or offensive to public policy.[14] This standard differs from the more restrictive U.S. approach in Chapter 11 cases following the U.S. Supreme Court's decision in Purdue, which held that the Bankruptcy Code does not authorize "a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of affected claimants."[15] U.S. Bankruptcy courts have declined to apply the holding of *Purdue* in the Chapter 15 context, instead determining that it is appropriate to grant recognition to non-U.S. debtors' plans that included third-party releases.[16]

RECENT CASES:

Li-Cycle Holdings Corp. In *Li-Cycle*, Judge Bentley of the Southern District of New York granted recognition of Canadian proceedings as foreign main proceedings for three U.S. subsidiaries, despite the U.S. Trustee's objection that their COMI was in the United States. The court cited factors such as the suspension of *Li-Cycle's* U.S. operations, that others can easily ascertain that Canada is the U.S. subsidiaries' COMI as of the petition date, the Chief Restructuring Officer was based in Canada, and the sale process was being run from Canada. The court also noted the absence of creditor objections as evidence that recognition aligned with creditor expectations. As described in the debtor's reply, "the Chapter 15 Debtors operate as one corporate group, controlled by Holdings, which manages the operations and strategic direction of the Chapter 15 Debtors."[17] The debtors conducted a sale and realization process under the auspices of the Canadian Court, which the U.S. Court recognized and approved. Judge Bentley granted an approximately 65-day sale process[18] and ultimately authorized the sale under Section 363.[19] *Li-Cycle* illustrates how Chapter 15 can be used to coordinate cross-border sales and restructuring activities.

In re *Iovate Health Sciences International Inc.* In a recent decision, Judge Glenn of the United States Bankruptcy Court for the Southern District of New York issued a detailed opinion confirming that the debtors' COMI, including that of the Delaware-incorporated entity whose registered office was also in Delaware, was likely in Canada.[20] In *Iovate*, Judge Glenn granted immediate provisional relief under Chapter 15, applying the automatic stay to stay U.S. creditor

actions. Notably, Judge Glenn found that Iovate Health Sciences USA Inc.'s, COMI was likely in Canada, despite its Delaware incorporation and having its registered office there, based on the debtors' centralized management based in Ontario and integrated operations between all of the debtors, including accounting, finance, and HR functions, all of which occur in Canada. The opinion demonstrated that U.S. bankruptcy courts will look beyond mere place of incorporation to the actual location of decision-making and business activity. By recognizing the Canadian proceeding as the foreign main proceeding for both Canadian and U.S. entities, the court enabled coordinated cross-border relief, protected U.S. assets, and promoted equitable treatment of creditors.

Giftcraft Ltd. In *Giftcraft Ltd.*, Judge Glenn recognized a Canadian receivership as a foreign main proceeding for both Canadian and U.S. entities.[21] In the *Memorandum Opinion & Order Granting Provisional Relief* (the "Opinion"), Judge Glenn overruled an objection from the U.S. Trustee to the debtors' motion for provisional relief, which objection argued that the COMI and the establishment of each of the U.S.-based subsidiaries was the United States, rather than Canada.[22] Judge Glenn recognized the likelihood that the Canadian receivership would be deemed a foreign main proceeding for all moving debtors, including the U.S.- based subsidiaries. Key to this analysis was the rule that the determination of the location of the debtor's COMI is the date on which the "Chapter 15 petition is filed."[23] Factors indicating that the U.S. subsidiaries' COMI may be in Canada included maintaining office space in Canada, storing books, records, and corporate documents in Canada, and holding no inventory in the United States, all material financial strategic, management, accounting, marketing, and personnel decisions related to the operation of the U.S. subsidiaries were made by Giftcraft Canada's senior management as of the Petition Date, and the U.S. debtors' most significant creditor was RBC, a bank based in Toronto. Additionally, as of the entry of the Canadian Court's order appointing the foreign representative as receiver of the debtors on a provisional basis, the Receiver, who was based in Toronto, was "vested with all property assets, and undertakings of [U.S. debtor entity] with broad power and authority over such assets, and the management and operations of [U.S. debtor entity] business." For the U.S.-based debtors, the initiation of the receivership constituted pre-filing restructuring activities of the sort that suggest that, as of the Petition Date, the U.S. debtors' COMI is likely Canada. On June 16, 2025, Judge Glenn entered the *Order Granting Verified Petition of Foreign Representative for (I) Recognition of Canadian Proceeding as Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [ECF. No. 37] finding that "the Giftcraft Receivership is pending in Canada, where the Debtors have their 'center of its main interests' as referred to in Section 1517(b)(1) of the Bankruptcy Code."[24] Judge Glenn, however, cautioned against bad faith COMI manipulation, warning that "insider exploitation, untoward manipulation, [and] overt thwarting of third-party expectations" could undermine recognition.[25]

Sunac China Holdings Ltd. In *In re Sunac China Holdings Ltd.*, Judge Bentley held that even if a Chapter 15 debtor maintains only a "limited physical presence" in the country where the foreign proceeding is pending, its COMI may still be deemed to be located there, provided that the country serves as the primary location of the debtor's business activities and decision-making.[26] The court relied on the "nerve center" test, concluding that the location of executive decision-making and restructuring activities in Canada established COMI there. The court also noted the absence of creditor objections as evidence that recognition aligned with creditor expectations "in many cases where no creditors object, deference to the forum chosen by the debtor and supported by its creditors is warranted."[27]

Lion Electric Company. In *Lion Electric*, Judge Cleary of the Northern District of Illinois recognized Canadian proceedings as foreign main proceedings for eight debtors, five of which had registered offices in the U.S. As described in the

debtors' Verified Petition, the U.S. and Canadian operations were functionally integrated, with senior management based in Canada "[t]he Debtors operate on a consolidated basis with a unified cash management system. The Debtors operate as one corporate group controlled by Lion Electric," whose registered, head office, and chief place of business is in Quebec, Canada, and is organized under the QBCA.[28]

IMPLICATIONS FOR CROSS-BORDER STRATEGY

These cases illustrate a growing trend to file Canadian proceedings as foreign main proceedings, even for U.S.-incorporated entities, when restructuring activities and executive control are centered in Canada, and then recognize them through a U.S. recognition case.

Key takeaways include:

- **Timing matters:** COMI is likely assessed as of the Chapter 15 petition date.
- **Substance over form:** Courts look beyond incorporation to actual operations and decision-making, which may include the debtors' liquidation activities.
- **Creditor expectations:** Lack of objection supports recognition.
- **Judicial scrutiny:** Courts remain vigilant against bad-faith forum shopping.

LOOKING AHEAD

As U.S. courts continue to grapple with the limits of Chapter 11, Canadian proceedings offer a flexible alternative. Chapter 15 recognition provides a bridge between jurisdictions, enabling coordinated restructurings that respect both U.S. and Canadian legal frameworks. The trend suggests continued receptiveness to cross-border cooperation, so long as the proceedings are not overtly abusive or prejudicial to creditors. For U.S. companies with Canadian ties, the northward path may offer a strategic advantage in navigating insolvency.

[**Madlyn Gleich Primoff** is a partner on our restructuring and insolvency team. She has more than 25 years of experience representing companies, lending groups, syndicate agents, global financial institutions, and private credit investors in complex US domestic and cross-border out-of-court restructurings, prepackaged Chapter 11 cases and contentious Chapter 11 cases as well as related litigation matters. Madlyn is regularly called upon by her clients to act as "first chair" trial counsel in contentious restructuring matters and insolvency related litigations.

[***Alexander Rich*** *is a counsel on the restructuring & capital solutions team. With more than 10 years of experience in the restructuring industry, he regularly counsels clients on complex insolvency situations across the globe. He has extensive experience practicing in the United States Bankruptcy Courts, including three judicial clerkships across the Southern District of New York and District of Minnesota.*

Sarah R. Margolis *is a senior associate in our New York office. She concentrates her practice on all aspects of corporate restructuring, bankruptcy, insolvency proceedings, and liability management.*]

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2 R.S.C. 1985, c. C-36.

3 S.C. 1985, c. B-3.

4 *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 206 (2024).

5 *Metcalfe & Mansfield Alt. Invs. II Corp.* (2008), 296 D.L.R. 4th 135, para. 39 (Can. Ont. C.A.).

6 11 U.S.C. § 1516(c); *see also In re Olinda Star I*, 614 B.R. 28, 41 (Bankr. S.D.N.Y. 2020); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 705 (Bankr. S.D.N.Y. 2017); *In re ABC Learning Centers Ltd.*, 445 B.R. 318, 333 (Bankr. D. Del. 2010), aff'd, 728 F.3d 301 (3d Cir. 2013).

7 *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 138 (2d Cir. 2013).

[9] *Order Granting Motion for Entry of an Order (I) Recognizing and Giving Effect to the Canadian Court's Approval and Vesting Order, (II) Approving the Sale of U.S. Transferred Equity Interests and the Purchased Assets Free and Clear of All Liens, Claims, and Encumbrances, (III) Approving Dismissal Procedures for Chapter 15 Debtor Li-Cycle Inc., (IV) Recognizing and Giving Effect to the Canadian Court's Priority Claims and Cure Amounts Procedure Order and (V) Granting Related Relief, Li-Cycle Holdings Corp.*, Case No. 25-10991 (Bankr. S.D.N.Y. May 22, 2025), ECF. No. 114; *Final Order Recognizing and Enforcing the Realization Process Approval Order and Granting Additional Relief, In re Ted Baker Canada Inc., et al.*, Case No. 24-10699 (Bankr. SD.N.Y. May 17, 2024), ECF. No. 53; *Order Pursuant to Sections 105(a), 363, 365, 1501, and 1521 of the Bankruptcy Code, and Bankruptcy rules 2002, 6004, and 9014, for Entry of an Order (I) Recognizing and Enforcing the Approval Vesting, and Distribution Order (II) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assignment of Certain Executory Contracts and Unexpired Leases, And (IV) Granting Related Relief, In re Thane Int'l, Inc. et al.*, Case No. 15-12186 (Bankr. D. Del. Dec. 1, 2015), ECF. No. 42; *Order Granting Receiver's Motion for Recognition of Canadian Court Vesting Orders Approving Sale of Substantially All of the Fletcher Entities' Assets, In re Fletcher Leisure Group LTD.* Case No. 13-13420 (BRL) and I*n re Fletcher Leisure Group Inc./LE GROUPE DE LOISIRS FLETCHER INC.* Case No. 13-13421 (Bankr. S.D.N.Y. Nov. 13, 2013), ECF. No. 26.

[10] *In re GSC, Inc.*, 453 B.R. 132, 173 (Bankr. S.D.N.Y. 2011) ("The overriding consideration for approval of a Section 363 sale is whether a good business reason has been articulated.").

[11] 11 U.S.C. § 1521(a).

[12] 11 U.S.C. § 1521(a)(5).

[13] 11 U.S.C. § 1522.

[14] *Metcalfe* at para. 113.

[15] *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 227 (2024).

[16] *In re Imperial Tobacco Canada Limited* No. 19-10771 (JPM) (ECF No. 95), (Bankr. S.D.N.Y. August 27, 2025) (Mastando, J.) (granting full force and effect to CCAA Plan, including third-party releases). *See also In re JTI-Macdonald Corp.* No. 25-11530 (JPM) (ECF No. 10) (Bankr. S.D.N.Y. August 5, 2025) (Mastando, J.) (granting full force and effect to CCAA Plan, including third-party releases); *In re Engenharia* No. 25- 10482 (MG) (ECF No. 21), 2025 Bankr. LEXIS 990 (Bankr. S.D.N.Y. 2025) (Glenn, J.) (granting full force and effect to Brazilian plan, including non-consensual third-party releases); *In re Credito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH) (ECF No. 65), 2025 Bankr. LEXIS 751 (Bankr. Del. Mar. 11, 2025), (Horan, J.) (granting full force and effect to Mexican *concurso* that included non-consensual thirdparty releases and rejecting application of holding in *Purdue* to releases in a Chapter 15 case); *In re Nexii Bldg. Sols. Inc.*, No. 24-10026 (Bankr. D. Del. July 22, 2024) (Stickles, J.), ECF No. 66 (granting recognition of a CCAA proceeding and approving a plan that included non-consensual third-party releases for certain claims against Nexii's directors and officers, DIP lenders and prepetition secured lenders); *In re Mega NewCo Limited*, No. 24-12031 (MEW), 2025 WL 601463, at *2 (Bankr. S.D.N.Y. Feb. 24, 2025) (Wiles, J.) (granting recognition of a Scheme of Arrangement that included non-consensual third-party releases).

[17] *Reply to U.S. Trustee Objection, Li-Cycle Holdings Corp.*, Case No. 25-10991 (Bankr. S.D.N.Y. May 22, 2025), ECF. No. 36.

[18] *Order Granting Motion for Entry of An Order (I) Recognizing and Giving Effect to the Sale and Investment Solicitation Process Order and (II) Granting Related Relief, Li-Cycle Holdings Corp.*, Case No. 25-10991 (Bankr. S.D.N.Y. May 23, 2025), ECF. No. 61.

[19] *Order Granting Motion for Entry of an Order (I) Recognizing and Giving Effect to the Canadian Court's Approval and Vesting Order, (II) Approving the Sale of U.S. Transferred Equity Interests and the Purchased Assets Free and Clear of All Liens, Claims, and Encumbrances, (III) Approving Dismissal Procedures for Chapter 15 Debtor Li-Cycle Inc., (IV) Recognizing and Giving Effect to the Canadian Court's Priority Claims and Cure Amounts Procedure Order and (V) Granting Related Relief, Li-Cycle Holdings Corp.*, Case No. 25-10991 (Bankr. S.D.N.Y. Aug. 4, 2025), ECF. No. 114.

[20] *Memorandum Opinion Granting Motion for Provisional Relief, In re Iovate Health Sciences International Inc., et al.* Case No. 25-11958 (Bankr. S.D.N.Y. Sept. 12, 2025), ECF. No. 23.

[21] *In re Giftcraft Ltd. et al.*, Case no. 25-11030 (MG).

[22] *Opinion, In re Giftcraft Ltd. et al.* Case No. 25-11030 (Bankr. S.D.N.Y. June 4, 2025), ECF. No. 32.

[23] *Id.* citing *Fairfield Sentry*, 714 F.3d at 137.

[24] *Order Granting Verified Petition of Foreign Representative for (I) Recognition of Canadian Proceeding As Foreign Main Proceeding, (II) Recognition of Foreign Representative, And (III) Related Relief Under Chapter 15 of the Bankruptcy Code, In re Giftcraft Ltd. et. al.*, Case No. 25-11030 (Bankr. S.D.N.Y. June 16, 2025), ECF. No. 37.

[25] Opinion citing *In re Fairfield Sentry Ltd.*, 440 B.R. 60, 66 (Bankr. S.D.N.Y. 2010), aff'd, 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011), *aff'd*, 714 F.3d 127 (2d Cir. 2013).

[26] *In re Sunac China Holdings Ltd.*, 656 B.R. 715, 719 (Bankr. S.D.N.Y. 2024).

[27] *Id.* at 733.

[28] *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order, Amended and Restated Initial Order, and SISP Order, and (IV) Related Relief*, Lion Elec. Co., Case No. 24-18898 (Bankr. N.D. Ill. Dec. 18, 2024), ECF. No. 3.

• LESSOR REPOSSESSION DURING A STAY: *WALGRE TRANSPORT INC. (RE)* •

Domenico Magisano, Partner, and Harleen Muker, Articling Student, Lerners LLP.
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OVERVIEW

On December 22, 2025, the Ontario Superior Court of Justice (Commercial List) released its reasons in *Walgre Transport Inc. (Re)*,[1] regarding TD Equipment Finance Canada's ("TDEF") ability to complete enforcement on certain equipment leased by Walgre Transport Inc. ("Walgre") (the "Leased Equipment").[2] At the time, Walgre had been afforded a stay of proceedings (the "Stay").[3] The NOI proceedings and corresponding stay of proceedings under the *Bankruptcy and Insolvency Act*[4] (the "BIA") were continued, without prejudice to TDEF's position, under the *Companies' Creditors Arrangement Act*[5] on October 8, 2025.[6]

In this decision, the Court permitted TDEF to complete enforcement by taking possession of the Leased Equipment.[7] This was decided on the basis that, among other things, TDEF had completed all steps for enforcement prior to the Stay being granted, save for being granted physical possession of the Leased Equipment.[8] The Court held that Walgre's failure to deliver physical possession at the time of, and subsequent to, the Stay being granted did not preclude TDEF from being given possession of the Leased Equipment.[9]

BACKGROUND

Walgre operated a trucking business.[10] In early 2025, Walgre began experiencing financial difficulties, and by May 12, 2025, it was in default under each of the leasing agreements concerning the Leased Equipment.[11] With respect to ownership, Walgre did not have an interest in the Leased Equipment—its rights of use and an eventual buyout were derived from the governing lease agreements.[12]

On June 4, 2025, TDEF delivered to Walgre:

- a notice of intention to enforce security under s. 244 of the BIA ("BIA NITES");
- a demand and termination letter (the "Letter") declaring the lease agreements terminated, all amounts owing under those agreements immediately due and payable, and demanding the return of the Leased Equipment within ten days; and

- a notice under s. 63(4) of the *Personal Property Security Act*[13] (the "PPSA") advising Walgre of TDEF's intention to dispose of the Leased Equipment unless Walgre redeemed it (the "PPSA Notice") (together, the "Enforcement Documents").[14]

By the expiry of the notice periods contained in the Enforcement Documents, Walgre did not exercise its redemption right or indicate a desire to do so, and it did not return the equipment to TDEF.[15] On June 25, 2025, TDEF wrote to Walgre and reiterated that it required the delivery of the Leased Equipment.[16] Two days later, on June 27, 2025, Walgre obtained creditor protection pursuant to the BIA, including the Stay, by filing a notice of intention to make a proposal ("NOI").[17]

Following the NOI filing and the accompanying Stay, TDEF maintained the position that the Stay did not apply to the Leased Equipment, and Walgre disagreed.[18]

THE STAY WAS NOT A BAR TO TDEF'S POSSESSION MOTION

TDEF brought a motion to address repossession of the Leased Equipment, which was heard on October 17, 2025, with reasons delivered on December 22, 2025. Justice Kimmel agreed with TDEF and ordered that the Leased Equipment be returned.[19] While granting TDEF possession of the Leased Equipment, Justice Kimmel noted that further remedies for TDEF, such as damages, may have been subject to the Stay.[20] However, TDEF's rights as owner to use and possess the Leased Equipment predated the Stay.[21]

Justice Kimmel explained that a stay operates to preserve the debtor's *status quo* as of the date it takes effect.[22] As of June 27, 2025, Walgre's *status quo* did not include any right to possess or use the Leased Equipment because the lease agreements had already been terminated.[23] Justice Kimmel also held that Walgre's subsequent designation of certain equipment as "essential" to restructuring could not revive rights under the terminated lease agreements.[24] Justice Kimmel made two observations in holding that the lease agreements were terminated prior to the NOI proceeding.[25] First, the lease agreements did not contemplate any contractual notice period as a precondition to an effective termination.[26] Second, irrespective of their applicability, any relevant statutory notice periods had expired without redemption rights being exercised before June 27, 2025—the BIA NITES expired on June 14, 2025, and the PPSA Notice expired on June 20, 2025.[27] As such, when TDEF reiterated its demand for the return of the Leased Equipment on June 25, 2025, it had completed its final remedial step for obtaining possession. TDEF was not in possession solely because Walgre refused to disclose the precise location of the Leased Equipment or otherwise return it to TDEF.[28]

Walgre advanced various procedural and policy-based arguments in support of its position, but Justice Kimmel rejected these as incorrect characterizations and "speculative," respectively.[29] The Court observed that Walgre's arguments required an improper characterization of TDEF's efforts as the owner to secure possession of the Leased Equipment as a continuing exercise of secured creditor remedies.[30] Justice Kimmel further reasoned that even where a creditor has a contractual right of termination, which is not always the case, it would be "speculative" to assume that termination would necessarily be the preferred course at the first sign of financial trouble in a debtor.[31]

TAKEAWAYS

This case is instructive in determining when a lessor's termination and enforcement efforts have been fully completed. It stands for the proposition that if a lessor has completed all steps of termination and enforcement prior to an insolvency proceeding, and the debtor simply refuses to surrender physical possession of an asset, that asset will not be subject to a stay of proceedings. It also serves as a cautionary tale for debtors in that deadlines in demands issued under s. 244 of the BIA and s. 63 of the PPSA are critical, and failure to address them before expiry may foreclose a debtor's ability to prevent a creditor's repossession efforts.

[***Domenico Magisano*** *is a Corporate Restructuring Partner in the Toronto office of Lerners LLP, recognized for his responsiveness and strong business insight. He acts for secured and unsecured lenders, customers, suppliers, debtors, chief restructuring officers and boards of directors in both formal and informal restructurings. Domenico also regularly represents court appointed trustees and receivers, and appears before trial and appellate courts.*

Harleen Muker *is a contributor to this article and is currently an articling student in the Toronto office of Lerners LLP.*]

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1 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 (Ont. S.C.J.).

2 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 1-2 (Ont. S.C.J.).

3 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 3(g) (Ont. S.C.J.).

4 R.S.C. 1985, c. B-3.

5 R.S.C. 1985, c. C–36.

6 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 3(k), 3(i) (Ont. S.C.J.).

7 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 2 (Ont. S.C.J.).

8 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 19 (Ont. S.C.J.).

9 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 (Ont. S.C.J.).

10 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 3(a) (Ont. S.C.J.).

11 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 3(d), 6(a) (Ont. S.C.J.).

12 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 36 (Ont. S.C.J.).

13 R.S.O. 1990, c. P10.

14 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 3(e)-(g), 11 (Ont. S.C.J.).

15 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 3(f), 6(e), g(h) (Ont. S.C.J.).

16 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 3(j) (Ont. S.C.J.).

17 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 3(g), 9 (Ont. S.C.J.).

18 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 9 (Ont. S.C.J.).

19 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 43 (Ont. S.C.J.).

20 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 26 (Ont. S.C.J.).

21 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 (Ont. S.C.J.).

22 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 16 (Ont. S.C.J.).

23 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at (Ont. S.C.J.).

24 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 17 (Ont. S.C.J.).

25 Walgre Transport Inc. (Re), [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 11-12 (Ont. S.C.J.).

26 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at (Ont. S.C.J.).

27 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 11 (Ont. S.C.J.).

28 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at para. 19 (Ont. S.C.J.).

29 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 31, 40 (Ont. S.C.J.).

30 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 31-32 (Ont. S.C.J.).

31 *Walgre Transport Inc. (Re)*, [2025] O.J. No. 5676, 2025 ONSC 7143 at paras. 40-41 (Ont. S.C.J.).

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Steven W. Golden[a1]
Pachulski Stang Ziehl & Jones LLP
Wilmington, Del., New York and Houston

Brooke E. Wilson[a1]
Pachulski Stang Ziehl & Jones LLP
San Francisco

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*22 COMI CHAMELEON:[1] IS "COMI MANIPULATION" IN CHAPTER 15 A BALLOONING PROBLEM?

Chapter 15 of the Bankruptcy Code was adopted in 2005 and implemented by the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency in the U.S. "'so as to provide effective mechanisms for dealing with cases of cross-border insolvency,' while promoting international cooperation, legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of debtors' assets, and the rescue of financially troubled businesses."[2] Under chapter 15, a bankruptcy court is obligated (subject to the other requirements set forth in chapter 15) to enter an order recognizing a foreign proceeding as a "foreign main proceeding" where the foreign proceeding is pending in the country where the foreign debtor has its center of main interests (COMI).[3]

As a result of such recognition, certain powerful relief is automatically available to the foreign debtor (such as the imposition of the automatic stay within the territorial jurisdiction of the U.S.).[4] The bankruptcy court has the discretion to grant "any appropriate relief" that is "necessary to effectuate the purpose [of chapter 15] and to protect the assets of the debtor or the interests of the creditors."[5] Although chapter 11 of the Bankruptcy Code has long been viewed as the "gold standard for resolving financial distress,"[6] insolvency laws in other countries -- including the U.K., the Netherlands, Germany and Singapore -- have implemented alternative regimes that offer some tools not available to chapter 11 debtors. For example, an English scheme of arrangement, which only needs to involve directly affected creditors, allows for a speedy restructuring of contractual arrangements (*e.g.*, funded debt) by allowing for 75 percent of holders to bind the minority holders to a change in contractual terms -- something not permitted in the U.S.[7] Moreover, English schemes of arrangement permit third-party releases "where such a compromise is 'necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company to its own creditors.'"[8]

As a result, both courts[9] and commentators[10] have expressed increasing concern that a company could manipulate its COMI to manufacture a foreign main proceeding in a specific country, thereby availing itself of the unique tools of a specific country's insolvency regime and circumventing perceived restrictions of the Bankruptcy Code.[11] In *In re Mega Newco*,[12] the U.S. Bankruptcy Court for the Southern District of New York recently faced such a case of COMI manipulation.[13]

Mega Newco: "Laudable" COMI Manipulation

Mega Newco Ltd., the foreign debtor, was a wholly owned subsidiary of parent Mexican financial services company Operator de Services Mega, S.A. de C.V., Sofom, E.R. The parent and other subsidiaries of the parent were based and headquartered in

Mexico with branches across Mexico and one additional office in San Diego. Thus, for all intents and purposes, the enterprise group was a Mexican business operating almost entirely within Mexico.[14]

In 2020, the parent issued a set of notes (the "U.S. notes") under an indenture that was governed by New York law. In 2024, the parent needed to restructure its obligations under the U.S. notes and negotiated terms of a possible restructuring with an *ad hoc* group of approximately 25 percent of the holders of the U.S. notes. However, the proposed restructuring of the U.S. notes posed logistical issues: The U.S. notes had to be ***23** restructured through a bankruptcy proceeding because without one, the parent required the affirmative consent of 100 percent of the holders of the U.S. notes (an essentially impossible task) to effectuate the restructuring, and the parties wanted "a surgical restructuring" of only the U.S. notes.[15] Given these constraints, the parties set their eyes on pursuing a scheme of arrangement under English law, which would allow all parties to propose a scheme of arrangement that just dealt with a single set of note obligations.[16]

Accordingly, approximately 45 days before Mega Newco filed papers to commence a scheme of arrangement proceeding in the High Court of Justice Business and Property Courts of England and Wales, Mega Newco was incorporated under the laws of England and Wales, listing a registered office with an address in London.[17] Mega Newco was incorporated for the sole purpose of commencing the English scheme proceeding and proposing a scheme of arrangement to restructure the U.S. notes in accordance with the parties' agreement.[18] The scheme was approved unanimously by those who voted (more than 75 percent of the holders of the U.S. notes), and no objections were filed with the English court.[19]

While the English scheme proceeding was pending, Mega Newco filed a petition under chapter 15 in the U.S. Bankruptcy Court for the Southern District of New York. Mega Newco sought recognition of the English scheme proceeding and enforcement, in the U.S., of the order entered by the English court approving Mega Newco's scheme.[20] Mega Newco "represented to the English Court that it has never engaged in any business, let alone any market-facing activities that it conducted from a location in the U.K.," sufficient to show the existence of an "establishment" in England.[21]

Thus, as to the recognition of the English scheme proceeding under chapter 15 of the Bankruptcy Code, the issue before Hon. **Michael E. Wiles** was whether the English scheme proceeding was a "foreign main proceeding" taking place where Mega Newco has its COMI.[22]

Given that "[c]hapter 15 is premised on the idea that a debtor who seeks to restructure an obligation is actually the subject of a foreign proceeding, and that the foreign proceeding is located in the country where that debtor has its COMI," the court noted that the "whole structure" in Mega Newco's restructuring was created for restructuring the parent's obligations. However, the parent's COMI was in Mexico, and the parent was not party to the English scheme proceeding.[23] In light of the admitted COMI manipulation, the court expressed concern over the "significant risks" of recognizing the English scheme proceeding as a foreign main proceeding:

> If we were routinely to allow this structure in all cases, no matter what the circumstances, the ordinary predicates for Chapter 15 relief could be stripped of meaning. Any debtor company could restructure its obligations anywhere it chose without even subjecting itself to a foreign proceeding. All that a debtor would need to do is to form a new subsidiary in a jurisdiction of its choice and then cause that new subsidiary to assume the parent company's obligations. The parent company's COMI would no longer be relevant to the parent's restructuring of its debts. The laws of the chosen jurisdiction would govern a restructuring, no matter how those laws might affect the legitimate expectations of creditors and regardless of whether the debtor had chosen a particular jurisdiction for the purpose of favoring insiders or for other improper reasons.[24]

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Considering the facts of the case, Judge Wiles framed the issue before him as follows: "[D]oes the underlying structure in this case constitute an improper manipulation of COMI?"[25] In addition, "should [the court] disregard the form of the transactions and disregard the participation by Mega Newco, and look instead to whether the Parent, on its own, has satisfied the conditions for relief under Chapter 15?"[26]

Although the court recognized that the structure of the enterprise group's restructuring "could be used in another case as a way of frustrating and thwarting the legitimate expectations of creditors,"[27] Mega Newco did no such thing. Quite to the contrary, Judge Wiles commented that the scheme was pursued for "laudable objectives."[28]

Rather than frustrate creditors' expectations, the whole process "was worked out with the involvement and consent of the affected creditors."[29] ""Ironically," the court noted, "the only thing that would thwart creditor expectations in the case before me would be if I were to decline to enforce the English Court Order."[30]

Is COMI Manipulation Becoming a Problem?

With respect to recognition of foreign main proceedings under chapter 15 of the Bankruptcy Code, the oft-repeated specter of a debtor's "bad-faith COMI manipulation"[31] is, at least today, largely theoretical.[32] In *Mega Newco*, the foreign debtor's COMI manipulation was far from bad faith; it was a deliberate and consensual restructuring of ***80** a portion of the enterprise group's financial (as opposed to operational) debt that used legal mechanisms that would have been unavailable under a plenary chapter 11 proceeding. With other countries' implementation of increasingly robust restructuring regimes occurring at the same time that less relief is available to chapter 11 debtors,[33] some believe that it is only a matter of time before a U.S. bankruptcy court is faced with a contested case of COMI manipulation in connection with chapter 15 recognition. How a bankruptcy court would approach a hotly disputed case of a debtor's COMI manipulation remains to be seen, but what is clear is that bankruptcy judges are ever vigilant about such a possibility, and appropriately approach even "laudable" cases of COMI manipulation with care.

Footnotes

1 With apologies to Culture Club.

a1 *Steve Golden is a partner with Pachulski Stang Ziehl & Jones LLP in Wilmington, Del., New York and Houston. Brooke Wilson is an associate in the firm's San Francisco office.*

2 *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 (2d Cir. 2013) (quoting 11 U.S.C. § 1501(a)).

3 11 U.S.C. § 1517(b)(1).

4 11 U.S.C. § 1520(a).

5 11 U.S.C. § 1521(a).

6 Bruce A. Markell, "The International Two-Step: Recognizing Domestic Chapter 15 Reorganizations," 98 *Am. Bankr. L. J.* 1, 4 (2024).

7 *See id.* at 10-11.

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8 *Re Haya Holdco 2 Plc*, [2022] EWHC (Ch) 1079 at [38] (Eng.) (quoting *Re Lehman Bros. Int'l*, [2009] EWCA Civ. 1161).

9 *See, e.g.*, *Fairfield Sentry*, 714 F.3d at 135 (discussing *Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1026 (5th Cir. 2010)); *In re Intercement Brasil S.A.*, 668 B.R. 802, 819 (Bankr. S.D.N.Y. 2025).

10 *See e.g.*, Markell, *supra* n.6; Anthony J. Casey & Joshua C. Macey, "Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars," 37 *Emory Bankr. Dev. J.* 463 (2021).

11 In this article, the authors refer to the deliberate creation of COMI in a particular country for the sole intent of commencing a plenary proceeding in such jurisdiction as "COMI manipulation." This terminology is intended to contrast with what is frequently referred to as "forumshopping," which is when a company has existing options of where it could commence a plenary proceeding under applicable laws. The use of these terms are not intended to evoke any connotation (pejorative or otherwise), but rather to distinguish between different factual situations.

12 No. 24-12031, 2025 Bankr. LEXIS 398 (Bankr. S.D.N.Y. Feb. 24, 2025).

13 2025 Bankr. LEXIS 398, at *5 ("The papers submitted to the English Court made clear that Mega Newco was created for the purpose of enabling the English Court to take jurisdiction over the proposed scheme of arrangement.").

14 *Id.* at *2; *see also* Verified Petition for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Order and Related Scheme and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code, No. 24-12031 (Bankr. S.D.N.Y. Nov. 25, 2024), ECF No. 2, ¶¶ 4-5.

15 *Mega Newco*, 2025 Bankr. LEXIS 398, at *3-4.

16 *Id.* at *3.

17 *Id.* at *4-5.

18 *Id.*; *see* Verified Petition, *supra* n.14 at ¶ 11.

19 *Mega Newco*, 2025 Bankr. LEXIS 398, at *6.

20 *Id.* at *5.

21 *Id.* at * 7.

22 *Id.* at *7-9.

23 *Id.* at * 8-9.

24 *Id.* at * 8-10.

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25 *Id.* at *10.

26 *Id.*

27 *Id.* at *11.

28 *Id.*

29 *Id.*

30 *Id.* at *12.

31 *Fairfield Sentry*, 714 F.3d at 135.

32 *In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169 (Bankr. S.D.N.Y. 2017), perhaps presents the closest that a U.S. court has come to declining to recognize a foreign proceeding due to alleged bad-faith COMI manipulation. However, in *Oi Brasil*, it was a creditor -- not the debtor -- that allegedly engaged in COMI manipulation.

33 *See, e.g.*, *Harrington v. Purdue Pharma LP*, 603 U.S. 204 (2024).

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SheppardMullin

Cross-border Airline Insolvencies: Will the Cape Town Convention's Alternative A Limit the Automatic Stay in a Foreign Airline Chapter 11[1]

By:
Edward H. Tillinghast III and Nicholas Dugdale, SheppardMullin

Section 1110 of the United States Bankruptcy Code (the "Code") provides eligible secured creditors and lessors with special remedies in Chapter 11 airline cases, including relief from the automatic stay to repossess aircraft if the debtor does not agree to perform its obligations and cure any defaults under the lease or security agreement within 60 days. However, Section 1110's limitations on the automatic stay only apply to airline debtors that are FAA-certificated United States air carriers, *i.e*., not foreign airlines that file a Chapter 11 case in the United States.

The importance of this limitation is highlighted by the potential desirability of Chapter 11 proceedings for foreign airlines located in less debtor/restructuring-friendly jurisdictions, and the rise in airline bankruptcies due to the COVID-19 pandemic. However, in certain circumstances, this limitation regarding Section 1110's protections for aircraft financers and lessors can be filled by Alternative A under the Protocol to the Cape Town Convention on International Interests in Mobile Equipment (the "CTC"). Alternative A of the CTC is similar to Section 1110 in that it provides secured creditors and lessors of aircraft a right to repossess their collateral after a specified waiting period, but unlike Section 1110, it is not restricted to only United States airlines. Specifically, if a non-United States airline whose "principal insolvency jurisdiction" (the "PIJ") is in a country that has declared Alternative A were to file for Chapter 11 protection in the United States (which is a CTC contracting state), it is possible that a secured creditor/lessor could demand the return of their aircraft collateral following the expiration of the PIJ's declared waiting period if the airline does not perform its obligations and cure any defaults, thereby modifying any automatic stay imposed by the Code. However, a creditor seeking to utilize Alternative A in this manner may have to persuade the United States Bankruptcy Court that its repossession rights should not be limited by the automatic stay, on the basis that the forum in which the insolvency case is pending is required under the CTC to recognize and defer to a debtor's PIJ's adoption of Alternative A.

Section 1110 of the Code

Section 1110 of the Code was designed by Congress to provide aircraft financiers and lessors with certain unique remedies in the event an airline files a Chapter 11 case, which were seen as necessary due to the importance of airlines to the United States economy, the significant costs involved in aircraft financing, and the high incidence of United States airline bankruptcies. Most significantly, Section 1110 creates an exemption to the automatic stay that is ordinarily imposed under Section 362(a) of the Code upon the filing of a Chapter 11 case, which, *inter alia*, prevents a secured creditor or lessor from repossessing its equipment without first obtaining judicial relief. Instead, Section 1110 provides a secured party or lessor of an aircraft, aircraft engine, propeller, appliance, or spare part the right, within 60 days of the filing of a debtor's petition, to force the debtor to either (a) cure all defaults and agree to perform

[1]By Edward H. Tillinghast, III and Nicholas Dugdale, who are a partner and an associate, respectively, in Sheppard Mullin Richter & Hampton LLP's Finance and Bankruptcy Group.

all of its obligations under the financing documents, or (b) if a debtor fails to cure its defaults and agree to perform its obligations, "take possession [of the collateral] . . . and to enforce any of its other rights and remedies" without limitation by any other provision of the Code or power of the court, including the automatic stay.[2] The result is that, unless an airline debtor cures all defaults and agrees to perform its obligations within the 60-day waiting period, an eligible creditor may demand the immediate return of an aircraft, saving considerable time and expense. However, while Section 1110 can be an extremely valuable tool for aircraft financiers, there is one key caveat: Section 1110 is only applicable to debtors holding an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo at the time of the financing transaction.[3] In effect, Section 1110 only applies to United States certificated air carriers, and not to foreign airlines that might seek Chapter 11 protection.

Alternative A of the CTC

Under the CTC and the associated Protocol to the Convention on Matters Specific to Aircraft Equipment (the "Protocol"), contracting states to the CTC can elect to establish a special insolvency regime (either Alternative A or Alternative B) to govern creditors' rights in relation to aircraft objects that is closely based on Section 1110(b). Under Alternative A, the debtor, no later than the earlier of (a) the end of a specified waiting period (usually, 30 or 60 days) or (b) the date on which the creditor would be entitled to possession if the CTC and Protocol did not apply, is required to either (i) give possession of the aircraft object to the creditor under the security agreement, title reservation agreement or lease or (ii) cure all defaults other than a default constituted solely by the insolvency proceedings, and agree to perform all future obligations under the agreement. The waiting period begins on the date the insolvency proceedings are commenced, and does not require any notice or demand.

For the CTC's insolvency regime to apply, a contracting state must declare pursuant to Article XXX(3) of the Protocol that it will apply Alternative A or Alternative B[4] of Article XI of the Protocol, which will then apply to the types of insolvency proceedings specified by the contracting state in its declaration, and must specify the duration of the waiting period.[5] A contracting state may also decide to make no such declaration, in which case neither Alternative will be applicable and the existing domestic insolvency regime in that jurisdiction will govern.

Article XI of the Protocol only applies to insolvency proceedings (i) where a contracting state that is the debtor's PIJ has made the applicable declaration, and (ii) there has been an "insolvency-related event".[6] Once an insolvency-related event has occurred**,** in any proceeding that occurs in a contracting

[2] 11 U.S.C. §1110(a)(3)(i) (1999).
[3] 11 U.S.C. §1110(a)(3)(i) (1999).
[4] Mexico is currently the only contracting state to have declared that it will apply Alternative B, so this article focuses on Alternative A.
[5] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mobile Equipment, art. XXX(3), Nov. 16, 2001, UNIDROIT. Under Article XXX(3) of the Protocol, a contracting state electing to apply Alternative A or B must apply the entirety of that Alternative. *Id*.
[6] Protocol, *supra* note 5, at art. XI(1). ROY GOODE, OFFICIAL COMMENTARY ON THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE PROTOCOL THERETO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT, Part 5.15, 4th ed., 2019. An "insolvency-related event" under the Protocol includes not only actual insolvency proceedings, but also a situation in which (i) there has been a declared intention to suspend or actual suspension of payments by the debtor and (ii) the creditor's right to institute insolvency proceedings against the debtor or to take remedies under the CTC has been prevented or suspended by law or state action. Protocol, *supra* note 5, at art. I(2)(m).

state, "the forum shall apply Article XI in conformity with the Article XXX(3) declaration made by the debtor's PIJ [contracting state]."[7] The foregoing applies whether or not any insolvency proceedings have been commenced in the debtor's PIJ.[8]

A debtor's PIJ is defined under Article I(2) of the Protocol as "the Contracting State in which the center of the debtor's main interests [("COMI")] is situated, which is presumed to be the debtor's statutory seat (or, if none, the place where the debtor is incorporated or formed) unless proved otherwise." According to the Second Annotation to Professor Sir Roy Goode's Official Commentary to the CTC (the "Second Annotation"), the presumption that a debtor's COMI is situated in its statutory seat (or, if none, place where the debtor is incorporated or formed) may not be displaced lightly, and the party asserting a different location has a substantial burden of proof.[9] The test to override this presumption is "whether a different state is visible to creditors in doing business with the debtor as the main state in and from which the ordinary course activities and decision-making relating to the debtor's overall business and operations with respect to aircraft objects are conducted."[10] The primary factors in determining that a debtor's COMI differs from its statutory seat (or, if none, place where the debtor is incorporated or formed) are that:

> (a) the debtor's management team with whom the creditors conduct business in relation to its aircraft objects is situated in a state that is different from its statutory seat;
> (b) the debtor's primary base of operations for, and where decisions relating to, its aircraft objects is located in a state that is different from its statutory seat; and
> (c) the debtor derives its authority to operate its aircraft objects, and/or authority to operate its aircraft objects on particular routes, from a state that is different from its statutory seat.[11]

Professor Sir Roy Goode's Official Commentary to the CTC (the "Commentary"), which is the definitive guides to the CTC and its Protocols, notes that the text of the definition of PIJ was derived from the COMI concept under the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law"). However, as the Second Annotation explains, whereas under the Model Law the purpose of the COMI determination is to select a state's insolvency court as the forum for the debtor's main insolvency proceeding, under the CTC the purpose of determining a debtor's PIJ is "to determine in any proceeding, regardless of which Contracting State is the venue, which Contracting State's declaration under Article XXX(3) applies to the international interests created by the debtor, such Contracting State being the debtor's PIJ."[12]

United States Bankruptcies and the CTC

If an airline debtor with its PIJ in a CTC contracting state outside the United States that has declared Alternative A, were to file a Chapter 11 case in the United States, the effectiveness of the

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[7] Second Annotation to Professor Sir Roy Goode's Official Commentary, Fourth Edition (UNIDROIT, 2019), Cape Town Convention Academic Project, July 13, 2020, at 1.

[8] *Id. See also* Protocol, *supra* note 5, at art. XXX(4), which provides that "The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction."

[9] Second Annotation, *supra* note 7, at 2.

[10] *Id*.

[11] *Id*.

[12] *Id*.

automatic stay could be modified by a secured creditor or lessor asserting its right to repossess the aircraft under Alternative A, but this issue has not been adjudicated by a court.

The United States adopted the CTC and the Protocol on October 28, 2004, and the United States Congress adopted amendments to the Transportation Code (49 U.S.C., subtit. VII, pt. A) and FAA Regulations (14 C.F.R. §§ 1, *et seq*.) to implement the CTC. As a contracting state to the CTC, the United States courts should apply Article XI of the Protocol in conformity with the Article XXX(3) declaration made by the debtor's PIJ – for example, Alternative A with a 30-day or a 60- day waiting period. Under the Supremacy Clause the United States Constitution, treaties entered into by the United States are considered the supreme law of the land, as are federal laws. Where there is a conflict between a treaty and a federal statute, the most recent or more specific one should control.[13] Further, Section 1503 of the Code provides: "To the extent that this chapter [Chapter 15] conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail." To date, the issue of whether a United States court would apply Alternative A in such a situation remains open. [14]

Therefore, the special remedies and stay limitation provided to secured creditors and lessors of aircraft by Alternative A of the Protocol may apply to a foreign airline that files a Chapter 11 case in the United States if its PIJ has adopted Alternative A.

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[13] The exception to this is if a treaty is non-self-executing, which is an issue that is beyond the scope of this article. *See, e.g*., Frederic L. Kirgis*, International Agreements and U.S. Law*, AMERICAN SOCIETY FOR INTERNATIONAL LAW INSIGHTS, May 27, 1997, at 2:5.

[14] Although a United States court has not ruled on the applicability of the CTC in such a case, the recent Chapter 15 proceeding involving Oceanair Linhas Aéreas S.A. d/b/a Avianca Brazil ("Avianca"), *In re* Oceanair Linhas Aéreas S/A, No. 18-14182 (S.D.N.Y., filed January 15, 2019), may be instructive. Avianca is a Brazilian headquartered airline (Brazil is a CTC contracting state that declared Alternative A with a 30-day waiting period), and filed for judicial reorganization in the Brazilian Bankruptcy Court in December 2018. After initially granting emergency relief to indefinitely stay actions filed by several lessors seeking to repossess aircraft, the Brazilian Court prohibited the lessors from exercising their rights under the CTC and under their lease agreements until the expiration of the 30-day waiting period. During this 30-day waiting period, Avianca also filed a Chapter 15 in the United States, where it requested that the court impose the automatic stay as to Avianca's property within the territorial jurisdiction of the United States. Debtor's Verified Petition of Foreign Representative for Recognition of Foreign Main Proceeding and Motion for Order Granting Relief Pursuant to Code Sections 1515, 1517, 1520 and 1521, *In re* Oceanair Linhas Aéreas S/A (No. 40). The United States Bankruptcy Court entered a provisional order granting provisional recognition and imposing a stay within the territorial jurisdiction of the United States beyond the expiration date of the 30-day waiting period specified by the Brazilian court pending the recognition hearing. Order Granting Motion of Foreign Representative for Provisional Relief, *In re* Oceanair Linhas Aéreas S/A (No. 24). Despite the lessors' objections, the court declined to modify the provisional order and agreed with the foreign representative, who argued that the purpose of Chapter 15 is for the United States court, acting in its ancillary capacity, to aid the foreign insolvency proceeding, rather than second guess the Brazilian court or impose a contrary rule that might undermine Avianca's ongoing restructuring efforts in Brazil**.** Foreign Representative's Reply in Support of Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Related Relief, *In re* Oceanair Linhas Aéreas S/A (No. 47). The United States Bankruptcy Court further declined to interfere with the Brazilian stay when the Brazilian Court later extended its stay beyond the 30-day waiting period established by Brazil's adoption of Alternative A. Order Granting Recognition of Foreign Main Proceeding and Discretionary Related Relief, *In re* Oceanair Linhas Aéreas S/A (No. 47-2). Thus, it remains unclear whether a United States court would apply a debtor's PIJ's Alternative A declaration in accordance with the CTC in a Chapter 11 proceeding where it is presiding over the main, or only, insolvency case, rather than merely an ancillary proceeding as in the Avianca case.

Faculty

Hon. Martin Glenn is Chief U.S. Bankruptcy Judge for the Southern District of New York in New York, initially sworn in on Nov. 30, 2006, and appointed Chief Judge on March 1, 2022. Previously, he was a law clerk for Hon. Henry J. Friendly, Chief Judge of the U.S. Court of Appeals for the Second Circuit, from 1971-72, and he practiced law with O'Melveny & Myers LLP in Los Angeles from 1972-85 and in New York from 1985-2006, where he focused on complex civil litigation including securities, RICO, financial and accounting fraud, and unfair competition. Judge Glenn is a member of the American Law Institute, International Insolvency Institute, New York Federal-State Judicial Council, New York City Bar, National Conference of Bankruptcy Judges and ABI. He is a past member of the Committee on International Judicial Relations of the U.S. Judicial Conference and the Bankruptcy Judge Advisory Group of the Administrative Office of the U.S. Courts. In addition, he is an adjunct professor at Columbia Law School, a contributing author to *Collier on Bankruptcy* and a frequent lecturer on bankruptcy-related issues. Judge Glenn received his B.S. from Cornell University in 1968 and his J.D. from Rutgers Law School in 1971, where he was an articles editor of the *Rutgers Law Review*.

Steven W. Golden is a partner with Pachulski Stang Ziehl & Jones in its Wilmington, Del., Houston and New York offices. He represents debtors, committees, foreign representatives, unsecured creditors and other constituencies in chapter 11 and 15 bankruptcy proceedings and related litigation and appeals. Among his many engagements, Mr. Golden was instrumental in the firm's representation of Amyris, Watsonville Hospital and CarbonLite in their chapter 11 cases, and the official creditors' committees in dozens of chapter 11 cases such as Neiman Marcus, Payless Shoes, Studio Movie Grill and The Weinstein Company. He also has represented foreign representatives in the chapter 15 cases of STS Renewables, Rokstad Power and Nexii Building Solutions and is a member of the International Insolvency Institute NextGen Class X. Mr. Golden has authored some 20 articles and other publications on a wide range of bankruptcy topics and was recognized in 2024 as an Emerging Leader by The M&A Advisor and in 2021. He received his Bachelor's degree from Emory University in 2009, his J.D. from Georgia State University College of Law in 2014 and his LL.M. in bankruptcy from St. John's University School of Law in 2015.

Rick Morris is a managing director at HPS Investment Partners, LLC in London, where he is focused on, among other things, distressed-credit investing. Prior to joining HPS in 2018, he was a managing director at Goldman Sachs, where he held various roles in New York and London, including head of EMEA Distressed Research and co-head of EMEA Distressed Trading. Prior to Goldman Sachs, Mr. Morris was a managing director at Merrill Lynch on its Global Distressed Trading and Investing desk in New York. Prior to that, he was a corporate restructuring attorney at Skadden, Arps, Slate, Meagher & Flom, where he represented debtors, senior lenders and distressed investors in complex corporate restructuring and cross-border transactions. Mr. Morris received his B.A. from Rutgers University and his J.D. from Rutgers Law School.

Barbra R. Parlin is a partner in Holland & Knight LLP's New York office and a member of its Litigation Section. Her practice focuses on advising parties involved in complex commercial insolven-

cy and restructuring proceedings, related litigation and transactional matters, as well as structuring transactions in anticipation of insolvency events. Ms. Parlin represents U.S.-based and foreign companies, court-appointed liquidators, indenture trustees, secured and unsecured lenders, asset-buyers, landlords, licensors, parties to pre-petition contracts and leases, and litigants in adversary proceedings in connection with domestic and cross-border insolvency cases, out-of-court restructurings and wind-down proceedings. In addition, she advises clients on the business aspects of bankruptcy and workouts such as pre-bankruptcy planning, transaction review, claims, distressed-asset and claims sales, lending and investment strategies. Ms. Parlin's experience crosses a broad array of industries, including corporate and structured finance, aviation, securities, manufacturing, transportation, construction, real estate, higher education, energy, technology, telecommunications, retail, health care, resort and hospitality, leasing, professional firms and maritime. She appears on behalf of clients in matters pending in bankruptcy courts around the country, as well as in other state and federal courts. Ms. Parlin also has broad experience in matters concerning corporate governance and fiduciary duties, director and officer liability, derivative actions, securities and common law fraud litigation and investigations, and other commercial litigation. She has advised boards of directors with respect to their fiduciary obligations and has managed a broad range of litigation matters, including bankruptcy and avoidance litigation, securities fraud, shareholder derivative litigation, U.S. Securities and Exchange Commission (SEC) investigations, mergers and acquisitions (M&A) litigation, corporate governance actions, construction litigation, directors' and officers' insurance issues, and other general commercial litigation. In addition to her legal practice, Ms. Parlin has served as the Holland & Knight New York office recruiting partner, chair of the New York office diversity committee, and as partner-coordinator of the New York office Women's Initiative. She currently is a member of the New York office's operations committee, a member of the advisory board for ABI's New York City Bankruptcy Conference and co-chair of the Practicing Law Institute's (PLI) Current Developments in Bankruptcy program. Ms. Parlin received her B.A. *magna cum laude* in religious studies from Yale University and her J.D. *cum laude* from New York University School of Law.

Madlyn Gleich Primoff is a partner with Freshfields Bruckhaus Deringer LLP in New York and a member of its Restructuring and Insolvency team. She is regularly called upon by her clients to act as "first chair" trial counsel in contentious restructuring matters and insolvency related litigations. Ms. Primoff has deep expertise in metals and mining, energy and infrastructure, consumer products, financial services, agriculture, entertainment, media, communications, shipping and health care (including device manufacturing and distribution). Ms. Primoff has more than 25 years of experience representing companies, lending groups, syndicate agents, global financial institutions and private credit investors in complex U.S. domestic and cross-border out-of-court restructurings, prepackaged chapter 11 cases and contentious chapter 11 cases, as well as related litigation matters. She also has substantial cross-border insolvency experience (including chapter 15 cases and parallel proceedings). Ms. Primoff is ranked as a leading attorney in *Chambers USA*, *The Best Lawyers in America* and *Expert Guides – Women in Business Law*. She also has been named the "Best in Insolvency and Restructuring" – America's Women in Business Law Awards (2016) by *Euromoney*. Ms. Primoff is a member of Freshfields' Finance and Risk Committee. She is admitted to practice in the State of New York and the District of Columbia, and before the U.S. District Courts for the Southern and Eastern Districts of New York, as well as the U.S. Courts of Appeals for the Second, Third and Sixth Circuits. In addition, she is a member of ABI, the SDNY Register of Mediators and the New York Conference Advisory Board. Ms. Primoff received her B.A. *magna cum laude* from Cornell University and her J.D. from Columbia University School of Law, where she was a Harlan Fiske Stone Scholar.

Edward H. Tillinghast, III is a partner and Practice Group Leader of Sheppard Mullin's Finance and Bankruptcy Practice Group in New York. He specializes in U.S. and cross-border insolvencies, particularly involving Asia and Latin America, and related creditors' rights and bankruptcy-related litigation. Mr. Tillinghast's broad bankruptcy and creditors' rights litigation and appellate experience, and his understanding of business realities, is helpful in creating and implementing business solutions to complex financially driven problems and resulting opportunities, regardless of whether they involve structuring a business deal or litigating related issues. He has been involved in many real estate-related bankruptcies representing commercial real estate developers, lenders, lessors and lessees. Mr. Tillinghast has represented ad hoc and official committees, debtors, distressed asset-purchasers, equityholders, funds, indenture trustees and institutional lenders. He also has litigated creditors' rights-related cases in many courts, including the U.S. Supreme Court, various U.S. Circuit Courts of Appeals, and various district and bankruptcy courts, and he has led cases in courts in Australia, Bermuda, the British Virgin Islands, the Cayman Islands, China, England, Germany, Hong Kong, Indonesia and Japan. Mr. Tillinghast received his undergraduate degree with honors from Lake Forest College and his J.D. from Chicago-Kent College of Law, where he served on the editorial board of the *Chicago-Kent Law Review*.