



Tuesday, October 20
11:00 am–12:30 pm

**406 The Debtor is in China, the Goods are on
a Freighter, and the Bankruptcy Court is in
Tennessee: Protecting Your Client From
International Insolvencies**

Robert Christmas
Partner
Nixon Peabody, LLP

Richard Pedone
Partner
Nixon Peabody, LLP

Steven Reynolds
Vice President and General Counsel
Sensata Technologies, Inc.

Faculty Biographies

Robert Christmas

Robert N. H. Christmas is a partner with the New York City office of Nixon Peabody LLP. Mr. Christmas practices business insolvency law and commercial litigation. He has represented hedge/private equity funds, secured lenders, lessors and other real estate owners, indenture trustees, unsecured creditors, and also debtors, in workout, bankruptcy, litigation, arbitration, and appellate proceedings across the United States. Mr. Christmas has particular expertise advising clients in cross-border commercial and insolvency matters, and represents multi-national businesses, as well as official liquidators and other fiduciaries, in complex claims involving non-U.S. law. He has both prosecuted and defended against ancillary bankruptcy cases filed under (former) Section 304 and Chapter 15. He is the hiring partner for Nixon Peabody's New York City office and is active in promoting law firm diversity.

Prior to joining Nixon Peabody, Mr. Christmas was law clerk for Judge James L. Garrity Jr., of the United States Bankruptcy Court (S.D.N.Y.), and served as a litigating attorney for the U.S. Treasury Department.

Mr. Christmas is frequently quoted as a bankruptcy expert in print media nationwide, and has appeared on CNNfn, Canadian Television, and Bloomberg Radio. As an author, his work has been published in the American Bankruptcy Institute's Journal and by Aspatore books, among other publications, and he has lectured for the Practising Law Institute and ACC.

Mr. Christmas received his BA from Pomona College, holds a JD from Fordham University School of Law, and an LLM from New York University School of Law.

Richard Pedone

Richard Pedone is a partner at Nixon Peabod, LLP in Boston. He represents secured creditors, strategic buyers of financially troubled businesses, purchasers of distressed debt, creditors' committees, asset purchasers, and others in the financial restructuring and bankruptcy processes. He also frequently represents corporations in workout negotiations with their creditors and bankruptcy planning. Mr. Pedone is a Fellow of the International Association of Insolvency and Restructuring Professionals. He regularly represents creditors, including indentures trustees and other fiduciaries, in cross-border insolvency matters.

Mr. Pedone has developed deep experience in franchise restructuring matters. In 2005, he received a Transaction of the Year Award from the Turnaround Management Association for his team's work helping the franchisees of the Ground Round restaurant chain use their claims to purchase the company's franchise assets out of bankruptcy. Franchisors

that he has represented in complicated multi-unit franchisee bankruptcies include Dunkin' Donuts and Bennigan's.

Mr. Pedone is the president and member of board of directors, Courageous Sailing Center, Charlestown, MA, a nonprofit that provides the children of Boston with the opportunity to sail on the ocean free of charge. In addition he is a member of the board of directors, Lincoln Maritime Center, Hingham, MA; member of the American Bankruptcy Institute, Turnaround Management Association, Boston Bar Association (Bankruptcy Section), INSOL International, International Franchise Association, and American Bar Association Forum on Franchising.

He received a BA from Bates College, and graduated cum laude with a JD from Boston College. He also has a MSC from the London School of Economics.

Steven Reynolds

Steven P. Reynolds is vice president and general counsel of Sensata Technologies, which is a global leader in sensors, electro-mechanical controls and circuit protection products serving numerous end markets with \$1.4 billion in 2008 revenues. He heads the Sensata Law Department which consists of 7 attorneys and 3 paralegal/contract managers/admins in the US, Netherlands, China and Korea. The company's Environmental Health and Safety (EHS) global manager also reports to Mr. Reynolds. The Sensata group was created to facilitate an April 2006 acquisition sponsored by Bain Capital. Sensata's equity is privately-owned but its notes are registered with the SEC. Mr. Reynolds's office is located in Attleboro, Massachusetts.

His immediate prior experience was with Texas Instruments Incorporated in Massachusetts, Texas and France. At TI he was involved in a range of practice areas and variety of assignments both at headquarters and other locations. His early legal experience consisted of commercial litigation practice at the Dallas firm Jackson & Walker and in-house practice at IBM.

Mr. Reynolds is a past president of ACC's Northeast chapter and a current board member.

He is a graduate of Georgetown University and the Rutgers School of Law.

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 Joint Administrators, as Foreign Representatives of Laurence, Scott &
 Electromotors Limited (In Administration), Debtor in a Foreign Proceeding

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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 In re: : Chapter 15
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 LAURENCE, SCOTT & ELECTROMOTORS LIMITED : Case No. 06-_____ ()
 (In Administration), :
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 Debtor. :
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**DECLARATION OF CHRISTOPHER MICHAEL HARLOWE IN SUPPORT
 OF PETITION UNDER CHAPTER 15**

CHRISTOPHER MICHAEL HARLOWE, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

- I am a solicitor of the Supreme Court of England and Wales and have been since 1986. I am a partner in the limited liability partnership Speechly Bircham LLP, 6 St Andrew Street, London EC4A 3LX, England and the focus of my practice is on commercial insolvency matters. I have extensive experience with, among other insolvency matters, the Insolvency Act 1986 of England and Wales ("the Act").

2. I am a solicitor retained by Andrew John Pepper and Alastair Paul Beveridge, who were appointed as Joint Administrators (the "Joint Administrators"), of Laurence, Scott & Electromotors Limited (In Administration) (the "Administration") pursuant to the procedures of the Act and the sanction of the Companies Court, Chancery Division, of the High Court of Justice of England and Wales (the "High Court"). I make this Declaration in support of the Petition of the Joint Administrators for recognition of the Administration as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code (or as a foreign nonmain proceeding as the Court may determine) and for related relief, and to provide an explanation of the relevant insolvency processes in the United Kingdom.

The Process of Administration

3. Administration is governed by Part II of the Act. There are two separate regimes for administrations: administrations started before September 2003 are governed by sections 8-27 of the Act, and administrations post-September 2003 by Schedule B1 to the Act. In this instance the Debtor was formally placed into administration on 8 May 2007 and the latter regime applies. All references to paragraph numbers below shall be to paragraphs of Schedule B1 to the Act (relevant portions of which are included in the Appendix of Exhibits accompanying the Petition in this case).

4. Administrations are, in principle, a rescue remedy for an insolvent corporate structure. Administration is an alternative process to liquidation, that is available to insolvent companies but with the specific intention to preserve the assets and business of the debtor company on the basis that there is something to save which restructuring, or alternatively, a sale as a going concern, will achieve a better result for creditors than a straight forward winding up of the same.

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5. The key characteristics are that the debtor must be insolvent, yet there are grounds that make it likely that with restructuring, refinancing or reorganisation the debtor company itself can be saved from total financial failure or, alternatively, the creditors will benefit more from the administration regime than a liquidation, which is a straightforward sale (where possible) or closure of the debtor company's business and affairs and a disposal and realisation of its assets.

6. The legal implication of placing a debtor company into administration is that management of the company's affairs is taken from the directors and management of the company and professional insolvency practitioners are appointed by the High Court to manage the business. The Act sets out the administrator's powers in detail but effectively they have, amongst other powers, the right to run the business, sell its assets, hire and fire employees, operate bank accounts, borrow money and bring legal proceedings as they see fit. They are appointed as officers of the High Court and owe a duty of care to the High Court and the creditors of the company to carry out their statutory function.

7. Upon the commencement of an administration no creditor may enforce or progress any claim howsoever arising against the company without the consent of the administrator(s) or the express permission of the Court. (Paragraph 43) This 'moratorium' protects the company's assets for the benefit of the creditors as a whole and enables the administrator relief from sanctions.

8. In every administration the administrators must achieve their functions in accordance with Paragraph 3 as follows:

"3 (1) The administrator of a company must perform his functions with the objective of—

(a) rescuing the company as a going concern, or

- (b) *achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or*
- (c) *realising property in order to make a distribution to one or more secured creditors.*

3 (2) *Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.*

3 (3) *The administrator must perform his functions with the objective specified in sub-paragraph (1) (a) unless he thinks either –*

- (a) *that it is not reasonably practicable to achieve that objective, or*
- (b) *that the objective specified in sub-paragraph (1) (b) would achieve a better result for the company's creditors as a whole.*

3 (4) *The administrator may perform his functions with the objective specified in sub-paragraph (1) (c) only if-*

- (a) *he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1) (a) and (b), and*
- (b) *he does not unnecessarily harm the interests of the creditors of the company as a whole."*

9. Paragraph 3 as recited in paragraph 8 of this Declaration sets out the purposes that every administrator howsoever appointed must seek to achieve in the performance of his functions. There are however, several different methods of appointment under the Act as follows:

- a. **Paragraph 14** - A secured creditor, who holds a floating charge over all of the assets of the company, and subject to the power to appoint being contained within their security documentation, may appoint an administrator of their choice. This

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appointment can be made immediately upon filing notice with the High Court. There is no need for a hearing and can be invoked in the case of default against the terms of the lending which is prima facie evidence of the company's insolvency. In circumstances where there is more than one floating charge holder then this rule applies only to the first in priority. If not the first charge secured in order of priority, then the floating charge holder must give at least 2 days written notice of intention to appoint to all prior registered floating charge holders.

- b. **Paragraph 22** - The company or its directors may also appoint an administrator. If there is no petition to wind up the company and no floating charge holders then this too can be an immediate appointment upon lodging the appropriate statutory notices with the High Court. If there is one or more secured creditors then prior written notice of an intention to appoint must be given at least 5 days before appointment. Upon service of the notice upon them the floating charge holders may either consent to the choice of administrator or appoint their own choice of administrator subject to the rules of priority discussed immediately above (in 9.a of this Declaration). If a winding up petition has been presented then the company may still seek to appoint an administrator as a means of avoiding compulsory liquidation but the company and its directors must apply to the High Court for an order. There will be a hearing of the application by a judge who will decide whether an administration order ought to be made or the winding up proceed. Once the administration application has been made there will be an automatic stay on all existing proceedings until the court decides the application

at which point the stay will either be lifted or become a moratorium (as detailed in paragraph 5 of this Declaration above).

- c. **Paragraph 12** - The creditors of the company may apply to the High Court for an order to place the company into administration. If an application is issued in this regard by either a creditor or the company itself as described in 9.b above, then a copy of the application must, as soon as reasonably practicable, be served upon any person which may be entitled to appoint an administrator under a floating charge who may, if they so choose, appoint under their debenture.

10. After appointment of an administrator the process is as follows. If the administrator wishes judicial direction in relation to any particular matter in connection with carrying out his functions, he may apply to the High Court (Paragraph 63). The administrator is furnished with a statement of affairs prepared by an officer or other knowledgeable person which details the company's assets, debts and liabilities; identifies its creditors; identifies any security held by creditors; and provides other information which may be requested (Paragraph 47(1)). Paragraph 51 requires that as soon as practicable but in any event within ten weeks of the making of the administration order, unless the High Court grants an extension, the administrator must call a meeting of all creditors in order to seek their approval of his proposals for conducting the administration. The creditors vote on whether to approve the administrator's proposals; if they approve the proposals with modifications, they need the consent of the administrator to the modifications; if they disapprove the proposals, the court may discharge the administration order and take whatever action it deems fit or adjourn the hearing conditionally or unconditionally, or take any other appropriate action. (Paragraphs 53-55). Where the majority of unsecured creditors eligible to vote (those who have presented claims which are duly admitted) approve the

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proposals, they may establish a creditors' committee which is entitled to require the administrator to attend meetings and to furnish it with information. (Paragraph 57). Creditors whose claims are not admitted may appeal to the High Court. (Rule 2.39 of the Insolvency Rules 1986 ('the Rules') which are the supplementary statutory practice rules to be read in conjunction with the Act.)

11. Generally once the specific functions referred to above have been achieved, the administrators will have to consider the exit from the administration. The options are as follows:

11.1 The objective of saving the company through reconstruction is achieved and the administration order is terminated allowing the former management to regain control of the company (Paragraph 80).

11.2 The administrator places the company into a creditors' voluntary liquidation. This is the most common exit route as more often than not the assets of the company have been sold as a going concern, leaving the proceeds from sale to be distributed to the creditors of the company and the most appropriate way for this to happen is in a liquidation whereby the liquidator will distribute the proceeds to creditors as in accordance with the Act and its Rules. The company is then dissolved at the end of the liquidation and ceases to exist as a legal entity (Paragraph 83).

11.3 Dissolution as in 11.2 above. This would only happen if the company has no assets or liabilities which could be realised to permit a distribution to the company's creditors, and therefore a straightforward dissolution is appropriate (Paragraph 84).

The Commencement of the Administration of the Debtor

12. Upon information and belief, the Debtor accrued a large liability to Her Majesty's Revenue and Customs ("HMRC") in the UK. By the early part of 2007 that liability had reached in excess of £(UK) 1 million and HMRC issued a petition in the High Court in London to place the Debtor into liquidation under the Act.

13. By means of illustration and very simply, in circumstances where a creditor of the Debtor company makes a demand for payment in a sum above £750 which is not disputed but which remains unpaid for more than 21 days from the date of the demand for payment, then that is accepted evidence that the company is insolvent and the High Court will place it into insolvent liquidation, freeze its accounts and assets and appoint an independent and regulated Insolvency Practitioner to gather those assets, investigate the officers conduct and distribute payment to creditors.

14. The Petition by HMRC was presented to the Court on 2nd March 2007 and served upon the Debtor with the hearing due to take place on 9th May 2007.

15. Apparently George Clair, the sole shareholder, and as director and manager of the Debtor, took advice on the Debtor's position and decided that in order to avoid liquidation he would seek to appoint an administrator over the affairs instead. Under the Act, whilst Directors can appoint an Administrator, they have to apply to Court to do so in circumstances where a winding up petition has been presented (Paragraph 25), and that appointment can be overruled by existing secured creditors who have the right to appoint an Administrator as an enforcement provision in their security. On this basis Mr. Clair approached Faunus Group International Inc. ("FGI"), as the first ranked secured creditor (the first ranked "floating charge" holder in UK terminology), to seek their support for the appointment of his choice of administrator.

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16. At the same time, upon information and belief, George Clair offered FGI a sum of money to clear the liability to them so as to subrogate their claim to him at that date (25th April 2007). This transfer was made and received by FGI although they did not use this money to clear their liability and instead held the money on account whilst they determined their position.

17. FGI insisted on an independent review of the Debtor's affairs and asked Andrew Pepper of Kroll, one of the Petitioners in this Chapter 15 proceeding, to review the Debtor's filed accounts (which are the public records in the UK) and to speak with George Clair. Because of the time pressure and because FGI insisted on this approach, as stated George Clair applied to Court for an Administration Order, which was to be heard on 11th May 2007.

18. FGI decided that it would agree to appoint an Administrator to protect its security and appointed the Joint Administrators on the 8th May 2007. (Thus, this Administration is less than two months old.) As a direct result the administration application issued by the Debtor was dismissed and the winding up petition presented by HMRC was stayed indefinitely.

19. The Joint Administrators, having considered their statutory objectives as detailed above, have sold the Debtor's business and assets.

20. The Administration can last for no more than 12 months from the date of the order. This can be extended for a further six months by the consent of the creditors or for such longer period as to the High Court on application deems fit and appropriate (Paragraph 76).

21. At the end of the Administration the Joint Administrators will most likely place the Debtor directly into creditors' voluntary liquidation. Once in liquidation the Joint Administrators are released from office and either a new insolvency practitioner is appointed as liquidator or the Joint Administrators can be appointed as joint liquidators if they agree to take the appointment and the creditors agree to the same. As opposed to an administration,

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liquidation is simply a final gathering and sale of assets, reporting on officer's conduct and then dissolving of the Debtor as a legal entity, as detailed more fully above.

22. I respectfully submit that the above supplies sufficient detail of the relevant U.K insolvency statutes, so as to enable the Bankruptcy Court to understand the process in the Administration of this Debtor.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date:

Christopher Michael Harlowe
Christopher Michael Harlowe

**SWORN by CHRISTOPHER
MICHAEL HARLOWE**

at ROSENBLATT SOLICITORS)

this 28 day of June 2007)
) Before me

Simon Walton SIMON WALTON
Commissioner for Oaths/Solicitor
as duly authorized to witness and attest to the execution of
documents of this nature within the United Kingdom

Robert N. H. Christmas, Esq. (RC 6189)
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Counsel for Andrew John Pepper and Alastair Paul Beveridge,
Joint Administrators, as Foreign Representatives of Laurence, Scott and
Electromotors Limited (In Administration), Debtor in a Foreign Proceeding

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 15
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LAURENCE, SCOTT AND ELECTROMOTORS	:	Case No. 07-12017 (RDD)
LIMITED (In Administration),	:	
	:	
Debtor.	:	
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**VERIFIED PETITION UNDER CHAPTER 15 FOR
ORDER AND FINAL DECREE GRANTING
RECOGNITION OF A FOREIGN MAIN PROCEEDING, AND
PERMANENT INJUNCTIVE AND OTHER RELIEF IN AID THEREOF**

Alastair Paul Beveridge and Andrew John Pepper, as the joint duly authorized foreign representatives of Laurence, Scott & Electromotors Limited (In Administration) (“LSE Ltd.” or “Debtor”), the above-captioned debtor in a foreign proceeding, through the Petitioners’ United States counsel, Nixon Peabody LLP, file this Verified Petition under Chapter 15 of Title 11 of the United States Code (the “Bankruptcy Code”) in furtherance of the Official Form Petition (this Verified Petition and Form Petition, collectively, hereinafter referred to as the “Petition”) filed contemporaneously herewith pursuant to 11 U.S.C. §§ 1504 and 1515, commencing a case

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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-	:	
	:	
	:	Chapter 15
In re:	:	
	:	Case No. 07-12017 (RDD)
LAURENCE, SCOTT AND ELECTROMOTORS	:	
LIMITED (In Administration),	:	
	:	
Debtor.	:	
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ORDER GRANTING RECOGNITION OF FOREIGN
MAIN PROCEEDING

Upon the Verified Chapter 15 Petition filed on June 29, 2007 by Andrew John Pepper and Alastair Paul Beveridge, Joint Administrators of debtor Laurence, Scott & Electromotors Limited (In Administration) (the “Petitioners”) commencing this case; the Declaration of Robert N. H. Christmas executed July 2, 2007 pursuant to Local Rule 9077-1; Petitioners’ Appendix of Exhibits filed on June 29, 2007; the Declaration of Solicitor Christopher Harlowe executed on June 28, 2007, and the accompanying Memorandum of Law dated June 29, 2007 (collectively, the “Application”); the opposition submissions submitted by George Clair and Laurence, Scott & Electromotors, Inc., consisting of the Declaration of Ted G. Semaya (with exhibits), executed on August 9, 2007, the Declaration of English Solicitor Simon Jacobs (with exhibits), executed on August 7, 2007, and an accompanying Memorandum of Law; and Petitioners’ submissions in reply, consisting of the Second Declaration of Solicitor Christopher Harlowe (with exhibits) executed on August 14, 2007, and an accompanying Reply Memorandum of Law dated August

15, 2007 (with exhibit); and the Court being satisfied that Petitioners have given due and sufficient notice to parties against whom relief is requested pursuant to Federal Rule of Bankruptcy Procedure 2002, prior to the final hearing on the Application held before this Court on August 16, 2007 (the “Final Hearing”); and upon the record of the Final Hearing; and the Court having been advised that Peter Mark Saville has been substituted for Andrew John Pepper as a Joint Administrator (hereafter, collectively with Mr. Beveridge, the “Joint Administrators”); and the Court having been advised by the Joint Administrators that, with respect to that branch of the Application that seeks additional relief pursuant to 11 U.S.C. § 1521, such relief will be the subject of further, future application by the Joint Administrators, and thus is not addressed in this Order; and after due deliberation, and sufficient cause appearing therefor, it is hereby

FOUND that (1) the administration proceeding of Laurence, Scott & Electromotors Limited (In Administration) pending in the Companies Court, Chancery Division, of the High Court of Justice of England and Wales (the “U.K. Administration”) is in the United Kingdom, the place of the Debtor’s center of main interests, and thus is a foreign main proceeding within the meaning of 11 U.S.C. § 1502; (2) the Joint Administrators are persons who are the duly appointed joint foreign representatives of the U.K. Administration; (3) the Application meets the requirements of 11 U.S.C. § 1515 for final recognition of a foreign proceeding; and (4) the public policy exception of 11 U.S.C. § 1506 does not apply to the relief requested in the Application; therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the objections of George Clair and Laurence, Scott & Electromotors, Inc. to the Application are overruled; and it is further

ORDERED, ADJUDGED and DECREED that the U.K. Administration is hereby granted recognition by this Court, pursuant to 11 U.S.C. §§ 1502(7) and 1517, as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code, with the resulting effects set forth in 11 U.S.C. § 1520.

Dated: New York, New York
August 16, 2007

/s/ Robert D. Drain
ROBERT D. DRAIN
United States Bankruptcy Judge

11 U.S.C. § 1502

- (1) cooperation between—
- (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
- (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
- (2) greater legal certainty for trade and investment;
- (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
- (4) protection and maximization of the value of the debtor's assets; and
- (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.
- (b) This chapter applies where—
- (1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;
- (2) assistance is sought in a foreign country in connection with a case under this title;
- (3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or
- (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.
- (c) This chapter does not apply to—
- (1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);
- (2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or
- (3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.
- (d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1502. Definitions

For the purposes of this chapter, the term—

- (1) "debtor" means an entity that is the subject of a foreign proceeding;
- (2) "establishment" means any place of operations where the debtor carries out a nontransitory economic activity;
- (3) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;
- (4) "foreign main proceeding" means a foreign proceeding pending in the country where the debtor has the center of its main interests;
- (5) "foreign nonmain proceeding" means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment;
- (6) "trustee" includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

§ 1501. Purpose and scope of application

- (a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

11 U.S.C. § 1502

(7) "recognition" means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

(8) "within the territorial jurisdiction of the United States", when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

§ 1503. International obligations of the United States

To the extent that this chapter 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.

§ 1504. Commencement of ancillary case

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

§ 1505. Authorization to act in a foreign country

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

§ 1506. Public policy exception

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

§ 1507. Additional assistance

(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

- (1) just treatment of all holders of claims against or interests in the debtor's property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of the debtor;
- (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
- (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

§ 1508. Interpretation

In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

**SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES
AND CREDITORS TO THE COURT****11 U.S.C. § 1513****§ 1509. Right of direct access**

(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

(b) If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter—

- (1) the foreign representative has the capacity to sue and be sued in a court in the United States;
- (2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and
- (3) a court in the United States shall grant comity or cooperation to the foreign representative.

(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

§ 1510. Limited jurisdiction

The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

§ 1511. Commencement of case under section 301 or 303

(a) Upon recognition, a foreign representative may commence—

- (1) an involuntary case under section 303; or
- (2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

§ 1512. Participation of a foreign representative in a case under this title

Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

§ 1513. Access of foreign creditors to a case under this title

(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a

11 U.S.C. § 1513

lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

§ 1514. Notification to foreign creditors concerning a case under this title

(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

(c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—

(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

(2) indicate whether secured creditors need to file proofs of claim; and

(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

(d) Any rule of procedure or order of the court as to notice or the filing of a proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF**§ 1515. Application for recognition**

(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

§ 1516. Presumptions concerning recognition

(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

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11 U.S.C. § 1519

(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

§ 1517. Order granting recognition

(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

(2) the foreign representative applying for recognition is a person or body; and

(3) the petition meets the requirements of section 1515.

(b) Such foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter may be closed in the manner prescribed under section 350.

§ 1518. Subsequent information

From the time of filing the petition for recognition of a foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

(1) any substantial change in the status of such foreign proceeding or the status of the foreign representative's appointment; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§ 1519. Relief that may be granted upon filing petition for recognition

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(1) staying execution against the debtor's assets;

(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

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11 U.S.C. § 1519

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§ 1520. Effects of recognition of a foreign main proceeding

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

§ 1521. Relief that may be granted upon recognition

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

(6) extending relief granted under section 1519(a); and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized

11 U.S.C.

by the court, provided that the court is satisfied that the interests of creditors in the United States sufficiently protected.

(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, is administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§ 1522. Protection of creditors and other interested persons

(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, including the requirement of the filing of a bond.

(c) The court may, at the request of the foreign representative or an entity affected by relief under section 1519 or 1521, or at its own motion, modify or terminate such relief.

(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

§ 1523. Actions to avoid acts detrimental to creditors

(a) Upon recognition of a foreign proceeding, the foreign representative has standing in the United States to bring an action concerning the debtor pending under another chapter of this title to initiate actions under sections 544, 545, 547, 548, 550, 553, and 724(a).

(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that the action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

§ 1524. Intervention by a foreign representative

Upon recognition of a foreign proceeding, the foreign representative may intervene in proceedings in a State or Federal court in the United States in which the debtor is a party.

SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES**§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives**

(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.

(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest and participation.

11 U.S.C. § 1526

§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

§ 1527. Forms of cooperation

Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

- (1) appointment of a person or body, including an examiner, to act at the direction of the court;
- (2) communication of information by any means considered appropriate by the court;
- (3) coordination of the administration and supervision of the debtor's assets and affairs;
- (4) approval or implementation of agreements concerning the coordination of proceedings; and
- (5) coordination of concurrent proceedings regarding the same debtor.

SUBCHAPTER V—CONCURRENT PROCEEDINGS**§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding**

After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

§ 1529. Coordination of a case under this title and a foreign proceeding

If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

(1) If the case in the United States pending at the time the petition for recognition of such foreign proceeding is filed—

(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United

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States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

§ 1530. Coordination of more than 1 foreign proceeding

In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527; the following shall apply:

(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign proceeding.

(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign proceeding.

(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

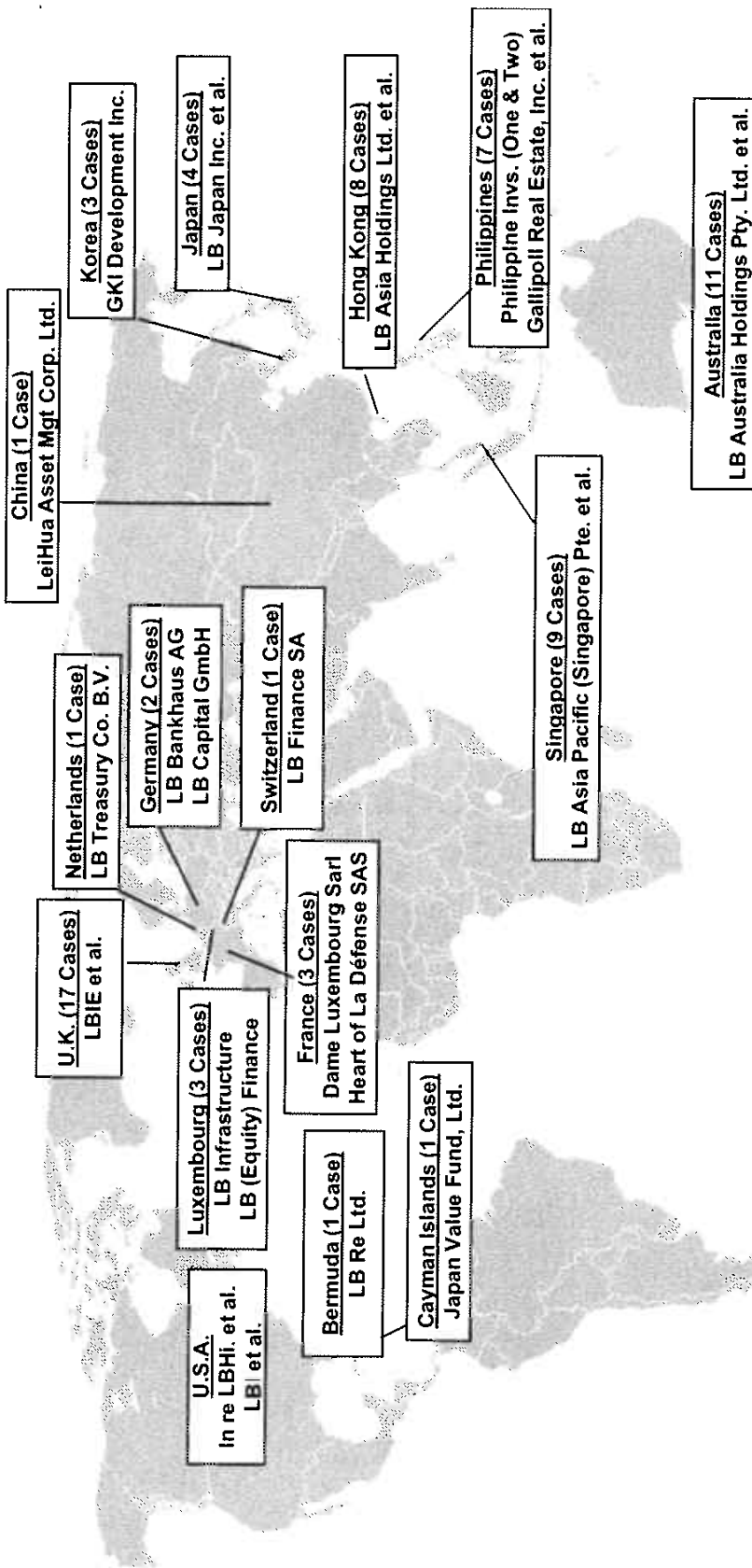
In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

§ 1532. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received payment in respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive payment for the same claim in a case under any other chapter of this title regarding the debtor, unless the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.

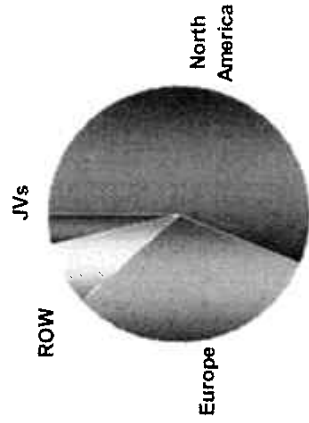
TAB 4

I. International Overview



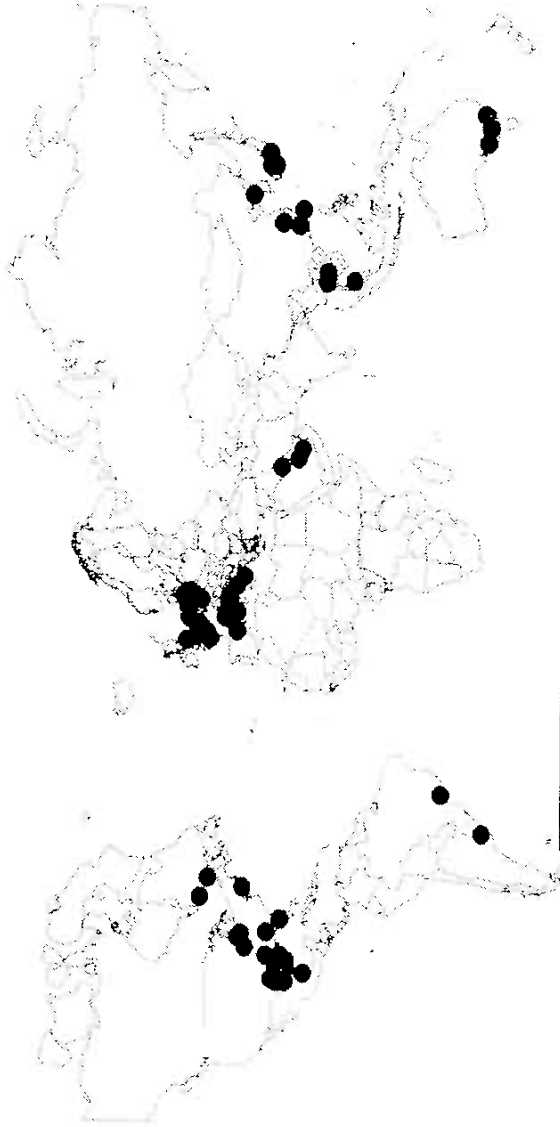
Leading Positions and Extended Geographic Presence

2007 Revenues Including JVs



Global Position¹

Category	Global Position ¹
Polymers	
Polyolefins	#1
Polyolefin Licensing	#1
Polyolefin Catalysts	#1
Fuels	
Oxy Fuels	#2
Chemicals	
Propylene Oxide	#1



- Legacy Basell Manufacturing Sites and JVs
- Legacy Lyondell Manufacturing Sites and JVs

- Global geographic diversity
- Significant presence in fast growing Asian markets
- Well positioned to access cost advantaged feedstock in the Middle East

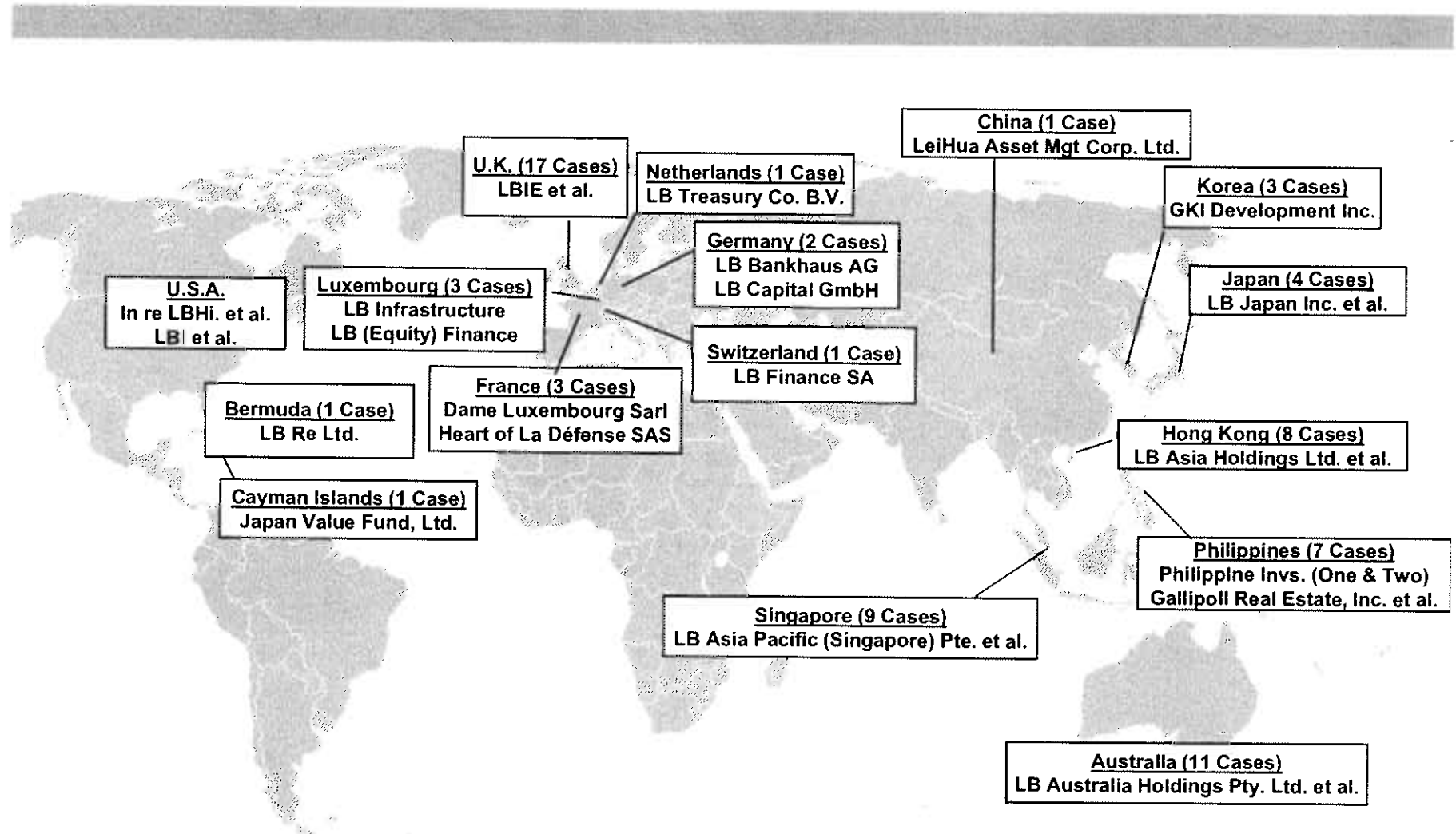
Source: LyondellBasell Industries and CMAI

¹ Based on 100% of JV capacity. Rankings based on CMAI information except for Polyolefins ranking which is based on internal LyondellBasell Industries information

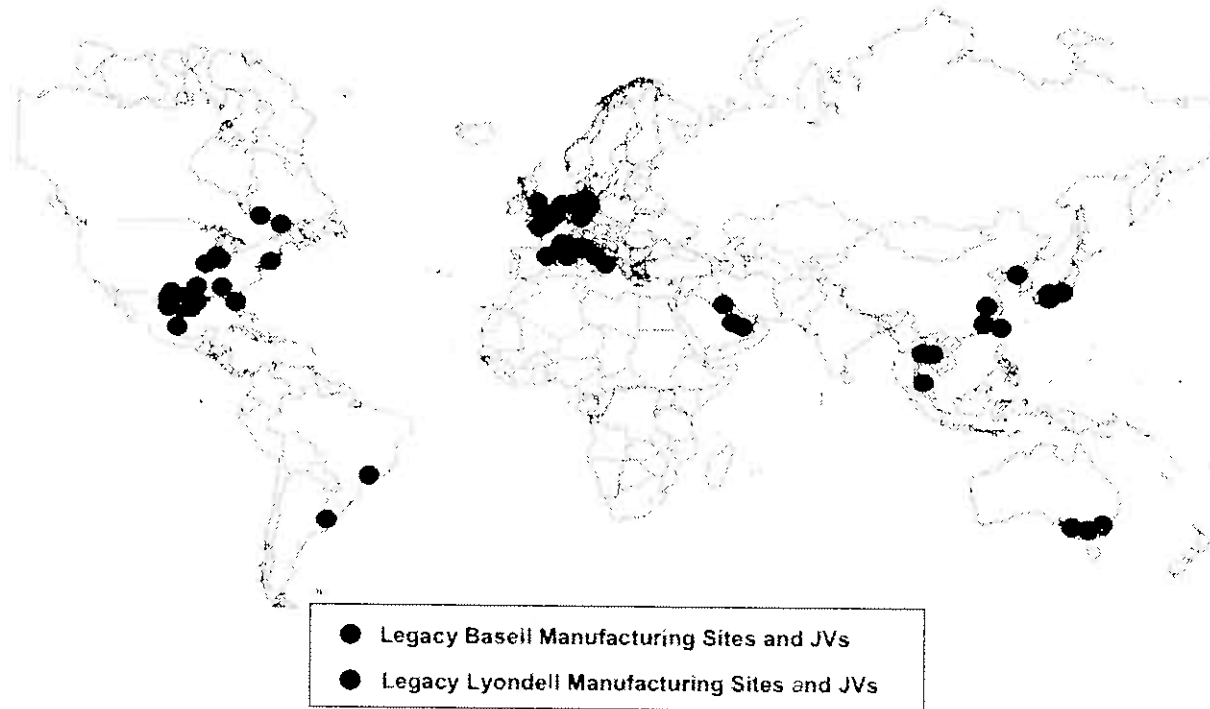
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I. International Overview

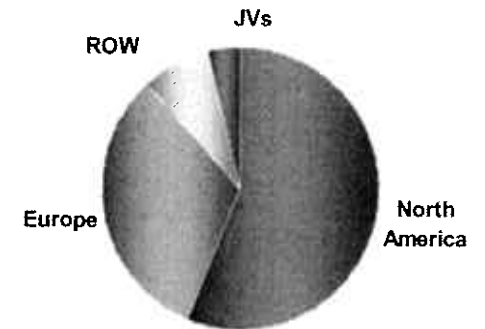


Leading Positions and Extended Geographic Presence



- Global geographic diversity
- Significant presence in fast growing Asian markets
- Well positioned to access cost advantaged feedstock in the Middle East

2007 Revenues Including JVs



	<u>Global Position¹</u>
<u>Polymers</u>	
Polyolefins	#1
Polyolefin Licensing	#1
Polyolefin Catalysts	#1
<u>Fuels</u>	
Oxy Fuels	#2
<u>Chemicals</u>	
Propylene Oxide	#1

Source: LyondellBasell Industries and CMAI

¹ Based on 100% of JV capacity. Rankings based on CMAI information except for Polyolefins ranking which is based on internal LyondellBasell Industries information

Insolvency Without Borders

The Debtor is in China, the Goods are on a Freighter, and the Bankruptcy Court is in Tennessee: Protecting Your Client From International Insolvencies

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I. INTRODUCTION TO CROSS-BORDER INSOLVENCY

Chapter 15 of the United States Bankruptcy Code and the laws governing cross-border insolvency proceedings in other countries only make sense after consideration of: (i) how difficult, if not impossible, is the task of meshing disparate substantive insolvency systems; and (ii) the large number of parties involved in a typical insolvency proceeding. As a result of these difficulties, no real headway has ever been made in connection with the development of a substantive global insolvency law through treaty or otherwise. As discussed below, even within the European Union, nearly all efforts aimed at reconciling conflicting substantive law have failed. Instead, most laws related to cross-border insolvency proceedings, including Chapter 15 in the United States, seek to address procedural issues such as when one court or administrative body will recognize an administrative or judicial decision made in another jurisdiction, and how courts will communicate in order to avoid wasted resources and resulting diminished distributions to creditors.

Once one accepts that the substantive law applicable to cross-border insolvency proceedings will not be uniform, choice of law becomes of major importance, along with the question of the balance of powers between multiple courts that may attempt to claim jurisdiction. Of course, in the absence of uniform substantive laws, forum selection and choice of law becomes very, if not all important, to debtors and creditors. Recognizing that the harmonization of substantive insolvency law would be impossible, but that enormous strides could be made by improving procedure, the United Nations Commission on International Trade (UNCITRAL)

went to work on the development of improved procedures that could be universally adopted.¹ These efforts culminated in the adoption of the UNCITRAL Model Law on Cross-Border Insolvency (the “Model Law”) in 1997.²

The Model Law and Chapter 15 address the central conflicts through the adoption of a concept that is both a model of eloquence and opaqueness. In essence, a foreign proceeding will only be recognized as a “main” proceeding, that is, one entitled to control the significant decisions in a case, if the debtor has its center of main interests (“COMI”) in the jurisdiction where that proceeding is pending. In this way the Model Law and Chapter 15 avoid giving sanction to orders of courts that might only have a tangential connection, or even no connection, to an individual or business that is the subject of insolvency proceedings. At its core, the idea behind COMI is to have the substantive law determined in the forum that commercial parties dealing with the debtor before insolvency would expect to govern.

By only recognizing an insolvency proceeding as a foreign main proceeding if it is pending where the debtor has its COMI, Chapter 15 seeks to meet commercial expectations, as well as substitute an objective statutory standard for recognition, in place of the equitable concept of comity that governed under Section 304³, which was repealed when Chapter 15 was

¹ See Kevin J. Beckering, “United States Cross-Border Corporate Insolvency: The Impact of Chapter 15 on Comity and the New Legal Environment,” 14 Law & Bus. Rev. Am. 281, 300 (2008); Daniel M. Glosband et al., *The American Bankruptcy Institute Guide to Cross-border Insolvency in the United States* (American Bankruptcy Institute, 2008).

² United Nations, UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment (1997). Available at www.uncitral.org/en/uncitral_texts/insolvency/1997model.

³ While 11 U.S.C. § 304 afforded bankruptcy courts substantial flexibility to fashion remedies in order to foster principles of international comity and respect for the judgments of other countries, it nevertheless was limited in scope. Filing a § 304 petition “did not initiate a normal bankruptcy case,” nor was it the exclusive remedy for a foreign representative seeking the assistance of U.S. Courts. Thus, there was no centralized forum for addressing requests for U.S. judicial relief in connection with foreign proceedings, and jurisprudence developed on a case-by-case basis. *See* (Footnote continued on next page)

enacted.⁴ In short, under the Model Law and Chapter 15, a debtor's main proceeding, and thus the substantive law that will govern most issues, is where the debtor has its "center of main interests." While both the Model Law and Chapter 15 create a rebuttable presumption that the COMI will be where the individual or business resides (e.g., is incorporated), they have generated, and will continue to generate, substantial litigation.⁵

Before turning to the mechanics of Chapter 15 proceedings, one unusual feature of Chapter 15 should be noted. Courts interpreting Chapter 15 are statutorily required to consider how similar statutes are applied abroad. As a recent case, *In re Betcorp Ltd.*, explained:

The statutory intent to meld American law into international law is explicit in the text of section 1501(a), and also is expressed in section 1508, which states that "[i]n interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C. § 1508; *see also* HOUSE REPORT ON THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, H.R. REP. NO. 109-31, pt. I, at 105 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 169 ("[Chapter 15] incorporates the model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases . . . [These provisions are] intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border insolvencies, which protects the interests of creditors and other interested parties, including the debtor.") [hereinafter "HOUSE REPORT"]; 8 COLLIER ON BANKRUPTCY ¶ 1501.01 (Alan N. Resnick & Henry J. Somme, eds., 15th ed. Rev. 2008) (explaining the basis for chapter 15).

(Footnote continued from previous page)

Alesia Ranney-Marinelli, "Overview of Chapter 15 Ancillary and Other Cross-Border Cases," 82 Am. Bankr. L.J. 269 (2008).

⁴ 11 U.S.C. § 1517(b)(1).

⁵ *See* 11 U.S.C. § 1516(c); UNCITRAL Model Law on Cross-Border Insolvency, Art. 16(3). The European Union Regulation on Insolvency Proceedings also relies on the concept of COMI to determine the substantive law that shall govern and which court has jurisdiction. *See* Council Regulation 1346/2000 O.J. (L160)(EC), Art. 3(1) ("EU Insolvency Regulation"). Law decided under the European Union Insolvency Regulation, while not binding, may have persuasive effect in litigation under Chapter 15. *See In re Ran*, 390 B.R. 257, 263-81 (Bankr. S.D. Tex. 2008) (citing cases decided by European Courts and Art. 3.1 of the EU Insolvency Regulation), *aff'd sub nom. Lavie v. Ran*, 406 B.R. 277 (S.D. Tex. 2009)(same). Some EU Insolvency Regulation cases are collected at the website of the International Insolvency Institute: www.iiiglobal.org.

Against this background, the scope of the Model Law's definition of "proceeding" is quite relevant. The Model Law's *Guide to Enactment*, published by UNCITRAL, states:

To fall within the scope of the Model Law, a foreign insolvency proceeding needs to possess certain attributes. These include the following: basis in insolvency-related law of the originating State; involvement of creditors collectively; control or supervision of the assets and affairs of the debtor by a court or other official body; and reorganization or liquidation of the debtor as the purpose of the proceeding

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT ¶ 23, at 10, U.N. Gen. Assembly, UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997), available at <http://www.uncitral.org/uncitral/en/comission/session/30th.html> [hereinafter "*Guide to Enactment*"⁶].⁷

Chapter 15 can be used by a foreign representative to gain access to the United States court system, and will, therefore, allow the foreign representative to benefit from the United States bankruptcy system once recognition is granted. A foreign representative may petition for recognition when:

- (1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;
- (2) assistance is sought in a foreign country in connection with a case under this title;
- (3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or
- (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.⁸

⁶ As Congress noted, the *Guide to Enactment* is very useful in construing chapter 15. "Interpretation of this chapter [15] on a uniform basis will be aided by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well."

⁷ *In re Betcorp Ltd.*, 400 B.R. 266, 276 (Bankr. D.Nev. 2009).

⁸ 11 U.S.C. § 1501(b).

II. THE MECHANICS OF A CHAPTER 15 CASE

An ancillary proceeding under Chapter 15 offers foreign representatives in a foreign insolvency many of the rights and powers of a trustee or a debtor in possession under the Bankruptcy Code, without filing a full case. However certain rights, such as the right to exercise avoidance powers under the U.S. Code, are specifically excluded. A foreign representative always has the alternative to file a full proceeding under Chapter 11 or Chapter 7 of the Bankruptcy Code.⁹

The purpose of Chapter 15¹⁰, its scope, and the types of cases where it does not apply are clearly stated in Section 1501 of Chapter 15:

Sec. 1501. Purpose and scope of application.

- (a) *The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency* so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—
- (1) *cooperation* between—
 - (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
 - (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
 - (2) greater legal certainty for trade and investment;
 - (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

⁹ However, after recognition of a foreign main proceeding, section 1528 mandates that a case under another chapter of title 11 can only be commenced if the debtor has assets in the United States. Thus, the basic scope of jurisdiction in a case commenced under title 11 after recognition of a foreign main proceeding is restricted to the assets of the debtor that are within the territorial jurisdiction of the United States.

¹⁰ The complete text of Chapter 15 is at Tab 1 of the Appendix to these materials.

- (4) protection and maximization of the value of the debtor's assets; and
 - (5) **facilitation of the rescue of financially troubled businesses**, thereby protecting investment and preserving employment.
- (b) This chapter applies where—
- (1) **assistance is sought in the United States by a foreign court or a foreign representative¹¹ in connection with a foreign proceeding¹²**;
 - (2) assistance is sought in a foreign country in connection with a case under this title;
 - (3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or
 - (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.
- (c) **This chapter does not apply to—**
- (1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);
 - (2) **an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States;** or
 - (3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.
- (d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under

¹¹ The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding. 11 U.S.C. 101(24).

¹² The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation. 11 U.S.C. § 101(23).

any applicable state insurance law or regulation for the benefit of claim holders in the United States, regarding

- (1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);
- (2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or
- (3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

A. Venue

The proper venue for a Chapter 15 case is where the debtor has its principal place of business or principal assets in the United States.¹³ If this does not apply to the debtor, then the correct venue may be in a district where there is pending against the debtor an action or proceeding in a federal or state court.¹⁴ However, if neither of these apply to the debtor, then the venue which will be consistent with the interests of justice and the convenience of the parties, in view of the relief sought by the foreign representative, will be considered the correct venue.¹⁵

B. Petition for Recognition.

A Chapter 15 case is commenced by the foreign representative's filing of a petition for recognition of a foreign proceeding.¹⁶ In addition to the petition for recognition, the following need to be submitted to the Court:

¹³ 28 U.S.C. § 1410(1); see *In re Innua Canada Ltd.*, No. 09-16362(DHS), 2009 WL 1025088, at *1 (Bankr. D.N.J. Mar. 25, 2009) (venue of principal assets); *In re Betcorp Ltd.*, 400 B.R. 266, 271 (Bank. D.Nev. 2009) (venue of pending lawsuit against debtor).

¹⁴ 28 U.S.C. § 1410(2).

¹⁵ 28 U.S.C. § 1410(3).

¹⁶ 28 U.S.C. §§ 1504 and 1515.

- (1) evidence of the existence of a foreign proceeding and the appointment of the foreign representative;¹⁷
- (2) a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative;¹⁸
- (3) a corporate ownership statement;¹⁹ and
- (4) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought.²⁰

A sample Affidavit in support of recognition is contained in the Appendix to these materials.

The Bankruptcy Court is entitled to presume that the documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.²¹

The foreign proceeding for which recognition is requested must be identified as either a foreign main proceeding or a foreign nonmain proceeding and it will be recognized in only one capacity.²² As discussed above, the proceeding should be recognized as a foreign main proceeding if the proceeding is pending in the country where the debtor has its COMI.²³

However, if the debtor has an establishment or any place of operations where the debtor carries

¹⁷ To fulfill this requirement, see 11 U.S.C. § 1515(b). Note that some documents under this requirement will need to be translated into English. *See* 11 U.S.C. §1515(d).

¹⁸ 11 U.S.C. § 1515(c). The foreign representative is also required to update the court with information regarding any substantial change in the status of the foreign proceeding or the foreign representative's appointment as well as any other foreign proceedings regarding the debtor that become known to the foreign representative. 11 U.S.C. § 1518.

¹⁹ Bankruptcy Rule 1007(a)(4), 7007.1.

²⁰ Bankruptcy Rule 1007(a)(4).

²¹ 11 U.S.C. § 1516(b).

²² 11 U.S.C. § 1502(4), (5).

²³ 11 U.S.C. § 1517(b)(1).

out a nontransitory economic activity in the foreign country where the proceeding is pending, then it shall be recognized as a foreign nonmain proceeding.²⁴

From the time the petition for recognition is filed until the point the court rules on the petition, the court may grant relief of a provisional nature.²⁵ The available provisional relief is summarized in Section 1519 which provides:

Sec. 1519: Relief that may be granted upon filing petition for recognition.

- (a) From the time of filing a petition for recognition until the court rules on the petition, the court may, *at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—*
- (1) staying execution against the debtor's assets;
 - (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative *or another person authorized by the court, including an examiner*, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
 - (3) any relief referred to in paragraph (3), (4), or (7) of section 1521 (a).²⁶

²⁴ 11 U.S.C. § 1517(b)(2); see *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 131 (Bankr. S.D.N.Y. 2007).

²⁵ 11 U.S.C. § 1519(a).

²⁶ 11 U.S.C. § 1521(a) provides: Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a); providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities; and granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

- (b) Unless extended under section 1521 (a)(6), the relief granted under this section terminates when the petition for recognition is granted.
- (c) ***It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.***
- (d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.
- (e) ***The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.***
- (f) The exercise of rights not subject to the stay arising under section 362 (a) pursuant to paragraph (6), (7), (17), or (27) of section 362 (b) or pursuant to section 362 (n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

(Emphasis added)

In order for such provisional relief to be granted, the foreign representative must request the relief and it must urgently be needed in order to protect the assets of the debtor or the interest of the creditors.²⁷

C. When Recognition is Granted

A petition for recognition of a foreign proceeding is to be decided upon at the earliest possible time.²⁸ After notice and a hearing, recognition shall be granted if:

- (i) the foreign proceeding is a foreign main or nonmain proceeding;
- (ii) the foreign representative applying for recognition is a person or body; and

²⁷ 11 U.S.C. § 1519(a); *see In re Innua Canada Ltd.*, No. 09-16362(DHS), 2009 WL 1025088, at *3-4 (Bankr. D.N.J. Mar. 25, 2009) (granting receiver's motion for provisional relief once receiver met burden under §§ 1519 and 105, and the injunctive relief standard of the Third Circuit); *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 867 (Bankr. C.D. Cal. 2008) (finding that the imposition of the automatic stay as provisional relief under § 1519 is not injunctive relief that is subject to the § 1519(e) requirement).

²⁸ 11 U.S.C. § 1517(c).

(iii) the petition for recognition met all the application requirements under section 1515.²⁹

A sample form of recognition order is located at Tab 3 of the Appendix.

If the court grants recognition, the foreign representative has the capacity to sue and be sued in a court in the United States; the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and a court in the United States shall grant comity or cooperation to the foreign representative.³⁰ The court may also grant any appropriate relief, at the request of the foreign representative, where it is necessary to effectuate the purpose of Chapter 15 and to protect the assets of the debtor or the interests of the creditors.³¹ Some examples of relief granted include entrusting administration and realization of the debtor's assets to the foreign representative³² and approval of a claims resolution procedure designed to speedily assess and value all claims.³³

A foreign main proceeding will also receive the benefits of certain other sections in the bankruptcy code in relation to property that is within the United States and the operation of the debtor's business.³⁴

D. Effects of Recognition

The effects of recognition and the full relief that can be provided are spelled out in Sections 1520 and 1521:

²⁹ 11 U.S.C. § 1517(a).

³⁰ 11 U.S.C. § 1509(b).

³¹ 11 U.S.C. § 1521(a).

³² *See In re Tri-Continental*, 349 B.R. 627 (Bankr. E.D. Cal. 2006).

³³ *See In re Ephedra Products Liability Litigation*, 349 B.R. 333 (S.D.N.Y. 2006).

³⁴ *See* 11 U.S.C. § 1520(a).

Sec. 1520. Effects of recognition of a foreign main proceeding.

- (a) Upon recognition of a foreign proceeding that is a foreign main proceeding—
 - (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
 - (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
 - (3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
 - (4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.
- (b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.
- (c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

Sec. 1521. Relief that may be granted upon recognition.

- (a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—
 - (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520 (a);
 - (2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520 (a);

- (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520 (a);
 - (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
 - (6) extending relief granted under section 1519 (a); and
 - (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724 (a).
- (b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.
- (c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.
- (d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.
- (e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).
- (f) The exercise of rights not subject to the stay arising under section 362 (a) pursuant to paragraph (6), (7), (17), or (27) of section 362 (b) or pursuant to section 362 (n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

E. Public Policy Limitations

The grant of recognition to a foreign representative may be denied if such recognition would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. This defense possessed by creditors has yet to be developed, but some case law is emerging. In a major decision under Chapter 15, the district court in *In re Ephedra Products Liability Litigation*, 349 B.R. 333 (S.D.N.Y. 2006), addressed objections of product liability tort plaintiffs to recognition of a Canadian insolvency proceeding. The plaintiffs argued against it, claiming that the claims resolution procedures adopted in the Canadian main proceeding of the debtor would deprive the plaintiffs of due process and trial by jury and thus were manifestly contrary to U.S. public policy. The court, citing the legislative history to Chapter 15 as well as the official Guide to the Enactment of the Model Law, held that the term “manifestly contrary to public policy” created a very narrow exception “intended to be invoked under exceptional circumstances concerning matters of fundamental important for the enacting State.” It concluded that, notwithstanding the importance of the constitutional right to a jury trial, the procedures in Canada proceeding were fair and impartial and “[n]othing more is required by § 1506 or any other law.”³⁵

F. Chapter 15 is Not Only for Business Debtors!

While the majority of reported Chapter 15 decisions involve businesses, the provisions are also applicable to cases of individuals. Furthermore, it is important for U.S. consumer lawyers representing individuals, and trustees in Chapter 7 cases of individuals, to realize that

³⁵ *Id.*, 349 B.R. at 337. The District Court had withdrawn the reference of the Chapter 15 petition for recognition of the Canadian case because it had been granted nation-wide jurisdiction of product liability litigation involving the drug Ephedra by the Panel on Multidistrict Litigation. In a related case, the Canadian representative of the debtor successfully removed from Wisconsin State court and transferred to New York a class action against the debtor. See *Baker v. Muscletech Res. and Dev., Inc.*, 2006 WL 1663748 (E.D. Wisc. June 9, 2006).

provisions analogous to Chapter 15 exist in at least fourteen other countries which have adopted the Model Law.³⁶ Accordingly, if you need to seize assets abroad or to obtain orders to protect assets, relief is often available. However, as in the commercial setting, the location of the debtor's COMI may limit the type of relief than can be obtained.³⁷

A foreign main proceeding is defined as a foreign proceeding pending in the country where the debtor has the center of its main interest.³⁸ In the case of an individual, the debtor's habitual residence is presumed, in absence of evidence to the contrary, to be the center of the debtor's main interests.³⁹ The presumption is rebuttable by "evidence to the contrary."⁴⁰ Therefore, a review of proffered proof is required to determine whether contrary evidence justifies a finding that an individual debtor's COMI is somewhere other than the place of his habitual residence.⁴¹

³⁶ To date legislation based on the UNCITRAL Model Law has been adopted in Australia, British Virgin Islands, Colombia, Eritrea, Great Britain, Japan, Mexico, Montenegro, New Zealand, Poland, Republic of Korea, Romania, Serbia, South Africa, and the United States of America.

³⁷ *See In re Ran*, 390 B.R. 257, 262-85, 300-02 (Bankr. S.D. Tex. 2008), *aff'd*, No. H-08-1961, 2009 WL 890387 (S.D. Tex. Mar. 30, 2009) (discussing factors that are appropriate when considering the COMI of an individual debtor and when determining if the presumption that an individual debtor's habitual residence is his COMI has been rebutted); *In re Loy*, 380 B.R. 154, 162-63 (Bankr. E.D. Va. 2007) (discussing factors, which are useful to flesh out a debtor's COMI in instances where the debtor is an individual).

³⁸ 11 U.S.C. § 1502(4).

³⁹ 11 U.S.C. § 1516(c).

⁴⁰ 11 U.S.C. § 1516(c).

⁴¹ *Lavie v. Ran*, 384 B.R. 469 (S.D. Tex. 2008); *see also In re Ran*, 390 B.R. 257, 267 (Bankr. S.D. Tex. 2008) (citing *Anciens Etablissements d'Angenieux Fils Aine v. Hakenberg* (Case 13/73), [1973] ECR 935 (ECJ 1973)) (noting that as used in Community law, "permanent residence," "habitual residence," and "normal residence" mean the location of the individual's permanent centre of interests); *In re Ran*, 390 B.R. at 271 ("Residence means the centre of interests of the individual concerned, and refers to the place where the person has established and intends to maintain the permanent or habitual centre of his interests and it implies, irrespective of the purely quantitative element of the time spent by the person concerned in a particular country, not only the actual fact of living in a given place, but also the intention of thereby achieving the continuity which stems from the course of normal social relations" (citing *Borbely v. Commission of the European Communities*, (Case F-126/05) 2007 WL 98303, (CFI 2007)).

In determining whether an individual debtor should seek protection in the United States or in another country, it is necessary to examine the types of assets and liabilities that the individual has and then to ascertain whether the other possible country for filing has adopted the Model Law, and if not, the type of cross-border bankruptcy law that it does have.⁴² Furthermore, counsel needs to remain cognizant of the fact that section 1501(c) identifies the entities and individuals to which chapter 15 will not apply. Paragraph (3) of subsection (c) provides that chapter 15 does not apply to an individual, or to an individual and such individual's spouse, who have *debts within the limits specified in section 109(e)* and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States. The House report on Chapter 15 explains:

Section 1501...largely tracks the language of the Model Law with appropriate United States references. However, it adds in [Model Law] subsection (3) an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.

The reference to section 109(e) essentially defines "consumer debtors" for purposes of the exclusion by incorporating the debt limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States. This ensures that residents of other countries will not be able to manipulate this exclusion to avoid recognition of foreign proceedings in their home countries or elsewhere.

H.R. REP. No. 109-31, pt. 1, at 169-70 (2005).

Finally, a consumer lawyer considering filing a Chapter 15 for an individual should also consider the potential debtor's immigration status and the implications that statements made

⁴² For an updated list of countries which have adopted the Model Law, see United Nations Commission on International Trade Law, Status of Model Law on Cross-border Insolvency, http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html (last visited April 20, 2009).

during the bankruptcy process could have on that status and coordinate efforts with the potential debtor's immigration counsel to be certain that all filings are accurate, consistent and in the debtor's best interests.

III. **JUDICIAL AND OTHER CROSS-BORDER COOPERATION SANCTIONED BY CHAPTER 15**

As noted, an important goal of Chapter 15 is to sanction, and even foster, cross-border cooperation between courts and insolvency estate representatives, such as trustees and administrators. Thus, Chapter 15 requires that the court cooperate with a foreign court or a foreign representative, either directly or through the trustee, to the maximum extent possible.⁴³

Cooperation can include,

- (1) appointment of a person or body, including an examiner, to act at the direction of the court ;
- (2) communication of information by any means considered appropriate by the court;
- (3) coordination of the administration and supervision of the debtor's assets and affairs;
- (4) approval or implementation of agreements concerning the coordination of proceedings; and
- (5) coordination of concurrent proceedings regarding the same debtor.⁴⁴

The court is also entitled to communicate, request information, or request assistance directly from a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.⁴⁵ If authorized by the court and subject to the court's supervision, the trustee is also entitled to communicate directly with a foreign court or foreign representative.⁴⁶

⁴³ 11 U.S.C. § 1525(a).

⁴⁴ 11 U.S.C. § 1527.

⁴⁵ 11 U.S.C. § 1525(b).

⁴⁶ 11 U.S.C. §1526(b).

As an example, the Lehman Brothers insolvency proceedings involve assets and active proceedings in more than fifteen countries and dozens of separate cases. See Appendix Tab 4 which is a map identifying the locations of the pending proceedings in Lehman.⁴⁷ The chaos, inefficiencies, and reduced return to creditors that follows from scattered proceedings is incredible. While the Lehman cases present the most difficult to organize to date, the potential for diminished distributions is no less when a multiplicity of proceedings are in play with smaller companies.

The seminal case discussing cross-border judicial cooperation is *In re Maxwell Communication Corp.*, where Judge Brozman and Justice Hoffman in Great Britain cooperated by authorizing the examiner and the administrators to coordinate their efforts pursuant to an approved agreement between them.⁴⁸ Much has been written about that cooperation as precedent. In recognition that there were significant hurdles impeding court-court communication, beginning in 2000, members of the American Law Institute and the International Insolvency Institute began to prepare a model protocol and guidelines for judicial communication and cooperation. By way of example, in some jurisdictions, courts or administrative bodies charged with oversight of insolvency proceedings believed that they lacked authority and/or were barred from communicating with other courts. These types of impediments led the drafters of the Model Law to include provisions authorizing and encouraging court-to-court communication, and these provisions were subsequently included in

⁴⁷ Tab 4 also contains a map identifying the locations of operations related to LyondellBasell which is now subject to Chapter 11 proceedings in New York. To date no foreign proceedings have been filed in the Lyondell case where a TRO entered in the United States in an attempt to prevent the filing of foreign proceedings by bondholders. In late April 2009, many of Lyondell's foreign affiliates filed their own Chapter 11 proceedings in the United States.

⁴⁸ *In re Maxwell Communication Corp.*, 170 B.R. 800, 802 (Bankr. S.D.N.Y. 1994).

Chapter 15. The guidelines and for protocol adopted by the two organizations is available at: www.ali.org/doc/Guidelines.pdf.⁴⁹ Copies of a protocol adopted in the Lehman cases is at Tab 5 of the Appendix.

IV. **A BRIEF INTRODUCTION TO THE EUROPEAN UNION INSOLVENCY REGULATION**

While a thorough review of the EU Insolvency Regulation is well beyond the scope of these materials, it is important for a practitioner dealing with a Chapter 15 issue involving a European entity to be aware of the EU Insolvency Regulation's existence, and to understand that the regulation could impact Chapter 15 cases involving debtors with European operations.

The EU Insolvency Regulation traces its origins to a draft convention proposed in 1982. That convention was the culmination of eleven years of work aimed at remedying the fact that the existing the Brussels Convention explicitly excluded reference to, and did not apply to, judgments rendered in insolvency proceedings.⁵⁰ Generally, the Brussels Convention only addressed traditional judgments between identified parties. The complexities of addressing general insolvency proceedings proved too great.

Though the early proceedings on the adoption of the EU Insolvency Regulation were filled with hope of a true “universalist”⁵¹ European treaty (i.e., one that provided a singular

⁴⁹ The International Insolvency Institute maintains copies of protocols on its website www.iiiglobal.org. The link to the protocols is: <http://www.iiiglobal.org/component/jdownloads/?task=viewcategory&catid=395> (last visited April 22, 2009).

⁵⁰ Bankruptcies and other proceedings related to the winding up of insolvent companies were excluded from the Convention on Jurisdiction and the Enforcement of Judgments and Civil and Commercial matters signed in Brussels in 1968 (the 1968 Brussels' Convention”).

⁵¹ A true “Universalist” approach to cross-border insolvency proceedings would allow one court to administer assets scattered across the globe or even in the case of a satellite company like that at issue in *In re Satelites Mexicanos, S.A. de C.V.*, United States Bankruptcy Court, S.D. NY. LA. No. 06-11868, in space. In contrast, a “territorialist” approach would allow local creditors to seize local
(Footnote continued on next page)

approach to substantive matters related to insolvencies in the European Union), it became clear that the procedural mechanisms would be the primary focus of the agreement, and questions of law concerning substantive issues of reorganization would be left to the law of each forum.⁵²

The EU Insolvency Regulation's reliance on the concept of COMI is the single most important feature for practitioners in the United States to be aware of. In essence, each EU member has agreed to defer to the courts of the jurisdiction where the debtor has its COMI for procedural issues and some substantive issues. As a result, since the Regulation's adoption, there has been a tremendous amount of litigation in Europe over the meaning of COMI. Hence, these decisions should be reviewed by any lawyer in the United States confronted with a difficult issue involving the determination of a debtor's COMI.

(Footnote continued from previous page)

assets for their benefit and even to the detriment of other creditors. For concise summary of universalism and territorialism *see* J. Lawrence Westbrook, "Multi-national Enterprises in General Default; Chapter 15, the ALI Principles in the EC Insolvency Regulations," 76 AM. Bankr. L.J. 1.

⁵² *See e.g.*, Bob Wessels, "International Jurisdiction To Open Insolvency Proceedings In Europe. In Particular Against (Groups Of) Companies" at 3, available at <http://www.iiiglobal.org/country/ecropen-union.html> visited August 20, 2008 and earlier. For an overview of the history and the current text of the EU Regulation, *see* Ian F. Fletcher, "The European Union Regulation on Insolvency Proceedings," reprinted in INSOL INTERNATIONAL, CROSS-BORDER INSOLVENCY: A GUIDE TO RECOGNITION AND ENFORCEMENT, 15-45 (2003).

USEFUL SOURCES AND LINKS

1. www.chapter15.com Website tracking all Chapter 15 cases.
2. www.iiiglobal.org Website of the International Insolvency Institute.
3. www.insol.org Website for INSOL International.
4. www.ali.org/doc/Guidelines.pdf Links to Protocols adopted in various cases
5. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT, U.N. Gen. Assembly, UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997), *available at* <http://www.uncitral.org/uncitral/en/commission/sessions/30th.html>. Indispensible source for preparing to litigate a Chapter 15 issue.
6. www.uncitral.org/uncitral/en/publications/bibliography_monthly.html UNCITRAL website containing a bibliography related to the Model Law.

APPENDIX

1. Chapter 15 Text.
2. Sample Verified Petition and Affidavit in Support of Recognition from Laurence, Scott & Electromotors case.
3. Sample Recognition Order from Laurence, Scott & Electromotors case.
4. Map showing locations of proceedings in Lehman and facilities in Lyondell cases.
5. Protocol for Lehman.

ACC Extras

Supplemental resources available on www.acc.com

Cross-Border Restructuring in the Energy Industry: An Overview of Canadian Insolvency Law.

Webcast. August 2009

<http://www.acc.com/education/webcasts/canadianinsolvencylaw.cfm>

Global Insolvency.

Program Material. December 2006

<http://www.acc.com/legalresources/resource.cfm?show=20188>

European Briefings: Insolvency.

ACC Docket. December 2006

<http://www.acc.com/legalresources/resource.cfm?show=14576>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.