

Chapter 15 Update

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Published Chapter 15 Cases In 2014

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1. **In re: Fairfield Sentry Limited**, 768 F.3d 239 (2d Cir. 2014)(Foreign debtor's claim against domestic SIPA liquidation estate was subject to Section 363 as a "transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States" under Section 1520(a)(2) because, applying definition in Section 1502(8), such claim was located in New York as it was subject to attachment or garnishment. Need for comity to BVI Court was unclear in light of statements by BVI Court and was limited by the express provisions of Section 1520(a)(2)).
2. **Coinlab v. MT Gox KK**, 513 B.R. 576 (W.D. WA 2014)(District Court stayed lawsuit against Chapter 15 debtor and its non-debtor parent).
3. **Hemlock Semiconductor Corp. v. Global Sun Limited**, 2014 WL 1464454 (E.D. Mich. 2014)(District Court refused to stay lawsuit against Chapter 15 debtor's co-defendant).
4. **Duff & Phelps, LLC v. Vitro S.A.B. De CV**, 18 F. Supp. 3d 375 (S.D.N.Y. 2014)(Court stayed discovery for period of time to provide Chapter 15 debtor opportunity to obtain ruling from Mexican bankruptcy court that transaction fee, contingent at time of Mexican petition and thus dischargeable under Mexican bankruptcy law, was actually discharged in Mexican proceeding).
5. **In re: Fairfield Sentry Limited**, 2014 WL 112329 (S.D.N.Y. January 8, 2014)(Court withdrew reference to consider issue of whether Chapter 15 debtor could assign certain litigation claims to SIPA trustee).
6. **In re: China Medical Technologies, Inc.**, 2014 WL 7141867 (Bankr. S.D.N.Y. 2014)(Gerber, J.)(Court applied "Touching Base" doctrine in conflict of law analysis for privileges, found that U.S. law applied to the scope of privileges for US law firm and US advisor to audit committee of Chapter 15 debtor rather than Cayman law where foreign

proceeding was pending and Chapter 15 debtor was incorporated, and held that audit committee was independent from Chapter 15 debtor and thus owned the privileges despite the subsequent bankruptcy).

7. **In re: Suntech Power Holdings Co., Ltd.**, 2014 WL 6152761 (Bankr. S.D.N.Y. November 17, 2014)(Bernstein, J.)(Court granted foreign main recognition to Cayman bankruptcy and refused to transfer venue to California where (a) bank account opened in New York by agent for purpose of satisfying Section 109(a) requirements, (b) bank account was principal asset of Chapter 15 debtor in the U.S. and thus 28 USC 1410(1) venue was established, (c) Chapter 15 debtor was not authorized to and did not operate in California and therefore did not manipulate venue by grabbing it from California, (d) Chapter 15 debtor conducted no business in Cayman at time Cayman bankruptcy commenced but post-petition activities of foreign representatives had effect of transferring COMI to Cayman by the time Chapter 15 petition was filed, (e) Chapter 15 debtor did not manipulate COMI in bad faith, (f) permissive transfer of venue is applicable to properly venued Chapter 15 case but facts did not support transfer of venue to California because NY Court had greater interest given that Chapter 15 debtor was also subject of a pending involuntary petition in NY and convenience of parties did not favor California).

8. **In re: Rede Energia S.A.**, 515 B.R. 69 (Bankr. S.D.N.Y. 2014)(Chapman, J.)(Brazilian Plan enforced as “appropriate relief” under Section 1521 and met requirements of Section 1522. Court held Section 1507 factors were met because (a) claimants were treated justly by receiving information, having opportunity to present claims and having opportunity to be heard and raise objections, (b) US creditors were not singled out for disparate treatment, (c) no fraudulent or preferential dispositions were made in the plan, and (d) the distribution scheme in the plan is substantially in accordance with US law. Court rejected Section 1506 public policy arguments holding that (i) marketing of assets and short term lock-up agreement were not inappropriate, (ii) substantive consolidation in Brazilian Plan was not inappropriate, (iii) decision that indenture trustee could not vote in lieu of individual noteholders was not contrary to US law and was irrelevant factually, (iv) ruling that shareholder who exercised put option to become creditor just prior to bankruptcy could vote for the plan did not violate due process, (v) distribution scheme under Brazilian Plan though not identical to US law was not manifestly contrary to US public policy, and (vi) differing treatment to certain creditors because of government regulation was justified.

9. **In re: Octaviar Administration Pty Ltd.**, 511 B.R. 361 (Bankr. S.D.N.Y. 2014)(Chapman, J.)(Court recognized Australian bankruptcy as foreign main proceeding despite dismissal of prior Chapter 15 due to lack of property in the US under Section 109(a). Court held that Chapter 15 debtor had intangible property in the US in the form of causes of action already pending and undrawn \$10,000 retainer in possession of US counsel.)

10. **In re: Transbrasil S.A. Linhas Aereas**, 2014 WL 1655990 (Bankr. S.D.N.Y. April 25, 2014)(Cristol, J.)(In dispute regarding unsealing of discovery materials in Chapter 15 case, Court acknowledged granting comity to Brazilian bankruptcy court's order sealing investigation by trustee in Brazil).
11. **In re: Cozumel Caribe, S.A. de C.V.**, 508 B.R. 330 (Bankr. S.D.N.Y. 2014)(Glenn, J.)(Court denied motion to vacate recognition order under Section 1517(d) over arguments that continued recognition was manifestly contrary to US public policy because US creditor alleged that foreign representative improperly listed US creditor in Mexican bankruptcy case, obtained comity of a Mexican order staying action against the Chapter 15 debtor's principals, has caused undue delay in the Mexican bankruptcy which allowed principal of debtor to try to spinoff assets, and failed to comply with reporting requirements under prior order and Section 1518).
12. **In re: Irish Bank Resolution Corporation Limited**, 2014 WL 1759609 (Bankr. D. Del. 2014)(Sontchi, J.)(Order approving sale in Chapter 15 case).
13. **In re: Soundview Elite, Ltd.**, 503 B.R. 571 (Bankr. S.D.N.Y. 2014)(Gerber, J.)(Court appointed Chapter 11 trustee, held US automatic stay came into being first but granted retroactive stay relief to filing of Cayman winding up, and directed protocol between Chapter 11 trustee and Cayman liquidators. Court provided extensive discussion of whether Chapter 15 case would be advantageous and of the interplay between Chapter 15 and 28 USC §1782.)