

Beyond the “Four Corners” of the Document: Practical Considerations for Creditors to Obtain Debt Recovery in the Caribbean

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Practical Considerations for Debt Recovery in the Caribbean

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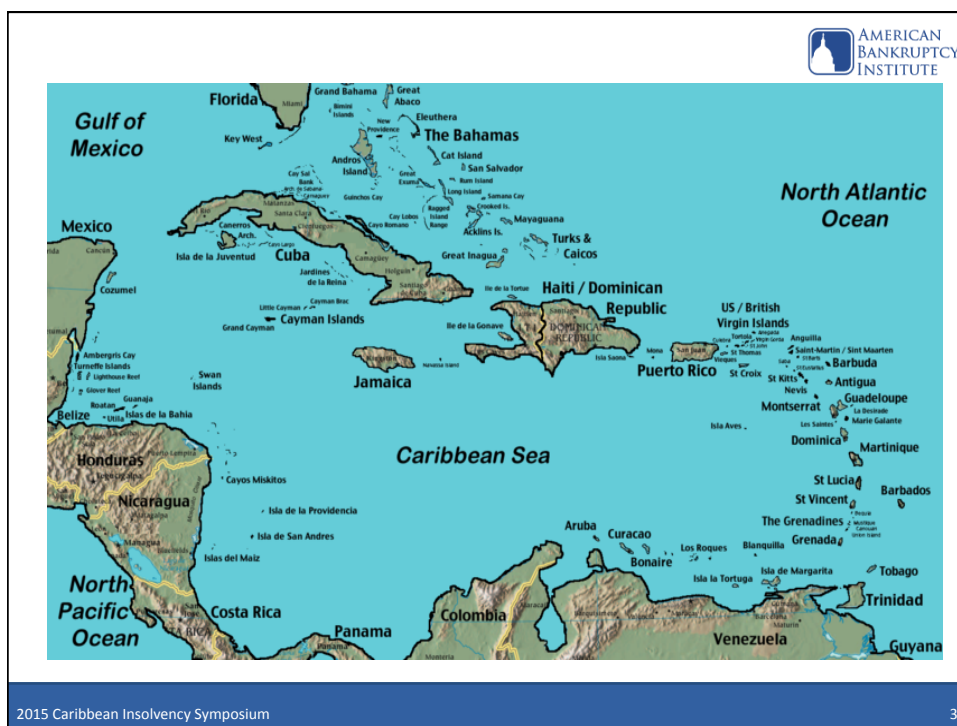
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Case Study #1: Trinidad Cement (TCL)

Company History

- Founded 1954 in Trinidad & Tobago as regional manufacturer and distributor of cement and cement products
- Operated principal plant in Trinidad and group subsidiary operations in Anguilla, Barbados, Guyana, and Jamaica
- Publicly held, with sizeable minority shareholders CEMEX, NIB (T&T national pension scheme), UTC (mutual fund), TCL ESOP
- Capitalized with about \$263 million US “stew” of bank debt bonds, trade credit at multiple levels; secured and unsecured; from roughly 30 local, regional, and international creditors
- Some creditors extended credit to one subsidiary, others to multiple ones



TCL (Continued)

- Company was on debt fueled expansion, and defaulted on its obligations following sudden and prolonged construction slow down brought about by the '08/09 financial crisis
- Union staged 90 day strike early in 2012 to protest wage offer
- Restructured in 2012, out of court, and with advice from US based turnaround consulting firm, with management intact
- Minority shareholders, including Republic Bank, were unhappy that management was unchanged



TCL (Continued)

Minority Shareholders and Creditors mobilize

- Minority shareholders propose nomination of new board members, with support from creditors
- Management ignores request and Minority group bring an action arguing they have right to vote new directors
- Management files argues there is nothing to warrant court interference, and that the law suit was orchestrated by Republic Bank , trying to have board members appointed in order to enhances its own chances of recovery
- Minority group wins injunction to block annual meetings set for July 2013, and July 2014, subsequently succeeds in getting special meeting called in August 2014 , and elects 7 new directors to the 11 member board



TCL (Continued)

Aftermath:

- CEO suspended by board for 30 days and subsequently terminated
- TCL lawsuits dismissed, and company ordered to pay costs
- New management misses debt payment in Sept, 2014 and announces a “standstill”
- Company begins work on new restructuring Oct 2014



Case Study #2: Cap Cana

Background

- Cap Cana, owned by Dominican Republic nationals, was developing a large resort property in the DR
- Cap Cana entered into, among others, a contract with Wyndham Hotels for construction of a new hotel to be managed by Wyndham, as well as a license agreement with Trump to develop a number of other properties
- Cap Cana financed its activities by issuing secured bonds, which were exchanged for new bonds after the global financial crisis
- Wyndham agreed to provide \$3.3. million in upfront construction funding, together with another \$2.5 million to cover pre-opening costs



Cap Cana (Continued)

- Cap Cana principals personally guaranteed to repay the upfront monies to Wyndham if they failed to complete the project by an “outside date”

The aftermath:

- despite numerous extensions, Cap Cana fails to complete the project
- Wyndham brings an action in US court (New York), alleging fraud, and suing under personal guarantees
- Wyndham successful in getting a judgment
- Trump sues to recover advance under license agreement
- Cap Cana resorts to exchange of land in order to settle various outstanding claims (pun intended)



Summary of Considerations

- Island populations are relatively small
- Each island has its own set of laws and regulations (e.g. Trinidad based on British system, St. Lucia on Quebec laws that were in place in 1876)
- Things take longer to get resolved than in the US or Canada
- Generally the only insolvency that is public is a court appointed receiver or liquidator
- A negative impression of the business is quickly created if a Receiver is appointed



Summary of Considerations

- Restructuring is often out of court, meaning more of a “free for all”
- Government pension schemes are often creditors and owners and will be sensitive to demands and claims
- The region is generally creditor friendly. For example, if a hedge fund buys up all outstanding debt, as creditor it can successfully force liquidation of the company
- Since few loans are documented under US or Canadian law, there is often no US or Canadian based action to be taken
- Personalities matter – know who you’ re dealing with on the other side