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2022 Caribbean Insolvency Symposium

Update on Chapter 15 and Other Hot Topics in Cross-Border Insolvency Cases

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Notable Chapter 15 Decisions in 2021

Set forth below are notable decisions rendered in chapter 15 cases to date in 2021. Specifically, the following decisions include all reported and selected unreported decisions issued in 2021, which among other things, (a) include written opinions with holdings not limited to the facts of the specific case or (b) address issues that often arise in large or complex insolvency proceedings (e.g., third-party releases; extension of the automatic stay to non-debtor entities).

Case Name	Date of Chapter 15 Filing	Relevant Jurisdictions	Key Holding/Findings
<i>In re Zawawi</i> , No. 6:21-BK-01251-LVV, 2021 WL 3890597 (Bankr. M.D. Fla. Aug. 31, 2021)	March 24, 2021	United Kingdom; Middle District of Florida	Foreign representative is not required to demonstrate that a foreign debtor meets the eligibility requirements set forth in Bankruptcy Code section 109, the section of the Bankruptcy Code governing who may be a debtor under title 11, to obtain recognition of a foreign proceeding under Bankruptcy Code section 1517.
<i>In re Culligan Ltd.</i> , No. 20-12192 (JLG), 2021 WL 2787926 (Bankr. S.D.N.Y. July 2, 2021)	September 17, 2020	Bermuda; Southern District of New York	Overruling minority shareholders' objection, finding that the public policy exception under Bankruptcy Code section 1506 does not prohibit recognition in situations where the debtor has engaged in bad faith, and granting recognition where foreign representatives admitted that entire purpose of the chapter 15 filing was to prevent continuation of shareholders' derivative action in New York
<i>In re Condor Flugdienst GmbH</i> , 627 B.R. 366 (Bankr. N.D. Ill. 2021)	October 2, 2020	Germany; Northern District of Illinois	Providing post-recognition relief under Bankruptcy Code sections 1521 and 1522 in the form of an order granting full force and effect to German confirmation order, including permanent stays of litigation in the United States, finding that post-recognition relief requested by the foreign representatives of a non-U.S. debtor need not be identical to that which is available under law of the United States and specific U.S. due process requirements need not be duplicated in a foreign insolvency proceeding in order for that proceeding to be fair, and for creditors and other interest holders to be sufficiently protected under Bankruptcy Code section 1522.

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<i>In re Transbrasil S.A. Linhas Aereas</i> , 860 F. App'x 163 (11th Cir. 2021)	April 7, 2011	Brazil; Southern District of Florida	Bankruptcy court's discovery orders were not final orders and thus were not immediately appealable, as orders were "preliminary step" to obtain information for another proceedings, here, implementation in chapter 15 case of Brazilian order freezing the plaintiff-appellants assets; rejecting appellants' argument that discovery orders in chapter 15 cases are final because chapter 15 proceedings are, by definition, ancillary proceedings to foreign insolvency proceedings and thus bankruptcy court has nothing left to do after granting or denying discovery. Also distinguishing <i>In re Barnett</i> , 737 F.3d 238 (2d Cir. 2013), where there, no proceedings other than discovery were contemplated in the chapter 15 cases.
<i>In re Bankr. Est. of Norske Skogindustrier ASA</i> , 629 B.R. 717 (Bankr. S.D.N.Y. 2021)	November 16, 2018	Norway; Southern District of New York	Section 108(a), the tolling provision of the Bankruptcy Code, applied in a Chapter 15 case in order to extend the time for the foreign representative of a company that was the subject of liquidation proceedings pending in Norway to bring fraudulent transfer avoidance claims under Norwegian law, upon which the statute of limitations had not yet run as of the entry of the recognition order.
<i>In re PT Bakrie Telecom Tbk</i> , 628 B.R. 859 (Bankr. S.D.N.Y. 2021)	January 29, 2018	Indonesia; Southern District of New York	Bankruptcy court could not grant request for additional post-recognition relief, in form of enforcement of third-party release, absent some rudimentary record as to the basis for the release and as to the procedural fairness of the underlying process, where, court found the record deficient as to whether the Indonesian court had considered the rights of creditors in connection with the third-party release, and it was unknown whether creditors were heard, or even had the ability to be heard. Record also did not provide any basis or justification to support a third-party release.
<i>In re Luckin Coffee Inc.</i> , No. 21-10228 (MG) (Bankr. S.D.N.Y. Mar. 30, 2021)	February 5, 2021	Cayman Islands; Southern District of New York	Bankruptcy court granted recognition of foreign proceedings but declined to, at time of recognition, grant requested extension of stay under Bankruptcy Code sections 1521 and 1522 to non-debtors former directors and officers who were defendants in pending litigation, where, although debtors had indemnification

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			obligations to former directors and officers, permissibility of extension of stay as an exercise of comity was unclear as Cayman Islands court had not and could not extend stay in foreign proceedings to non-debtors under applicable law. The stay issue remains under consideration by the Court in the chapter 15 cases.

Faculty

Leyza F. Blanco is a shareholder with Sequor Law in Miami, where she focuses her practice on a wide range of litigation and insolvency matters, including out-of-court workouts, debt restructuring, and the representation of creditors, receivers, assignees, trustees and debtors in bankruptcy and general commercial litigation matters in state and federal courts. Her practice in the area of restructuring and creditors' rights is currently focused on complex business and cross-border bankruptcy and commercial litigation matters. Ms. Blanco has served in several roles, including examiner, receiver and special master in federal and state court proceedings, and has served as a neutral arbiter in an arbitration proceeding. She currently serves as chair of IWIRC and past chair of the Florida Bar's Business Law Section, and as Special Projects Director for ABI's Asset Sales Committee. Ms. Blanco is a Fellow of the American College of Bankruptcy and also served past chair of the IWIRC Florida Network and past-president of the Bankruptcy Bar of the Southern District of Florida. Her other notable activities include serving as lead adjunct professor at the Florida International University College of Law, for which she launched its bankruptcy clinical program. Ms. Blanco has been recognized in *Chambers and Partners U.S.A.* She received her B.A. from Miami College of Arts & Sciences and her J.D. *magna cum laude* from the University of Miami Law School, where she was articles and comments editor for the *Inter-American Law Review* and a member of the Order of the Coif.

Hon. Erik P. Kimball is a U.S. Bankruptcy Judge for the Southern District of Florida in West Palm Beach, appointed in 2008. Prior to his appointment to the bench, he was a member of the Commercial Law and Bankruptcy Department at Hale and Dorr (now WilmerHale) in the firm's Boston office, where he specialized in corporate bankruptcy, workouts and debt restructuring, and spent considerable time on pro bono representation of individual debtors. Judge Kimball left Hale and Dorr to become a vice president at Colonial Management Associates Inc., a Boston-based mutual fund advisor, where he oversaw all fixed-income defaults for the firm's municipal department. Thereafter, he was a shareholder with the Florida firm Nabors, Giblin & Nickerson, P.A., where his practice focused on representing institutional investors and indenture trustees in connection with defaults of publicly traded debt securities. He later returned to Boston as a vice president in the Investment Department at Columbia Management Advisors, an affiliate of Bank of America, where he supervised all fixed-income defaults and assisted in the management of its Municipal Department. From 2003 until his judicial appointment in 2008, Judge Kimball was a shareholder at Akerman Senterfitt in the firm's Orlando office, where he represented secured creditors, indenture trustees, institutional investors, corporate debtors and other parties in bankruptcy, receivership and debt-restructuring matters. Prior to his appointment, Judge Kimball was a member of the Board of Governors and a member of the Executive Committee of the National Federation of Municipal Analysts, an organization of more than 2,000 municipal credit analysts whose primary goal is to provide educational programs for municipal finance professionals. During his long association with the NFMA, he assisted in writing and presenting on numerous topics relevant to municipal finance. Judge Kimball is a recipient of the Denis Maguire Pro Bono Award of the Boston Bar Association. He received his B.A. from the University of Massachusetts at Amherst in 1987 and his J.D. from Boston College Law School in 1990.

Morgan L. Patterson is a partner with Womble Bond Dickinson in Wilmington, Del., where her practice focuses on corporate bankruptcy and creditors' rights in complex chapter 11 proceedings. She primarily practices in the bankruptcy court in Wilmington, Del., and has broad experience representing debtors, creditors' committees, lenders, bondholders, secured and unsecured creditors, liquidation trustees, landlords, asset-purchasers and other interested entities in various bankruptcy reorganization and liquidation proceedings. Ms. Patterson's bankruptcy work includes all matters of litigation and transactions, including involuntary petitions, avoidance actions, relief-from-stay proceedings, trustee motions, the sale and purchase of assets, executory contracts and lease issues, post-petition financing, disclosure statements, plan confirmation, and representing liquidating trustees and plan administrators in the winding down of estates. She also has expertise with cross-border insolvency proceedings, specifically with respect to the consummation of large cross-border asset sales. Ms. Patterson is the membership chair for the International Women's Insolvency & Restructuring Confederation's Delaware Chapter, and is a member of ABI, the Federal Bar Association, the Delaware Bankruptcy Inn of Court and the Delaware State Bar Association. She was selected as one of the "Delaware Rising Stars" by *Super Lawyers* in Bankruptcy from 2018-19. Ms. Patterson received her B.A. *magna cum laude* in 2005 from Temple University and her J.D. *magna cum laude* in 2009 from Widener University School of Law, where she was Bluebook editor of the *Delaware Journal of Corporate Law*.