JENNER&BLOCK

Recent Developments in Bankruptcy Law, April 2025

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2.1.b **Section 546(e) safe harbor does not prevent avoidance of initial transfers based on subsequent transfers.** The debtor defrauded its investors by selling them participation interests in bogus loans, which it purchased with the investors' money from an affiliate, who then used the proceeds to pay the affiliate's noteholders, through the indenture trustee for the notes. The debtor was placed into liquidation in the Cayman Islands. The Cayman Liquidators brought avoiding power and other claims under New York law against the indenture trustee and the noteholders. Some claims were assigned to the Liquidators by the investors; some were brought in the debtor's name; some were brought in their capacity as Liquidators under Cayman law. Section 546(e) prohibits a trustee from avoiding any transfer of a settlement payment in connection with a securities contract. In a transaction that has several intermediate steps, the court must determine which "overarching transfer" is to be avoided. If the overarching transfer is not a settlement payment, then intermediate transfers that qualify for the safe harbor do not insulate the overarching transfer from avoidance. Here, the transfer to be avoided was the debtor's payment to the affiliate. The affiliate used the transferred funds to pay the indenture trustee and the noteholder. That payment was likely safe-harbored. However, the court should not look at subsequent transfers, such as the transfers from the affiliate to the indenture trustee and the noteholders, to determine whether the safe harbor protects the initial transfer. Nor does the debtor's payment to the affiliate knowing that the affiliate intended to pay the indenture trustee and noteholders make the initial transfer one "in connection with" a securities contract. Finally, the safe harbor does not apply to claims the Liquidators obtained by assignment from the investors, who are themselves not restricted by section 546(e). Therefore, the court denies the motions to dismiss those claims. *IIG Global Trade Fin. Fund Ltd. v. Int'l Inv. Grp (In re IIG Global Trade Fin. Fund Ltd.)*, 666 B.R. 38 (Bankr. S.D.N.Y. 2024).

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4.1.b **Court dismisses second chapter 11 case to modify debt created in first case.** The debtor confirmed a chapter 11 plan that modified the creditor's original secured debt. The reorganized debtor defaulted on the modified debt three years later and filed a second chapter 11 case before the first case was closed under section 350. Section 1127 permits modification of a confirmed plan only before substantial consummation. A new chapter 11 plan would, in effect, modify the prior chapter 11's confirmed plan, which would violate section 1127. Changed circumstances do not permit modification in violation of section 1127. Therefore, the court concludes the second chapter 11 case was filed in bad faith and dismisses the case. *In re SC SJ Holdings LLC*, ___ B.R. ___, 25-10189-JTD (Bankr. D. Del. Jan. 30, 2025).

4.2 Involuntary Petitions

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5. CHAPTER 11

5.1 Officers and Administration

5.1.a **Section 107 displaces the common law right of access to bankruptcy court documents.** The successor to the debtor under the plan sued a third party in the bankruptcy court. During discovery, they agreed to a protective order, under which each party could designate documents as confidential, subject to challenge in the bankruptcy court. The plaintiff sought to use some of the documents the defendant had designated as confidential in litigation and filed them under seal. The plaintiff then sought to use the documents in state court litigation and sought to unseal them in the bankruptcy court. There is a common law right of access to documents used in a federal judicial proceeding, and documents may be sealed only if disclosure would cause a clearly defined and serious injury. Section 107 governs public access to documents in a bankruptcy court. It requires the court to "protect an entity with respect to a trade secret or confidential research, development, or commercial information" and "protect a person with respect to scandalous or defamatory matter." It differs from the common law in two respects. The protection of trade secrets and commercial information is broader than the information protected by the common law, which requires a showing that disclosure will work a clearly defined and serious injury. Second, protection is mandatory where the risk of competitive injury is action and objection, not speculative or subjective. The bankruptcy court may not weigh the interest in secrecy against the presumption of public access. *Mesabi Metallics Co. LLC v. Cleveland-Cliffs, Inc. (In re ESML Holding Inc.)*, ___ F. 4th ___, 2025 U.S. App. LEXIS 8983 (3d Cir. Apr. 16, 2025).

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5.5.a **Subchapter V plan may extend automatic stay to protect a third party for the plan's duration.** The subchapter V debtor had obtained an extension of the automatic stay to protect its principal because of the risk of interference with the debtor's business operations. The court determined that enforcement of a prepetition judgment against the principal would impact his efforts on the debtor's behalf, the debtor was likely to reorganize but would suffer irreparable harm without the stay, and the balance of harms weighed in favor of the stay extension. The debtor proposed a plan that would extend the stay for the full five-year life of the plan. One class did not accept the plan. Section 1191 requires as a condition to confirmation of a nonconsensual plan that the plan be fair and equitable with respect to each class of claims or interests, including that the debtor devote at least its projected disposable income to the payment of creditor for three to five years. A court may extend the automatic stay to a non-debtor where pursuing the claim against the non-debtor will have an immediate adverse economic effect on the debtor's estate. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), determined that the Code does not permit a plan to include a nonconsensual third-party release. However, *Purdue* did not prohibit an extension of the automatic stay where necessary to a plan's success. Here, for the same reasons supporting the stay extension at the commencement of the case, the court may extend the stay during the plan's five-year duration. *In re Hal Luftig Co., Inc.*, ___ B.R. ___, 2025 Bankr. LEXIS 399 (Bankr. S.D.N.Y. Feb. 24, 2025).

6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Statute of limitations defense is measured as of the petition date.** A creditor asserted a personal injury claim against the debtor that arose in June 2017. The applicable two-year statute of limitations would have run after the November 2018 petition date. The court set a bar date of May 2019. The creditor timely filed a proof of claim. The debtor confirmed a plan in October 2020. In February 2023, the trustee moved for summary judgment to disallow the claim. The court denied the motion in April 2023. Section 502(b)(1) requires the court to "determine the amount of [a] claim … as of the date of the filing of the petition [and to] allow such claim … except to the extent that … such claim is unenforceable" under applicable nonbankruptcy law. The date reference applies not only to determination of the amount of the claim but also to its enforceability. Therefore, whether a claim is time barred is determined as of the petition date, not as of the bar date or the date the claim is litigated. Section 108(c)(2) extends a statute of limitations that applies to a creditor's claim to 30 days after notice of termination of the automatic stay. This provision protects a creditor who must pursue a claim against the debtor after bankruptcy, such as a claim that is nondischargeable, but it does not imply that a creditor is required to bring a nonbankruptcy action within that 30-day period to preserve the allowability of a claim in bankruptcy. Therefore, the creditor's failure to bring a state court action on the claim after plan confirmation does not provide a ground for objection to the claim. *In re Promise Healthcare Group, LLC*, 130 F. 4th 56 (3d Cir. Mar. 3, 2025).

6.1.b **Lender may apply guarantor's payment to postpetition interest first.** The trustee sold a liened asset for less than the senior secured creditor's claim. The creditor collected most of the balance owing on the claim from a guarantor. After paying costs of sale, the trustee had additional funds on hand. If the senior creditor applied the guarantor's payment to principal, then no principal would be owing, and any payment by the trustee to the senior creditor would be of postpetition interest. If the senior creditor applied the guarantor's payment to postpetition interest, principal would still be owing, indirectly permitting the senior creditor to collect postpetition interest, which is prohibited by section 502(b)(2). That prohibition does not apply to third parties. Therefore, section 502(b)(2) is not implicated when the creditor receives post-petition interest

from the guarantor. *HAR-BD, LLC v. DBD Credit Funding, LLC (In re TBH19, LLC)*, ___ B.R. ___, case no. 2:24-cv-01473-HDV (C.D. Cal. Feb. 7, 2025).

6.1.c **Carve-out does not reduce claim**. The trustee sold a liened asset with an agreement from the senior secured lender to a carve-out for costs of sale. The sale proceeds were sufficient to pay the junior secured lender only if the senior lender was entitled to recover the carve-out amount from the sale proceeds. Because the carve-out is akin to costs of sale the creditor would have incurred if it sold the asset itself, it is not deducted from the claim. *HAR-BD, LLC v. DBD Credit Funding, LLC (In re TBH19, LLC)*, ___ B.R. ___, case no. 2:24-cv-01473-HDV (C.D. Cal. Feb. 7, 2025).

6.1.d **Company becomes a WARN Act liquidating fiduciary when it ceases any revenue generating activity.** The debtor needed new financing, which it was seeking. It also was attempting to implement major changes in its business practices, which would have required union approval, which it was also seeking. The union negotiations were difficult, reflecting the brinkmanship between the debtor and the union that had occurred in many prior negotiations. Ultimately, the negotiations were unsuccessful, and the union issued a strike notice. To the debtor's and union's surprise, the strike notice caused customers to flee and the business to fail within a few days. During those few days, the debtor began an orderly shutdown. It directed employees to complete existing jobs to the extent possible and to return equipment to the debtor's yards, a process it completed three days later. It began drafting a WARN Act notice the same day. The debtor sent the notice on the fourth day, by which time it was no longer conducting its revenue-producing business but only engaging in wind-down and clean-up operations. The WARN Act's requirement of 60 days' advance notice of mass permanent layoffs is subject to a case-law exception for a liquidating fiduciary, where the business has actually stopped running its business as of the layoff date but is merely in the process of winding up its affairs and liquidating. Here, the debtor stopped being an "employer" under the WARN Act at the end of the third day. The notice requirement applies only once the employer orders a plant closing or mass layoff, not when it decides to make the order. Here, the order was given on the fourth day, after the debtor became a liquidating fiduciary, so despite the earlier decision to close, the statute did not apply. *In re Yellow Corp.*, ___ B.R. ___, 2025 Bankr. LEXIS 429 (Bankr. D. Del. Feb. 26, 2025).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.2 Third-Party Releases

8.2.a **Bankruptcy court approves opt-out third-party releases.** The debtor negotiated a prepetition restructuring support agreement that provided for third-party releases. Over 98% of the holders of the RSA classes signed on to the RSA. The non-RSA classes were unimpaired under the plan. The disclosure statement and ballot were clear in their description of the releases and of the opt-out box on the ballot. Although *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), prohibits nonconsensual third-party releases, section 1123 permits a plan to treat a consenting creditor less favorably than other creditors with claims in the same class. A creditor may manifest agreement by returning a ballot and not opting out of a third-party release where the ballot clearly explains the release and opt-out provision. The question of adequate consent to a third-party release is a federal question, but applicable nonbankruptcy contract law also supports an opt-out release. Generally, an offeree who takes the benefit of an offer with a reasonable opportunity to reject and with reason to know the offeror made the offer with the expectation of compensation is

liable to the offeror. Here, creditors are receiving the benefit of the plan, with the expectation and understanding that the releases are being requested in an opt-out form. Thus, they may be bound by failing to opt out. *In re Spirit Airlines, Inc.*. ___ B.R. ___, 2025 Bankr. LEXIS 553 (Bankr. S.D.N.Y. Mar. 7, 2025).

8.2.b **Third-party releases with a right to opt out are permissible.** The debtor confirmed a plan that provided for third-party releases by all creditors except those who opted out on their ballot. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), prohibits nonconsensual third-party releases. However, the clear disclosure of the releases and the right to opt out makes any releases by non-opting creditors consensual and therefore permissible. *Mercy Health Network, Inc. v. Mercy Hosp., Iowa City, IA*, ___ B.R. ___, 2025 U.S. Dist. LEXIS 64407 (N.D. Iowa Mar. 3, 2025).

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

9.1.a **Earned rental obligations that are payable only monthly "arise" when due, not when incurred.** The debtor leased aircraft through a broker. The broker's commission was added to the rent. The lease provided that the commission was fully earned upon signing of the lease and the payment obligation was unconditional, but it was payable only with the regular rent payments to the lessor. After its chapter 11 petition, the debtor did not pay the commission rental payments before rejection, which occurred about two years after the petition date. Section 365(d)(5) requires the debtor in possession to "timely perform all of the obligation of the debtor … first arising … after 60 days after the order for relief." The obligation to make the commission payments under the lease arises when each payment becomes due, even though the parties created an unconditional obligation to make the payments when the lease was signed. Therefore, the DIP was required to make all the commission payments until the lease rejection date. *Avianca Holdings S.A. v. Burnham Sterling & Co. LLC (In re Avianca Holdings S.A.)*, 127 F. 4th 414 (2d Cir. 2025).

10. INDIVIDUAL DEBTORS

10.1 Chapter 13

10.2 Dischargeability

10.3 Exemptions

10.4 Reaffirmations and Redemption

11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.1.a **Bankruptcy court may deny arbitration of automatic stay violation disputes.** The individual debtor brought an action against a creditor for a stay violation. The credit agreement between the debtor and the creditor provided for arbitration of all disputes. The creditor sought to compel arbitration of the stay violation proceeding. Federal law favors enforcement of arbitration agreements unless superseded by a contrary federal policy or statute. Congress intended to grant the bankruptcy courts comprehensive jurisdiction over all matters connected with a bankruptcy case, particularly core proceedings. The automatic stay is central to a bankruptcy case, and its enforcement is a key part of the Code's principal purpose to provide a fresh start. Compelling arbitration of stay disputes would threaten the bankruptcy court's authority to enforce the stay and centralize bankruptcy-related disputes in the bankruptcy court. Therefore, the

bankruptcy court has discretion to deny a motion to arbitrate a stay dispute. *Goldman Sachs Bank USA v. Brown*, ___ B.R. ___, 2025 U.S. Dist. LEXIS 48032 (W.D. Va. Mar. 17, 2025).

11.1.b **Probate exception to federal jurisdiction does not apply where the property is not subject to state court jurisdiction.** The debtor's spouse died prepetition. The trustee claimed the debtor's home transferred by intestate succession to the debtor. The debtor's adult children claimed their mother had quitclaimed the house to them before her death. The bankruptcy court has core jurisdiction to determine what property is property of the estate, but the probate exception prohibits a federal court from deciding a dispute over property that is subject to a state court probate proceeding. Because the property here was not in the custody or subject to the *in rem* jurisdiction of a state court, the probate exception did not apply. *Gold v. Williams (In re Williams)*, ___ F. Appx. ___, 2025 U.S. App. LEXIS 2934 (6th Cir. Feb. 7, 2025).

11.2 Sanctions

11.3 Appeals

11.3.a **An order denying mandatory abstention is a final, appealable order.** The bankruptcy court denied a creditor's motion for mandatory abstention from hearing a state law claim under section 1334(c)(2), which is appealable. Only a final order is appealable as of right. In bankruptcy, unlike in ordinary civil litigation, finality is based on whether the order terminates a procedural unit separation from the main case, not on whether the court has conclusively determined a substantive issue. For example, an order denying relief from the automatic stay is a final, appealable order. An order denying mandatory abstention is similar in effect and therefore a final, appealable order. *Guan v. Ellingsworth Residential Cmty. Ass'n, Inc. (In re Ellingsworth Residential Cmty. Ass'n, Inc.)*, 125 F. 4th 1365 (11th Cir. 2025).

11.4 Sovereign Immunity

11.4.a **Section 106 sovereign immunity waiver does not apply to section 544(b) action.** The trustee sued the United States under section 544(b) to avoid and recover a tax payment as a fraudulent transfer under applicable state law. Section 544(b) permits the trustee to avoid a transfer avoidable by a creditor holding an unsecured claim. A creditor holding an unsecured claim could not have avoided the transfer because the United States has sovereign immunity against such an action. Section 106(a) abrogates sovereign immunity as to any claim under section 544(b). Sovereign immunity is jurisdictional and, unless waived, deprives a court of jurisdiction to hear a case against the United States. Therefore, section 106(a) should be read only as permitting the bankruptcy courts to hear actions against the United States, not as altering the substantive rules governing an action. Because a creditor holding an unsecured claim would not be able to defeat the United States' claim of sovereign immunity, the trustee may not use section 106(a) to succeed in a claim against the United States. *U.S. v. Miller*, 604 U.S. ___, 145 S. Ct. 839 (2025).

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.1.a **Creditor's claim assignment to trustee is not champertous.** As part of a settlement of various issues with the trustee, a creditor in a Ponzi scheme case assigned to the trustee claims against a bank that the trustee alleged had facilitated the scheme. The settlement included a waiver of a portion of the creditor's claim to permit the trustee to use estate cash to pay his law firm a retainer and the trustee's agreement to share a portion of the lawsuit's proceeds with the creditor. An assignment is champertous and void where the intent to sue on the claim to obtain costs, rather than to protect an independent right, is the assignment's primary purpose. Because the assignment was part of a larger transaction that was intended for efficiency and administrative convenience in the estate's administration, the assignment was not champertous, and the trustee may proceed with the action. *Silverman v. Citibank, N.A.*, 665 B.R 206 (S.D.N.Y. 2024).

12.2 Turnover

12.3 Sales

12.3.a **Section 363(f)(5) authorizes sale free and clear of junior lien.** The debtor in possession proposed to sell real property free and clear of all claims and interests, including a junior lien that was out of the money. Section 363(f) permits a sale free and clear of claims and interests if nonbankruptcy law would permit such a sale, the interest holder consents, the interest is in the money or in bona fide dispute, or the interest holder "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." In this case, the first four conditions do not apply. The last condition should be read as employing a "realistic possibility" standard, that is, is there a realistic possibility that the holder could be compelled to accept a money satisfaction, rather than a "hypothetical" standard, that is, is there a conceivable proceeding that would satisfy the standard? A foreclosure or U.C.C. sale would satisfy the realistic possibility standard. Under such a sale, the holders of interests must accept a money satisfaction, and such sales are realistic possibilities, unlike, for example, an eminent domain sale, which is hypothetically possible but not realistic. Therefore, the court approves the sale. *In re Urban Commons 2 W. LLC*, ___ B.R. ___, 2025 Bankr. LEXIS 507 (Bankr. S.D.N.Y. Mar. 4, 2025).

12.3.b **Bankruptcy court may enjoin third parties from pursuing purchaser of property of the estate.** The debtor was subjected to numerous asbestos personal injury claims. Its insurers covered the claims, subject to a self-insured retention, until the debtor ran out of funds to pay the self-insured portion. In its bankruptcy case, the debtor in possession sold back the insurance policies to the insurers. The order approving the sale enjoined third parties from pursuing the policies or the insurers. A bankruptcy court may protect a sale of property of the estate by enjoining third parties from pursuing the asset after it leaves the estate; the value of the asset is held by the estate, and the bankruptcy case is designed to channel all claims against the debtor or relating to the asset into the bankruptcy court. *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024), addressed third-party releases only in the context of a plan, not a sale. Therefore, on the third parties' motions for a stay of the approval order pending appeal, the bankruptcy determines they have little likelihood of prevailing on the merits and denies the stay. *In re Hopeman Bros., Inc.* 667 B.R. 101 (Bankr. E.D. Va. 2025).

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.1.a **Chapter 13 trustee fee system is not unconstitutional.** A chapter 13 trustee receives a percentage of a chapter 13 debtor's plan payments as compensation. A debtor usually starts plan payments before plan confirmation. If confirmation is denied, the trustee receives no fees. The trustee must appear and be heard on confirmation. If a trustee appears and successfully objects, the trustee will receive no fees in that case. A judicial officer may not properly have a financial stake in the outcome of a proceeding. Because the trustee does not rule on confirmation but only makes a recommendation, a chapter 13 trustee is not a judicial officer. A bankruptcy trustee, including a chapter 13 trustee, is a quasi-judicial officer for purposes of obtaining judicial immunity for official acts. But that status does not change the analysis of whether a chapter 13 trustee is a judicial officer who makes judicial decisions. *Kerns v. Foss (In re Chapter 13 Trustee's Motions for Declaratory Relief Challenging the Constitutionality of 28 U.S.C. § 586(e) & 11 U.S.C. § 1326(b)(2)*, 664 B.R 789 (9th Cir. B.A.P. 2024).

13.1.b ***Barton* doctrine applies to liquidating trust trustee, and an action taken without approval is void.** The chapter 11 plan created a liquidating trust and vested it with all litigation assets, including claims under the debtor's prepetition insurance policies, the proceeds of which would be distributed to creditors. It made the trust subject to the bankruptcy court's jurisdiction but authorized the trustee to proceed in other courts. The trustee brought an action in Pennsylvania federal district court against several insurers to determine insurance coverage issues. Some of

the issues were sent to arbitration under arbitration clauses in the policies. Some of the insurers then brought another action in Delaware state court to determine those issues, claiming the Pennsylvania court lacked the required diversity jurisdiction and the Delaware action could proceed to resolution faster. They then filed a notice of the action in the bankruptcy court and a motion for leave to proceed. Under *Barton v. Barbour*, 104 U.S. 126 (1881), a suit may not be brought against a receiver without leave of the appointing court. The rule applies equally in bankruptcy cases and to court-appointed fiduciaries. The liquidating trustee is a court-appointed fiduciary. Therefore the initiation of the Delaware action is subject to *Barton*. A complaint filed in violation of the *Barton* doctrine is void, and the court lacks subject matter jurisdiction. That defect cannot be cured through retroactive leave. Accordingly, the court denies the insurers' motion. *In re Endo Int'l. PLC*, ___ B.R. ___, case no. 22-22549-JLG (Bankr. S.D.N.Y. Jan 22, 2025).

13.2 Attorneys

13.2.a **Attorney representing individual chapter 11 debtor (and not the estate) is not subject to section 327 and 330.** Before filing its chapter 11 case, the individual debtor gave an attorney $60,000 as a non-refundable fixed fee to defend expected dischargeability litigation, which was in fact brought during the case. The debtor remained as debtor in possession. The attorney filed a disclosure under section 329 and Rule 2016, and the debtor sought approval of the attorney's employment under section 327, with fees subject to approval under section 330 at the conclusion of the litigation. Dischargeability litigation in an individual chapter 11 case does not benefit the estate, and generally speaking, professional services that do not benefit the estate may not be paid from estate assets. Therefore, the attorney's fees should not be approved under section 327. Work for an individual debtor that does not involve the estate may be paid by the debtor individually, and not in the capacity of debtor in possession. Therefore, the application to approve employment should be denied, and the fees should not be subject to approval under section 330, only subject to consideration under the standards of section 329 for prepetition payments to an attorney. *In re Schlomer*, ___ B.R. ___, 2025 Bankr. LEXIS 373 (Bankr. W.D. Tex. Feb. 19, 2025).

13.2.b **Evergreen retainer permitted in a subchapter V case.** The subchapter V debtor sought approval of the employment of counsel under an engagement agreement that provided for a trust account retainer, for counsel to be paid monthly, subject to court approval, and for the debtor to replenish the trust account after each payment, subject to subsequent notice and court approval. Section 327(a) permits employment of counsel, subject to court approval and, under section 328(a), "on any reasonable terms and conditions of employment." A general retainer secured an attorney's services without regard to the time spent on a matter. An evergreen retainer contemplates either that counsel hold a retainer in a trust account, with periodic payments for services from operating funds, or payment from the trust account, with replenishment of the trust account from operating funds, primarily to reduce counsel's risk of nonpayment. However, such an arrangement allows one administrative claimant—counsel—to have priority in payment over other administrative claimants. Such an arrangement is permissible with appropriate notice and disclosure if funds are held in counsel's trust account and if the court approves payments before they are made. However, in this case, notice was inadequate, the relationship between the debtor and counsel was not arms' length, payments could cause the debtor not to pay operating expenses, and no other risk mitigation factors were present. Therefore, the retainer is not approved. *In re Raocore Tech., LLC*, ___ B.R. ___ (Bankr. D.D.C. Jan. 28, 2025).

13.3 Committees

13.4 Other Professionals

13.5 United States Trustee

14. TAXES

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES

15.1.a **Court recognizes "manufactured" English scheme proceeding.** The Mexican parent issued notes governed by U.S. law. To restructure the notes, it formed an English subsidiary, based in England, which assumed liability on the notes and pursued a scheme in England, which the court there approved. The subsidiary sought recognition of the English scheme under chapter 15. Under chapter 15, a bankruptcy court may recognize a foreign main proceeding or a foreign nonmain proceeding. A foreign nonmain proceeding is a foreign proceeding in a jurisdiction that is not the debtor's COMI but in which the debtor has nontransitory economic activities. The debtor had no economic activities in England, so the scheme did not qualify as a nonmain foreign proceeding. The debtor's COMI is presumed to be its place of incorporation, in this case, England. Since no creditors objected, the court determines that the debtor's COMI is England, so the scheme was a foreign main proceeding. The entire structure here could be used to take advantage of a group of creditors, and the courts should be sensitive to such issues. But in this case, none of the creditors objected to the recognition. Therefore, the court grants recognition and enforces the scheme. *In re Mega Newco Ltd.*, ___ B.R. ___, 2025 Bankr. LEXIS 398 (Bankr. S.D.N.Y. Feb. 24, 2025).

15.1.b **Court approves third-party releases in Mexican concurso proceeding recognized under chapter 15.** The debtor confirmed a Mexican concurso that included a third-party release, which is common in concursos and consistent with Mexican law, and sought recognition and enforcement in the United States under chapter 15. Section 1501 contains a policy statement that directs courts to promote cooperation and comity with foreign courts and deference to those courts within chapter 15's limits. Section 1521 permits the court, after recognition, to "grant any appropriate relief, including" a list of possible orders and a list of prohibited orders. The prohibited list defines the outer bounds of what a court may do under section 1521. Enforcement of a third-party release is not in the list. Section 1507 permits a court to grant "additional assistance" to the foreign representative, subject to the specific limitations elsewhere in the chapter, based on listed considerations. This grant is more expansive than section 1521's grant, but subject to limitations, as stated. Because comity is central to chapter 15, and neither of these sections prohibits recognition of a plan with a third-party release, the court agrees to recognize and enforce the plan. Section 1506 prohibits the court from enforcing a foreign plan provision that is contrary to U.S. public policy. The prohibition relates primarily to procedural fairness in the foreign court. As there was no allegation of procedural unfairness here, section 1506 does not prohibit the court from recognizing the concurso. *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, ___ B.R. ___, 2025 Bankr. LEXIS 751 (Bankr. D. Del. Apr. 1, 2025).