Testing the Limits of § 1506 and the Public Policy Exception Under Chapter 15

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The Bankruptcy Code's chapter 15 gives effect to the UNCITRAL Model Law on Cross-Border Insolvency and was designed to support comity and cooperation among international jurisdictions in cross-border restructurings. Recognition of a foreign main or nonmain proceeding, and all related relief afforded to foreign representatives upon such recognition, is mandatory once the requirements of 11 U.S.C. § 1517 are met. Such mandatory recognition is, however, subject to the narrow exception provided under 11 U.S.C. § 1506, commonly referred to as the "public policy exception," which precludes recognition when doing so would be manifestly contrary to the public policy of the U.S.

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Since chapter 15's enactment in 2005, substantive invocation of § 1506 has been limited and has chiefly concerned constitutional or procedural issues, such as due process. Recently, in *The Cannabist Company Holdings Inc.*, the Delaware Bankruptcy Court granted recognition of a Canadian debtor's Companies' Creditors Arrangement Act (CCAA) proceeding over an initial § 1506 objection that was ultimately resolved on a consensual basis prior to the recognition hearing. The case was closely watched because cannabis companies have regularly been dismissed from chapter 11 proceedings on the basis that their operations violate the Controlled Substances Act (CSA), 21 U.S.C. § 841 *et seq.*, making it impossible to propose a lawful plan or administer a lawful bankruptcy estate.

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Whether a foreign debtor's U.S. illegal operations could independently support a § 1506 objection was the central question the case presented. That question remains unanswered as a matter of binding authority, as the objection was resolved before the court could rule on the merits. What *Cannabist* did was place the CSA illegality argument within the chapter 15 comity framework and sharpen the question that courts will eventually have to answer, a question with broader implications well beyond cannabis.

Recognition Under Chapter 15 and the Public Policy Exception

Under § 1517, a bankruptcy court is compelled to grant recognition upon finding that (1) the foreign proceeding for which recognition is sought is a foreign main or nonmain proceeding; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the procedural requirements of § 1515.[1] Unlike other chapters of the Bankruptcy Code, chapter 15 does not provide a mechanism for dismissal for cause, bad faith or inability to confirm a plan. The foremost focus of chapter 15 is to establish and foster the cooperative framework outlined by the Model Law, limited by Congress's deliberate choice to carve out only those actions that may be "manifestly contrary to the public policy of the United States."[2]

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The language of § 1506 tracks Article 6 of the Model Law, which similarly provides: "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State." The commentary from UNCITRAL is instructive on the purposeful use of that language and its extremely narrow intended application, stating that "[n]o definition of what constitutes public policy is attempted as notions vary from State to State. However, the intention is that the exception be interpreted restrictively and that Article 6 be used only in exceptional and limited circumstances."[3]

UNCITRAL further notes that "[d]ifferences in insolvency schemes do not themselves justify a finding that enforcing one State's laws would violate the public policy of another State."[4] Consistent with that guidance, bankruptcy courts have nearly uniformly interpreted § 1506 narrowly.[5]

The cases that have substantively engaged § 1506 converge on a single organizing principle: Section 1506 is properly invoked when recognition would operate to deprive persons of legal protections to which they are entitled under U.S. law, not merely because a foreign debtor's conduct conflicts with a domestic statute or because a for-

1 *See* 11 U.S.C. § 1515.

2 11 U.S.C. § 1506.

3 UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment 9-13 (1997).

4 *Id.* at ¶ 30.

5 *See In re Gold & Honey, Ltd.*, 410 B.R. 357, 372 (Bankr. E.D.N.Y. 2009) ("The legislative history of Section 1506 demonstrates that this exception should be applied narrowly, [and] it should be invoked when fundamental policies of the United States are at risk.") (citing *In re Iida*, 377 B.R. 243 (9th Cir. BAP 2007); *In re Atlas Shipping A/S*, 404 B.R. 726 (Bankr. S.D.N.Y. 2009); *In re Ernst & Young Inc.*, 383 B.R. 773, 781 (Bankr. D. Colo. 2008); H.R. Rep. No. 109-31 at 109 (2005), *reprinted in* U.S.C.C.A.N. 88, 172).

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eign proceeding produces an outcome a U.S. court would reach differently. The decisions discussed below are best understood through that lens.

In re Gold & Honey, Ltd.[6] remains a foundational case on the application of § 1506. There, an Israeli company commenced chapter 11 cases in the U.S. Meanwhile, after the chapter 11 proceedings had filed, a lender initiated receivership proceedings in Israel in willful violation of the automatic stay and the bankruptcy court's orders, notwithstanding that the lender had participated in the chapter 11.

The lender obtained an Israeli court order appointing a receiver, and that receiver thereafter sought chapter 15 recognition. The debtor opposed under § 1506, arguing that recognition would reward bad-faith circumvention of U.S. court authority. The court agreed, finding that recognition would "reward and legitimize" the lender's conduct and severely hinder bankruptcy courts' ability to carry out their most fundamental purposes.[7] The operative harm was not that Israeli law differed from American law, it was that recognition would have stripped the debtor of the automatic stay's protections by rewarding the very conduct that violated them.

In *In re Toft*,[8] a foreign representative sought to enforce broad discovery powers arising from German insolvency proceedings, including access to the debtor's email communications. The court denied that specific relief under § 1506, finding that compliance would violate the Electronic Communications Privacy Act (ECPA) and strip individuals of privacy protections that Congress specifically enacted the ECPA to guarantee.[9] The *ex parte* nature of the foreign order independently implicated due process concerns.[10] Notably, broader recognition under § 1517 was not disturbed. The court denied only the specific discovery sought. The concern in *Toft* was not that a U.S. statute would be violated in the abstract, but that identifiable individuals would lose specific privacy rights that Congress enacted laws to guarantee.

In *In re Credito Real, S.A.B. de C.V., SOFOM, E.N.R.*,[11] the court declined to apply § 1506 and enforced nonconsensual third-party releases contained in a Mexican *concurso* plan, notwithstanding that objecting parties argued that the releases were manifestly contrary to U.S. public policy in light of *Harrington v. Purdue Pharma*.[12] The objectors contended that enforcing equivalent releases via chapter 15 deprived them of a protection U.S. law guarantees.

The court rejected that framing. The critical distinction is that Purdue Pharma establishes a ceiling on what U.S. bankruptcy courts may themselves grant; it does not create an affirmative substantive right in creditors to be free from such releases in every forum. Because no person was stripped of a protection U.S. law exists to guarantee, the court declined to invoke § 1506. Credito Real thus draws a critically important line between institutional limitations and the substantive rights § 1506 is designed to protect. This distinction will prove decisive in future cases, including any return of the Cannabist question.

In sum, the trend from these preeminent decisions addressing § 1506 and all those that have come since is both well developed and substantially settled in consistently finding that the public policy exception should be applied narrowly.[13]

The *Cannabist Company* Case: What the Consensual Resolution Did, and Did Not, Resolve

Entities engaged in cannabis operations have been precluded from chapter 11 because their businesses cannot satisfy § 1129(a)(3) of the Bankruptcy Code, which prohibits confirmation of plans "proposed by any means forbidden by law."[14] The rationale is straightforward: A cannabis debtor cannot propose a reorganization plan that does not contemplate continued operation or monetization of assets that remain federally illegal, making it impossible to satisfy the confirmation standard as a matter of law.

Whether that same illegality concern, transplanted from the chapter 11 merits framework into the chapter 15 comity framework, could support a § 1506 objection was squarely raised in *In re The Cannabist Co. Holdings Inc*.[15] As discussed below, however, the question was resolved consensually before the court could rule, leaving the doctrinal answer open.

The Cannabist Company Holdings Inc. is a Canadian-incorporated multi-state operator whose U.S. subsidiaries operate retail outlets and production facilities across multiple states. In March 2026, the company commenced CCAA proceedings in the Ontario Superior Court of Justice and filed chapter 15 petitions in Delaware the following day. Critically, none of the U.S. subsidiaries were subject to the chapter 15 cases. The debtors before the court were the Canadian holding entities, which did not directly hold cannabis licenses or operate retail facilities.

6 410 B.R. 357 (Bankr. E.D.N.Y. 2009).

7 *See* 410 B.R. at 372.

8 453 B.R. 186 (Bankr. S.D.N.Y. 2011).

9 *See* 453 B.R. at 198.

10 *See id.* at 196.

11 670 B.R. 150 (Bankr. D. Del. 2025).

12 144 S. Ct. 2071 (2024).

13 *See, e.g., In re Irish Bank Resol. Corp. Ltd.*, No. 13-12159 (CSS), 2014 WL 9953792, at *18-21 (Bankr. D. Del. Apr. 30, 2014) (declining to apply § 1506 and granting recognition of Irish special liquidation proceeding over objections that Irish resolution scheme deprived creditors of protections available under U.S. law); *In re Hanjin Shipping Co. Ltd.*, No. 16-27041 (JKS), 2016 WL 6679487, at *4-5 (Bankr. D.N.J. Sept. 20, 2016) (declining to apply § 1506 to lift Korean rehabilitation stay at request of maritime lienholders); *In re Manley Toys Ltd.*, 580 B.R. 632, 646-51 (Bankr. D.N.J. 2018) (declining to apply § 1506 and granting recognition of Hong Kong liquidation proceeding over objections asserting five separate public policy grounds); *In re O'Reilly*, 598 B.R. 784, 794-98 (Bankr. W.D. Pa. 2019) (declining to apply § 1506 and granting recognition of Bahamian bankruptcy proceeding over creditor's objections that she was not afforded notice or opportunity to participate in Bahamian proceedings).

14 *See* 11 U.S.C. § 1129(a)(3).

15 No. 26-10426 (BLS), Docket No. 82 (Bankr. D. Del. May 9, 2026).

A secured lender to certain nondebtor subsidiaries objected to recognition under § 1506, arguing that cannabis' status as a controlled substance would require the bankruptcy court to endorse and facilitate illegal conduct under federal law, and that for the same reasons cannabis operations are denied access to chapter 11, those operations should be denied chapter 15 relief. Notably, the U.S. Trustee did not take a formal position. The foreign representative argued that § 1506 demands more than a conflict between foreign and U.S. federal law; it requires a threat to fundamental procedural or constitutional rights. The CCAA, the foreign representative argued, is well recognized as being consistent with U.S. public policy, and the company's business had never been found to implicate the sort of procedural unfairness that justifies the exception's application.

The argument has genuine force: The CSA exclusion in chapter 11 reflects a congressional judgment that federal courts should not serve as institutional instruments in the administration of federally criminal enterprises. That concern does not evaporate because a court is overseeing a chapter 15 case rather than a chapter 11 case, or because the nominal debtors are holding entities. The counterargument rests on the underlying principle of the public policy exception: § 1506 asks whether recognition deprives persons of rights U.S. law guarantees them, not whether the foreign debtor's conduct is itself lawful.

The CCAA proceeding afforded procedural fairness substantially equivalent to U.S. standards, no creditor was stripped of a protection U.S. law entitled it to, and the structural isolation of the U.S. operating subsidiaries blunted the argument that the court was being asked to administer illegal assets. The lender's objection was resolved prior to the recognition hearing, and the court issued a consensual recognition order. The substantive question — whether a foreign debtor's U.S. illegal operations can, standing alone, trigger § 1506 — therefore remains unanswered as a matter of binding authority.

The Future of § 1506

Although some might argue that § 1506 has lost its bite, it remains the steadfast backstop ensuring that fundamental rights afforded under U.S. law remain intact. The exception's diminishing frequency of application reflects the maturity and predictability of the chapter 15 framework, not an erosion of its protective function. When a foreign proceeding genuinely threatens to strip persons of rights U.S. law guarantees, as in *Gold & Honey* and *Toft*, § 1506 remains fully available and capable of doing the work Congress designed it to do.

The unanswered question *Cannabist* leaves behind, whether U.S. illegal operations can ever independently support a § 1506 objection, will almost certainly return. When it does, the stakes will extend beyond cannabis: The framework for resolving that question will determine how broadly chapter 15 is available to any foreign debtor whose operations conflict with U.S. federal law. A court that sustains a § 1506 objection on CSA grounds will have effectively created a domestic legality prerequisite for chapter 15 recognition, a significant departure from the Model Law's comity-first design that could place U.S. courts at odds with other Model Law jurisdictions. The organizing principle that § 1506 protects persons, not U.S. institutional prerogatives, should be the starting point when the question returns. abi