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Saving Equity: Using Non-U.S. Regimes and Chapter 15 to Restructure

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Saving Equity: Using Non-U.S. Regimes and Chapter 15 to Restructure

Exploring how companies leverage cross-border insolvency frameworks and Chapter 15 recognition to preserve equity value and achieve successful restructurings across Latin America.

Weighing Chapter 11's Advantages and Disadvantages

What Makes Chapter 11 Attractive

- + Global automatic stay of creditor action
- + Ability to obtain DIP financing in amounts and on timelines not available locally
- + Cramdown of dissenting classes - many LatAm regimes require approval by all classes
- + Ability to effect operational, not just financial, restructuring
- + Rejection of executory contracts and unexpired leases
- + Section 363 sales, though less commonly used
- + Specialized and sophisticated courts
- + Minimal jurisdictional threshold (open doors)

What Now Lessens That Appeal

- Difficulty enforcing U.S. plans against non-U.S. persons and assets
- Recognition abroad does not prevent creditors from initiating a local main proceeding
- Significant costs / wide differences in U.S. vs. LatAm legal fees
- Heavy litigation and discovery, multiple stakeholders, committee and financial-advisor fees, success fees, delay and complexity
- Loss of process control relative to LatAm expectations
- Absolute priority rule makes it hard for equity holders to retain interests in the reorganized entity

A Shifting Map of Forums

Local Regimes and Other Forums are Gaining Ground



Mexico, Chile and Colombia traditionally have had their largest restructurings filed in the United States — but this is starting to change.



Local jurisdictions are improving their restructuring systems, with Brazil and Mexico as the most representative examples of retaining large cases at home.



Chapter 11 now faces competition not only from more robust local proceedings, but also from other international regimes such as **UK schemes of arrangement or Canadian insolvency proceedings**.



Spain is positioning itself based on shared language and its significant investment footprint in Latin America – level of success TBD.



Asian cross-border insolvency regimes (e.g., Singapore, Hong Kong) have not been meaningfully explored by Latin American companies to date.



Chapter 15's growing share relative to full Chapter 11 filings reflects this same shift. Foreign companies now increasingly restructure at home and seek only **narrow US recognition**, rather than importing the whole case.

Where are Some of the Largest Plenary LatAm Cases Filed?

 CHILE \$16Bn LATAM AIRLINES · LARGEST CASE			 COLOMBIA \$7.1Bn AVIANCA · LARGEST CASE			 MEXICO \$3.6Bn BRASKEM IDESA · LARGEST CASE			 BRAZIL \$25Bn ODEBRECHT S.A. · LARGEST CASE		
LATAM Airlines		\$16Bn	Avianca Holdings		\$7.1Bn	Braskem Idesa		\$3.6Bn	Odebrecht S.A.		\$25Bn
Corp Group Bkg.		\$2.0Bn	Pacific E&P		\$5.3Bn	Empresas ICA		\$3.5Bn	Oi S.A.		\$20Bn
Alto Maipo		\$1.5Bn	Alpha Latam Mgmt.		\$768M	AHMSA		\$3.5Bn	Raizen S.A.		\$12.1Bn
WOM S.A.		\$1.05Bn	Canacol Energy Ltd.		\$750M	Crédito Real S.A. B.		\$2.5Bn	Azul S.A.		\$9.6Bn
Nova Austral		\$560M	Credivalores		\$210M	Grupo Aeroméxico		\$2.0Bn	Americanas		\$8.2Bn

The Growing Relevance of Chapter 15

Third-party releases survive Purdue — via Chapter 15

In *Harrington v. Purdue Pharma* (2024), the Supreme Court barred nonconsensual third-party releases in Chapter 11 plans. Two 2025 decisions held that bar does not extend to Chapter 15.

In re Crédito Real, S.A.B. de C.V. (Delaware)

JUDGE THOMAS HORAN · APRIL 2025 · AFFIRMED ON APPEAL, 2026

Recognized a Mexican concurso mercantil and enforced the plan's nonconsensual releases over a U.S. agency's objection. Held "Chapter 11 and Chapter 15 are very different animals." Purdue turned on Chapter 11 specific provisions (Bankruptcy Code §§ 1123(b) and 1141(d)) that do not appear in §§ 1521 or 1507. The releases were not "manifestly contrary" to U.S. public policy because Congress permits comparable releases in the asbestos trust context.

In re Odebrecht Engenharia e Construção S.A. (SDNY)

CHIEF JUDGE MARTIN GLENN · APRIL 2025

Went further by enforcing release-like language in the U.S. recognition order itself, even though the Brazilian recuperação judicial plan contained no third-party release. Held that § 1521's "any appropriate relief" standard is broad enough to support that relief, and that Purdue "did not say anything about limitations on courts acting as ancillaries to foreign proceedings under chapter 15."

Other Chapter 15 Advantages

- **Shorter duration.** Pairing a foreign proceeding with Chapter 15 recognition avoids many Chapter 11 procedural mandates (separate entity filings, U.S. Trustee oversight, official committees, and fee applications) that can delay resolution by months or even years. Comparable UK and Dutch processes often conclude in 8 to 10 weeks.
- **Less litigation and lower cost.** Chapter 15 typically has no statutory creditors' committees and involves far less motion practice than Chapter 11, often resulting in fewer expenses even after accounting for the cost of the foreign proceeding.
- **Selective access to U.S. tools.** Debtors can still use key U.S. tools where helpful, including robust discovery, free-and-clear asset sales, and in some cases avoidance actions under foreign law or Bankruptcy Code setoff principles, without needing to file a full Chapter 11 case.

The Public Policy Exception

11 U.S.C. § 1506

“Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.”

Narrow by Design

Quoted language, circuit by circuit

2D CIR. Fairfield Sentry II, 714 F.3d 127, 139 (2013)

“The statutory wording requires a narrow reading.”

“The word ‘manifestly’ ... restricts the public policy exception to the most fundamental policies of the United States.”

quoting H.R. Rep. No. 109-31, pt. 1, at 109 (2005)

3D CIR. ABC Learning Centres, 728 F.3d 301, 309 (2013)

Invoked “only under exceptional circumstances concerning matters of fundamental importance” for the U.S.

4TH CIR. Jaffé v. Samsung Elecs., 737 F.3d 14 (2013)

“§1506 is an additional, more general protection of U.S. interests that may be evaluated apart from the particularized analysis of §1522(a).”

Note: Jaffé does not itself use “narrow”/“exceptional circumstances” language — its focus is the §1521/§1522 balancing test.

5TH CIR. In re Vitro S.A.B. de C.V., 701 F.3d 1031, 1069 (2012)

The exception “is intended to be invoked only under exceptional circumstances concerning matters of fundamental importance for the United States.”

Raised but Rejected

Cases where §1506 was argued — and denied

Fairfield Sentry II, 714 F.3d 127, 139–40 (2d Cir. 2013)

Sealed BVI liquidation records didn't offend U.S. policy — “the right to inspect and copy judicial records is not absolute.”

ABC Learning Centres, 728 F.3d 301, 310–11 (3d Cir. 2013)

Australian law let secured creditors realize collateral directly instead of surrendering it to the estate — a “different way to achieve similar goals,” not repugnant to U.S. law.

Manley Toys, 580 B.R. 632, 648–52 (Bankr. D.N.J. 2018)

Notice, insider control of the process, and Hong Kong's stricter (intent-based) fraudulent-transfer standard were all raised — each complied with Hong Kong law or was a comparable, not contrary, approach.

Culligan, 2021 WL 2787926, at *14–16 (Bankr. S.D.N.Y. 2021)

Recognition sought as a litigation tactic to escape adverse New York rulings — “a bad faith filing, by itself, will not trigger the public policy exception.”

Black Gold, 635 B.R. 517, 528–32 (9th Cir. BAP 2022)

Alleged misconduct by the debtor, insiders, and the foreign representative himself — “misconduct or ‘bad faith,’ standing alone, is not a proper basis for invoking” §1506.

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In re Canterbury Securities, Ltd.

675 B.R. 109 — S.D.N.Y. — Judge Paul A. Engelmayer — Nov. 19, 2025

The Facts

- Cayman joint liquidators petitioned to recognize the Cayman liquidation of Canterbury Securities, Ltd. Erin Winczura, the company's former owner, whom the Cayman court found had misappropriated over \$20 million and later debarred for contumacious non-compliance, opposed recognition and moved to dismiss the case. She argued parties had committed securities fraud and that recognition would let “fraud proceeds” reach creditors in violation of U.S. anti-money-laundering law. That fraud theory, however, was tried and rejected by the Cayman court after a nearly two-week trial with witnesses and expert testimony.
- The bankruptcy court denied dismissal and Winczura appealed.

The Holding

- **AFFIRMED.** Applying Fairfield Sentry's two-factor test (procedural fairness and no impingement of a U.S. statutory or constitutional right). The court also held Winczura's fraud claims were a collateral attack on the Cayman court's factual findings.
- The Court held that chapter 15's public policy exception is not intended to invite factual challenges to the determinations made in a procedurally sound foreign proceeding.

The Exception Applied

Second Circuit

Per the Canterbury district court (2025): in the 2d Circuit, only two decisions have ever invoked §1506 to refuse recognition or relief.

In re Toft

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

WHAT HAPPENED

German insolvency administrator sought ex parte U.S. recognition to seize a debtor's stored emails and intercept his future email — in effect, a warrantless wiretap.

WHY §1506 APPLIED

The relief itself was independently unlawful — barred by the Wiretap Act and the Stored Communications Act, with potential criminal exposure for anyone who carried it out.

In re Gold & Honey, Ltd.

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

WHAT HAPPENED

- A creditor commenced an Israeli receivership over a debtor already in a U.S. Chapter 11 case, in willful violation of the automatic stay.

WHY §1506 APPLIED

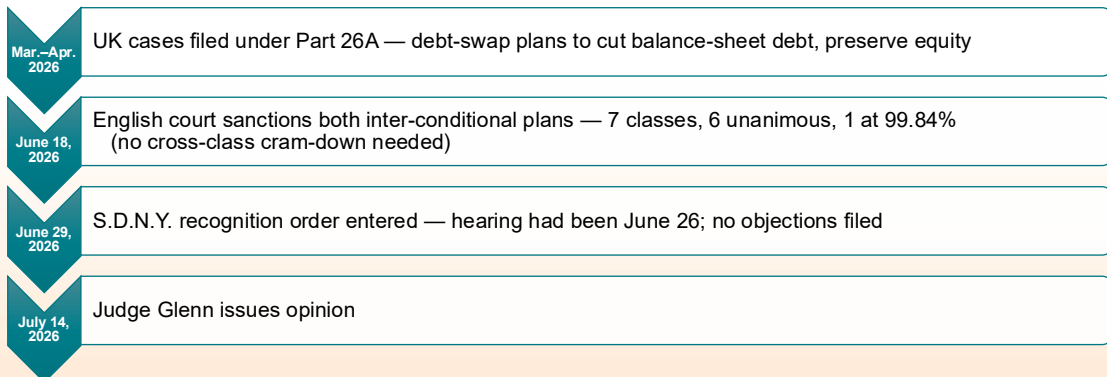
- Recognizing the Israeli proceeding would have rewarded a knowing end-run around a standing U.S. court order — not merely a foreign-law mismatch.

The common thread: *independently unlawful conduct or defiance of a U.S. order — not merely a sympathetic set of facts.*

New Fortress Energy

The Facts — Two UK Debtors, One U.S. Parent

NFE Global Holdings Limited (inc. 2021, UK) and **NFE Brazil Newco Ltd.** (inc. April 2026, UK) — affiliates of New York-based New Fortress Energy Inc. (Delaware).



“COMI Tourism”

Judge Glenn's Framing

No creditor objected — The Court treated that as favorable, but not dispositive. Courts must “look closely” at whether creditors are “sufficiently protected” under §1522(a):

“Is ‘COMI tourism’ — where a foreign debtor that is an affiliate of a U.S.-based ... corporation was established specifically for the purpose of pursuing a foreign restructuring solution followed by a chapter 15 case — a basis to deny recognition and enforcement?”

- 1 Just treatment of all claim holders
- 2 Protection of U.S. claimants
- 3 Distribution substantially per Title 11's order
- 4 A balancing of the interests at stake

The Throughline

Mega NewCo → Fossil → NFE



Fossil Group

Case Overview

Company Background

- NASDAQ-listed (FOSL); global fashion accessories (watches, jewelry, handbags)
- HQ: Richardson, Texas; operations in 20+ countries
- Revenue declined from \$1.7B (2022) to ~\$1.1B (2024); net loss of -\$106M
- S&P downgraded to CC (August 2025)

The Fossil logo is displayed in a large, bold, black, sans-serif font. The letters are closely spaced and the overall style is clean and modern.

Company Debt

- \$150M 7.00% senior unsecured "baby bonds" maturing Nov 2026
- Traded on NASDAQ in \$25 denominations; ~40% held by 1,500+ retail investors
- Subject to Trust Indenture Act (cannot modify payment terms out of court)

The Stapled Exchange

Structure & Process

TSA executed August 13, 2025 with ~60% of holders.

- **[1] Consent Solicitation**
 - Changed governing law from New York to English law (majority consent sufficient)
- **[2] UK Plan Company**
 - Created Fossil (UK) Global Services Ltd as guarantor of the notes
- **[3] US Exchange Offer**
 - Launched September 9, 2025 with 90% participation threshold; only 72% achieved by October 8
- **[4] UK Part 26 A Restructuring Plan**
 - Commenced October 9, 2025 – English court jurisdiction via Rule in Gibbs (English-law debt)

Court Rulings & Outcomes

Court Rulings

- **Oct 15**
 - UK Convening Hearing – granted leave; single-class meeting; Rule in Gibbs jurisdiction
- **Nov 6**
 - Creditor Vote – 363 in favor, 1 against (99.99% by value)
- **Nov 10**
 - UK Sanction Hearing – High Court sanctioned the Restructuring Plan
- **Nov 12**
 - Chapter 15 recognition – recognized as foreign main proceeding; enforced third-party releases
- **Nov 13**
 - Transaction effective – all \$150M notes exchanged

Outcomes

- First US public company to restructure US-governed debt via UK plan and chapter 15
- Shares remained listed on NASDAQ
- Maturity extended from Nov 2026 to Jan 2029
- Third-party releases enforced
- Market cap: ~\$80M to ~\$200M

Court Rulings

- Retired U.S. Bankruptcy Judge James Peck, serving as Fossil UK's U.S. recognition expert in the English proceeding, described the case as "good forum shopping," pointing to the English Plan's focused treatment of a single funded-debt tranche and the fairness of the process
- Mr. Justice Richards of the High Court of Justice described this as an example of "good forum shopping" and accepted that the advantages an English restructuring plan (in particular, its ability to enable the restructuring of a targeted creditor group) justified Fossil's approach of seeking to restructure in the UK
 - ["That in turn allays concerns about the "artificiality" of the deed of contribution arrangement and the possibility that it could be regarded as forum shopping. Judge Peck considers that a US bankruptcy court would be likely to look favourably on the Plan on the basis that it achieves a beneficial outcome for Plan Creditors generally. That is also my view on the Plan and indeed no-one has attended the sanction hearing to articulate a different view." Approved Judgment, dated Nov. 10, 2025, ¶ 53.]
- *See also In re Mega Newco Ltd.*, Case No. 24-12031 (MEW), Dkt. No. 27, at 7–8 (Bankr. S.D.N.Y. Feb. 24, 2025) (granting recognition of a U.K. scheme of arrangement under similar circumstances; in that case a newly incorporated English company was used to compromise NY law-governed debt issued by a non-U.K. parent in a surgical restructuring not available in chapter 11; court provided guidance on "good forum shopping," emphasizing that recognition is appropriate where the U.K. process is pursued for legitimate, value-maximizing restructuring objectives, with creditor involvement, and not to unfairly frustrate creditor rights or expectations)

Faculty

David J. Cohen is a partner in Weil Gotshal & Manges LLP's Restructuring Department and is based in New York and Miami, where he is the co-managing partner of the firm's Miami office. He has experience representing debtors, secured and unsecured creditors, sponsors, lenders, bondholders, acquirors and other key stakeholders in U.S. and cross-border corporate restructurings (both in-court in chapter 11, chapter 15, receivership, international insolvency and other proceedings, as well as out-of-court), liability-management transactions, distressed financings and distressed M&A transactions across a wide-range of industries. Most recently, *The American Lawyer* named Mr. Cohen "Dealmaker of the Year" by for his role as lead counsel to Steward Health Care, the largest healthcare bankruptcy in U.S. history. He also is a finalist for "Florida Dealmaker of the Year" by the *Daily Business Review*. In 2025, Mr. Cohen was named a "Rising Star" in Bankruptcy by *Law360*, recognized as an "On the Rise" attorney at the Florida Legal Awards by the *Daily Business Review*, and included in both *Lawdragon's* 500 Leading Global Bankruptcy & Restructuring Lawyers and The Next Generation list (2024-25). He also has been honored as an "Emerging Leader" by The M&A Advisor and recognized as an "Outstanding Young Restructuring Lawyer" by Turnarounds & Workouts. Mr. Cohen regularly speaks on bankruptcy and restructuring panels and has been a guest lecturer at the University of Miami School of Law and University of Florida Levin College of Law. He received his B.Comm. from the University of Guelph and his J.D. from Osgoode Hall Law School.

Kathryn A. Coleman is a partner in Hughes Hubbard & Reed LLP's New York office, co-chairs the firm's Corporate Reorganization & Bankruptcy practice and sits on the firm's Executive Committee. She has handled a wide range of chapter 11 representations and other high-stakes insolvency-related matters in her more than 35 years in practice, including dealing with "bet-the-company" litigation claims, representing acquirers in chapter 11 sale transactions, representing DIP lenders, and handling cross-border insolvency matters, out-of-court restructurings and distressed investments. Ms. Coleman's clients include individuals and companies defending trade secret theft and RICO lawsuits, publicly traded and privately held companies restructuring their financial affairs, traditional and non-traditional secured lenders, unsecured creditors (both official committees and significant creditors for their own account), equityholders, potential acquirers, equity sponsors, and financial and strategic buyers. She also is experienced in advising management and boards of directors on corporate governance, fiduciary duty and D&O insurance matters. Ms. Coleman has advised clients on, and litigated at the trial and appellate levels, the significant legal issues inherent in modern restructuring and finance practice, including contested plan confirmations, prepackaged plans, credit bidding, exclusivity, debtor-in-possession financings, valuation, adequate protection of security interests, the ability to collaterally attack orders of the bankruptcy court and cash-collateral usage. She has experience litigating venue, remand, removal and stay issues, and has represented recovery trustees dealing with myriad post-confirmation issues and litigation. Ms. Coleman is a Fellow of the American College of Bankruptcy (ACB) and serves on the board of the ACB's charitable foundation. She also serves on the ACB's Education Committee. Ms. Coleman served two terms on ABI's Board of Directors, co-chairs its annual Complex Financial Restructuring Program, and has served on the advisory boards for the annual VALCON and New York City educational programs. She frequently speaks on bankruptcy law and distressed investing, participating in programs sponsored by the Practising Law Institute, ABI, the Turnaround Management Association, AIRA, The M&A Advisor, the New York City

Bar Association, the California Continuing Education of the Bar and the American Bar Association. She also serves on the Steering Committee of the NYC Bankruptcy Assistance Project. Ms. Coleman is ranked by *Chambers USA* as a leading restructuring lawyer, and she has twice been named to *Lawdragon's* list of 500 Leading U.S. Bankruptcy & Restructuring Lawyers. She also was recognized in 2019 by *Crain's New York Business's* Notable Women in Law List for her comprehensive knowledge of insolvency law, and she was named a 2018 Bankruptcy MVP by *Law360* and as one of the 100 Most Influential Women in Business by the *San Francisco Business Times*. In addition, Ms. Coleman was designated a leading lawyer in bankruptcy in *The Best Lawyers in America*, and her experience in cross-border insolvency was noted in the *IFLR 500* and in PLC's *Cross-Border Restructuring and Insolvency Handbook*. She received her undergraduate degree *magna cum laude* from Pomona College and her J.D. from Boalt Hall School of Law (U.C. Berkeley), subsequently clerking for Hon. C. Martin Pence, U.S. District Judge for the District of Hawaii.

David A. Herman is a partner in Dechert LLP's Financial Restructuring group in New York, where he represents clients in complex chapter 11 and municipal bankruptcy cases, out-of-court restructuring matters and high-stakes bankruptcy litigation. He combines expertise in all aspects of financial restructuring with first-chair trial experience and more than 15 years litigating in trial and appellate courts. Mr. Herman has represented debtors and creditor parties in many of the most complex and contentious U.S. bankruptcy proceedings in recent years. His experience includes the bankruptcy cases of LATAM Airlines, PG&E Corp., The Weinstein Co., Sears, Roebuck and Co., Eletson Holdings and the Puerto Rico Electric Power Authority (PREPA). He also represented the Republic of Argentina in its 2016 sovereign debt restructuring. Mr. Herman's litigation matters have involved contested plan confirmation proceedings, debtor-in-possession and exit financing, equity backstop arrangements, contested asset sales, fraudulent conveyance claims, valuation disputes, and claims for breach of fiduciary duty. He also has experience in bankruptcy and other appeals, including litigating cases before the U.S. Supreme Court and the U.S. Courts of Appeals. Mr. Herman has devoted a significant portion of his practice to cross-border matters, particularly matters involving jurisdictions in Latin America or Latin American parties. Those matters have included representing sovereign and commercial actors in restructuring and litigation matters, as well as representing parties in connection with internal investigations and regulatory inquiries. Mr. Herman is recognized for financial restructuring by *The Legal 500 US* and for banking and finance by *The Legal 500 Latin America*. In 2022, he was named one of ABI's "40 Under 40." Mr. Herman received his B.A. *summa cum laude* and Phi Beta Kappa in 2004 from the University of Pennsylvania, and his J.D. *magna cum laude* in 2007 from New York University School of Law, where he was a member of the Order of the Coif and articles editor of the *NYU Law Review*.

Hon. Christopher M. Lopez is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, appointed on Aug. 14, 2019. He previously was a member of the Business, Finance & Restructuring Group of Weil, Gotshal & Manges LLP and focused on representations ranging from top global corporations in mega-restructurings to middle-market debtor and creditor representations. Judge Lopez lectures across the country on bankruptcy issues. He also serves as an adjunct professor at Thurgood Marshall School of Law. Judge Lopez currently serves as a council member of the State Bar of Texas's Bankruptcy Law Section, an advisor to the State Bar of Texas Young Lawyers Committee, a member of the Nominations Committee for the National Conference of Bankruptcy Judges, and a member of the National Bankruptcy Conference. He received his B.A. in psychology in 1996 from

the University of Houston, his M.A. in religion in 1999 from Yale Divinity School and his J.D. from the University of Texas School of Law in 2003.

Jorge Villen is a senior member of Houlihan Lokey's Financial Restructuring Group in Los Angeles and is co-head of coverage for the Latin America region. He has more than 20 years of global investment banking experience, including corporate restructurings, mergers and acquisitions, and the issuance of both debt and equity securities. Mr. Villen's experience includes providing advice to major parties-in-interest in a broad range of transactions in the U.S., Europe and LatAm, including Volcan Compañía Minera, Grupo Mega, Atento, WOM S.A., Mexarrend, Alpha Credit, Credito Real, Unifin Financiera, Credivalores, Grupo Aeroportuario de la Ciudad de Mexico, Corporación GEO, Nextel Mexico, Nextel Brazil, Panrico, Martinsa-Fadesa, Levantina, Bodybell, Banco Estado, Afore XXI, Frontier Communications, Windstream Holdings, Guitar Center, The Weinstein Co., Relativity Media, SFX Entertainment, Rhythm & Hues Studios, Independent News & Media, IBAHN Corp., Quizno's, Sbarro, Culligan International, IAP Worldwide Services, Reichhold Industries, UniversalPegasus International, Gibson Brands and Den-Mat, among others. Before joining Houlihan Lokey, Mr. Villen was a member of Prudential Financial's M&A and Corporate Development Group in Newark, N.J. He started his career with Deutsche Bank's Financial Institutions Group in London. Mr. Villen holds a B.S. in business administration from Pontificia de Comillas University and an M.B.A. from Columbia Business School.