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Chapter 15 and Cross-border Bankruptcy

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Current Issues and Developments in Cross-Border Insolvencies¹

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I. Origins of Chapter 15

A. Section 304 –Cases Ancillary to Foreign Proceedings

- Statutory Framework of section 304

Prior to its repeal with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act, section 304 provided authority for adjudicating international insolvency issues before the U.S. Bankruptcy Courts where a proceeding had already been filed or would be more appropriately filed in a foreign jurisdiction. The purpose of this section was to shield American creditors and assets located within the United States from piecemeal distribution of assets resulting from foreign reorganization or liquidation procedures. Section 304 acted as a jurisdictional aid to foreign bankruptcy representatives by providing for discovery and a structured distribution of assets.

Pursuant to subsection (a), only a “foreign representative” could commence a case “ancillary” to a foreign proceeding. Ancillary proceedings were conducted as adversary proceedings and did not result in a conventional reorganization or liquidation, did not create a bankruptcy estate and did not result in the appointment of a U.S. Trustee. While many of the powers granted trustees and debtors in possession under the Bankruptcy Code were not available to foreign representatives in the context of section 304 ancillary proceedings, many courts interpreted subsection (b) of section 304 to provide a basis for granting relief similar to the relief available to trustees, such as authorizing asset dispositions consistent with section 363, issuing injunctions to the same effect as the automatic stay, and permitting the pursuit of avoidance type actions not based on the bankruptcy code but on choice of law rules. Subsection (c) qualified the expansive powers of subsection (b) by enumerating factors to be weighed when fashioning judicial relief such as ordering the turnover of property, enjoining the disposition or transfer of property or authorizing the taking of discovery. Specifically, subsection (c) provided:

In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with –

- (1) just treatment of all holders of claims against or interests in such estate
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding
- (3) prevention of preferential or fraudulent dispositions of property of such estate

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- (4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title
- (5) comity
- (6) If appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceedings concerns.

- Important Section 304 Cases

Foreign Representative Gaining Recognition for the Foreign Proceeding

- *In re Master Home Furniture Co., Ltd.*, 261 B.R. 671 (Bankr. C.D. Ca. 2001) – The court refused to grant recognition under section 304 to a foreign reorganization proceeding, holding that comity did not require recognition of a Taiwanese proceeding because no fiduciary existed in Taiwan and no orderly distribution to creditors existed in Taiwan.
- *In re Empresa de Transportes Aero del Peru, S.A.*, 263 B.R. 367 (S.D. Fla. 2001) – The district court ruled that for a US Court to have jurisdiction under section 304, there had to be a “foreign proceeding” and remanded the case back to the bankruptcy court to determine whether there existed a foreign proceeding under Peruvian law in a context where the foreign reorganization efforts had failed.
- *In re Petition of Caldas*, 272 B.R. 583 (Bankr. S.D.N.Y. 2002) – A “foreign proceeding” under section 304 was recognized where petitioners were appointed by the Superintendency of Banking and Insurance and were members of a Peruvian bank in an intervention proceeding in Peru, and where the applicable provisions of Peruvian law were fully explained to the court.

Scope of Section 304

- *In re Treco*, 240 F.3d 148 (2nd Cir. 2001) – The court concluded that the turnover of funds would be improper because the distribution of proceeds in a Bahamian bankruptcy would not be substantially in accordance with the United States Code where (i) under American law, the bank’s security interest would not be charged with the costs of administration of insolvency proceedings, whereas under Bahamian law the liquidators would be able to access all of the collateral to satisfy administrative costs, and (ii) the liquidators’ fees had already consumed \$8million of the \$10 million of receivables collected and were likely to increase to the point that they would consume all of the bank’s collateral and leave it with no recovery at all.
- *In re Petition of Garcia Avila*, 269 B.R. 95 (Bankr. S.D. N.Y. 2003) – The court found that section 304 does not require that a creditor receive the same distribution as it would have received in a hypothetical American

bankruptcy, only that the foreign law be sufficiently close to the American law to meet section 304(c) standards.

- *In re Petition of Kyu-Byung Hwang*, 309 B.R. 842 (Bankr. S.D.N.Y. 2004) – The court granted recognition of a Korean proceeding because Korean law was substantially similar to American law, did not discriminate against foreign creditors, comported with notions of fairness and due process, and provided many of the procedural safeguards of an American Chapter 11 case.
- *In re Petition of Gross*, 278 BR 557 (Bankr. M.D. Fla. 2002) – The court held that in a section 304 case, a petition may be brought to set aside a transaction based on foreign law, that it is not necessary for the foreign debtor to have physical property in the district, and that discovery is appropriate.

B. Model Law on Cross Border Insolvency

- Formulated and Adopted by UNCITRAL

The United Nations Commissions on International Trade Law (UNCITRAL) was created in 1967 as a legal body within the United Nations General Assembly in an effort to help unify commercial and trade law. In 1997, UNCITRAL adopted the “Model Law” of cross-border insolvency.

- Cornerstones of the Model Law
 - Access – to establish a principal that a foreign representative, holding office under an insolvency proceeding opened under the law of one state, has a right of direct access to the courts of other states where it may be expedient to take action of some kind.
 - Recognition – to establish basic principals and procedures for the recognition of foreign insolvency proceedings and for the provision of relief and assistance in cross-border cases.
 - Relief – to establish a positive legal framework, sanctioning cooperation between courts in different jurisdictions, and between courts and foreign representatives.
 - Co-operation – to establish a framework of basic rules to be applied in cases where concurrent insolvency proceedings take place, so that coordination can be optimized in the interest of attaining the fairest possible outcome for all creditors and other parties concerned.
- Issues addressed by the Model Law

- Recognition in the enacting State of foreign insolvency proceedings, and the effects therefore.
 - Direct rights of access to the courts and legal processes within the enacting State for foreign representatives and creditors.
 - The correlative rights of courts and office-holders within the enacting State and to make outward-bound requests to courts in foreign jurisdictions for recognition of proceedings commenced in the enacting states and to apply for assistance and relief, and for office-holders to commence or participate in proceedings under the insolvency laws of the other State.
 - Co-operation between courts and office holders from different jurisdictions.
 - Co-ordination of concurrent proceedings taking place in two or more different jurisdictions.
- Who uses the Model Law

Eritrea
 Japan
 Mexico
 Poland
 Romania
 South Africa
 Serbia
 Montenegro
 British Virgin Islands
 United States of America (Chapter 15)

C. European Insolvency Regulation

The EU Insolvency Regulation came into effect on May 31, 2002. This regulation applies to all EU Member states, except Denmark, and is automatically law in the relevant member states, overriding where necessary any conflicting provisions in national laws. The primary function of the regulation is to codify the manner in which a member state determines whether it has jurisdiction to open insolvency pleadings. Also, the regulation seeks to propose a uniform approach to the choice of governing law. After these factors have been determined, the procedural rules of the relevant member state will generally apply.

The regulation applies to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator. It only applies to entities that have their centre of main interests within an EU member state, including those whose place of incorporation may be outside the European Union, but whose centre of main interests is within a member state.

As provided by the regulation, the applicable jurisdiction for insolvency proceedings is the court of the member state where the debtor's center of main interests is located. There is a rebuttable presumption that the center of main interest for a company or other legal person is where the registered office of the company is located. The regulation provides for secondary proceeding in certain restricted circumstances in countries other than the state in which the center of main interests is located.

The courts of member states have jurisdiction to open insolvency proceedings against the debtor only where the debtor is established within the territory of that other member state. Unlike a main proceedings, which in the absence of a secondary proceeding has effect throughout the European Union, secondary proceedings are restricted to the assets of the debtor situated in that specific member state and are limited to winding-up procedures. The general rule with respect to choice of law under the regulation is that the law applicable to the insolvency proceeding and its effects shall be that of the member state within the territory in which such proceedings are opened. However, this general rule is subject to a number of exceptions.

II. Impact of Chapter 15

A. Overview of Chapter 15

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Chapter 15 titled "Ancillary and Other Cross-Border Cases" was enacted to provide a mechanism for dealing with cross-border insolvency cases. Chapter 15 substantially adopts the form and substance of the Model Law and replaces former code section 304. Chapter 15 applies to cases filed on and after October 17, 2005.

Chapter 15 applies in the following four situations:

- (1) where assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding,
- (2) where assistance is sought in a foreign country in connection with a case under the Bankruptcy Code,
- (3) where a foreign proceeding and a case under the Bankruptcy Code with respect to the same debtor are pending concurrently, and
- (4) where creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case proceeding under the Bankruptcy Code.

To commence a case under Chapter 15, a petition for recognition of a foreign proceeding must be filed pursuant to the procedural requirements listed in section 1515. A court must enter an order recognizing a foreign proceeding if (i) such foreign proceeding for which recognition is sought is a foreign main proceeding (a foreign

proceeding pending in the country where the debtor has its center of main interests) or a foreign nonmain proceeding (a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment), (ii) the foreign representative applying for recognition is a person or body, and (iii) the petition meets the requirements of section 1515. However, any order recognizing a foreign proceeding is subject to the public policy exception codified in section 1506, which provides “[n]othing 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.”

A foreign representative is not entitled to any automatic relief upon filing the petition; however, a foreign representative may request, and the court may grant on a provisional basis if the relief is needed to protect the assets of the debtor or the interests of creditors, the relief specified in section 1519.

Upon entry of the order recognizing a foreign main proceeding, the foreign representative is automatically entitled to the following specified relief under section 1520:

- (1) Sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States.
- (2) Sections 363, 549, 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate
- (3) Unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552
- (4) Section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States

A foreign representative in a nonmain proceeding is not entitled to automatic relief; however, he may seek relief pursuant to section 1521. At the request of the foreign representative, whether a main or nonmain proceeding, the court may grant other relief specified in section 1521 if the court is “satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceedings or concerns information required in that proceeding.” In addition, section 1507 specifies:

in determining if the court will provide “additional assistance” to a foreign representative, the court will consider such additional assistance, consistent with the principles of comity, which will reasonably assure (1) just treatment of all holders of claims against interests in debtor’s property; (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceedings; (3) prevention of preferential or fraudulent

dispositions of property of the debtor; (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by the Bankruptcy Code; and if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

Also, upon recognition, a foreign representative may commence an involuntary case under section 303 or a voluntary case under section 301 and 302 if the foreign proceeding is a foreign main proceeding. However, a case under a chapter other than Chapter 15 may only be commenced if the debtor has assets in the United States.

Pursuant to 28 U.S.C. §157(b)(2)(P), recognition of foreign proceedings and other matters under Chapter 15 are core proceedings. Venue is governed by 28 U.S.C. §1410.

B. Changes on Section 304 Practice by Chapter 15

Chapter 15 replaced Bankruptcy Code section 304 and made significant changes to the ancillary proceeding practice. While many of the principals of section 304 are still recognizable in Chapter 15, Chapter 15 offers a much more sophisticated tool for addressing cross-border insolvencies.

First, certain definitions under section 304 were amended to be more expansive. The definition of "foreign proceeding" in section 101(23) was amended to recognize as a foreign proceeding: (i) a collective proceeding, (ii) a judicial or administrative proceeding, (iii) an interim or final proceeding, and (iv) a proceeding in which the assets and affairs of the debtor are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation. In addition, the definition of "foreign representative" was changed to a broader version that includes "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding."

Second, Chapter 15 now provides for the automatic application of several provisions of the Bankruptcy Code upon the recognition of a foreign main proceeding, such as section 362 automatic stay, the right of a foreign representative to operate a business, section 361 defining "adequate protection" for the interests of secured creditors and the provisions of section 363 regarding the use, sale or lease of the debtor's property.

Section 1521 of Chapter 15 also provides that a foreign representative may apply for any appropriate additional relief if such relief is necessary to carry out the purpose of Chapter 15 or to protect the assets of the debtor or the interests of creditors. However, according to the House Report on the 2005 Law, the relief available under section 1521 is not intended "to expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 ..." Section 1507 further provides "[s]ubject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other

laws of the United States.” Section 1507 conditions any additional relief that may be granted in an ancillary proceeding on the court’s consideration of five factors, consistent with the principles of comity; (i) just treatment of all holders of claims against or interests in such estate; (ii) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceedings; (iii) prevention of preferential or fraudulent dispositions of property of such estate; (iv) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title; and (v) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns. While these factors are identical to the factors listed in former section 304(c), comity is included as a new overarching factor. Now, in section 1507, the court must consider whether the additional assistance is consistent with the principles of comity, and then whether such relief will reasonably satisfy the five other factors.

III. Chapter 11 vs. Chapter 15

An ancillary proceeding under Chapter 15 offers foreign representatives in a foreign main case many of the rights and powers of a trustee or a debtor in possession under the Bankruptcy Code without filing a full case. However certain rights, such as the right to exercise avoidance powers under the U.S. Code, are specifically excluded. A foreign representative always has the alternative to file a full or plenary proceeding under Chapter 11 or Chapter 7 of the Bankruptcy Code. However, after recognition of a foreign main proceeding, section 1528 mandates that a case under another chapter of title 11 can only be commenced if the debtor has assets in the United States. The basic scope of jurisdiction in a case commenced under title 11 after recognition of a foreign main proceeding is restricted to the assets of the debtor that are within the territorial jurisdiction of the United States.

If no foreign proceeding is pending, there do not appear to be any additional restrictions imposed by Chapter 15 on the right of a foreign debtor or of foreign creditors to file a voluntary or involuntary petition in the United States. Section 109 provides that a person who resides or has a domicile, place of business or property in the United States may be a debtor under title 11 unless that person falls into one of the specifically enumerated exceptions. Persons, which include individuals, partnership and corporations, are eligible to file in the United States even if they only have a small amount of property located in the United States. *In re Global Ocean Carriers Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000) (holding that a few thousand dollars in a bank account and the unearned portions of retainers provided to local counsel constituted property sufficient to form a predicate for a filing in the United States); *In re Iglesias*, 226 B.R. 721 (Bankr. S.D. Fla. 1998) (holding that \$500 in a bank account was sufficient predicate to file in the United States). See also 2 L. King, *Collier on Bankruptcy*, P 109.02[3] (15th ed. rev. 2003), (stating without qualification, "there is virtually no formal barrier to a foreign entity commencing a case under title 11 in the United States."). Once such a case is filed, all of the provisions of the

Bankruptcy Code would apply and all of the assets of the debtor worldwide would be part of the proceeding.

IV. Articles of Interest on Chapter 15

Evelyn H. Biery, Jason L. Boland and John D. Cornwell, *The Future of Chapter 11: A Look at Transnational Insolvencies and Chapter 15 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 47 B.C. L. Rev. 23 (2005).

Jay Lawrence Westbrook, *Chapter 15 at Last*, 79 Am. Bankr. L.J. 713 (Summer 2005).

Current Developments in International Insolvency Law: A United States Perspective by Allan L. Gropper, United States Bankruptcy Judge for the Southern District of New York.

Cases Filed and Decided Under Chapter 15 of the Bankruptcy Code

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Case Filed Under § 304 – discussing Chapter 15

In re Atrimm, S.r.L., 335 B.R. 149 (Bankr. C.D. Cal. 2005)

Although decided under section 304 of the Bankruptcy Code, the Court also analyzed the effect that chapter 15 would have on the outcome of the case if the case had been decided under the then-enacted chapter 15 of the Bankruptcy Code. The case centers around a settlement for the distribution of proceeds of a motion picture between an Italian debtor in a bankruptcy proceeding pending in Rome, Italy and TriStar Pictures, Inc. The settlement agreement provided that the distribution proceeds would be directed to the Italian debtor's trustee. The movie's producer opposed sending all of the proceeds to the debtor's trustee, claiming he was entitled to be paid from the proceeds as well.

Under section 304, which emphasizes deference to the foreign court, the bankruptcy court found that settlement funds owed to the debtor should be turned over to the debtor's Italian trustee. The court found that anyone claiming an interest in such settlement funds, in particular the film producer, must prosecute his claim in the Italian proceeding.

The court noted that a fundamental change between section 304 and chapter 15 is that chapter 15 directs the court to cooperate with the foreign court or representative "to the maximum extent possible." The court noted, however, that section 1521(b) of the Bankruptcy Code, like section 304(c), also requires the court to ensure "sufficient protection to U.S. creditors." The court found that there would be little difference in the outcome of this case if it were decided under chapter 15, except that the certificate from the foreign court affirming the existence of a foreign proceeding would have had to been filed with an English translation, pursuant to section 1515(d), which was not required under Section 304.

Chapter 15 Recognition is the Exclusive Remedy for Extending Injunctive Relief

United States v. J.A. Jones Construction Group, LLC, 333 B.R. 637 (E.D.N.Y. 2005)

The interim receiver in the Canadian bankruptcy proceeding of LBL Systems (U.S.A.) Inc. requested an injunction from the United States District Court for the Eastern District of New York to stay an action commenced by the United States government against the Canadian debtor. The court refused to grant such an injunction and held that, unlike the prior scheme under section

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304 of the Bankruptcy Code, chapter 15 is intended to be an exclusive remedy for a foreign representative to enforce an injunction issued by a foreign bankruptcy or insolvency court. The court explained that if a foreign representative meets the requirements to be recognized as a foreign main proceeding by satisfying the requirements of chapter 15, “a wide range of relief available under American bankruptcy law immediately becomes applicable, including the automatic stay provision in section 362 of the Code,” pursuant to Section 1520 of the Bankruptcy Code. Moreover, if the foreign proceeding is recognized as a foreign nonmain proceeding, pursuant to Section 1521 of the Bankruptcy Code, the foreign representative may obtain a stay or injunction where the foreign representative can demonstrate that the injunction is necessary to effectuate the purposes of chapter 15 and to protect the interests of the debtor or the creditors. Pursuant to section 1519(a), the foreign representative may also obtain a stay from the bankruptcy court from the date the petition for recognition is filed until the court rules on the petition if the representative can demonstrate that such relief is “urgently needed to protect the assets of the debtor or the interests of the creditors. The court granted the Canadian receiver a 60-day stay to allow the receiver to file a chapter 15 case for recognition as a foreign proceeding.

Interpretation of Section 1506 of the Bankruptcy Code “Manifestly Contrary to the Public Policy of the United States”

In re Ephedra Products Liability Litigation, 349 B.R. 333 (S.D.N.Y. 2006)

The appointed monitor in the Muscletech Canadian proceeding filed a chapter 15 petition seeking recognition as a foreign main proceeding. The Muscletech case was removed to the district court and consolidated with the multi-district litigation including other manufacturers and retailers of ephedra-based products captioned “In re Ephedra Products Liability Litigation.” The Canadian court had already instituted a claims resolution procedure in the Muscletech Canadian bankruptcy proceeding.

In the district court, the ephedra claimants argued that the Muscletech Canadian claims resolution procedure, which included mandatory mediation, should be refused recognition pursuant to 11 U.S.C. § 1506, which provides that a bankruptcy court considering a chapter 15 petition may refuse “to take an action governed by [chapter 15] if the action would be manifestly contrary to the public policy of the United States.” The ephedra claimants argued that the lack of a jury trial in the Canadian claims resolution procedure was manifestly contrary to public policy. The district court held that the lack of a right to a jury trial did not rise to the level of being “manifestly contrary to public policy” and instead considered whether the Canadian claims resolution procedure was a “fair and impartial proceeding.” After requesting certain amendments to the Canadian claims resolution procedure, and having those recommended amendments proposed by the Canadian monitor to and accepted by the Canadian court, the district court recognized the Muscletech Canadian proceeding as a foreign main proceeding.

Determining the Debtor's Center of Main Interests in Deciding Whether a Foreign Proceeding is a Foreign Main or Nonmain Proceeding

In re SPhinX Ltd., et al., 351 B.R. 103 (Bankr. S.D.N.Y. September 6, 2006) (Case No. 06-11760)

The United States Bankruptcy Court for the Southern District of New York was asked by the Cayman Islands Joint Official Liquidators (“JOLs”) to recognize the Cayman Islands insolvency proceedings as foreign main proceedings.

The Court made the following factual determinations:

- (i) the SPhinX Funds¹ are limited liability companies and segregated portfolio companies incorporated and registered in the Cayman Islands;
- (ii) the Cayman Islands incorporation and registration were apparently set up to attract, through favorable Cayman Islands tax benefits, non-US and US tax-exempt investors;
- (iii) the SPhinX Funds did not conduct business in the Cayman Islands and had no employees or physical offices in the Cayman Islands;
- (iv) no assets other than the SPhinX Funds’ books and records were kept in the Cayman Islands;
- (v) the SPhinX Funds’ investments were managed by PlusFunds Group, Inc. (“Plus Funds”), a Delaware corporation with offices in New York, New York²;
- (vi) under a discretionary management agreement, only approximately 14% of SPhinX funds’ investors, by amount, were US investors; and
- (vii) the SPhinX Funds are hedge funds whose business consisted of buying and selling securities and commodities tracking certain S&P Hedge Fund Indexes. The SPhinX Funds business was conducted by PlusFunds Group, Inc. under a discretionary investment management agreement.

¹ SPhinX Managed Futures Fund, SPC, together with twenty-one related companies are defined as the “SPhinX Funds.”

² PlusFunds is presently a chapter 11 debtor in the Southern District of New York. Approximately 95 percent of the funds held by Sphinx Managed Futures Fund, SPC were invested in securities and commodities with Refco, LLC, a United States regulated company, and approximately five percent invested in foreign currencies with Refco Capital Markets, Ltd. (“RCM”). Except for the margin payments in Refco, LLC, all of the SPhinX Funds were transferred to RCM, which failed to maintain such funds in a segregated account but rather placed such funds in RCM’s operating account.

About a week before the bankruptcy filings of Refco, LLC, RCM and other affiliated companies (the “Refco Cases”), RCM transferred \$312 million to Refco LLC which was subsequently transferred to an account for the benefit of SPhinX Managed Futures Fund, SPC. The Official Committee of Unsecured Creditors appointed in the RCM case subsequently commenced an adversary proceeding against certain of the SPhinX Funds seeking the recovery of \$312 million.

The parties reached a settlement that was approved by the Bankruptcy Court in the Refco Cases under which the SPhinX Funds agreed to pay \$263 million to RCM and waive their rights to any claim in the Refco Cases, including any claim arising under 11 U.S.C. § 502(h) (the “RCM Settlement”). Pursuant to the RCM Settlement, the \$263 million was paid into escrow. Shortly thereafter, the SPhinX Funds filed voluntary liquidation proceedings in the Cayman Islands. The JOLs appointed by the Cayman Islands court to administer the liquidation of the SPhinX Funds filed chapter 15 petitions in the United States Bankruptcy Court for the Southern District of New York.

Before deciding whether to recognize the Cayman Islands proceeding as a main or nonmain proceeding, the court downplayed the importance of the distinction between main and nonmain recognition, stating “while the decision to recognize a foreign proceeding as ‘main’ may be viewed by some as significant, it has limited specified consequences under chapter 15 (particularly since the chapter gives the bankruptcy court the ability to grant substantially the same types of relief in assistance of foreign nonmain proceedings and to condition the foreign representative’s ability to operate the business and dispose of the debtor’s assets under section 1520(a)(3)), and, moreover, recognition itself is subject to review and modification under Bankruptcy Code section 1517(d).”

In its decision, the court noted that certain SPhinX Funds investors had appealed the court’s order entered in the Refco Cases approving the RCM Settlement and that the \$263 million could not be taken out of escrow until a final, non-appealable order was entered. The court stated as follows:

[a]s a result, delay of the appeals effectively constitutes success on appeal *without consideration of the merits*. Moreover, the RCM Trustee and the Refco Committee have persuasively asserted that delay of the effectiveness of the RCM Settlement materially affects their ability to reach a global resolution of the Refco Chapter 11 cases, thus conferring significant leverage on the party causing delay.

The Bankruptcy Court held that although the SPhinX Funds were registered in the Cayman Islands and would “normally” be recognized as a foreign main proceeding because its center of main interests would be presumed to be in the Cayman Islands, other interests required that it be recognized as a “foreign nonmain proceeding.” The court refused to apply the factors relating to recognition “mechanically.”

The Bankruptcy Court relied on the “flexibility” of chapter 15 set forth in section 1521 of the Bankruptcy Code stating that relief may be granted “only if the interests of creditors and other

interested entities, including the debtor, are sufficiently protected.” The court noted that chapter 15 separates the concept of “recognition” from the determination of the proceeding as “foreign main” or “foreign nonmain.” The court recognized the Cayman Islands proceeding as a foreign nonmain proceeding rather than a foreign main proceeding, stating that the determination of the “center of main interests” should be interpreted in light of “the interest of the debtor’s estate, creditors and other parties, absent evidence that they support a ‘primary’ proceeding for an improper purpose.”

Ultimately, the Bankruptcy Court relied on its determination that the chapter 15 petition of the JOLs was filed for an improper purpose:

...a primary basis for the Petition, and the investors’ tacit consent to the Cayman Islands proceedings as foreign main proceedings, is improper: that is, it has the purpose of frustrating the RCM Settlement by obtaining a stay of the appeals upon the invocation of Bankruptcy Code section 362(a) that would go into effect under section 1520(a)(1) upon such recognition ... given that the JOL’s did not articulate a proper basis, or even actively pursue a request, for any other relief under chapter 15 ... this litigation strategy [to stay the appeal] appears to be the only reason for their request for recognition of the Cayman Islands proceedings as foreign main proceedings.

In re SPhinX, Ltd., et al., Slip Op., Chapter 15 Case No. 06-11760 (RDD) (Bankr. S.D.N.Y. May 14, 2007)

In the SPhinX chapter 15 proceeding, the bankruptcy court issued a second opinion in May, 2007 denying a motion of the JOLs for an order compelling the production of documents and examination of witnesses pursuant to section 1521 of the Bankruptcy Code and Rule 2004 of the Federal Rules of Bankruptcy Procedure. This decision was also based on the Bankruptcy Court’s belief that authorizing such discovery may disturb the RCM Settlement, and that such discovery was not “necessary” or “appropriate relief” pursuant to section 1521(a)(4). Any discovery could conceivably be used by the JOLs in a motion to obtain relief from the Bankruptcy Court’s order approving the RCM Settlement pursuant to Rule 60 of the Federal Rules of Civil Procedure, as adopted by Rule 9024 of the Federal Rules of Bankruptcy Procedures. The Bankruptcy Court held that the terms “necessary” and “appropriate relief” in the statute requires the court to use its discretion regarding the merit of the parties’ requests “rather than blindly turning to the broad fishing expedition provided for in Bankruptcy Rule 2004.” The Bankruptcy Court went on to consider the “context” of the request for discovery and the RCM Settlement and denied the discovery requests on that basis.

Location of Debtor's Center of Main Interests as "Principal Place of Business"

In re Tri-Continental Exchange, Ltd., 349 B.R. 627 (Bankr. E.D. Cal. 2006)

A debtor insurance company, which would not be eligible for traditional relief under the Bankruptcy Code, commenced an insolvency proceeding in St. Vincent and the Grenadines. The debtor sold insurance policies in the US and Canada and one of its principals faced criminal charges for fraud. Joint liquidators in the foreign proceeding identified and sought to freeze \$7 million in assets from various international banks. A judgment creditor filed an objection and argued that the foreign proceeding should be recognized as a "foreign non-main proceeding."

In determining where the "center of the debtor's main interests" is located for purposes of chapter 15 recognition, the court considered the entity's "principal place of business." The court ultimately held that the insurance company's principal place of business and thus center of main interests was St. Vincent and the Grenadines because the debtor had registered offices and conducted regular business there. Thus, the foreign winding-up proceedings were recognized as foreign main proceedings over the objection of the judgment creditor. The court went on to consider whether it should impose additional restrictions on the foreign proceedings "in the name of protecting" US creditors and determined that this would be inappropriate "because all creditors in this instance will be better served by, as contemplated by 11 U.S.C. § 1521(a)(5), entrusting administration and realization of assets to the foreign representatives without imposing a superfluous, and potentially inconsistent, tranche of judicial supervision."

Permanent Injunctive Relief Available Under Chapter 15 Without an Adversary Proceeding

In re Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006)

The foreign representative of a Korean bankruptcy proceeding, in which a plan of reorganization had already been approved, filed a chapter 15 proceeding in the United States Bankruptcy Court for the Western District of Washington and sought a permanent injunction to prevent a US plaintiff in a litigation against the debtor from recovering a judgment in excess of the amount provided under the Korean bankruptcy plan. The plaintiff in the state court litigation argued that seeking a permanent injunction in the chapter 15 case was procedurally improper and that an injunction must be obtained only through an adversary proceeding. The court held that a permanent injunction in a chapter 15 case can be obtained without filing an adversary proceeding. The court also held that it was not cost effective to keep a chapter 15 case open indefinitely to retain the benefit of the automatic stay when the more appropriate relief is a permanent injunction of the action.

In re Petition of Jeffrey John Lloyd, *Slip Op.* Case No. 05-60100 (BRL) (Bankr. S.D.N.Y. Dec. 7, 2005)

A foreign representative of a proceeding in the United Kingdom filed a chapter 15 petition for recognition as a foreign main proceeding and injunctive relief in support of the "scheme of arrangement" approved in the United Kingdom proceeding. The court granted recognition of the

proceeding and the scheme of arrangement adopted by the UK court as well as permanent injunctive relief against any persons or entities taking actions to interfere with the scheme of arrangement proposed and accepted in the UK proceeding.

Grant of Relief Short of Recognition

In re Yukos Oil, Slip Op. Case No. 06-10755 (RDD) (Bankr. S.D.N.Y. May 26, 2006)

Yukos was in the process of selling assets of a Dutch subsidiary even though the Russian receiver had obtained orders from the Russian court enjoining these transactions. The Russian receiver attempted to obtain an injunction by commencing a chapter 15 case. Yukos and one of its major creditors opposed the chapter 15 petition and injunction, reasoning that the proceeds of the sale were needed to pay Dutch creditors under Dutch law. The Bankruptcy Court for the Southern District of New York denied recognition and held that it would not enjoin the proposed sale, which was for a fair price, but would recommend to the Dutch court that the proceeds of the sale be used to benefit all creditors of Yukos.

CHAPTER 15 CASES COMMENCED SINCE OCTOBER 17, 2005

Afinsa Bienes Tangibles SA, Chapter 15 Case No. 07-10675 (JMP) (Bankr. S.D.N.Y. March 13, 2007)

Background: The debtor operated an investment business and entered into contracts whereby third parties would acquire stamp-related investments. The operation was in reality a large-scale Ponzi scheme for which the debtor entered into over 140,000 contracts, most of which were with entities in Spain, and had liabilities in excess of €4.2 billion.

Foreign Proceeding: Spanish authorities initiated proceedings against the debtor on May 9, 2006 and the proceeding was pending before the Mercantile Court No. 6 in Madrid, Spain.

Decision: An order granting recognition and relief in aid of a foreign main proceeding pursuant to 11 U.S.C. §§ 1515, 1517 and 1520 was entered on April 26, 2007.

Alpha-200 GmbH & Co. KG a/k/a Erwin Behr GmbH & Co. KG, Chapter 15 Case No. 06-46562 (SWR) (Bankr. E.D. Mich. May 24, 2006)

Background: The debtor, a German company engaged in the business of selling wood interior panels for luxury automobiles, filed a bankruptcy proceeding to avoid a London arbitration award of \$2.2 million to M&C Corporation, a manufacturer's representative serving suppliers to the automotive industry.

Foreign Proceeding: The foreign proceeding was filed on August 15, 2005 in the Bankruptcy Division of the District Court of Esslingen Germany.

Decision: The chapter 15 case filed in Michigan was dismissed on July 12, 2006 for non-compliance with 11 U.S.C. § 1515(b), debtor's foreign representative failed to file required documentation of foreign proceeding.

Amerindo Internet Growth Fund Limited, Chapter 15 Case No. 07-10327 (RDD) (Bankr. S.D.N.Y. February 9, 2007)

Background: The debtor is a Cayman Islands limited liability exempted company with a registered office in the Cayman Islands. The petition for relief under chapter 15 in the Bankruptcy Court of the Southern District of New York was unopposed.

Foreign Proceeding: On December 8, 2006, the Grand Court of the Cayman Islands entered an order providing for the winding-up of the debtor.

Decision: An order granting recognition of a foreign main proceeding was entered on March 7, 2007.

Auctentia, S.L.U., Chapter 15 Case No. 07-11173 (JMP) (Bankr. S.D.N.Y. April 24, 2007)

Background: The debtor was an investment holding company in connection with stamp-related investments, which was a wholly-owned subsidiary of Afinsa Bienes Tangibles SA (see above).

Foreign Proceeding: The foreign proceeding is pending before the Mercantile Court No. 1 in Madrid, Spain.

Decision: The court reserved decision and has not rendered a decision at this time.

Bancafe International Bank, LTD, Chapter 15 Case No. 06-16712 (RAM) (Bankr. S.D. Fla. December 19, 2006)

Background: The debtor was a Barbados full service bank with over \$203 million in estimated liabilities. The debtor had claims against the Refco entities that remain unresolved.

Foreign Proceeding: The foreign proceeding is pending in the High Court of Barbados.

Decision: An order granting recognition of a foreign main proceeding pursuant to §§ 1515 and 1517 of the Bankruptcy Code and granting related relief was entered on January 12, 2007.

Bancredit Cayman Ltd., Chapter 15 Case No. 06-11026 (SMB) (Bankr. S.D.N.Y. May 10, 2006)

Background: The debtor is a bank incorporated in the Cayman Islands and regulated by the Cayman Islands Monetary Authority. The debtor had approximately 73 creditors and \$215 million in liabilities. From its Cayman Islands office, the debtor was engaged in administrative and regulatory activities necessary to comply with a Cayman Islands banking license. One objection was filed to the debtor's chapter 15 petition.

Foreign Proceeding: The foreign proceeding was filed on May 31, 2004 in the Grand Court of the Cayman Islands, Justice A.G. Henderson, Case number 171 of 2004.

Decision: An order granting recognition as a foreign main proceeding and certain injunctive relief was entered on June 15, 2006.

Boe Hydys Technology Co., Ltd., Chapter 15 Case No. 06-52334 (RLE) (Bankr. N.D. Ca. November 14, 2006)

Background: The debtor manufactures computer hardware and also licenses their intellectual property to a number of high profile electronics firms, such as Samsung, Siemens, IBM, Dell, LG, and Hewlett-Packard. The debtor was facing a lawsuit for patent infringement from Honeywell International, Inc. at the time of the commencement of its Korean proceeding and Honeywell opposed the debtor's chapter 15 petition.

Foreign Proceeding: The foreign proceeding was filed on September 29, 2006 in the Seoul Central District Court, First Bankruptcy Division, Case No. 2006 Hoi Hap II.

Decision: The court reserved decision and has not rendered a decision at this time.

Creative Building Maintenance Inc. (Delaware Corporation), Chapter 15 Case No. 06-03587 (CLB) (Bankr. W.D.N.Y. November 15, 2006)

Creative Building Maintenance Inc. (Ontario Corporation), Chapter 15 Case No. 06-03586 (CLB) (Bankr. W.D.N.Y. November 15, 2006)

Background: The debtor is in the business of providing building cleaning and maintenance services to commercial customers in Canada and the United States. A substantial majority of the Debtors contract revenue comes from contracts with PetSmart Inc., The TJX Companies, Inc., and Michael's Stores, Inc.

Foreign Proceeding: The foreign proceeding is pending before the Ontario Superior Court of Justice Commercial List, a monitor was appointed on May 8, 2006.

Decision: An order was entered on December 29, 2006 recognizing the case as a foreign main proceeding.

Daewoo Corporation, Chapter 15 Case No. 06-12242 (REG) (Bankr. S.D.N.Y. September 25, 2006)

Background: The Japanese debtor was involved in trading and construction businesses prior to its workout proceeding in the late 1990's that led to a workout agreement in January 2000. Pursuant to the workout agreement, the debtor's trading division was spun-off into Daewoo International Corporation and the debtor's construction division was spun-off into Daewoo Engineering & Construction Co., Ltd. The debtor itself has been dormant since the spin-off. Pursuant to the workout agreement, claims against the debtor held by certain financial institutions were stayed until March 31, 2006. Because the debtor was left with no meaningful business activities or revenue, it was unable to repay its debts even with the extended grace period.

Foreign Proceeding: The foreign proceeding was filed June 16, 2006 in the Seoul Central District Court (12th Bankruptcy Division), Chi-Yong Lim (Presiding Judge), Tae-Joon Park (Judge), Choon-Soo Kim (Judge), Case number 2006 Hahap 18 Bank. Decl.

Decision: An order granting recognition and relief in aid of a foreign main proceeding pursuant to 11 U.S.C. §§ 1517, 1520 and 1521 was entered on October 20, 2006.

Daymonex Limited, Chapter 15 Case No. 07-90171 (BHL) (Bankr. S.D. Ind. February 2, 2007)

Background: The debtor is a leading Canadian supplier and manufacturer of fabricated anodized and extruded aluminum products, fabricated machined components and assemblies to the automotive, transportation, building trades, appliance and consumer product industries in Canada and the Americas.

Foreign Proceeding: The foreign proceeding was filed on January 11, 2007 in the Ontario Superior Court of Justice in Bankruptcy and Insolvency.

Decision: An order recognizing Daymonex as a foreign main proceeding was entered on February 26, 2007.

Europäische Rückversicherungs-Gesellschaft in Zurich, Chapter 15 Case No. 06-13061 (REG) (Bankr. S.D.N.Y. December 21, 2006)

Background: The debtor was an insurance and reinsurance company that requested recognition as a foreign non-main proceeding in order to support the implementation so its scheme of arrangement developed in the English courts.

Foreign Proceeding: The foreign proceeding is pending before the High Court of Justice of England and Wales.

Decision: A Permanent Injunction and Order Granting Recognition of a Foreign Nonmain Proceeding of European Reinsurance Co. of Zurich was entered on January 22, 2007.

Gestion-Privee Location L.L.C., Chapter 15 Case No. 06-80071 (WLS) (Bankr. M.D.N.C. January 18, 2006)

Background: The debtor's affiliate raised funds from investors by advertising that funds would be invested in Swiss Private Banking assets. The debtor and its affiliates engaged in fraudulent use of funds by failing to invest the funds as advertised and instead using such funds to purchase real estate.

Foreign proceeding: The foreign proceeding was filed August 8, 2005 in the Tokyo District Court Civil Division No. 20, Tokyo, Japan, Case number 14570.

Decision: An order was entered on February 24, 2006 recognizing a the case as a foreign main proceeding and granting the chapter 15 petition.

Gordian RunOff (UK) Ltd., f/k/a GIO (UK) Ltd., Chapter 15 Case No. 06-11563 (RDD) (Bankr. S.D.N.Y. July 11, 2006)

Background: Gordian RunOff (UK) Limited is underwriter and reinsurance company. The chapter 15 case was commenced to implement a scheme of arrangement sanctioned by the High Court of Justice of England and Wales. The chapter 15 petition was unopposed.

Foreign Proceeding: The foreign proceeding is pending in the High Court of Justice of England and Wales.

Decision: An order and final decree granting recognition of the foreign main proceeding, a permanent injunction and related relief was entered on August 28, 2006.

Hatteras Reinsurance Ltd., Chapter 15 Case No. 06-11304 (JMP) (Bankr. S.D.N.Y. June 8, 2006)

Background: Hatteras Reinsurance Ltd., was licensed as a Class 3 insurer and at the time of the chapter 15 petition was engaged in orderly winding-up proceedings in Bermuda. The chapter 15 petition was opposed by a creditor of the debtor.

Foreign Proceeding: The foreign proceeding was filed on June 6, 2006 in the Supreme Court of Bermuda (Commercial Court), Case no 175.

Decision: An order recognizing the case as a foreign main proceeding was entered on September 25, 2006.

Ian Gregory Thow, Chapter 15 Case No. 05-30432 (PHB) (Bankr. W.D. Wash. November 2, 2005)

Background: Ian Gregory Thow, an investment counselor from Victoria, B.C., was accused by former clients of defrauding them of millions of dollars to facilitate his lavish lifestyle. The related Canadian bankruptcy case was filed to stay dozens of actions filed against Mr. Thow for defrauding Canadian investors. Several orders to freeze the debtor's assets were outstanding at the time. Thow faced a proposal in the Canadian proceeding to pay his creditors and on the even of their consideration of the proposal fled to the United States in the middle of the night, with assets of the Canadian bankruptcy estate, to file a chapter 7 bankruptcy petition in the United States. The Canadian trustee has a pending motion to dismiss the chapter 7 case in the United States Bankruptcy Court for the Western District of Washington, Case No. 05-21675 (KO). The Canadian Trustee also filed this chapter 15 petition to recover assets brought by the debtor to the United States.

Foreign Proceeding: Filed in the Supreme Court of British Columbia, Vancouver, on July 21, 2005.

Decision: On November 10, 2005, an order was entered recognizing Thow's case as a foreign main proceeding.

Industrieplanung Fischer Aktiengesellschaft, Chapter 15 Case No. 07-30662 (Bankr. M.D. Ala. May 9, 2007)

Background: The debtor is a German branch of an international engineering company. A state court action in Alabama was filed by an affiliate of the debtor against Eisenmann Corporation and Hyuandai Motor Manufacturing of Alabama LLC for breach of contract. The trustee of the German proceeding brought the chapter 15 petition to avoid conflict between the German bankruptcy proceedings and the Alabama state court action.

Foreign Proceeding: The foreign proceeding is pending before the Local Court (Amtsgericht) of Bad Homburg v.d. Hohe Insolvency Court.

Decision: The court reserved decision and has not rendered a decision at this time.

Katsumi Iida, Chapter 15 Case No. 06-00376 (RJF) (Bankr. D. Haw. June 13, 2006)

Background: Katsumi Iida is an individual and was the owner of record of 100% of the stock of (i) Total Organic Recycling Systems, Inc., (ii) Clio Hawaii, Inc., (iii) Kahuwai Bay Yacht Club,

Inc., (iv) Kahala Royal Corp., (v) KHOMC Corp., and (vi) Kalalani KVR, Inc. These corporations all owned real estate or other assets only in Hawaii. The debtor owns no other property or assets in the United States besides stock ownership in the above-mentioned companies. The chapter 15 petition was opposed by the debtor.

Foreign Proceeding: The foreign proceeding is pending in the Tokyo District Court Civil Division 20th Department.

Decision: An order dated July 14, 2006 was entered recognizing the case as a foreign main proceeding.

Kirshan K Sudan, Chapter 15 Case No. 07-11166 (AIH) (Bankr. N.D. Ohio February 26, 2007)

Background: Kirshan Sudan was an individual debtor in Quebec that transferred funds to a United States bank account. The Canadian proposal to creditors was rejected and the Canadian trustee later learned of the transferred funds and sought to obtain information from the United States bank. The bank refused to give the trustee information related to the account or access to the funds. The trustee initiated the chapter 15 petition to gain access to the funds for the benefit of Canadian creditors.

Foreign Proceeding: The foreign proceeding is pending before the Quebec Superior Court (Commercial Division).

Decision: The court reserved decision and has not rendered a decision at this time.

La Mutuelle du Mans Assurances IARD, U.K. Branch, Chapter 15 Case No. 05-60100 (BRL) (Bankr. S.D.N.Y. November 11, 2005)

Background: La Mutuelle du Mans Assurances IARD is a mutual instance company doing business in the UK, France and elsewhere in the European Union. A branch of the debtor administered contracts of insurance in respect of marine risk in the United Kingdom. A solvent scheme of arrangement was proposed to the debtor's creditors in the foreign proceeding, which included the UK marine risk contracts. The chapter 15 case was filed to more efficiently carry out the scheme of arrangement.

Foreign Proceeding: The foreign proceeding is pending before the High Court of Justice, Chancery Division, Companies Court, London, England.

Decision: See above discussion of In re Petition of Jeffrey John Lloyd, *Slip Op.* Case No. 05-60100 (BRL) (Bankr. S.D.N.Y. Dec. 7, 2005).

Lion City Run-Off Private Limited, Chapter 15 Case No. 06-10461 (SMB) (Bankr. S.D.N.Y. March 15, 2006)

Background: The debtor is an insurance company that was put into “run-off” proceedings in which insurance companies cease writing new business and seek to determine, settle and pay all liquidated claims of their insureds as they arise. “Run-off” proceedings typically last for 20 years or more. To shorten such time frame, the debtor proposed a scheme of arrangement. The debtor was solvent and anticipated that claims would be paid in full.

Foreign Proceeding: The foreign proceeding is pending in the Singapore High Court.

Decision: An Order and Final Decree Granting Recognition of a Foreign Main Proceeding, Permanent Injunction and Related Relief was entered on April 13, 2006.

Mackenzie E. Bowell, Chapter 15 Case No. 06-01710 (SSC) (Bankr. D. Ariz. June 9, 2006)

Background: Mackenzie E. Bowell, an individual, left Canada during the pendency of her bankruptcy case there and was involved in multimillion dollar real estate deals in the United States. The Canadian trustee brought the chapter 15 petition seeking to have the case recognized as a foreign non-main proceeding in order to distribute assets equitably to creditors.

Foreign Proceeding: The foreign proceeding was filed March 3, 2004 in Vancouver, British Columbia under Canada’s Bankruptcy and Insolvency Act, Case number: 11-236424.

Decision: An Order granting Application for Recognition of a Foreign Non-Main Proceeding was signed on July 28, 2006 (as requested).

Mark Steven Parker, Chapter 15 Case No. 06-05212 (DRD) (Bankr. D.S.C. November 14, 2006)

Background: Mark Steven Parker, an individual debtor, moved to the United States with assets that could have been used for distribution to creditors in his foreign bankruptcy case. The trustee seeks to have the case recognized as a foreign main proceeding in order to assist with the marshalling of the debtor’s assets.

Foreign Proceeding: The foreign proceeding was filed on January 25, 2005, case 12 of 2005 in the Slough County Court, England.

Decision: The court reserved decision and has not rendered a decision at this time.

Moulin Global Eyecare Holdings, Ltd., Chapter 15 Case No. 06-30018 (TEC) (Bankr. N.D. Cal. January 13, 2006)

Background: Moulin Global was a holding company for a group of vertically integrated manufacturers, distributors and retailers of branded and private optical frames and accessories in Asia. The chapter 15 pleadings state that the debtor was the third largest such company in the world. In April 2005, the debtor's auditors reported questionable accounting practices, which led to winding-up proceedings in Hong Kong and Bermuda. A pending lawsuit from a U.S. management-level employee was filed alleging fraud, breach of fiduciary duty, conversion and other theories of recovery. The trustee in the winding-up proceedings filed a chapter 15 petition to marshal assets and stay the litigation. Opposition to the chapter 15 petition was filed by the litigation counterparty.

Foreign Proceeding: The foreign proceeding was filed on June 21, 2005 in the High Court of the Hong Kong Special Administrative Region Court of First Instance and Supreme Court of Bermuda, Case number HCCW 470/2005 and 243 of 2005.

Decision: An order was entered on March 3, 2006 recognized the Hong Kong proceeding as a foreign main proceeding and the affiliated Bermuda proceeding as a foreign nonmain proceeding (as requested by the trustee).

Mount Real Corporation, Chapter 15 Case No. 06-41636 (RJK) (Bankr. D. Minn. August 9, 2006)

Background: The debtors were in the business of selling magazine subscription contracts through sales management organizations. The magazine subscribers were virtually all United States residents and citizens. More than 20,000 subscribers had claims against the debtors in the estimated amount of \$2-5 million. The subscribers had no representation in the Canadian bankruptcy proceeding.

Foreign Proceeding: The foreign proceeding was filed on August 9, 2006 in the Quebec Superior Court (Commercial Division).

Decision: An order granting the petition as a foreign main proceeding was entered on September 6, 2006.

MuscleTech Research and Development Inc., Case No. 06-10092 (JMP) (Bankr. S.D.N.Y. January 18, 2006)

Background: The debtor owned certain intellectual property associated with nutritional products. Some of the debtor's products contained the herb ephedra, which has been linked to dangerous physical ailments and has since been banned by the FDA. Product liability claims of US citizens prompted the debtor's Canadian bankruptcy filing as well as the chapter 15 petition. The debtor also requested a temporary restraining order for the benefit of "non-applicants" which

were co-defendants (including retailers) and insurers in ephedra-based litigation also naming the debtor.

Foreign Proceeding: The foreign proceeding was filed in Canada and protection was granted by the Ontario Superior Court of Justice.

Decision: See above discussion of In re Ephedra Products Liability Litigation, 349 B.R. 333 (S.D.N.Y. 2006).

NRG Victory Reinsurance Ltd., Chapter 15 Case No. 06-11052 (JMP) (Bankr. S.D.N.Y. May 12, 2006)

Background: NRG Victory is a reinsurance underwriter. A proceeding in the English High Court was filed seeking a scheme of arrangement and a Canadian proceeding was also filed to recognize the English scheme of arrangement, once developed.

Foreign Proceeding: The foreign proceeding is pending before the High Court of Justice of England and Wales.

Decision: An order was signed on November 21, 2006 recognizing the English Proceeding as a foreign main proceeding and scheduling a permanent injunction hearing.

New World Network International, Ltd., Chapter 15 Case No. 06-10157 (ALG) (Bankr. S.D.N.Y. January 26, 2006)

Background: New World Network is a holding company for the New World Group of companies, a privately-held telecommunications group. Along with certain of its subsidiaries, the New World Group operated a major optical fiber submarine cable system. A sale of New World Network assets occurred in the United States with U.S. investors prior to the Bermuda winding-up proceeding, but all of the debtor's other activities occurred in Bermuda.

Foreign Proceeding: The foreign proceeding was filed on December 12, 2005 in the Bermuda Court.

Decision: An order granting Recognition and Relief in Aid of Foreign Main Proceeding was entered on October 20 2006.

Norshield Asset Management (Canada) Ltd., et al., Chapter 15 Case No. 06-40997 (RJK) (Bankr. D. Minn. May 30, 2006)

Background: The debtors offered financial services, hedge fund management, and alternative investment solutions. Proceedings were filed in Canada to appoint a receiver at the request of the Ontario Securities Commission.

Foreign Proceeding: The foreign proceeding is pending in the Ontario Superior Court of Justice.

Decision: An order was entered on June 28, 2006 recognizing the Canadian Insolvency Proceeding as a foreign main proceeding pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code.

North America Steamships Ltd., Chapter 15 Case No. 06-13077 (RDD) (Bankr. S.D.N.Y. December 22, 2006)

Background: The debtor was engaged in chartering and subchartering vessels for maritime freight transport. The debtor was a party to foreign freight agreements under which it owed or is owed certain amounts based on fluctuations in pricing of maritime freight. The debtor's accounts receivable are payable in US dollars through US accounts. Attachment proceedings were filed by US creditors against the US accounts. The trustee sought recognition of the Canadian proceeding to prevent piecemeal distribution of assets outside of the Canadian proceeding.

Foreign Proceeding: A voluntary assignment in bankruptcy was filed on November 29, 2006 in the Province of British Columbia, Canada.

Decision: An Order Granting Recognition of Foreign Main Proceeding was entered on January 25, 2007.

Quebec, Inc., Chapter 15 Case No. 06-07875 (CAD) (Bankr. N.D. Ill. July 5, 2006)

Background: Quebec, Inc. is involved in the production of large-format films, including Ultimate G's: Zac's Flying Dream (2000), Adrenaline Rush: The Science of Risk (2002), and Vikings: Journey to New Worlds (2004). Litigation was pending at the time of the bankruptcy filing in Texas against the debtor and various theme parks. The action was brought by the trustee to stay such litigation.

Foreign Proceeding: The foreign proceeding was filed on July 5, 2006 in the Office of the Superintendent of Bankruptcy Industry Canada.

Decision: An Order Granting Recognition of Foreign Main Proceeding was entered on August 22, 2006.

S.N.C. Summersun et cie, Case No. 06-10955 (SMB) (Bankr. S.D.N.Y. May 4, 2006)

Background: S.N.C. is a partnership company formed under French commercial law for the purpose of purchasing, managing and operating real estate. The debtor owns two 32-floor towers located at 14 Rue de Théâtre in Paris, France.

Foreign Proceeding: A foreign proceeding was commenced on February 16, 2001 in the Commercial Court of Antibes, France.

Decision: An order entered granting recognition and relief in aid of foreign main proceeding was entered on August 10, 2006.

Spencer Partners Limited, Chapter 15 Case No. 07-02356 (JEW) (Bankr. D.S.C. May 2, 2007)

Background: The debtor is subject to a winding-up order in the Isle of Man. The trustee commenced the case to marshal assets of the debtor for the benefit of creditors.

Foreign Proceeding: The foreign proceeding is pending in Douglas, Isle of Man, under the supervision of the High Court of Justice of the Isle of Man (Serial Number CPL 2007/1).

Decision: The court reserved decision and has not rendered a decision at this time.

SPhinX Strategy Fund Ltd., Case No. 06-11292 (ALG) (Bankr. S.D.N.Y. June 7, 2006)

Background: SPhinX Strategy Fund Ltd., is a specialized investment vehicle comprised of various classes of shares. Third-parties invested funds with SPhinX in exchange for those shares and the proceeds feed into various funds in the structure using the SPhinX name.

Foreign Proceeding: The foreign proceeding was filed in the Grand Court of the Cayman Islands Law Courts, George Town, Grand Cayman, Judge A.G. Henderson, Case number 207.

Decision: See above discussion of In re SPhinX Ltd., et al, Case No. 06-11760 (Bankr. S.D.N.Y. September 6, 2006).

Stephen Anthony Botes, Chapter 15 Case No. 05-87098 (SGJ) (Bankr. N.D. Tex. December 7, 2005)

Background: The debtor fled South Africa to the United States to avoid the jurisdiction of the South African court. The debtor and a partner own shares in a United States corporation. The South African trustee discovered fraudulent activity by the debtor and his partner in persuading residents of South Africa and Namibia to invest in their US corporation with the promise that such funds would be traded on the international market. Up to \$12.5 million was taken from

investors but never invested as described. The funds were instead used by the debtor personally with certain investments hidden in US financial institutions.

Foreign Proceeding: The foreign proceeding was filed on June 8, 2004 in the High Court of South Africa, Transvaal Division, Pretoria, South Africa, Case number 15003/2004.

Decision: An order was entered on March 30, 2006 Approving Petition for Recognition of Foreign Main Proceeding pending in the High Court of South Africa (Transvaal Provincial Division) and authorizing Foreign Representative Anton Lohse, among other things, to examine witnesses, take discovery or the delivery of information concerning Debtor's assets, affairs, rights, obligations, and liabilities.

Three Estates Company, Ltd., Chapter 15 Case No. 07-23597 (TH) (Bankr. E.D. Cal. May 15, 2007)

Background: According to its website, the Debtor is a publishing company that specializes in printing university level textbooks, dictionaries and testing materials for languages including German, English, French and Chinese.

Foreign Proceeding: The foreign proceeding was filed in Tokyo, Japan on June 26, 2006 (Case No. HEISEI 18-FU-8844).

Decision: The court reserved decision and has not rendered a decision at this time.

Trade and Commerce Bank, Chapter 15 Case No. 05-60279 (SMB) (Bankr. S.D.N.Y. December 20, 2005)

Background: The debtor was created as a full service offshore bank that acted on behalf of the Velox Group. The Velox Group is a set of banking, retail and investment operations in Latin America that are owned and controlled by members of the Peirano family. The debtor's clients were predominantly individuals or companies resident in Argentina, Uruguay and Paraguay. The debtor had no branch or agent in the United States.

Foreign Proceeding: The foreign proceeding was filed on July 5, 2002 as Cause No. 496 of 2002 in the Grand Court of the Cayman Islands.

Decision: An order was entered on February 8, 2006 Granting Recognition of Foreign Main Proceeding.

Tri-Continental Exchange Ltd., Chapter 15 Case No. 06-22652 (CMK) (Bankr. E.D. Cal. July 20, 2006)

In re Alternative Market Exchange Ltd., Chapter 15 Case No. 06-22657 (CMK) (Bankr. E.D. Ca. July 20, 2006)

Background: The Debtors acted as insurance managers, underwriters and insurers. The debtors were sued by Nationwide Mutual Insurance Company for trademark infringement and the United States Attorney brought criminal charges against certain of the Debtor's principals for fraud, including selling fraudulent insurance policies. The U.S. District Court for the Central District of California found out that the Debtors were using the Nationwide name to sell insurance policies to customers. None of the Debtors were affiliated with the company. Nationwide asserts that the Debtors claimed to be "administrators of a pool of insurers", of which Nationwide is a member. Subsequently, the Court granted Nationwide a preliminary injunction against the Debtors and several state authorities have issued cease and desist orders against the Debtors.

Foreign Proceeding: The foreign proceeding was filed in Saint Vincent and the Grenadines under the supervision of the Eastern Caribbean Supreme Court.

Decision: See above discussion of In re Tri-Continental Exchange, Ltd., 349 B.R. 627 (Bankr. E.D. Cal. 2006).

TriGem Computer, Inc., Chapter 15 Case No. 05-50052 (TBD) (Bankr. C.D. Cal. November 3, 2005)

Background: TriGem manufactures desktop PCs, notebook PCs, LCD monitors, printers, scanners, other computer peripherals, and PIDs and supplies over four million PCs a year to clients all over the world. The debtor has a global network of production, research, marketing, logistics and service centers in major markets in the U.S., Japan, China, Europe, Australia and Mexico. TriGem America Corporation, an affiliate of the Debtor, filed for chapter 11 protection on June 3, 2005 (Bankr. C.D. Calif. Case No. 05-13972). TriGem Texas, Inc., another affiliate of the Debtor, also filed for chapter 11 protection on June 8, 2005 Bankr. C.D. Calif. Case No. 05-14047). The trustee in the Korean bankruptcy case was engaged in a winding up proceeding. A judgment creditor filed the chapter 15 case to ensure appropriate implementation of such winding-up proceeding.

Foreign Proceeding: The foreign proceeding was filed May 18, 2005 in Suwon District Court Bankruptcy Division, South Korea, Case number 2005 Hoe 5.

Decision: A Recognition Order was entered on December 7, 2005 by Judge Donovan granting recognition of Foreign Main Proceeding.

Vekoma International B.V., et al., Chapter 15 Case No. 06-50151 (LMC) (Bankr. W.D. Tex. February 3, 2006)

Background: The debtors designed, manufacturer and sold amusement park rides. Some of such rides were sold to amusement parks in the United States. A personal injury case was filed in the United States against the debtors and others. The Netherlands administrator filed the chapter 15 case to have such personal injury litigation stayed.

Foreign Proceeding: The foreign proceeding was filed in the District Court of Roermond, The Netherlands, Liquidation No. 01/119 F.

Decision: An order was entered on March 3, 2006 recognizing the case as a foreign main proceeding.

William Hung Yu Yang, Chapter 15 Case No. 06-13022 (ALG) (Bankr. S.D.N.Y. December 14, 2006)

Background: The individual debtor owned property in the United States and faced a judgment in the Hong Kong court in the approximate amount of \$716,000. The petition was filed to stay the execution of the judgment against the US property.

Foreign Proceeding: The foreign proceeding is pending in the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.

Decision: The court reserved decision and has not rendered a decision at this time.

Yoshihiko Kokura, Chapter 15 Case No. 06-00849 (RJF) (Bankr. D. Haw. November 21, 2006)

Background: The individual debtor owned a condominium in the “Bay Villas” condominium project, Kapalua in Maui, Hawaii. The foreign representative filed a proceeding for control over such property.

Foreign Proceeding: Pursuant to an order of the Tokyo District Court (Heisei 16 (Fu) No. 16333) dated Oct. 22, 2004, Mr. Kokura was declared insolvent under Article 126 of the Bankruptcy Law of Japan (Law No. 71, 1922) and Mr. Kondo, the foreign representative, was appointed Bankruptcy Trustee of the Bankruptcy Estate of Kokura, under Article 142 of the Bankruptcy Law of Japan.

Decision: An order was entered on November 22, 2006 Granting Motion For Provisional Relief Under Section 1519 of the Bankruptcy Code and such provisional relief was extended until December 15, 2006. No decision on recognition has been rendered.

Young Chang Co. Ltd., Case No. 06-40043 (PBS) (Bankr. W.D. Wash. January 13, 2006)

Background: Young Chang Co., Ltd., is one of Korea's largest piano manufacturers. Its subsidiary, A N D Music Corporation, distributes pianos for North, Central and South America.

Foreign Proceeding: The foreign proceeding was filed on September 24, 2004 in the Incheon District Court, Department of Bankruptcy, Republic of Korea Case, number: 05-2-07400-6.

Decision: See above discussion of In re Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006).

Yukos Oil Company, a/k/a. OAO NK Yukos, Case No. 06-10775 (RDD) (Bankr. S.D.N.Y. April 13, 2006)

Background: Yukos, a Russian Federation corporation, owns various subsidiaries, which control or have other entitlements to rights to oil and gas production, refining and marketing assets.

Foreign Proceeding: The foreign proceeding was initiated on March 6, 2006 in the Arbitrazh Court of the City of Moscow.

Decision: See above discussion of In re Yukos Oil, Slip Op. Case No. 06-10755 (RDD) (Bankr. S.D.N.Y. May 26, 2006).

Yuval Ran, Case No. 06-37067 (KKB) (Bankr. S.D. Tex. December 11, 2006)

Background: The debtor is an Israeli resident living in the United States with property in the United States. The trustee in the Israeli case filed a chapter 15 petition seeking assets of the debtor located in the United States. The debtor opposes the chapter 15 petition.

Foreign proceeding: The foreign proceeding was filed on July 10, 1997 in the Israeli District Court of Tel-Aviv-Jaffa, Case number: 399/97.

Decision: The court reserved decision and has not rendered a decision at this time.