

Recent Decisions Pertaining to Chapter 15

By Leslie A. Berkoff

Recently, the judges of the Bankruptcy Court of the Southern District of New York issued three decisions addressing Chapter 15 the United States' adoption of the Model Law on Cross Border Insolvency (Model Law).

In re Avanti Communications Group PLC, 18-10458 (9 April, 2018), the Court found that the principles of comity justified enforcing a UK Scheme of Arrangement that released non-filed US affiliates from their guarantees. The Court relied on the fact that UK law afforded creditors a 'full and fair opportunity to be heard in a manner consistent with US due process standards' and there was no objection to approval of the scheme.

In Platinum Partners Valve Arbitrate Fund LP, 16-12925 (17 April, 2018), the Court allowed discovery to be obtained from US based accountants even though such discovery would not have been allowed under Cayman law. The Court found that 'the principles of comity decisively weigh in favour of granting the motion' for discovery as such relief did not run 'contrary to the public policy of the foreign jurisdiction'.

In B.C.I. Finances Pty. Ltd., Bankr., 17-11266 (April 24, 2018), the Court overruled a request to dismiss a chapter 15 based upon claims that the liquidators had manufactured assets in the US in bad faith by sending a meagre USD 1,250 retainer to US counsel. The Court recognised



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that the Australian liquidators were on the cusp of obtaining a USD 15 million judgment against insiders and that Australia 'had the greatest interest in the litigation' as the acts

giving rise to the claims occurred in Australia, the claims existed under Australian law and any recovery would be distributed to foreign creditors through the Australian liquidation.