



## Alerts

### U.S. District Court Issues Precedent-Setting Chapter 15 Bankruptcy Holding

April 19, 2012

*Hinshaw Alert*

The U.S. District Court for the Southern District of Florida recently decided a case involving issues of first impression regarding Chapter 15 of the U.S. Bankruptcy Code. The court's holding will have implications for both creditors and debtors and will require them to be more vigilant regarding their involvement in foreign reorganization/insolvency proceedings. It also reinforces the effectiveness of automatic stays issued in by foreign courts with respect to contemplated acts and conduct in the United States. The district court heard the case on appeal from an order of a U.S. bankruptcy court dismissing the case. Hinshaw & Culbertson LLP represented the successful appellant, SNP Boat Service S.A. (SNP), a French boat manufacturer/distributor.

Chapter 15 was enacted as part of the overall revisions to the Bankruptcy Code in 2005 and was created to address cross-border bankruptcies. As world trade has expanded and treaties have been promulgated to deal with reciprocal issues involving cross-border bankruptcies, Chapter 15 was needed in order to allow bankruptcy courts in the United States to deal with and administer assets of foreign debtors involved in reorganization and insolvency proceedings throughout the world where there may be assets located in the United States.

In this case, there was a reorganization proceeding involving SNP, where a dispute arose in connection with SNP's purchase of a boat from Hotel le St. James, a Canadian company. SNP initiated a reorganization proceeding in the French courts (similar to a U.S. Chapter 11 proceeding), and Hotel le St. James participated in it. Notwithstanding the fact that the French reorganization law has a provision for an automatic stay that extends worldwide (similar to the automatic stay under the U.S. Bankruptcy Code), Hotel le St. James obtained a judgment in Canada against SNP and domesticated the judgment in Florida. Thereafter, Hotel le St. James seized an SNP boat located in Fort Lauderdale.

SNP then filed a Chapter 15 proceeding in Florida to regain possession of the boat and administer it under its reorganization plan approved by the French court. Hotel le St. James, a full participant in the French bankruptcy proceeding, sought to have the Florida bankruptcy court determine whether Hotel le St. James received due process in France. SNP argued that the U.S. bankruptcy court had no jurisdiction to determine on a case-by-case basis whether a party received due process in a foreign country, as it is solely the province of the foreign courts to make that determination. The U.S. bankruptcy court judge agreed with Hotel le St. James and dismissed the Chapter 15 proceeding.

#### Attorneys

James H. Wyman

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On appeal the U.S. District Court for the Southern District of Florida reversed the bankruptcy court's ruling and reinstated the case. More importantly, the district court ruled that the concept of comity (recognition of foreign law and foreign courts' rulings) only permits a U.S. court to determine if foreign jurisprudence in concept provides due process to litigants. Once this determination has been made, the court held, it is improper for a U.S. court to look on a case-by-case basis to review what transpired in a foreign proceeding. The effect of this ruling will be to substantially narrow the scope of what may be reviewed by a U.S. bankruptcy court when dealing with what has already transpired in a foreign bankruptcy or reorganization proceeding.

Appellate counsel [James H. Wyman](#) handled the appeals process. Associate Esperanza Segarra also contributed to the overall appellate project.

For more information, please contact [James H. Wyman](#) or your regular [Hinshaw attorney](#).

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