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Presumption, Proof and Corporate Reality: Recent Developments in COMI for Enterprise Groups

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"Keep the big door open, everyone will come around."
— Dave Matthews Band,
"Typical Situation"

Hon. **Martin Glenn** recently published an opinion in *Iovate*[1] in which he recognized a Canadian insolvency proceeding as a foreign main proceeding for a primarily Canadian debtor group of entities, but also including a U.S. subsidiary with U.S. employees, U.S. assets and U.S. property. Chapter 15 cases hinge on recognition. To be recognized as a foreign main proceeding, the proceeding must be "pending where the debtor has its center of main interests" (COMI), a phrase undefined in the Bankruptcy Code.

However, § 1516 of the Bankruptcy Code provides that "[i]n the absence to the contrary, the debtor's registered office ... is presumed to be the center of the debtor's main interests." Thus, for a U.S. entity to have its COMI in Canada, § 1516's presumption would obviously have to be overcome. The *Iovate* opinion specifically deals with when and how this can happen.

U.S. Treatment of the COMI Presumption

Iovate is the culmination of nearly 20 years of case law trying to appropriately deal with § 1516's presumption. In 2007, about two years after the U.S. enacted chapter 15, Hon. **Burton R. Lifland** of the U.S. Bankruptcy Court for the Southern District of New York denied recognition for a Cayman-based exempt entity, even though no objection to recognition had been filed.[2]

By denying recognition, he essentially nullified the COMI presumption. Construing the statute strictly, he found that the COMI presumption only stands in "the absence of proof to the contrary" and may be easily overcome "particularly in the case of a 'letterbox' company not carrying out any business in the territory of the Member State in which its registered office is situated."[3]

The *Bear Stearns* opinion suggests that the presumption means very little and that it would be virtually impossible for an exempt entity — an entity that is not allowed to carry out business in its registered jurisdiction — to receive recognition.[4] However, "letterbox" companies have very legitimate purposes and make up a significant portion of the offshore jurisdictions' advisory work. To completely deny exempt entities recognition obviously undermines the comity objectives of chapter 15.

In 2010, Judge Lifland course-corrected. He explained "that non-recognition where recognition is due may forestall needed international cooperation" and[5] recognized a BVI "letterbox" entity's insolvency proceeding by determining the debtor's COMI at the date that the chapter 15 petition was filed. Thus, while the presumption did nothing to help with recognition, the liquidator's activities

1 *In re Iovate Health Scis. Int'l Inc.*, Case No. 25-11958, 2024 WL 2630487 (S.D.N.Y. Sept. 12, 2025).

2 *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd.*, 374 B.R. 122, 130-31 (Bankr. S.D.N.Y. 2007).
3 *Id.* at 130. (internal citations omitted).
4 *Id.*
5 *In re Fairfield Sentry Ltd.*, 440 B.R. 60, 64-65 (Bankr. S.D.N.Y. 2010).

between the date that the foreign proceeding was filed and the date the chapter 15 was filed lodged the debtor's COMI in the jurisdiction of the liquidation.[6] This gave letterbox entities a path toward recognition.

The Second Circuit upheld this opinion, and it remains the most pivotal case for determining when a court should assess COMI.[7] Ultimately, the courts established that while the presumption carries little weight, a court may consider various factors and activities up to the time that a chapter 15 petition is filed in determining the debtor's COMI.

Had Bear Stearns not weakened the presumption in the first place, would U.S. courts have still decided to make the COMI determination at the date of the chapter 15? Who knows, but it is clear that the drafters of the Model Law wanted the COMI determination to be made at the date of the foreign proceeding, not the chapter 15 petition. The *Judicial Guide to Interpreting the Model Law* explicitly supports the foreign proceeding date as the controlling date. Nonetheless, the case law developed like it did, giving Judge Glenn a lot of flexibility to overcome the presumption for U.S. debtors in a Canadian proceeding.

Overcoming the Presumption with Corporate Groups

Judge Glenn gave a road map to determining COMI and challenging the registered-office presumption. First, courts look to the nonexclusive and helpful factors listed in *In re SPhinx Ltd*.:[8] (1) the location of the debtor's headquarters; (2) the location of those who actually manage the debtor; (3) the location of the debtor's primary assets; (4) the location of the majority of the debtor's creditors, or a majority of the creditors who would be materially affected by the case; and (5) the jurisdiction whose law would apply to most disputes.

Second, since the *Sphinx* factors are really just stepping stones for a court to determine where a debtor's COMI could be reasonably "ascertain[ed] by third parties," courts should also examine other evidence "in the public domain." These could include "public documents and information available to guide creditor understanding of the nature and risks of their investments," such as disclosures in offering memoranda and indentures.[9]

Third, since the COMI determination is made at or around the time that the chapter 15 petition has been filed, courts should also look to a debtor's liquidation or restructuring activities. These activities may shift a debtor's COMI. Judge Glenn noted that "[m]aterial pre-filing restructuring efforts may include the negotiation and/or execution of a restructuring framework or support agreement, organization of creditor meetings, or facilitation of related operational or liquidation activities or administrative functions."[10]

Using the aforementioned framework, the court found that the U.S. subsidiary — an entity registered in Delaware that employed 11 people in the U.S. with principal assets consisting of accounts receivable from U.S.-based customers — had a Canadian COMI, since it was "run" out of Ontario. Moreover, its officers/managers were either in China or Canada, and the corporate group was highly integrated with shared management, headquarters, and accounting/finance/HR functions — all from Canada.[11]

Thus, despite the progress made in *Iovate*, *Black Press* serves as a cautionary reminder that even highly integrated enterprise groups remain vulnerable to fragmented COMI determinations.

The Bottom Line

Undeniably, the court reached the right result. When dealing with a fully integrated enterprise group, especially one that is being reorganized as a whole, a strict entity-by-entity COMI analysis that focuses on the facts considered important to some particular bankruptcy court can run counter to the Model Law's main purposes. As recognized in UNCITRAL's working documents regarding the Model Law on the Treatment of Enterprise Groups in Insolvency, "[i]n certain situations, such as where the business activity of group members is closely integrated, that approach [entity-by-entity COMI analysis] may not always achieve the best result for the individual debtor or for the business group as a whole." Had the court refused to recognize the Canadian proceeding and the U.S. subsidiary's foreign main proceeding, the entire insolvency process could have been derailed, resulting in a catastrophic result for everyone involved.

The dance between § 1516's presumption and the ultimate COMI determination at the date of the chapter 15 petition is often carried out flexibly to fulfill chapter 15's mission of universalism and maximizing estates for the benefit of interested parties. U.S. courts routinely recognize Canadian proceedings as the foreign main proceeding for U.S. entities in corporate groups.[12]

This is not always the case, however. For example, in *Black Press Ltd*.,[13] a fully integrated Canadian enterprise group sought recognition under the CCAA for several of its U.S. newspaper subsidiaries. Despite the group's cen-

6 *Id.*
7 *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013).
8 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006).
9 *Id.* at 118.
10 *In re Iovate Health Scis. Int'l Inc.*, Case No. 25-11958, 2024 WL 2630487, at *29 (S.D.N.Y Sept. 12, 2025).
11 *Id.* at 35.
12 *See, e.g., In re Dynamic Tech. Grp. Inc.*, Case No. 23-41416, (N.D. Tex. July 20, 2023) [Docket No. 59]; *In re Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS) (Bankr. D. Del. Dec. 1, 2015) [Docket No. 97]; *In re Talon Sys. Inc.*, Case No. 13-11811 (KJC) (Bankr. D. Del. Aug. 30, 2013) [Docket No. 49]; *In re The John Forsyth Shirt Co. Ltd.*, Case No. 13-10526 (SCC) (Bankr. S.D.N.Y. March 18, 2013) [Docket No. 24]; *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. March 16, 2012) [Docket No. 70]; *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJM) (Bankr. D. Del. March 5, 2012) [Docket No. 89]; *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) [Docket No. 83]; *In re Giftcraft Ltd.*, 2025 WL 1583480 (Bankr. S.D.N.Y. June 4, 2025).
13 *In re Black Press Ltd.*, Case No. 24-10044-MFW, Audio File of Recognition Hr'g (Bankr. D. Del. Feb. 8, 2024) [Docket No. 67].

tralized decision-making, unified management and operational interdependence, the court focused on the hyper-local nature of the U.S. newspaper operations and denied recognition. To be fair, the U.S. debtors' business consisted of local U.S. newspapers, and a key purpose of the Canadian proceeding centered on evading paying millions in pensions.

Nonetheless, this decision illustrates how an entity-level COMI analysis can overlook the practical realities of an integrated enterprise and undermine the Model Law's goal of coordinated cross-border relief. The purchaser could have refused to close, leaving all interested parties with essentially nothing. Thus, despite the progress made in *Iovate*, *Black Press* serves as a cautionary reminder that even highly integrated enterprise groups remain vulnerable to fragmented COMI determinations. abi

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