MEXICAN COMPANIES CROSS THE U.S. BORDER FOR BANKRUPTCY PROTECTION
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Two notable Mexican companies have used U.S. Bankruptcy Laws in different ways to restructure and reorganize their business operations.

Vitro SAB's massive bankruptcy case spans two countries and involves bankruptcy courts in Mexico, Texas and New York. The case pits Mexico's Sada family against the glass-maker's Noteholders, owed about $1.2 billion.

Vitro SAB is a Mexican company formed in 1909 and is the largest manufacturer of glass containers and flat glass in Mexico, with annual sales of $1.8 billion in 2010, and operating in 11 countries. In response to Vitro's 2008 default under the $1.2 billion note obligations, failed negotiations to restructure the notes, and lawsuits by the noteholders against Vitro in multiple jurisdictions, Vitro filed for bankruptcy protection in Mexico.

Prior to Vitro's voluntary bankruptcy filing in Mexico, the Noteholders filed an INVOLUNTARY bankruptcy against 15 of Vitro's subsidiaries in Texas, under U.S. Bankruptcy law. In addition, the Noteholders commenced lawsuits against Vitro and 49 of it's subsidiaries in New York State Court for breach of contract regarding the Notes.

In response, and in an effort to stay litigation in New York State Court, Vitro filed a Chapter 15 proceeding in U.S. Bankruptcy Court for the Southern District of New York. Vitro maintained that its voluntary bankruptcy filing in Mexico under Mexico's Business Reorganization Act was a "foreign main proceeding" that supported the Chapter 15 filing and afforded Vitro access to the automatic stay of Section 362 of the U.S. Bankruptcy Code, which would effectively enjoin the state court lawsuits initiated by the Noteholders. As Vitro's "COMI" (center of main interests) was clearly located in Mexico, there was no question that a Chapter 15 based on "foreign main proceeding" was appropriate.

In connection with Vitro's voluntary bankruptcy filing in Mexico, Vitro filed a "prepackaged" voluntary judicial reorganization plan under Mexico's Business Reorganization Act", or a Concurso Plan. The Plan provided for an approximate 40% "haircut" of the Noteholders' claims, by replacing existing notes with new notes issued by the reorganized Vitro. To effectuate a "cram-down" of the Concurso Plan on the dissenting Noteholders, Vitro seeks to utilize the voting power of Vitro subsidiaries who hold $1.8 billion in claims as creditors of Vitro. The Vitro subsidiaries would undoubtedly vote in favor of Vitro's Concurso Plan.

Vitro's Noteholders have objected to the Concurso Plan in the Mexican bankruptcy proceeding, asserting that the claims of Vitro's subsidiaries as creditors of Vitro should not be considered in voting on the Concurso Plan. Without the voting power of the $1.8 billion in claims of the Vitro subsidiaries, it was unlikely the Concurso Plan would be confirmed over the Noteholders' objection. Initially the Mexican Bankruptcy Court agreed with the Noteholders and ruled that the subsidiary claims could not be voted. Without such votes, the Concurso Plan was "dead" and the entire Mexican bankruptcy proceeding was not viable. Without a viable "foreign main proceeding", Vitro and the Noteholders agreed to a dismissal of Vitro's Chapter 15 proceeding in New York.

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However, on appeal, the Mexican Bankruptcy Court decision was reversed and the appellate court ruled the subsidiary claims could in fact be counted in plan voting. As a result of this ruling, the Mexican proceeding once again became viable and a second Chapter 15 in New York was filed.

At the heart of the cross-border chess match between Vitro and the Noteholders are conflicting business strategies. According to the Noteholders, Vitro's business objective is to eliminate substantial debt but allow the Sada family to retain its controlling ownership interest of the 100 year old Monterey glass maker. To effect this plan, Vitro is using the Mexican Business Bankruptcy Act to "cram-down" a debt reduction on the Noteholders, and simultaneously using Chapter 15 to gain "U.S. recognition of the Mexican bankruptcy proceeding and of Vitro's Concurso Plan. As part of its business plan, Vitro is also attempting to sell 4 of its U.S. subsidiaries in the Texas involuntary bankruptcy proceeding, which sale was approved on May 6, 2011. Conversely, the Noteholders seek a full recovery on the Notes, or a controlling equity stake in Vitro if the Notes are not paid in full. The Noteholders would contend that the Sada family should not be able to retain its controlling equity interest if the obligations owed to Vitro's creditors are materially compromised.

The Vitro bankruptcy cases in 2 countries and 3 jurisdictions stand as an excellent example of the business strategies and procedural maneuverings global businesses may utilize to accomplish business strategies. Vitro involved voluntary and involuntary bankruptcy cases in Mexico, an involuntary U.S. bankruptcy and a voluntary Chapter 15 proceeding, modeled after the UNCITRAL Model Law on Cross-Border Insolvency.

The U.S. Bankruptcy filings of Satmex (Satellites Mexicanos, S.A.) stand in contrast to the complex business and procedural strategies of Vitro SAB. Satmex is a Mexico City – based company that provides fixed satellite services and sells video and data transmission capacity to phone and internet companies, with coverage in more than 45 nations and territories.

Satmex, whose operations are largely concentrated in Mexico, sought to restructure its debt by filing its first Chapter 11 proceeding in New York in 2006. After emerging from Chapter 11, Satmex sought to sell itself to EchoStar Corp. However, that deal fell through in March, 2011 and Satmex filed a second Chapter 11 proceeding in Delaware in early April, 2011. Apparently, Satmex was able to obtain Chapter 11 jurisdiction in Delaware based on its Delaware subsidiaries. Interestingly, Satmex did not seek to restructure its debt in a Mexican bankruptcy proceeding as did Vitro. Satmex could have sought protection under the Mexican Business Reorganization Act and then filed a Chapter 15 proceeding in the U.S. There is little doubt a bankruptcy court in the U.S. would have recognized a Satmex Mexican bankruptcy proceeding as a "foreign main proceeding" as Satmex' COMI is clearly in Mexico. Satmex, like Vitro, could have sought the approval of a pre-packaged" Concurso Plan. Rather, when Satmex filed Chapter 11 in Delaware in April, 2011, it filed a pre-packaged Plan of Reorganization, which was approved on May 11, 2011.

Although both Vitro and Satmex are utilizing U.S. Bankruptcy Law to restructure their businesses, Vitro chose Mexico as the host of its main insolvency proceeding, while Satmex chose U.S. Bankruptcy Court in Delaware. In both cases, the companies needed access to U.S. Bankruptcy Courts to accomplish their restructurings.

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