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Recent Developments in Bankruptcy Law, April 2023

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1. AUTOMATIC STAY

1.1 Covered Activities

1.1.a **Court denies injunction against actions involving debtors' affiliates.** Shortly after filing their chapter 11 cases, the debtors in possession sought, in the alternative, extension of the automatic stay to the litigation against affiliates or stays of the litigation. The Ninth Circuit has questioned the authority to extend the stay and instead has directed the bankruptcy courts to proceed through the more settled form of a preliminary injunction. A preliminary injunction requires a showing of likelihood of success on the merits, potential for irreparable harm, a balance of equities, and the public interest. In a chapter 11 case, a likelihood of success on the merits means likelihood of confirming a plan. At the early stages of a case, that showing is all the more difficult. Similarly, because the nonbankruptcy litigation is in the early discovery stages, a showing of irreparable harm is also difficult. The debtor in possession here fails to make either showing adequately, so the court denies the injunction. *In re Mariner Health Central, Inc.*, ___ B.R. ___, 2023 Bankr. LEXIS 95 (Bankr. N.D. Cal. Jan. 12, 2023).

1.2 Effect of Stay

1.3 Remedies

2. AVOIDING POWERS

2.1 Fraudulent Transfers

2.1.a **Court issues asset freeze order in fraudulent transfer action.** The trustee brought a fraudulent transfer action against several insiders to avoid and recover specific real estate parcels that he alleged were purchased with the debtor's cash and to avoid and recover cash that had been transferred. In addition, due to the questionable state of the debtor's book and records, the trustee sought an accounting. The trustee sought a preliminary injunction to freeze the real estate parcels and the cash. Under *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), a federal court may not freeze a defendant's assets in a legal action to recover on a claim for money damages but may seek a freezing order in an equitable action to recover specific property. An action to recover a fraudulent transfer may be both. Ordinarily, an action to recover cash is an action at law, even if the plaintiff invokes equity as a basis for the recovery, such as to impose a constructive trust on specific cash. Here, the trustee also seeks an accounting, which is an equitable remedy and which is needed because of the questionable state of the books and records. Finding that the trustee is likely to prevail on the fraudulent transfer action and that he would be irreparably harmed if the relief is not granted, the court grants the preliminary injunction freezing the assets. *Miller v. Mott (In re Team Sys. Int'l, LLC)*, ___ B.R. ___. 2023 Bankr. LEXIS 229 (Bankr. D. Del. Jan.31, 2023).

2.2 Preferences

2.3 Postpetition Transfers

2.4 Setoff

2.5 Statutory Liens

2.6 Strong-arm Power

2.7 Recovery

3. BANKRUPTCY RULES

4. CASE COMMENCEMENT AND ELIGIBILITY

4.1 Eligibility

4.1.a **Good faith chapter 11 filing requires financial distress.** A consumer products company was subject to an increasing number of tort claims, some of which resulted from asbestos exposure. The litigation and liability costs exceeded the company's operating income. Using the Texas divisional merger statute to resolve all the tort claims without subjecting the entire enterprise to the bankruptcy process, the company divided into one company that continued the consumer products business, assuming all the assets and the ordinary course liabilities associated with that business, and another that received certain royalty streams and assumed all the tort liabilities. The continuing company was a highly valuable enterprise. It agreed, without any reimbursement rights, to fund a trust to resolve the other company's litigation and bankruptcy expenses and tort liabilities to the extent the other company's royalty streams and other assets were insufficient. The funding agreement was limited in amount to the value of the continuing company, which could increase over time. The ultimate parent company guaranteed the funding agreement. Immediately after completing the divisional merger, the other company filed a chapter 11 case with the goal of addressing the tort claims through an asbestos claims trust, funded by the royalty streams, the funding agreement, and insurance proceeds. A chapter 11 case that is not filed in good faith is subject to dismissal. Good faith depends on an objective analysis of whether the debtor remains within the equitable limitations of chapter 11, particularly whether the case serves a valid bankruptcy purpose and is not filed merely to obtain a tactical litigation advantage. A valid bankruptcy purpose does not require insolvency but at least sufficiently immediate financial distress of the kind that chapter 11 can address. Here, the funding agreement addressed all of the debtor's liabilities. The continuing company and its ultimate parent were extremely valuable, with sufficient assets and earnings to cover foreseeable tort liabilities, including litigation costs, for the foreseeable future. Therefore, the case was not filed in good faith and must be dismissed. *In re LTL Mgmt., LLC v. Official Committees (In re LTL Mgmt., LLC)*, 58 F.4th 581 (3d Cir. 2023).

4.1.b **Subchapter V eligibility is determined as of the petition date.** The debtor filed a chapter 11 petition and elected to proceed under subchapter V. During the case, a nonbankruptcy court entered judgment against the debtor in an amount far exceeding the eligibility cap for subchapter V, and the debtor's shareholder, who had liquidated debts also far exceeding the cap, filed his own chapter 11 case. Section 1182(1) contains the subchapter V eligibility requirements, including (A) subject to subparagraph (B), having aggregate noncontingent liquidated debts as of the date of the filing of the petition of not more than $7.5 million *and* (B) not being a member of a group of affiliated debtor with debts greater than $7.5 million. Subparagraphs (A) and (B) must be construed together and applied as of the petition date. Bankruptcy Rule 1020(a) requires the debtor to state with the petition if it elects to proceed under subchapter V and allows creditors 30 days to contest the election. It does not allow a later challenge based on a later change in circumstances. Such a limitation helps expedite the case, consistent with subchapter V's streamlined process. Moreover, neither the statute nor the Rules provide a standard for revoking a subchapter V designation. Therefore, the postpetition events do not vitiate the debtor's subchapter V eligibility. *In re Free Speech Sys., LLC*, ___ B.R. ___, 2023 Bankr. LEXIS 892 (Bankr. S.D. Tex. Mar. 31, 2023).

4.1.c **Court denies motion to dismiss case of debtor formerly engaged in marijuana business.** The debtor operated a marijuana business. It sold the business in exchange for 10% of the equity in a Canadian company that operated a similar business. It then filed a chapter 11 case with the goal of confirming a plan that provided for the sale of the stock and the distribution of the proceeds to creditors. Section 1112 permits the court to dismiss a case for cause. Violations of nonbankruptcy law can be cause for dismissal. Although the debtor's prepetition activities violated federal law, its ownership of stock in a Canadian cannabis company likely did not. Moreover,

even if there were a violation, section 1112 does not require dismissal of any case in which the debtor violated nonbankruptcy law, as many debtors wind up in bankruptcy precisely because of their prepetition illegal activities. Therefore, the court denies the U.S. trustee's motion to dismiss the case. *In re The Hacienda Co., LLC*, ___ B.R. ___ (Bankr. C.D. Cal. Jan. 20, 2023).

4.2 Involuntary Petitions

4.3 Dismissal

5. CHAPTER 11

5.1 Officers and Administration

5.2 Exclusivity

5.3 Classification

5.4 Disclosure Statement and Voting

5.5 Confirmation, Absolute Priority

5.5.a **Insurer does not have standing to object to a plan that is "insurance neutral."** The debtor proposed a plan in an asbestos chapter 11 case that provided for the debtor's insurance policies to be assigned to the 524(g) trust. To prevent fraudulent claims, a claimant with an uninsured claim had to provide information to the trust about other asbestos trust claims and provide a certification. A claimant with an insured claim was not required to provide the certification. Under the insurance policy, the debtor was required to assist in the investigation and defense of claims. The insurer claimed that the different treatment of insured and uninsured claims under the plan was not "insurance neutral," that is, that it effected a change in the debtor's or the insurer's obligations under the insurance policies. The bankruptcy court found otherwise and recommended plan confirmation to the district court. The district court agreed that the plan was insurance neutral and therefore that the insurer was not a party in interest who had standing to object to confirmation. The insurer appealed the confirmation order. Only a person aggrieved may appeal a bankruptcy court decision. An appellant has standing to appeal from a decision denying standing, whether or not it has standing to appeal from the substance of the adverse decision, though the two concepts are related. If the plan was not insurance neutral, the insurer would have had standing to object to confirmation and appeal, because it would be a person aggrieved. If not, then it would not have had standing to object to confirmation and would have had standing to appeal only the decision denying it standing. The court of appeals agreed that the plan is insurance neutral and therefore affirms the district court's ruling that the insurer was not a party in interest with standing to object to confirmation. *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co, Inc. (In re Kaiser Gypsum Co., Inc.)*, 60 F.4th 73 (4th Cir. 2023).

6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Court allows postpetition interest on oversecured claim at default rate.** The loan agreement provided for an increase in the interest rate by 3% upon the debtor's filing a bankruptcy petition. In the chapter 11 case, the debtor in possession sold the lender's collateral for a price that exceeded the amount of the loan. Section 506(a) provides for allowance of postpetition interest on an oversecured claim but does not state the applicable rate. Decisions addressing the allowance of postpetition interest focus on the balance of equities between creditor and creditor and between creditors and the debtor. Where a debtor is solvent, equity does not permit the debtor to escape its bargain. Most courts have adopted a presumption in favor of applying the contractual default rate, subject to equitable considerations, which include the creditor's misconduct, harm to unsecured creditors, and whether the rate constitutes a penalty. None of those factors are present here, so the court allows postpetition interest to the secured lender at

the contractual default rate. *Official Comm. v. Entrepreneur Growth Cap. (In re Latex Foam Int'l, LLC)*, ___ B.R. ___, 2023 U.S. Dist. LEXIS 38488 (D. Conn. Mar. 8, 2023).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.2 Third-Party Releases

8.2.a **Opt-out third-party release is permitted.** The debtor proposed a plan that contained a third-party release and proposed that it would apply to creditors who did not opt out, by checking a box on a ballot, from the release. In the Third Circuit, a bankruptcy court may confirm a plan that contains a non-consensual third-party release if certain conditions are met or a consensual third-party release in any case. If a creditor objects to the release, the plan proponent may exclude the creditor from the release or may attempt to satisfy the conditions for a non-consensual release. If a creditor does not object, then the creditor has effectively forfeited the issue and will be bound by the order confirming the plan, just as would be the case for any other plan provision that might not comply with the Code's confirmation requirements. Therefore, permitting the release to become effective as to creditors who do not opt out is consistent with the treatment of all other plan issues (such as a contract cure amount or the best interest test), and the court need not satisfy itself in the absence of an objection that the requirements are met. However, in this case, an order earlier in the case might have prevented creditors from becoming aware in a timely manner of potential third-party claims, so the court requires opt-in for the release. *In re Arsenal Intermediate Holdings, LLC*, ___ B.R. ___, 2023 Bankr. LEXIS 752 (Bankr. D. Del. Mar. 27, 2023).

8.2.b **Equity receivership court may not bar third-party claims.** An unsecured creditor placed the debtor into an equity receivership. The receiver asserted claims against the directors and officers arising from the debtor's failure and settled with proceeds of directors and officers insurance. A settlement condition was the court's issuance of a bar order protecting the directors and officers from other claims related to the debtor. The debtor's customers who had sued the directors and officers for fraud objected to the bar order as beyond the receivership court's authority. An equity receivership court is limited to the traditional powers in equity exercised by the English chancery courts in 1789. The court has *in rem* jurisdiction over the debtor's property, may issue injunctions to protect the receivership property and the receiver, and may hear and determine claims against the debtor, but it does not have jurisdiction over property of nondebtors and may not enjoin conduct that does not affect the court's control of the debtor's property or of *in personam* actions. Here, the customers owned their claims against the directors and officers because they were injured directly by the fraud; they are not asserting injury based on the directors' and officers' injury to the debtor. Therefore, the bar order exceeds the receivership court's power. *Digital Media Solutions, LLC. v. Dunagan*, ___ F.4th ___ (6th Cir. Feb. 7, 2023).

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

9.1.a **Preliminary injunction requiring debtor's contract performance does not prevent rejection.** The debtor was a franchisee under a hotel management agreement. Disputes arose. The debtor sent a termination notice and sued in state court for damages and for a declaration that the license was terminated. The franchisor also sued, seeking a declaration that the license was not terminated, an injunction prohibiting termination, and damages if the debtor had successfully

terminated the agreement. The state court issued a preliminary injunction that barred termination to preserve the status quo pending trials on the merits. The debtor later filed bankruptcy, blaming its financial distress on the franchise agreement and the franchisor's performance, and sought to reject the agreement. A debtor in possession may reject an executory contract, which is one that remains so far unperformed that failure of either party to perform would constitute a material breach entitling the other party to terminate the contract. Here, the parties had substantial, material continuing obligations. A final order from a nonbankruptcy court requiring performance under a contract renders the contract nonexecutory, as the court has effectively prohibited the debtor's breach. However, a preliminary injunction to preserve the status quo does not determine rights under the contract and so does not prevent rejection of the contract. *In re Times Square JV LLC*, 648 B.R. 277 (Bankr. S.D.N.Y. Feb. 4, 2023).

9.1.b **Section 365(b) cure requirement applies only to contract counterparty.** The debtor entered into a ground lease for property that it intended to develop. The lease required it to pay any contractor in full. The debtor separately contracted with a construction company to build the development. Disputes over the construction led to a halt in construction and, ultimately, the debtor's chapter 11 filing. During the case, the debtor assumed the ground lease but not the construction contract. The contractor sought payment of amounts claimed under its contract based on the provision in the ground lease requiring payment of contractors. Section 365 permits assumption of an unexpired lease, conditioned on cure of any default under the lease. In effect, the lessor gains administrative expense priority for what would otherwise be a general unsecured claim. Priorities are to be strictly construed. Here, the cure requirement is designed to make the counterparty whole, so that the counterparty need not continue performance without the full benefit of the bargain. That purpose does not apply to a stranger to the contract or lease. The absence in section 365 of a direction that only the counterparty is entitled to cure does not override this consideration. Therefore, the debtor in possession need not cure any defaults under the construction contract to assume the ground lease. *Tutor Perini Bldg. Corp. v. N.Y. City Regional Center George Washington Bridge Bus Station and Infrastructure Development Fund, LLC (In re George Washington Bridge Bus Station Development Venture LLC)*, ___ F. 4th ___, 2023 U.S. App. LEXIS 8428 (2d Cir. Apr. 10, 2023).

9.1.c **A limited partnership agreement is not an executory contract.** The chapter 7 debtor held an interest in a limited partnership. The trustee did not seek to assume or reject the limited partnership agreement. Section 365(d)(1) provides for automatic rejection of an executory contract that is not assumed within 60 days after the order for relief. An executory contract is one under which performance is due from each party and nonperformance by either would result in a material breach, excusing the other party from further performance. The limited partner has few if any obligations under the partnership agreement. The partnership must provide distributions to cover the partner's taxes, but only if the partner requests the distribution, which is an option agreement. An option is not an executory contract, because performance is not due from the optionee. Therefore, the limited partnership agreement is not an executory contract. *Rainsdon v. Duncan Ltd. P'shp (In re Duncan)*, ___ B.R. ___, 2023 Bankr. LEXIS 493 (Bankr. D. Ida. Feb. 24, 2023).

10. INDIVIDUAL DEBTORS

10.1 Chapter 13

10.2 Dischargeability

10.2.a **Debt for fraud incurred by debtor's partner or agent is nondischargeable.** The debtor and her boyfriend purchased a house to repair and sell. The boyfriend did nearly all the work; the debtor was largely uninvolved. Their buyer later obtained a judgment against them for defects the boyfriend had knowingly concealed or misrepresented. Section 523(a)(2)(A) excepts from discharge a debt for money, property, or services to the extent obtained by false pretenses, a false representation, or actual fraud. The bankruptcy court determined that the boyfriend's debt to

the buyer was nondischargeable under this provision. The provision is written in the passive voice—a debt for money or property obtained by fraud—without regard to the actor who perpetrated the fraud—such as a debt obtained by the fraud of the debtor. Where, under applicable nonbankruptcy law, a person is liable for a debt of another, such as in a partnership or agency relationship, and the debt is nondischargeable in the fraudster's case, the debt is similarly nondischargeable in the second person's case. *Bartenwerfer v. Buckley*, 598 U.S. ___, 143 S. Ct 665 (2023).

10.2.b

10.3 Exemptions

10.4 Reaffirmations and Redemption

11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.1.a **Debtor may not remove district court action to the district court for the same district.** The government brought an action in district court to reduce to judgment amounts the debtors owed for nondischargeable taxes. The debtors filed in the district court a notice of removal of the action to the bankruptcy court. Section 1452(a) of title 28 permits removal to the district court of a civil action arising under title 11 or arising in or related to a case under title 11. The statute's language does not support removal of an action from the district court to the district court, and permitting removal to obtain the benefit of the standing orders of reference to the bankruptcy court of all cases and proceedings arising under or related to title 11 would thwart the district court's power to refer matters to the bankruptcy courts. This district court's local rule providing for referral of bankruptcy matters to the bankruptcy court does not apply, because the government's action to obtain a judgment on a tax claim arises under title 26 (the Internal Revenue Code), not title 11. Therefore, the matter proceeds in the district court. *U.S. v. Mikhov*, 645 B.R. 609 (S.D. Ind. 2022).

11.2 Sanctions

11.3 Appeals

11.3.a **District court decision to abstain is unreviewable, even if state court might lack jurisdiction under *Barton*.** After the conversion of its chapter 11 case to chapter 7 and the closing of the chapter 7 case, the corporate debtor sued its counsel in state court for malpractice arising out of his representation of the chapter 7 trustee in specific recovery actions and simultaneous representation of the corporate debtor. Counsel moved to enjoin the action under the *Barton* doctrine, which deprives a state court of jurisdiction over an action against an officer of a bankruptcy estate without leave of the bankruptcy court. The bankruptcy court issued a report and recommendation to the district court, which rejected the recommendation and determined to abstain in favor of the state court action to permit it to develop the record on whether *Barton* applied. Section 1334(c)(1) permits a district court to abstain from any proceeding in the interest of comity or respect for state law. Section 1334(d) provides that a decision to abstain or not abstain is not reviewable on appeal or otherwise. Some courts permit review if the abstention decision is outside the district court's authority. However, here, even if under *Barton* the state court might lack jurisdiction over the action, that determination could not be made until the development of the record in the state court. Therefore, the abstention decision is unreviewable. *Conway v. Smith Devel., Inc.*, ___ F.4th ___, 2023 U.S. App. LEXIS 7988 (4th Cir. Apr. 4, 2023).

11.3.b **Court of appeals does not have jurisdiction of order determining only some adversary proceeding claims.** The debtor in possession sued a creditor who had seized the debtor's property on four claims: declaratory relief that the property was exempt and that the creditor did not hold a security interest in the property, for turnover of the property, and for unjust enrichment. The bankruptcy court granted summary judgment on the first three claims and held the fourth

claim over for trial. The creditor appealed. The district court affirmed, and the creditor appealed to the court of appeals, A court of appeals has jurisdiction only over final decisions, judgments, orders, or decrees. In bankruptcy, the courts treat the final judgment rule with greater flexibility, permitting appeals of final judgments in discrete disputes within the larger bankruptcy case. However, that flexibility does not extend to termination by final order in some but not all of the claims in a single adversary proceeding. Therefore, unless the court certifies the order for immediate appeal under Bankruptcy Rule 7054, the court of appeals does not have jurisdiction of an appeal from an order determining some but not all the claims. *Esteva v. UBS Fin. Servs. Inc. (In re Esteva)*, 60 F.4th 664 (11th Cir. Feb. 16, 2023).

11.4 Sovereign Immunity

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.2 Turnover

12.3 Sales

12.3.a **Section 363(m) is not jurisdictional.** The debtor sold its assets, including the right to designate assignees of its real property leases. The buyer exercised the designation right, the landlord objected on adequate assurance grounds, the court overruled the objection and approved the assignment, and the landlord appealed. Relying on section 363(m), the district court dismissed the appeal. Section 363(m) provides that a reversal or modification on appeal of a sale order may not affect the validity of the sale to a good faith purchaser. First, an appeal is moot if the appellate court cannot grant effective relief. However, a dispute over whether the court can grant relief goes to the merits—the extent and applicability—of the statutory limitation on the court's authority. The mootness doctrine does not limit the appellate court's determination of that issue. Second, a statutory precondition to relief is jurisdictional only if it is clearly stated as such. Section 363(m) does not speak in jurisdictional terms but only as a limitation on the remedy that an appellate court may apply on reversal or modification of a sale authorization order. Therefore, it does not deprive the appellate court of jurisdiction to hear an appeal of such an order. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. ___, 143 S. Ct. ____, 2023 U.S. LEXIS 1666 (2023).

12.3.b **Adverse claim to defeat good faith sale requires title dispute.** After the hotel developer debtor defaulted during construction, it provided the secured lender's affiliate a deed (in lieu of foreclosure) in exchange for a release and a 50% profit participation in future development. The construction contractor asserted a mechanics lien in state court litigation. The lender and its affiliate arranged for a sale of the property through a chapter 11 case. They transferred the property to a financial advisory firm. With that firm's cooperation, they hired an experienced hotel broker to sell the property. The lender agreed to provide debtor in possession financing. The court approved the financing, and the advisory firm filed a motion to approve bidding procedures and a stalking horse bidder. No outside bids were received, so the lender, with the court's permission, credit bid an amount greater than the stalking horse bid. The court determined the lender bought the property in good faith and approved the sale. The contractor appealed. Section 363(m) provides that absent a stay pending appeal, an appeal may not affect the validity of a sale to a good faith buyer. A good faith purchaser is one who purchases for value, in good faith, and without notice of adverse claims and does not engage in misconduct, including fraud, collusion, or an attempt to take grossly unfair advantage of other bidders. An adverse claim does not include a lien claim or an objection to the sale, only an adverse claim to title, that is, an ownership dispute. Because the contractor asserted only a lien, its claim did not prevent the lender from purchasing in good faith. In addition, because the lender disclosed all aspects of the planning and the transaction and the court approved each step, the lender was not guilty of any misconduct. Therefore, the court of appeals dismisses the appeal. *SR Construction, Inc. v. Hall Palm Springs,*

L.L.C. (In re RE Palm Springs II, L.L.C.), ___ F. 4th ___, 2023 U.S. App. LEXIS 9101 (5th Cir. Apr. 17, 2023).

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.2 Attorneys

13.2.a **Court allows fees for representing affiliated debtors with conflicting interests.** Two affiliated debtors filed chapter 11 petitions. The cases were jointly administered. One of the debtors perpetrated a major fraud, resulting in significant claims against it; the other debtor was arguably solvent but in default on a credit line that it jointly signed with the fraudulent debtor. The U.S. trustee appointed separate creditors' committees. The court permitted representation of both debtors in possession by the same counsel. Counsel filed three separate plans in the course of negotiating a fourth plan incorporating a settlement to which all parties consented. Two of the three plans heavily favored the fraudulent debtor's creditors at the expense of the other debtor's creditors. Section 328(c) permits, but does not require, the court to deny compensation if at any time a professional represented or held an interest adverse to the estate on the matter on which the professional was employed. A chapter 11 professional has a fiduciary duty to pursue a strategy reasonably designed to maximize the estate after accounting for attendant costs, risks, and time. Filing a plan may, among other legitimate purposes, memorialize an agreement, make a proposal, make a threat, or comply with a deadline. Here, the debtors' filing of the three plans properly performed several of these functions and therefore appeared to facilitate the fourth plan that reflected a global resolution. As such, the prior three plans were proper, did not reflect a conflict of interest or representation of an interest adverse to the estate, and did not warrant denial of compensation under section 328(c). In the alternative, sanctions were not warranted because the application of section 328(c) here was a close call, and such a sanction is draconian and should not be applied absent injury or prejudice to the estate. *In re Easterday Ranches, Inc.*, 647 B.R. 236 (E.D. Wash. 2022).

13.3 Committees

13.4 Other Professionals

13.5 United States Trustee

14. TAXES

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES

15.1.a **Court may continue recognition of foreign main proceeding that changes from rescue to liquidation.** The debtor commenced a business rescue proceeding in South Africa. The High Court there appointed Business Rescue Professionals (BRPs). They sought and obtained recognition in the U.S. under chapter 15. After it became apparent that the debtor could not be rescued, the BRPs petitioned the High Court to terminate the rescue proceeding and initiate a provisional liquidation. The two proceedings are coterminous—the provisional liquidation commences upon the termination of the rescue proceeding. The High Court granted the petition and appointed provisional liquidators and authorized them to seek recognition of the liquidation as a foreign proceeding, which they did. Section 1517(d) permits the court to modify a recognition order if the grounds for granting it have ceased to exist. Although the rescue proceeding terminated, the initiation of the liquidation continued the foreign proceeding in a different form but without change of identity, and the provisional liquidators are appropriate substitutes for the BRPs. Therefore, the court modifies the recognition order to recognize the provisional liquidators as the foreign representatives and otherwise leaves in place all relief previously granted in the

chapter 15 case. *In re Comair Ltd.*, ___ B.R. ___, 2023 Bankr. LEXIS 363 (Bankr. S.D.N.Y. Feb. 12, 2023).