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FINANCIAL RESTRUCTURE FOR BUSINESSES AND GOVERNMENTS

International and Cross-Border Bankruptcy Cases In the Southern District of Texas

There is substantial precedent in the Southern District of Texas (“SDTX”) for international and cross-border bankruptcy cases, and it is a good place to pursue such cases.

The Xacur cases set precedent in SDTX for the minimum contacts necessary to bring a foreign citizen into involuntary U.S. bankruptcy jurisdiction. They discuss factors supporting abstention from exercising that jurisdiction in one case, but not in another. Compare the opinion *In re Jacobo, Felipe and Jose Maria Xacur*, 216 B.R. 187 (Bankr. S.D. Tx. 1997) (ordering involuntary bankruptcy) to the opinion *In re Nicolas Xacur*, 219 B.R. 956 (1998) (abstaining and dismissing the involuntary bankruptcy petition).

Yukos set precedent in SDTX for the minimum contacts necessary to establish jurisdiction over a foreign company that files a voluntary Chapter 11 case here, taking a broad approach based on the plain language of the Bankruptcy Code. *See In re Yukos Oil Company*, 321 U.S. 396 (Bankr. S.D. Tx. 2005). The Bankruptcy Court explained its policy reasons for essentially abstaining from exercising that jurisdiction over a foreign oil and gas production company where the home government would not cooperate with the reorganization.

Subsequently, in TMT Group, Judge Isgur found U.S. bankruptcy jurisdiction for shipping company debtors based on similar minimal contacts, but kept the case after demanding that the shipping company debtor with assets and operations all over the world put substantial liquid assets in SDTX to show its good faith. *In re TMT Procurement Corp, et al.*, case no. 13-33763, Docket no. 134, Order entered July 23, 2013, (dismissing TMT Shipmanagement and one other affiliated company that had no assets, but explicitly not dismissing 18 other affiliated shipping company cases; and demanding the posting of Good Faith Property in the registry of the court to provide a pool of assets to ensure compliance with court orders).

Shipping companies with assets and operations that move all over the world do not present the same issues of comity with the home government as an oil and gas production company that is more subject to foreign government control.

More recently, Judge Jones has handled Seadrill, a multibillion dollar offshore drilling company, whose headquarters is in London.

The theories supporting and opposing abstention and dismissal in such cases are discussed in an outline posted below, titled *Use of Chapter 11 by Foreign Debtors*. It has been used for years by Zack Clement and Retired US Bankruptcy Judge Allan Gropper in a class sponsored by the American College of Bankruptcy that is broadcast to 10 law schools. Judge Gropper presided over the Chapter 11 case of Avianca Airlines that was filed in New York. There, he declined to abstain, kept the case and ultimately entered a plan confirmation order. *In re Avianca*, 303 B. R. 1 (Bankr. S.D. NY. 2003).

Finally, the Southern District of Texas has a strong record for recognizing foreign representatives under Chapter 15 and efficiently administering their U.S. assets. See, e.g., *Harkand*, *Argent* and *Calmena*. A website provides copies of all papers filed in Argent (www.upshotservices.com/argent).

Materials concerning these international and cross-border issues are listed below my signature block and are available for free download on my website.

I have been involved in many of these cases and would be happy to discuss them with you.

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SDTX International and Cross-Border Materials

- 1 [*Use of Chapter 11 By Foreign Debtors*, Clement and Gropper American College of Bankruptcy Course Outline](#)
- 2 [*In re Jacobo, Felipe and Jose Maria Xacur*, 216 B.R. 187 \(Bankr. S.D. Tx. 1997\) \(opinion granting involuntary Chapter 7 petition\)](#)
- 3 [*In re Nicolas Xacur*, 216 B.R. 956 \(Bankr. S. D. Tex. 1998\) \(opinion abstaining](#)

- 4 [and denying Involuntary Chapter 7 petition](#)
- 4 [*In re Avianca*, 303 B.R. 1 \(Bankr. S.D. N.Y. 2003\) \(order retaining Chapter 11 case and declining to abstain\)](#)
- 5 [*In re Yukos Oil Company*, 321 B.R. 396 \(Bankr. S.D. Tx. 2005\) \(opinion finding bankruptcy jurisdiction but abstaining\)](#)
- 6 [*Historic Award in the Yukos Majority Shareholder Arbitration*, by Shearman and Sterling \(describing the significance of the Yukos chapters 11 and 15 U.S. bankruptcy cases\)](#)
- 7 [*In re TMT Group \(In re TMT Procurement Corporation et al.*, Case no. 13-33763, Docket no. 134, Order entered 7/23/13 \(finding bankruptcy jurisdiction and ordering cash deposit to establish good faith\)](#)
- 8 [*Harkand* Chapter 15 Recognition Order](#)
- 9 [*Argent Energy Holdings Inc.* Chapter 15 Provisional Relief Order](#)
- 10 [*Argent Energy Holdings Inc.* Chapter 15 Recognition Order](#)
- 11 [*Calmena Energy Services Inc.* Chapter 15 Recognition Order](#)