4.16.19

Berau Coal Trial Heads to Third Day In the New York State Supreme Court

The lawsuit brought by two US hedge funds based in the Cayman Islands, Pathfinder Strategic Credit LP and BC Investment LLC, against Indonesia's PT Berau Coal Energy and Berau Capital, is bogged down in a procedural morass and heading to a third day in the New York State Supreme Court.

Pathfinder, of which BC is a subsidiary, is managed by Argentem Creek Partners LP, and seeks over 160 million dollars in damages against the Widjaja family-backed Berau entities for unpaid notes issued in 2015 and 2017. According to testimony in court, Berau last paid interest on the notes in 2015 and has never paid the principals.

The hearing's two days have been spent by the plaintiff's counsel, Gary Mennitt of Dechert LLP, attempting to get the basic terms of the overdue notes into testimony from two witnesses in front of the jury. The plantiff's witnesses were Argentem Creek Partners's Director of Operations and Accounting Margaret Mangelsen of Minneapolis and Northern Trust Hedge Fund Services Senior Vice President and Head of Relationship Management Nadia Cobalovic of Chicago.

This protracted process was due to an error Dechert made when copying accounting statements from Argentem's internal database into evidence. The totals of some trades differed on documents that were supposed to represent the same trade. This discrepancy was caused by what Mennitt termed a "resorting error" in Microsoft Excel, but it cast reasonable doubt on the legitimacy of their chain of evidence, leading to both accounting statements to be thrown out.

This error was brought to light through tenacious and, at times, exasperating, objections by the defense's lead counsel Theodore Hecht of Schnader Harrison Segal & Lewis LLP. Hecht's objections led Justice Andrew Borrok to decide the documents showing the terms of the unpaid notes were not produced during the "ordinary course of business" as they were manipulated by the counsel and were therefore not admissible.

At one point, Justice Borrok suggested putting the entirety of Argentem's database in evidence. One wonders why the plaintiffs decided to rely on a chain of document transferal that opened itself up to procedural challenges by the defense. As Justice Borrok said during a pre-trial sidebar on the second day of the trial, "at the end of day, the trial is about holdings and the accounts and where they stand, the terms, and what they think that means, at least that's what I think it's about." On the second day, the plaintiffs were finally able to extract the terms of the notes from the witnesses, but the process was grueling and monotonous.

In a lawsuit that concerns layer upon layer of opaque financial instruments held by hedge funds in the Cayman Islands that is to be decided by a jury, not being able to succinctly define the terms of the debt is a failure. The jury already likely look on this legal battle between the global one percent with some mixture of not understanding and not caring. Adding the plaintiffs' call and response forced by the defense for each figure of each note associated with each year,

requiring each witness to look at each of their previous affidavits for each financial statement could not have helped.

Why a jury is best suited to decide this case is anyone's guess. The testimony of the plaintiffs' third witness, Duff and Phelps's James Finkel, an expert witness in debt and global markets, was spent relating, more or less, a Wikipedia-level account of the history of bonds. The plaintiffs' counsel at one point even attempted to submit into evidence a bond certificate from the 1890s that Finkel had collected to get across the historical evolution of the debt instrument. It was overruled.

But the defense's counsel Hecht has relied on the lack of the jury's knowledge of debt trading for many of his bad faith arguments, which do appear to have merit to the layman at face value. Hecht has exploited the fact that Pathfinder never gave his clients a "single penny"——because the notes were bought on the secondary market——as a commonsense contradiction. So, too, has Hecht made much of the fact that Pathfinder and BC are beneficial holders——but not the registered holders——of the notes, though industry insiders know well that this is because the registered holder is DTCC.

Hecht's smoke and mirrors performance while arguing and cross-examining helps his flimsy arguments. He has something of the country lawyer in him, able to play to a jury couched in televised representations of court proceedings. His questions are quick, rarely in good faith, are leading, or misrepresenting, as when he kept conflating Argentem's Ms. Mangelsen with Pathfinder, but he is rarely relenting. This is in stark contrast to Mennitt's technocratic anemia. While objective facts should make a case, when have they?

Justice Borrok has strove to be even-handed, even with Hecht's risible defense and the grinding nature of the plaintiffs questioning. Yet, each objection sustained over arcane issues of data transmission, themselves operating on their own logics——apparently Excel sheets are editable, but PDFs are not, in the age of PhotoShop——gives the defense an edge.

Justice Borrok inherited the trial from the recently retired Justice Charles Ramos who oversaw its deposition and discovery phases. This has turned into a hinge point for the case, and the hearing ended its second day in a sidebar debate between counsels, started by the defense, over what expert testimony was agreed to be in discovery to Borrok's confusion and dismay.

The Widjaja family behind Berau Coal infamously used creative legal maneuvers to get out of almost 14 billion dollars of Asia Pulp and Paper's debt in the 2000s. A former co-owner of Berau currently running for vice president of Indonesia with an election on April 17th, 2019, Sandiaga Uno, is mired in corruption allegations associated with the company. So, too, is Berau known as one of the prime environmental harm agents in its region.

The defense is stuck with the problem of how to get its clients, well-known bad actors, out of paying a clear debt. With the gadfly behavior of Hecht, they're giving it their best shot and Dechert isn't putting up much resistance.

6.13.19

No Decision on Berau Coal Motion to Set Aside $170 Million Verdict

Justice Andrew Borrok said he needed to "think about this for a couple of days" at the conclusion of a June 13th hearing on PT Berau Coal's motion to set aside an April 17th $170 million jury verdict.

Two Argentem Creek Partners funds, Pathfinder Strategic Capital LP and BC Investment LLC, brought the lawsuit against Berau to recover damages on notes they purchased on the secondary market.

The hearing, which took place at the New York County Supreme Court in New York City, turned, as the entire trial did, on the admissibility of financial account statements into evidence.

Theodore Hecht of Schnader Harrison Segal and Lewis, counsel for Berau, argued that Borrok should use his discretion to set aside the verdict because the plaintiffs were not able to provide a "hard copy" of the financial statements into evidence and instead relied on witness testimony from Argentem Creek Partners's Director of Operations and Accounting Margaret Mangelsen.

Hecht's issue with Mangelsen's testimony is that the plaintiffs repeatedly used an inadmissible financial statement to "refresh" Mangelsen's recollection as to the amounts owed to Pathfinder and BC. Therefore, Hecht argued, this was tantamount to reading an inadmissible document into evidence.

However, the plaintiffs argued that the document was a true and accurate representation of Argentem's electronic record-keeping system overseen by Mangelsen and therefore suitable to use.

Also at issue for Hecht is the supposed discrepancy in the amounts shown in the statements—$23 million—and the amount awarded—over $170 million. However, this supposed discrepancy is due to the date Northern Trust became the custodian of the funds and is not indicative of the actual total of the debt held by the two funds.

Justice Borrok ended the hearing by asking the defense why they had refused to field an expert to contest the testimony of the plaintiffs' final witness, James Finkel of Duff and Phelps. Finkel, an expert in capital markets, testified that the documents used as evidence were sufficient proof for the commercial bond market. The defense started the trial with an expert witness slated to appear, but dismissed the witness on the third day of the trial before he testified and without explanation.

A rival motion from the plaintiffs to file the verdict in order to start the discovery process on Berau's assets, was not heard by Justice Borrok.

7.11.19

Goldman Sachs, UNFI Lawsuit Preliminary Conference Held; No Decision Yet

Justice Andrea Masley heard preliminary arguments in a Goldman Sachs motion to dismiss a United Natural Foods, Inc. (UNFI) suit alleging breach of contract today in the New York County Supreme County in New York City. Masley said a decision would be out "as fast as we can."

The lawsuit follows UNFI's voluntary dismissal of its own January 2019 lawsuit against Goldman Sachs, Goldman co-head of Americas mergers Stephan Feldgoise, Bank of America, and U.S. Bank following the natural foods distributor's acquisition of SuperValu. That suit was to be heard in the U.S. District Court for the Southern District of New York. This new UNFI lawsuit is against only Goldman Sachs and Feldgoise and is taking place in New York State Court.

UNFI hired Goldman Sachs as its advisor, loan funder, and entity responsible for syndicating the loan that UNFI used to acquire SuperValu in 2018. In the process of the acquisition, Goldman Sachs enacted flex provisions in the contract that increased the interest UNFI was responsible to pay and the amount to which Goldman Sachs was entitled, while just failing to syndicate the loan at market.

UNFI alleges Goldman Sachs to be in breach of contract for taking over 40.5 million dollars in marketing period fees, for withholding 11.4 million in advisory fees, and for breaching the implied covenant of good faith and fair dealing.

Counsel for Goldman Sachs Michael Paskin of Cravath, Swaine & Moore argues that Goldman faced difficulties syndicating the UNFI loan due to external market factors and poor financial statements from both UNFI and SuperValu that were released in the marketing period. However, also at issue is a Goldman Sachs suggestion to sign SuperValu on as a co-borrower to the loan. This kept SuperValu's 450 million dollars in debt alive for hedge funds that held credit default swaps on SuperValu's debt.

UNFI therefore alleges that Goldman Sachs acted in bad faith, saddling UNFI with debt in order to appease other Goldman Sachs clients who held SuperValu debt. Counsel for UNFI, Quinn Emanuel Urquhart & Sullivan's Michael Liftik, characterized this as Goldman Sachs "wheeling the Trojan horse into UNFI. Has it been harmed when it's wheeled in, or when the Greeks come out?" Goldman's counsel Michael Paskin retorted that "speculative injury can not support a fraud claim."

This gets to the core of the question for UNFI, as UNFI's other legal counsel Gabriel Soledad argued, the case does not hinge on proving "ill-gotten gains" for Goldman Sachs, but on proving unnecessary harms incurred by UNFI due to Goldman Sachs and their bad faith dealing.

The syndication's marketing period was full of odd moments, including Goldman Sachs telling UNFI that "Things are going to get ugly" if they did not comply to last minute changes in the loan terms and a last minute billing by Goldman that UNFI alleges did not follow a contract stipulation for a three day invoicing notice. Both sides disagree as to

what dates constituted the marketing period and when the proper closing date should have been.

Also at issue is whether or not the case can even be taken up without Bank of America and U.S. Bank listed as co-defendants, as Goldman Sachs held only 45% of the loan arrangements, not a majority.

7.18.19

FTI FRAUD ALLEGATION CLAIMS AGAINST CFG PERU WITHDRAWN

Judge James Garrity, Jr. of the US Bankruptcy Court of the Southern District of New York has sided with FTI, the BVI liquidators of China Fishery, in a dispute over the proper venue of fraud claims on July 18th in New York City.

Garrity abruptly ended the hearing by telling the counsel for China Fishery Group, Quinn Emanuel Urquhart & Sullivan's James Tecce, that FTI would like to withdraw their claim "and I'm going to give them an opportunity to do that," allowing FTI's claims alleging fraud by CFG Peru to be withdrawn.

FTI is seeking to pursue the claims in Hong Kong courts, over the objection of the Chapter 11 trustee, William Brandt, Jr., who was appointed in the US bankruptcy cases in 2016 by Judge Garrity.

The length of Brandt's trustee-ship — two and a half years and counting — was often mentioned during the proceedings. Brandt emphasized his desire to sell the company "yesterday," invoking former Chicago mayor Rahm Emanuel by saying, "It's been the job of a lifetime, but it's not a job for a lifetime."

Brandt stressed the health of China Fishery Group's economic fundamentals, going into detail about new deals with the Peruvian authorities, met fishing quotas, and "350" potential buyers. Brandt said he has had meaningful negotiations with over sixty of these potential buyers and reached the NDA stage with several.

However, competing liquidation processes in other countries and an ongoing survey of assets have led to "bracketing issues" getting in the way of a potential sale. So too have time-consuming trials afar afield as Samoa and Namibia.

In the beginning of the multipart hearing, Judge Garrity authorized a commercial real estate property in Hong Kong worth seven to eight million dollars to be sold off to clear administrative costs and that the sale's principles could not be sealed.

The closing exchange regarding fraud allegations between Judge Garrity and CFG counsel James Tecce was a rapid, heated back and forth. Tecce said that even the assertion of fraud was serious and clearing CFG's name in a US court would be "of value to any bidder," and would have an impact on the Hong Kong court's decision. Garrity did not find that rationale convincing, saying "none of that is relevant at all."

Douglas Deutsch of Clifford Chase US, the counsel for FTI, agreed with Judge Garrity, saying that withdrawing the claims would have no impact on the Hong Kong court, and that Hong Kong was the right forum for the case as the company's name is "China Fishery, not US Fishery."

9.4.19

No Decision Reached in HSBC Motion to Dismiss CFG Peru's Claims

Judge James Garrity of the United States Bankruptcy Court of the Southern District of New York did not issue a decision in Hongkong and Shanghai Banking Corporation's motion to dismiss China Fishery Group Peru's claims.

CFG Peru, which has been in Chapter 11 bankruptcy under the guidance of US trustee William J. Brandt since 2016, sought $245 million for damages and $100 million for equitable subordination.

HSBC, represented by lawyers from Davis Polk & Wardell, LLP and Boies Schiller Flexner, LLP, filed their motion to dismiss CFG Peru's claims for a lack of personal jurisdiction, in an effort to keep the litigation in the Hong Kong courts, where earlier related cases have been heard.

Judge Garrity requested more information on Mr. Justice Jonathan Harris of the High Court of Hong Kong's decision in one of the earlier cases, as Garrity worried that pursuing the matter in the US would potentially cause CFG Peru's trustee Brandt to lose his legal standing in Hong Kong.

Judge Garrity had reason for concern as Mr. Justice Harris has referred to CFG Peru's prior actions as "conscious fraud" and their pursuit of the HSBC case in New York as "self-evidently objectionable and an affront" to the Hong Kong court.

HSBC's argument for Garrity to dismiss CFG Peru's claims hinged on the fact that very little of the case had anything to do with the United States to begin with. Indeed, none of the businesses involved were American.

Both sides will meet in a conference call in approximately a week in an effort to sort out how Mr. Justice Harris's opinions on the case could affect this very globalized legal dispute.

10.11.19

Duniatex Granted Provisional Relief Prior to CH 15 Hearing

PT Delta Merlin Dunia Textile, or Duniatex, a group of six Indonesian textile companies, was granted provisional relief by Judge Sean E. Lane on October 10th in the US Bankruptcy Court of the Southern District of New York in White Plains, NY. The judgment is in advance of Duniatex's

upcoming chapter 15 recognition hearing, likely to be held in mid-to-late November or early December 2019, in New York City, NY.

Duniatex is currently pending PKPU restructuring proceedings in the Semarang Commercial Court in Indonesia. The foreign representative of the vertically-integrated textile company, and its beneficiary holder Mr. Sumitro, is Geoffrey David Simms of AJCapital Advisory. Simms filed chapter 15 petitions on Tuesday, October 8th, 2019, to have the Indonesian PKPU proceedings recognized as a foreign main proceeding under chapter 15 of the US Bankruptcy Code. On the same day, Simms filed an emergency motion for provisional relief from US creditors. Duniatex's worry was that its only US asset, an interest reserve account worth almost $13 million—equal to one of Duniatex's semi-annual interest payments—would be seized by its US creditors.

Duniatex's emergency motion for provisional relief was objected to by an ad-hoc committee of noteholders' on Duniatex's $300 million of 8.625% senior notes due March 2024. This committee is composed of three Bank of New York Mellon entities as well as any other noteholders. DMDT, one of the six component companies under Duniatex's umbrella, issued this debt just six months ago. Counsel for the committee filed an objection only hours before the hearing.

Judge Lane found the objector's arguments to refuse a stay on US creditor actions wanting in the extreme. Point by point, Judge Lane consistently pushed back on the ad-hoc committee of noteholders' counsel John E. Jureller, Jr., of Klestadt, Winters, Jureller, Southard & Stevens, LLP. When Jureller suggested the small creditor PT Shine Golden Brdige, or PT SGB, that filed the involuntary PKPU proceeding in Indonesia on September 11th, violated Indonesian law by filing, Judge Lane asked, "Do you have evidence to support that?" Jureller replied, "No . . . we'll look for it."

Jureller also insinuated that when Duniatex filed their chapter 15 application the day before their first interest payment on $300 million of 8.625% notes due March 2024 that it had been a suspicious move. Judge Lane replied, laughing, "That happens all the time . . . people always say, 'I can't believe they filed the day before foreclosure!' Well, I *can* believe they filed the day before foreclosure!"

Judge Lane ended the ninety-minute proceeding by granting Duniatex their application for provisional relief coextensive with section 362 from the US Bankruptcy Code. The main case precedent Judge Lane cited was Tonnarello and Sons, among other cases from the Second Circuit, calling it a well-worn standard. For Lane, the issues of irreparable harm and the balance of harm between the parties were the most important factors in deciding whether or not to issue a stay. The judge felt Duniatex's risk of losing $13 million did, in fact, constitute irreparable harm. Judge Lane concluded by offering the petitioner's counsel suggestions for rewriting their chapter 15 petitions in advance of the recognition hearing. The date for the hearing is up in the air as the foreign representative for Duniatex must be present in New York in case testimony is needed from him and the case must be scheduled to accommodate his availability.

10.17.19

US Judge Grants CH 15 Recognition for Reward Science's Chinese Proceeding

Judge Michael E. Wiles of the US Bankruptcy Court for the Southern District of New York recognized Reward Science and Technology Group's ongoing bankruptcy proceeding in the People's Republic of China, granting Chapter 15 protection to the embattled milk powder and chemical company.

The October 7th hearing came in response to a request from BFAM Asian Opportunities Master Fund and Pinpoint Multi-Strategy Fund for a summary judgment to collect a total of 160 million in outstanding notes. Reward Science defaulted on their $200 million 7.25% guaranteed senior notes due in January 2020. BFM is holds $83.2 million, while Pinpoint holds $77 million of Reward Science's notes.

Chapter 15 is a section of the US bankruptcy code that incorporates a model law drafted by the UN Commission on International Trade Law meant to facilitate cooperation between US and foreign courts in regard to cross-border insolvency cases. Chapter 15 allows a representative of a foreign bankruptcy case—Dr. Yin Zhengyou in the Reward Science case—to obtain access to US courts.

On September 9th, Reward Science and Dr. Yin petitioned for Chapter 15 recognition of a foreign main proceeding to stay any US actions while their case in the PRC continues. Prior to Reward Science's filing, BFAM filed a motion in the Supreme Court of the State of New York seeking a summary judgment that would reward them $83.2 million. Judge Wiles's decision means this matter will be postponed until the conclusion of Reward Science's bankruptcy trial in Beijing.

One issue for BFAM, Pinpoint, and the other noteholders in the case, Value Partners China High Yield Income Fun and Value Partners Credit Opportunities Fund SP, was that Reward Science had not disclosed all of its US assets, especially their interest in the California-based Panrosa Enterprise Group Co., Ltd. Judge Wiles agreed to hold this Chapter 15 recognition hearing on the precondition that Reward Science would declare this asset and not transfer any US asset outside of the jurisdiction.

Undecided at the time of this report was an agreement by all parties as to the scope of the stay for Reward Science's assets outside of the US. When asked by Judge Wiles whether they would give notice before they took action outside of the US, the plaintiffs said they would need to confer with their clients, who were on Hong Kong time and therefore not easily contacted.

10.29.19

No Ruling on CFG Distribution Motion; DIG Loan Terms Amended

There was no ruling on the motion filed by the ch 11 trustee William J. Brandt of the China Fishery group companies, CFGI and Copeinca. Brandt's motion would have enabled CFGI and Copeinca to make interim distributions of excess cash to partially pay down outstanding amounts to CFG's creditors.

Judge James L. Garrity of the US Bankruptcy Court for the Southern District of New York said he would instead issue a ruling on November 8th, 2019, at 11:00 AM, with no expected need for further argument.

CFG is a global industrial fishing company, based in Singapore and the Cayman Islands, with access to the anchovy fishing grounds in Peru, currently going through ch 11 restructuring.

At issue was whether or not certain noteholders of CFG's debt had the benefit of a loan guarantee from its subsidiary Copeinca as well as from CFGI. Brandt's plan distributes funds to partially pay, on a pari passu basis, the $300 million 9.75% senior notes due 2019, the $650 million club loan facilities, and the facility provided by Bank of America, N. A. However, under the plan, Copeinca would only partially be paying the club lenders, not the $300 million noteholders or Bank of America.

As it stands, no guarantee has been recognized, and other noteholders, like Monarch Alternative Capital LP, support Brandt's interim distribution plan. But counsel for the objecting noteholders, Matthew Stein of Kasowitz Benson Torres, LLP, repeatedly argued that CFGI and Copeinca were one in the same, that there was no meaningful separation to the entities, and that, therefore, a guarantee was only needed from one, not both.

While Judge Garrity appeared frustrated by the ch 11 trustee's counsel, Lisa Laukitis from Skadden Arps Slate Meagher & Flom, LLP, and her desire to see the issue of the guarantee settled at the hearing, he also seemed to favor the trustee's arguments. Though Judge Garrity declined to rule, ch 11 trustee Brandt was overheard leaving the hearing saying that he felt Garrity would accept the proposal and that the distribution scheme would be retained for future payments. Brandt has made it clear in the past that he would not issue any distributions if the court found that the noteholders did have a guarantee from Copeinca.

On a related second item on the court's agenda, Judge Garrity granted the motion by the ch 11 trustee to amend the DIG intercompany loan, injecting additional capital to cover administrative costs, on the basis that SFR not make the loans.

12.17.20

China Fishery Mediation Ruling to be Issued on Friday 12/20

Judge James L. Garrity of the United States Bankruptcy Court in the Southern District of New York will issue a ruling at 3:00 p.m. on Friday, December 20th, 2019. Garrity's ruling will decide if a mediator will be appointed to resolve issues related to CFG Investment S.A.C. (Peru), or CFGI. These issues include whether or not CFGI's chapter 11 trustee William A. Brandt, Jr. can pay interim distributions out to creditors, if Copeinca is guaranteed to do so as well, and whether FTI Consulting liquidators can be asked to take part in a US-based mediation process based on how their $152 million lawsuit in Hong Kong depreciates the potential sale price of CFGI.

Garrity ended the hearing on Tuesday, December 17th, by inviting the counsels of all parties into his chambers, as he wanted the remainder of the discussion about inviting a mediator to be off the record.

Two reasons were given for a mediator by the chapter 11 trustee's counsel. First, Lisa Laukitis, of Skadden, Arps, Slate, Meagher & Flom LLP, argued that a mediator was needed for "a swift cost-effective resolution" to the issue of the Copeinca noteholder guarantee dispute, and the number of objections and other filings miring down this case.

The second reason was provided by James Tecce of Quinn, Emanuel Urquhart & Sullivan, LLP, also counsel for the chapter 11 trustee. Tecce argued that because two of the claimants who are awaiting a decision in Hong Kong courts initially filed their claims in New York, Judge Garrity still had jurisdiction to compel them to participate in a mediation process. These claimants initially filed a suit alleging trade finance fraud that implicated CFGI, before withdrawing their claims with prejudice and taking them to HK.

The chapter 11 trustee William A. Brandt, Jr. felt FTI's participation in the mediation process was necessary to cast off doubts as to the value of CFGI to potential bidders. As CFGI's chapter 11 process began over four years ago, expediting the sale of the company in excess of its debt, or producing a creditor-led debt and equity deal, as quickly as possible—especially while CFGI is posting profits—is on Brandt's mind.

However, Robert Johnson, of Clifford Chance, counsel for certain debtors in the case, argued that Judge Garrity did not have the jurisdiction to compel litigants in a foreign court to partake in a US-based mediation process, whether or not they had filed a claim in New York in the past. Johnson also pointed out that three of the HK claimants had not been party to the earlier US filing.

A further upcoming hearing in front of Judge Garrity on January 22nd, 2020, will address the Rule 2004 request filed by the Kasowitz team, the counsel for the noteholders. Laukitis recited a litany of some of the 4,700 CFGI documents that were recently made available to the noteholders in a "data room." This included everything from collective-bargaining contracts to monthly gas bills dating back to 2013 for both CFGI and Copeinca.

A Rule 2019 Statement compliance motion filed by the chapter 11 trustee was not addressed in court on the 17th.

1.22.20

China Fishery Group Limited and Noteholders Agree to Ch. 11 Mediation

A mediation plan proposed by China Fishery Group Limited's (CFGL) chapter 11 trustee William J. Brandt and CFGL's creditors and liquidators was approved by Judge James Garrity of the U.S. Bankruptcy Court of the Southern District of New York on Wednesday, January 22nd.

The plan calls for all parties to join a mediation process to be overseen by a judge to solve a number of long running disputes. The parties that will be part of the mediation process include CFGL and its trustee William J. Brandt, liquidators represented by Chance Clifford LLP, club loan counsel Michael Luskin, Copeinca, FTI, noteholders represented by Kasowitz Benson Torres LLP, Monarch Alternative Capital LP, the OpCos, Peruvian companies, TMF, and a representative from the Ng family. HSBC, a creditor to some OpCos involved in the restructuring, has made it clear they will not be a party to the mediation process.

The Ng family informed counsel for certain debtors John Jureller of Klestadt Winters Jureller Southard & Stevens that the following Ng entities could not be included in the mediation because the family does not control them: Throne Holdings LTD, ASAFONA Enterprises Limited, Go Will Holdings Limited, Glorious Bright, and Dal West Limited. The Ng family's inclusion in the mediation process was integral for the liquidators. But Robert Johnson, counsel for the liquidators from Clifford Chance LLP, asserted that this was the first time the liquidators had heard these Ng entities were not controlled by the Ng family. As to the confusion between which Ng entities were run by the Ng family and which were not, Judge Garrity characterized it as a "Who's on first?" situation. To make matters more confounding, Jureller said it was likely the same person will represent both the family and the uncontrolled entities. Ng entities that will be involved in the mediation include Holdings Limited, KOBE, KCO Investments, and Meridian.

The chapter 11 trustee filed the initial emergency motion requesting the court to appoint a mediator to resolve a noteholder guarantee dispute with Copeinca and the Hong Kong litigation initiated by the FTI liquidators against China Fisher Group Investments (CFGI) in connection with claims related to trade finance fraud at CFGI.

The mediation motion set many aspects of the proposed process, including a selection process for a mediator, a session schedule, a confidentiality rule, the conditions under which certain parties must attend mediation sessions, and stipulations requiring no further discovery or proceedings other than the ongoing Hong Kong litigation.

Prior to the mediation motion, the main parties to this restructuring case provisionally agreed on the following issues brought up in the hearing's first two motions:

1. Bank of America, as Judge Garrity previously ruled, will not be included in a China Fishery Group Investments S.A.C. (CFGI) and

Corporation Pesquera Inca S.A.C. (Copeinca) interim distribution of excess cash plan. However, excepting Bank of America, the plan to partially pay down outstanding amounts due under the $300 million 9.75% senior notes due 2019 issued by CFGI and the $650 million club loan facilities as initially formulated was approved to move forward. Copeinca distributions will be paid on a pari passu basis to the club loan and other noteholders. These payments will be made without prejudice as to the amount or timing of any future payments and will be subject to the fluctuating amount of the trustee's cash on hand, fees, and interest, at his determination.

2. Noteholders will be able to use a 2004 subpoena for limited discovery on documents and will be able to conduct witness examinations in regard to China Fishery Group Limited, the chapter 11 trustee, CFGI, Copeinca, Citicorp International Limited, and Hogan Lovells International LLP to investigate the nature and enforceability of Copeinca’s supposed guarantee of a club loan. The noteholders will be moving forward with the collection, targeted searching, and review and rolling production of documents, which they have agreed to share with Monarch and the indentured trustee.

Judge Garrity asked the parties to make sure these agreements were memorialized and granted both motions. He also asked for a revised order for the mediation motion to be submitted.

A fourth motion filed by Pacific Andes International Holdings Limited (Bermuda) and Pacific Andes International Holdings (BVI) Limited to authorize certain corporate governance actions, approve certain claims, and grant related relief was adjourned.

James Payne New York, NY 917.859.3196 james.payne.cc@gmail.com