

# Zack A. Clement, PLLC

## FINANCIAL RESTRUCTURE FOR BUSINESSES AND GOVERNMENTS

### *Southern District of Texas International and Cross-Border Bankruptcy Cases*

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.

#### *Chapter 15 Cross-Border Cases*

The Southern District of Texas has a strong record for recognizing foreign representatives under Chapter 15 and efficiently administering U.S. assets related to their cases. *See, e.g., Harkand, Argent and Calmena* cited below.

#### *Involuntary International Cases*

The Xacur cases set precedent in SDTX for the minimum contacts necessary to bring a foreign citizen into U.S. involuntary bankruptcy jurisdiction. One of these cases discusses factors supporting abstention from exercising that jurisdiction.

#### *Voluntary International Chapter 11 Cases*

Yukos set precedent for the minimum contacts necessary to establish jurisdiction over a foreign company that files a voluntary Chapter 11 case in SDTX. Yukos applied the plain terms of the Bankruptcy Code requiring only **some** property or **a** place of business as a basis for jurisdiction and found it had jurisdiction over this large Russian oil company. *See In re Yukos Oil Company*, 321 U.S. 396 (Bankr. S.D. Tx. 2005).

The court dismissed Yukos under §1112 primarily because (i) a tax dispute with the Russian government would be central to the case; (ii) Yukos represented a very large percentage of Russia’s annual oil production; (iii) extraction of oil from the ground is inherently subject to substantial government control; (iv) and the Russian government would not cooperate with the reorganization.

Subsequently, in *TMT Group*, Judge Isgur found U.S. bankruptcy jurisdiction for a shipping company with assets all over the world based on similar minimal contacts with the Southern District of Texas. The judge kept the case after demanding that the debtor place substantial assets in the Southern District of Texas to show its good faith and ensure compliance with court orders. *See In re TMT Procurement Corp, et al.*, case no. 13-33763, Docket no. 134, Order entered July 23, 2013.

Subsequently, *Seadrill*, a London-based company with mobile offshore drilling rigs deployed around the world, filed a Chapter 11 case in SDTX in September 2017. Five months later, Judge Jones confirmed *Seadrill's* plan that reorganized its \$8 billion debt.

Thus, there is precedent for use of Chapter 11 in Houston by shipping companies (like *TMT*) and offshore drilling companies (like *Seadrill*), who, unlike Yukos, do not represent 20% of the oil and gas production in their home country and are not engaged in a life or death fight with their home government over a \$27 billion tax assessment that will be the biggest disputed claim in the Chapter 11 case.

My paper *Foreign Companies Using Chapter 11* discusses the different issues presented by *Yukos*, *TMT Group* and *Seadrill*. It describes how the U.S. Bankruptcy Code provides an excellent system to preserve value and reorganize a company as a going concern. Section 109 only requires some property or a place of business in the U.S. to qualify to be a Chapter 11 debtor. However, other parties can then seek to have the court abstain from hearing the case under §305 or dismiss under §1112.

*Foreign Companies Using Chapter 11* describes how these issues came out differently in *Avianca* where the going concern of a Columbian national airline was preserved through a New York Chapter 11 with tacit Columbian government support. This differs from Yukos where the Russian government had assessed a \$27 billion, hotly contested tax claim against Yukos and did not want the company to reorganize under Chapter 11.

*Foreign Companies Using Chapter 11* has been used for 10 years in a class sponsored by the American College of Bankruptcy and the International Insolvency Institute and broadcast to 10 law schools. Retired U.S. Bankruptcy Judge Allan Gropper, who presided over *Avianca*, taught this class with me for many years; Rick Mason and I now teach this class.

Materials concerning these international and cross-border matters are listed below and are available for free download at [www.zackclement.com](http://www.zackclement.com).

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

Zack Clement

January 31, 2023

Zack A. Clement, PLLC  
3753 Drummond St.  
Houston Texas 77025  
832 274 7629  
zack.clement@icloud.com  
www.zackclement.com

Fellow, American College of Bankruptcy  
Member, International Insolvency Institute

Admitted to practice in Texas, Illinois, New York, District of Columbia, Virginia

SDTX International and Cross-Border Materials

1. Foreign Companies Using Chapter 11, American College of Bankruptcy, Clement, Mason and Gropper, January 30, 2023
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 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. *Yukos: Three Years, Three Bankruptcies*
8. *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)
9. *Harkand Chapter 15 Recognition Order*
10. *Argent Energy Holdings Inc.* (website containing all pleadings in Argent case - [www.upshotservices.com/argent](http://www.upshotservices.com/argent))
11. *Argent Energy Holdings Inc. Chapter 15 Provisional Relief Order*
12. *Argent Energy Holdings Inc. Chapter 15 Recognition Order*
13. *Calmena Energy Services Inc. Chapter 15 Recognition Order*