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Recent Developments in Bankruptcy Law, April 2019

(Covering cases reported through 596 B.R. 773 and 914 F.3d 1310)

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1. AUTOMATIC STAY

1.1 Covered Activities

1.1.a **Contract parties may not contract out of the automatic stay by agreeing that a party is a "forward contract merchant."** The debtor supplied electricity to its customers under long-term contracts. The contract with a customer who used electricity to manufacture metal auto parts specified the contract was a forward contract, the parties were both "forward contract merchants" as defined in the Bankruptcy Code, and upon a default (including a bankruptcy filing) by either party, the other party could terminate the contract. An exception to the automatic stay permits a forward contract merchant to terminate a forward contract. The Bankruptcy Code defines forward contract merchant as "an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity." A contractual term that purports to designate a legal status for a contract party is not effective to override a statutory definition of that status. Therefore, the court must determine, without reference to the contract, whether the customer is a forward contract merchant. *In re FirstEnergy Solutions Corp.*, 596 B.R. 631 (Bankr. N.D. Ohio 2019).

1.1.b **Electricity end user is not a forward contract merchant to whom the automatic stay exception applies.** The debtor supplied electricity under a long-term contract to a customer who used electricity to manufacture metal auto parts. An exception to the automatic stay permits a forward contract merchant to terminate a forward contract. The Bankruptcy Code defines forward contract merchant as "an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity." Electricity is a commodity. A merchant is one who engages in a business for profit. To qualify as a forward contract merchant, the entity must purchase or sell the commodity to generate a profit. Simply purchasing a commodity for end use in a business does not qualify the purchaser as a merchant. Therefore, the customer is not a forward contract merchant, and the automatic stay exception does not apply. *In re FirstEnergy Solutions Corp.*, 596 B.R. 631 (Bankr. N.D. Ohio 2019).

1.1.c **Failure to halt state court contempt proceeding to collect prepetition debt violates the automatic stay.** The state court ordered the debtor to pay a property settlement to his former wife by a specified date or appear for a hearing a week later to sentence him for contempt. He failed to pay, and he filed a chapter 13 case before the sentencing hearing. At the sentencing hearing, the state court judge determined she was not restrained by the automatic stay and sentenced the debtor to 30 days in jail, subject to release upon payment of the property settlement amount. The wife's lawyer made no attempt to stay or delay the sentencing hearing. The debtor brought an action against the wife and her lawyer for violating the automatic stay. The stay prohibits any act or the commencement or continuation of any proceeding to collect a prepetition debt. Courts have created exceptions to the automatic stay for contempt proceedings to protect the dignity of the nonbankruptcy court. In this case, the clear purpose of the sentencing hearing was to coerce payment of the property settlement, not to protect the state court's dignity. Creditors have the burden to prevent stay violations. Because the wife and her lawyer did nothing to stay or delay the contempt hearing, whose sole purpose was to collect the prepetition property settlement debt, they violated the automatic stay. *Wohleber v. Skurko (In re Wohleber)*, 596 B.R. 554 (6th Cir. B.A.P. 2019).

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2.6.b **Court limits rights of holders of municipal special revenue bonds.** The municipal debtor had pledged special revenues (primarily highway tolls) to an indenture trustee to secure revenue bonds. After the debtor filed a municipal bankruptcy case, the bond insurer, as the bondholders' subrogee, sought to require the debtor to continue to turn over the special revenue. Section 552(a) cuts off a prepetition security interest on postpetition revenues. However, section 928(a) provides, "Notwithstanding section 552(a) …, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from" a prepetition security agreement. Section 928(a) does not require the debtor to continue to turn over postpetition revenues; it only negates section 552(a)'s effect and preserves the security interest on postpetition revenues. Section 922(d) provides the automatic stay does not stay the application of pledged special revenues to payment of debt secured by those revenues. However, it does not provide blanket stay relief to permit bondholders secured by special revenues to collect special revenues nor require the debtor to turn them over. *Assured Guaranty Corp. v. Financial Oversight & Mgmt. Board (In re Financial Oversight & Mgmt. Board)*, ___ F.3d ___, 2019 U.S. App. LEXIS 8981 (1st Cir. Mar. 26, 2019).

2.7 Recovery

2.7.a **Section 550(a)(2) applies to a foreign subsequent transfer.** The Ponzi scheme debtor fraudulently transferred property to foreign investors, who transferred some of the property to their own investors. The trustee avoided the transfers under section 548(a)(1)(A) and sued under section 550(a)(2) to recover the subsequent transfers. There is a presumption against extraterritorial application of a statute. An action may proceed under a statute only if Congress clearly indicated its intent that the statute apply extraterritorially or if the action involved a domestic application of the statute. To determine whether an action involves a domestic application, the court must look at the statute's focus, which is the overriding purpose of the statute or the conduct it seeks to regulate and the parties it seeks to protect. Here, section 550(a)(2) works, and must be read, in tandem with section 548(a)(1) to regulate the harm to the estate and other creditors from the initial fraudulent transfer. Because the initial transfer was made in the United States by a domestic debtor, the application of section 550(a)(2) here involves a domestic application of the statute. *In re Picard*, 917 F.3d 85 (2d Cir. 2019).

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6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Court allows postpetition attorneys' fee claim to undersecured creditor.** The undersecured creditor asserted a claim under the note for postpetition attorneys' fees that would be enforceable under applicable nonbankruptcy law. Section 502(b) provides a claim is allowed unless one of nine enumerated exceptions to allowance apply. None of them disallows attorneys' fees. "Claim" includes a right to payment that is contingent or unliquidated. Even though section 502(b) requires the claim to be determined as of the petition date and the creditor had not incurred postpetition attorneys' fees as of that date, the creditor's fee claim was contingent as of the petition date. The fees became fixed and liquidated during the case and before the final order on allowance, so awaiting the fixing or liquidation of the claim would not delay the case's administration, which is the trigger for section 502(c) estimation. Therefore, the court could allow the claim in the actual amount rather than simply estimating the contingent claim under section 502(c). Section 506(b) allows a claim for attorneys' fees on an oversecured claim. Its function is to fix the secured status of the fee claim and should not be read to override section 502(b), which requires allowance if none of the nine enumerated conditions are met. Therefore, the court allows the creditor's claim for postpetition attorneys' fees. *Summitbridge Nat'l Invs. III, LLC v. Faison*, 915 F.3d 288 (4th Cir. 2019).

6.1.b **Court refuses to enforce unconditional guarantee that violates public policy.** The debtor leased aircraft under a financing lease; the debtor's parent issued an unconditional guarantee. The lease contained a liquidated damages provision that was designed to ensure the lessor received a full return of its investment plus an IRR of 4%. Section 504 of Article 2A of the U.C.C. permits a liquidated damages provision "that is reasonable in light of the then anticipated harm caused by the default or other act or omission." The liquidated damages provision effectively required the debtor to assume the risk of market value loss over the course of the lease and so was not related to the anticipated harm the lessor might suffer upon a default. As such, it was not reasonable and was instead a penalty that is unenforceable as a matter of public policy. Courts typically enforce an unconditional guarantee despite the unenforceability of the guaranteed obligations, except where enforcement would violate public policy. Accordingly, the guarantee is also unenforceable for the same reason as the lease's damages provision. *In re Republic Airways Holdings Inc.*, ___ B.R. ____, 2019 Bankr. LEXIS 407 (Bankr. S.D.N.Y. Feb. 14, 2019).

6.2 Priorities

6.2.a **Trustee may avoid consignor's unperfected interest in proceeds of consigned goods.** The debtor sold the consignor's goods but had not yet paid the consignor the proceeds of sale when the debtor filed bankruptcy. The consignor had not perfected its interest in the goods by the filing of a UCC-1. A consignment is subject to the U.C.C.'s priority and perfection rules. A consignor must perfect, usually by filing a UCC-1, to retain priority in its goods or their proceeds. A delivery of goods to a merchant for sale is a consignment if the merchant deals in those kinds of goods and is not generally known by its creditors to be substantially engaged in selling goods of others. If a merchant is generally so known, then the delivery is not a consignment, and the deliverer need not perfect to prevail over perfected security interests. Here, the debtor was not generally known to be substantially engaged in selling consigned goods, so the supplier's interest in the goods was unperfected and avoidable by the trustee under section 544(a). The UCC treats unperfected consignments the same as unperfected security interests. An interest in proceeds is perfected only if the interest in the goods was perfected. Therefore, the trustee may avoid the supplier's claimed interest in the proceeds. *IPC (USA), Inc. v. Ellis (In re Pettit Oil. Co.)*, 917 F.3d 1130 (9th Cir. 2019).

6.2.b **True consignment requires that debtor purchase at least 20% of its inventory on consignment.** The debtor maintained a program for its suppliers who wished to sell on consignment. About 14% of the debtor's inventory was purchased that way. The debtor also had a term loan secured by a lien on its inventory. The term loan lender perfected its security interest by filing a UCC-1. One consignor filed a UCC-1 to perfect its interest in its consigned inventory only a month before the bankruptcy. The lender did not know the consignor was selling goods on consignment, and the consignor did not give the lender direct notice of its interest once it filed its UCC-1. After bankruptcy, the debtor in possession sold some of the consigned goods. The consignor and the secured lender each claimed the proceeds. A consignment is subject to the U.C.C.'s priority and perfection rules. A consignor must perfect, usually by filing a UCC-1, to retain priority in its goods or their proceeds. A delivery of goods to a merchant for sale is a consignment if the merchant deals in those kinds of goods and is *not* generally known by its creditors to be substantially engaged in selling goods of others. If a merchant is generally so known or if the competing secured creditor actually knows, then the delivery is not a consignment, and the deliverer need not perfect to prevail over perfected security interests. The courts use a 20% rule of thumb to determine whether a merchant is substantially engaged in selling goods of others. Here, the debtor purchased only 14% of its inventory on consignment.

Therefore, the consignor's sale was not a true consignment, and the consignor had to file a UCC-1 to perfect its security interest in the goods. Since it filed its UCC-1 after the lender did so, the lender's security interest has priority and is entitled to the sale proceeds. *TSA Stores, Inc. v. Sport Dimension (In re TSAWD Holdings, Inc.)*, ___ B.R. ___, 2019 Bankr. LEXIS 1181 (Bankr. D. Del. April 12, 2019).

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9.1.a **Deemed rejection in a chapter 7 case under section 365(d)(1) applies to unscheduled contracts and leases.** Before bankruptcy, the debtor settled patent litigation that claimed the debtor's machines infringed a patent. Under the settlement, the debtor received a license to use its machines for a royalty. The debtor did not list the license agreements in it schedules or statements of financial affairs. More than 60 days after the debtor's chapter 7 petition, the trustee sold the debtor's assets to its secured lender. The sale included a generic assignment under section 365 of all executory contracts. The licensor later learned of the sale and sought to enjoin the purchaser's use of the machines. Under section 365(d)(1), an executory contract is deemed rejected in a chapter 7 case if the trustee does not assume it within 60 days after the order for relief. Unlike section 554 which addresses abandonment of property and does not apply to contracts and leases, section 365(d)(1) does not contain an exception for contracts or leases the debtor does not schedule. Therefore, the licenses were deemed rejected before the sale. *RPD Holdings, L.L.C. v. Tech Pharmacy Servs. (In re Provider Meds, L.L.C.)*, 907 F.3d 845 (5th Cir. 2018).

10. INDIVIDUAL DEBTORS

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11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.1.a **Bankruptcy court may not enjoin insurers' claims against settling insurer.** The debtor owned several insurance policies that funded asbestos claims against the debtor. The debtor's insurers had equitable contribution claim against each other and had entered into a cost sharing agreement that apportioned defense and indemnity costs. In its chapter 11 case, the debtor in possession proposed to sell one of the policies to the issuing insurer, free and clear of all claims of other insurers, so that the issuing insurer would no longer be liable to the other insurers for any claims arising from injured parties' claims against the debtor, and to enjoin the other insurers from pursuing any such claims. Section 105(a) grants the bankruptcy court the power to issue orders necessary or appropriate to carry out the provisions of the Bankruptcy Code. In *In re American Hardwoods, Inc.*, 885 F.2d 621 (9th Cir., 1989), and *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), the Ninth Circuit held section 524(e) deprives bankruptcy courts of the power to release third party claims, that is, claims against others. That rule applies even in the context of a proposed sale under section 363(f) free and clear of interests. Therefore, the court may not enjoin the other insurers' claims against the settling insurer as part of the sale. *In re Fraser's Boiler Serv., Inc.* ___ B.R. ___, .2019 U.S. Dist. LEXIS 37840 (W.D. Wash. March 8, 2019).

11.2 Sanctions

11.3 Appeals

11.3.a **Appeal of settlement that is part of a sale is moot.** The trustee litigated with an adverse claimant over ownership of property. A buyer offered to purchase the property but demanded clear title. The trustee agreed to a settlement with the adverse claimant, resulting in payment of portion of the sale price and release of all claims between the trustee and the adverse claimant. The sale and the settlement were each conditioned on the other. The bankruptcy court approved both in a single order. An unsecured creditor appealed the approval of the settlement. A court of appeals may dismiss a bankruptcy appeal on equitable mootness grounds if the challenged transaction is substantially consummated and would be too complex to unwind. This transaction is simple and could be unwound, so the court denies the trustee's motion to dismiss on equitable mootness grounds. Section 363(m) provides that a reversal on appeal of an order under section 363 approving a sale does not affect the validity of the sale. Neither the Code nor the Bankruptcy Rules provide a similar provision for a settlement approval. However, here, because the sale and the settlement were conditioned on each other and the settlement was an essential part of the sale, section 363(m) prevents appellate review. *New Indus., Inc. v. Byman (In re Sneed Shipbuilding, Inc.)*, 914 F.3d 1000 (5th Cir. 2019).

11.3.b **Section 363(m) does not prevent appeal of an order determining distribution of sale proceeds.** The secured lender mistakenly released its lien long before bankruptcy but corrected its error before bankruptcy. After the property was sold in the bankruptcy, the debtor in possession sought to keep the sale proceeds, free of the lender's secured claim. The bankruptcy court ruled for the lender; the DIP appealed. Section 363(m) prevents the reversal or modification of a sale approval order from affecting the validity of a sale to a good faith buyer. Mootness is a constitutional doctrine that deprives a federal court of jurisdiction when the issues are no longer live or the parties lack a cognizable interest in the outcome. Section 363(m) provides a rule of decision, but does not make a live dispute moot or prevent a bankruptcy court from deciding what should be done with sale proceeds. Because state law here permits a mortgagee to correct a mistaken release before a third party relies on the mistake, the lender properly corrected the mistake and is entitled to the sale proceeds. *Trinity 83 Devel, LLC v. ColFin Midwest Funding, LLC*, 917 F.3d 599 (7th Cir. 2019).

11.4 Sovereign Immunity

11.4.a **Section 106's sovereign immunity abrogation does not apply to Indian tribes.** The trustee sued an Indian tribe to avoid and recover a fraudulent transfer. Indian tribes have sovereign immunity. Congress may abrogate a tribe's sovereign immunity, but only by a clear and unequivocal statement. Inference or implication from legislative language does not suffice. In every instance in which the courts have found abrogation of an Indian tribe's sovereign immunity, Congress has referred expressly to Indians or tribes. Section 106(a) abrogates sovereign immunity of governmental units. Section 101 defines "governmental unit" as the "United States; State; Commonwealth; … foreign state; … or other foreign or domestic government." A tribe is domestic and it is a government. Syllogistically, therefore, it is a domestic government. However, no prior Supreme Court case has referred to an Indian tribe as a "domestic government." Therefore, including Indian tribes within the phrase "domestic government" would require inference or implication, which would be inadequate to bring them within the section's scope. The court dismisses the avoiding power action against the tribe. *Buchwald Cap. Advisors, LLC v. Sault St. Marie Tribe (In re Greektown Holdings, LLC)*, 917 F.3d 451(6th Cir. 2019).

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.1.a **Direct injury claim to former CEO is not property of the estate.** The debtor's former CEO claimed the debtor's principal secured lender, through its control of the board and the debtor's funding, caused the debtor to fire him prepetition. The dismissal entitled him to severance payments, which the debtor could not pay. After bankruptcy, the debtor settled with the lender, releasing all claims against the lender. The former CEO later sued the lender in state court for recovery of his severance payments. Where an act directly injures the debtor, the claim for damages is property of the estate, which any other person indirectly or derivatively injured by the act may not bring. By contrast, a direct injury claim that does not involve any harm to the debtor is not property of the estate and may be brought by the creditor or other party in interest that the act harmed. Even if the act also harms the debtor, as long as the third party's injury is not derivative of the debtor's injury, the third party may independently bring a claim. Here, the former CEO's injury of loss of severance payments did not depend on injury to the debtor; he was injured independently by the lender's act. Therefore, the claim is not property of the estate, and the CRO may bring it. *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291 (5th Cir. 2019).

12.1.b **Shareholder derivative action is property of the estate.** After chapter 11, the debtor corporation's sole shareholder sued a competitor for damages under the Ohio RICO statute, which expressly permits a party "directly or indirectly" injured by corrupt conduct to sue for damages. Ordinarily, a shareholder may not sue directly for damages to a corporation but may sue only in a derivative action in the name of the corporation. In authorizing an action by a party indirectly injured, the Ohio legislature did not intend to supplant this body of corporate law. The shareholder could sue only derivatively, as the claim for damages under the Ohio RICO statute belonged to the corporation. Because it belonged to the corporation, upon the corporation's bankruptcy filing, the claim became property of the estate. The shareholder's lawsuit was an act to obtain possession or control of property of the estate and so violated the automatic stay. *Lowe v. Bowers (In re Nicole Gas Prod., Ltd.)*, 916 F.3d 566 (6th Cir. 2019).

12.1.c **Court may grant creditors derivative standing in a chapter 7 case.** The chapter 7 trustee agreed to sell the debtor's causes of action against managers and other insiders and the estate's causes of action to avoid and recover fraudulent transfers to creditors who had been pursuing similar lawsuits before bankruptcy. Sections 548 and 544(b) authorize the trustee to bring avoiding power claims. The Court of Appeals had previously ruled that a bankruptcy court may authorize a chapter 11 creditors committee to bring such claims derivatively on behalf of the estate in certain circumstances, such as when "the Code's envisioned scheme has broken down." The same rationale applies in a chapter 7 case. As in a chapter 11 case, section 503(b)(3)(B), which authorizes compensation to a committee acting on behalf of the estate, applies in a chapter 7 case and recognizes and rewards the practice, as long as the court has previously authorized the action. The court's equitable powers exist equally in chapter 7, and the public policy goals in a chapter 11 case of maximizing creditor recoveries and equality of treatment are the same in a chapter 7 case. *Claridge Assoc., LLC v. Schepis (In re Pursuit Cap. Mgmt., LLC)*, 595 B.R. 631 (Bankr. D. Del. 2018).

12.1.d **Post-bankruptcy death terminates debtor's joint tenancy and deprives trustee of interest in property.** On the petition date, the debtor owned real property in joint tenancy with his wife with right of survivorship. Before the trustee sold the debtor's interest in the property, the debtor died. Applicable non-bankruptcy law applies to determine property interests unless some federal interest requires otherwise. Federal law does not include any property ownership rules; state law governs ownership of property of this kind. Under state law, upon death, the full ownership of the property vests in the wife under the right of survivorship. That divests the estate of any further interest in the property. *Cohen v. Chernushin (In re Chernushin)*, 911 F.3d 1265 (10th Cir. 2018).

12.2 Turnover

12.3 Sales

12.3.a **Section 363(f) does not authorize sale free and clear of claims among third parties.** The debtor owned several insurance policies that funded asbestos claims against the debtor. The debtor's insurers had equitable contribution claim against each other and had entered into a cost sharing agreement that apportioned defense and indemnity costs. In its chapter 11 case, the debtor in possession proposed to sell one of the policies to the issuing insurer, free and clear of all claims of other insurers, so that the issuing insurer would no longer be liable to the other insurers for any claims arising from injured parties' claims against the debtor, and to enjoin the other insurers from pursuing any such claims. Section 363(f) permits sale of property of the estate free and clear of other interests. Courts have construed this authority broadly to encompass any "obligations that may flow from ownership of property or … that are connected to, or arise from, the property being sold." Third party claims that are not against the debtor are not interests in property of the estate unless they are truly derivative of the debtor's own claims or they seek compensation directly from policy proceeds the debtor owns. Here, the inter-insurer claims arise only from rights among the insurers and not from any relationship to the debtor or its property. Therefore, section 363(f) does not authorize sale free and clear of the insurers' claims against the settling insurer. *In re Fraser's Boiler Serv., Inc.* ___ B.R. ___, .2019 U.S. Dist. LEXIS 37840 (W.D. Wash. March 8, 2019).

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.1.a ***Barton* doctrine protects trustees of an asbestos trust.** Asbestos claimants brought an action in state court for breach of fiduciary duty against the trustees of a trust established under a chapter 11 plan to pay future asbestos claimants. The trustee removed the action to the district court, which transferred venue to the bankruptcy court where the chapter 11 case was pending. Under *Barton v. Barbour*, 104 U.S. 126 (1881), a plaintiff may not sue a receiver except in the appointing court. Courts have extended the *Barton* doctrine to protect bankruptcy trustees and liquidating trusts created under a chapter 11 plan. The doctrine's purposes are to ensure consistent and equitable administration of the estate, to protect against judgments issued outside of the appointing court, and to permit the appointing court to exercise appropriate supervisory authority over the trustee. Those considerations apply equally to a trust created under a plan to pay future asbestos claims. Therefore, the doctrine prohibits the filing of an action against the trustees except in the bankruptcy court. Because the plaintiffs filed the action without leave of the bankruptcy court, the court dismisses the action. However, preventing the plaintiffs from bringing their claim at all would defeat the supervisory purpose of the doctrine, so the court dismisses without prejudice. *Smith v. Hilton (In re Swan Transp. Co.)*, 596 B.R. 127 (Bankr. D. Del. 2018).

13.2 Attorneys

13.3 Committees

13.4 Other Professionals

13.5 United States Trustee

13.5.a **Increase in U.S. Trustee fees is temporarily unconstitutional.** In October 2017, Congress increased quarterly U.S. Trustee fees for chapter 11 cases, effective January 1, 2018. The increase did not apply in the non-U.S. Trustee districts of Alabama and North Carolina. In those districts, the Judicial Conference determines Bankruptcy Administrator fees, which had been previously set in the same amounts as U.S. Trustee fees. The Judicial Conference increased fees in those districts effective October 1, 2018 to the same amounts as Congress imposed in U.S. Trustee districts effective January 1, 2018. The Constitution authorizes Congress to enact uniform laws on the subject of bankruptcies. Although different results in bankruptcy cases are permissible based on underlying state law, Congress may not enact different results in different parts of the country. By increasing U.S. Trustee fees in only 48 states, Congress enacted a non-uniform bankruptcy law. Therefore, the increase violates the Uniformity Clause for the nine months between January and October 2018 when the fees in the two states were different, and the estate is not required to pay the increased fees during that time. *In re Buffets, LLC*, ___ B.R. ___, 2019 Bankr. LEXIS 396 (Bankr. W.D. Tex. Feb. 8, 2019).

14. TAXES

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES

15.1.a **Foreign debtor need not seek chapter 15 recognition as a condition to a recognition of the foreign insolvency judgment.** The debtor commenced a CCAA proceeding in Canada to restructure its obligations. The Canadian court set a claims bar date, gave notice to creditors, and ultimately sanctioned an arrangement that converted debt to equity and discharged securities fraud claims against the debtor and its CEO. U.S. securities fraud plaintiffs knew of the CCAA proceeding and the bar date but chose instead to commence an action in New York against the debtor and its CEO for U.S. securities law violations. The defendants moved to dismiss on international comity grounds. Comity is particularly appropriate in connection with foreign insolvency proceedings and should be granted when the foreign proceeding satisfies fundamental due process standards and when granting comity would not violate any U.S. laws or public policies. A CCAA proceeding involves notice to creditors and an opportunity to be heard and similar treatment of similarly situated creditors and so satisfies fundamental due process requirements. Nothing in the CCAA proceeding or the sanction order, including the release of the CEO from securities fraud claims, violates fundamental U.S. law or public policy. Although the debtor could have sought recognition under chapter 15 in the United States of the CCAA proceeding, its failure to do so does not preclude a U.S. court from giving the Canadian court the recognition that the United States allows to the acts of a foreign nation. Therefore, the court dismisses the action against the debtor and its CEO on grounds of international comity. *EMA Garp Fund v. Banro Corp.*, ___ B.R. ___, 2019 U.S. Dist. LEXIS 27387 (S.D.N.Y. Feb. 21, 2019).