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JOURNAL OF CORPORATE RENEWAL

TURNAROUND.ORG

DECEMBER 2025 CONTENTS



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U.S. CANNABIS &
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Conflicts Beyond Borders – Reshaping the Restructuring & Insolvency Landscape

BY STEPHANIE FERNANDES, DECEMBER GUEST EDITOR



Stephanie Fernandes is an associate practicing within the Restructuring & Insolvency group at Thornton Grout Finnigan LLP. Her practice focuses on complex domestic and cross-border corporate restructurings, and she has experience acting for debtor companies, court officers, creditors, and other stakeholders in both formal restructuring proceedings and out-of-court matters. Fernandes is an active TMA member, contributing to both the NextGen and Network of Women Committees. She has previously contributed to the Journal of Corporate Renewal as a co-author.

hen I was invited to serve as guest editor for the Journal of Corporate Renewal's issue on conflicts of laws, I saw it as an opportunity to explore a complex and practical area of restructuring and insolvency law. While often an area that raises questions of jurisdiction and recognition across borders, conflicts of laws can also emerge within a single jurisdiction, where overlapping

constitutional, property, and regulatory frameworks collide. This issue brings together perspectives that span Canada, the United States, and England, as well as uniquely domestic conflicts within Canada's own constitutional and property legal frameworks.

In the cross-border sphere, the interaction between national insolvency regimes continues to evolve. Canada's pragmatic approach, rooted in comity and cooperation, contrasts with the United States' codified structure under the Bankruptcy Code. England, one of the traditional cornerstones of international insolvency coordination, faces renewed complexity following Brexit as it navigates the loss of automatic mutual recognition under EU frameworks.

The theme of "conflicts" extends beyond international borders. In Canada, the interplay between constitutional law, Indigenous rights, and commercial certainty, particularly in insolvency proceedings raises equally pressing questions. Similarly, the treatment of interests in land, such as gross overriding royalties, reveals how doctrinal inconsistencies can generate unpredictability for investors and creditors alike. Together, these issues demonstrate that conflicts of law are not limited to jurisdictional issues.

Thank you to all the authors and contributors who made this issue possible.

Robyn Gurofsky, partner, and Tiffany Bennett, associate, both with Fasken Martineau DuMoulin LLP, examine how Canadian courts have grappled with the classification of gross overriding royalties as interests in land, tracing the evolution from *Dynex* to *Dianor* and identifying where further judicial clarity is needed to

bring predictability to commercial transactions and insolvency outcomes.

Michael Brandess, partner at Husch Blackwell, and Scott Moskol, partner at Blank Rome LLP, explore the tension between state-level legalization and federal illegality, which continues to leave cannabis companies without access to bankruptcy protection and facing significant tax and financing challenges.

Spencer Klug, associate at McMillan LLP, and Martha Wyrick, associate at Haynes and Boone LLP, analyze *Purdue Pharma* and related cases, and illustrate how the treatment of nonconsensual third-party releases diverge between jurisdictions, raising critical questions about fairness, consent, and the scope of judicial discretion.

Jared Enns, partner, Joshua Gordon, associate, and Daniel Jolic, articling student of Cassels Brock & Blackwell LLP, examine the *Scala* decision and its implications for balancing federal and provincial jurisdiction under the Indian Act. Their analysis highlights how constitutional law principles can intersect with commercial realities in ways that shape the practical reach of remedies available in insolvency law.

Simon Beale, senior counsel, and Jatinder Bains, partner, with Macfarlanes, explore how Brexit has reshaped the recognition of insolvency and commercial judgments, replacing established EU frameworks with domestic approaches. While the change introduces added complexity, it also encourages cooperation and adaptability among practitioners managing cross-border proceedings.

I invite your questions and comments and hope this issue inspires further discussion on the topic.

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Reflecting on Two Remarkable Years as President & Chair of TMA

BY ALLEN WILEN, CTP, TMA GLOBAL CHAIR



erving as president and chair of the Turnaround Management Association (TMA) over the past two years has been one of the most rewarding experiences of my professional career. These roles have not only allowed me to deepen my understanding of corporate restructuring and revitalization, but also to forge meaningful connections with outstanding professionals, participate in unforgettable events, and unlock a wealth of opportunities for both personal and professional growth.

The Power of Community: Remarkable People & Lasting Relationships

One of the greatest joys of my tenure has been the chance to work alongside a diverse and talented group of TMA members. From seasoned turnaround specialists to emerging leaders, our association is a tapestry of expertise, dedication, and mutual support. I have been continually inspired by members who bring innovative ideas

and a collaborative spirit to every meeting, event, and initiative. Whether mentoring younger professionals or learning from industry veterans, the relationships I have built through TMA have been invaluable.

In particular, the collegiality and generosity of our members stand out. I have received and given a multitude of referrals to fellow TMA members, strengthening our professional networks and facilitating career advancement across the board. These referrals are more than just business opportunities—they are a testament to the trust and respect that TMA fosters among its membership.

Dynamic Events: Networking, Learning & Growth

Throughout my time as president and chair, I have had the privilege of organizing and attending a wide array of TMA events. Our annual conferences, monthly seminars, and social gatherings have provided members with platforms to share insights, discuss industry trends, and develop new skills. Each event has been meticulously planned to maximize engagement, learning, and networking.

Some highlights include keynote presentations from industry leaders, panel discussions on the future of turnaround management, and interactive workshops focused on practical tools and strategies. These events have not only enriched our professional knowledge but have also sparked lifelong friendships and collaborations.

Opportunities Unlocked Through TMA Membership

Membership in TMA is more than just an affiliation—it is a gateway to

extraordinary opportunities. I have witnessed first-hand how TMA opens doors for career advancement, business development, and personal growth.

TMA's commitment to professional development extends beyond formal events. The informal connections, support systems, and collaborative projects that emerge from TMA interactions add significant value to every member's career. The referrals I have exchanged over the years are a key benefit, reinforcing the practical value of being part of an engaged and respected professional community.

Conclusion: A Lasting Legacy

As I reflect on my two years as president and chair, I am filled with gratitude for the people, experiences, and opportunities that TMA has brought into my life. The association's vibrant community, robust programming, and unwavering commitment to its members have made my tenure truly exceptional. I look forward to remaining an active participant in TMA, continuing to support its mission, and helping future generations experience the same value and fulfillment that I have enjoyed.

I would also like to thank Scott Stuart, Esq.; past TMA Chairs Jane Mitnick, Jeffrey Hampton, Scott Victor, Derek Meek, Milly Chow, and Matthew English, CTP; and all the past leaders who made TMA what it is today.

Lastly, I would like wish Rachael Smiley (2026 TMA Global Chair), Brian Gleason, CTP (2026 TMA Global President), and Frank Grimaldi (2026 TMA Global President-Elect) good luck in continuing to make TMA the premier organization in the restructuring industry.

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What Would a Little Money Help Your Chapter Do?

BY MICHAEL ROSOW, CHAIR — CHAPTER RESOURCE AND RESPONSE COMMITTEE (CRRC) & VICE PRESIDENT — CHAPTER RELATIONS



Our mission is simple—to help chapters grow and thrive.
We do that by offering targeted grants—up to \$5,000—that give chapters the freedom to innovate.

s the chair of the Chapter Resource and Response Committee (CRRC) for the last two years, I have seen first-hand just how much creativity and dedication exists across TMA's chapters. Every month, chapter leaders come up with new ways to bring members together, attract fresh faces, and deliver value to their communities. What's often missing isn't the ideas—it's the financial cushion to take a chance on something bold.

That's where the CRRC comes in.

Our mission is simple—to help chapters grow and thrive. We do that by offering targeted grants—up to \$5,000—that give chapters the freedom to innovate. These grants can be used to cover losses that might otherwise be incurred in connection with an event. Whether a chapter wants to pilot a new networking format, host a marquee speaker, or expand membership by reaching out to an underserved professional group, CRRC grants can provide the safety net that makes those experiments possible.

The program rests on two pillars: supporting membership growth and assisting chapters in financial hardship. But we don't just write checks; we partner with chapters. Most CRRC members are past chapter presidents who know the realities of budgeting, programming, and member engagement. We help chapters refine ideas and ensure every program connects back to TMA's broader mission of growth and community.

The application process is designed to be collaborative. Each chapter works with its CRRC mentor—someone who has walked in their shoes—to shape a compelling proposal. We ask that chapters make applications about 90 days before an event. The strongest applications will include a copy of the marketing materials that will be used for the event, explain how the program aligns with the CRRC's twin goals, and include an accurate budget for the event. The 90-day window gives us time to meet at our regularly scheduled meeting time and offer feedback before both the chapter and CRRC commit financially, while helping make good programs even stronger.

Over the past two years, we've seen remarkable results. The Joint Power Networking event co-hosted by the

TMA Arizona and Rocky Mountain chapters in April 2025 is one of my favorite examples. Held over three days in Scottsdale, Arizona, the regional event—the first of its kind among these chapters—featured golf, multiple networking opportunities, and a prominent keynote speaker. These two growing chapters were able to take on a higher level of risk knowing that CRRC support was behind them. Even better, that support proved unnecessary, as the event was such a success that it turned a profit.

Another highlight was the launch of TMA Florida's Network of Women (NOW) initiative. The event, "NOW Is the Time: TMA Florida's Network of Women," brought together professionals from across the state for an inspiring program on leadership and empowerment. Of the 52 attendees, 31 were nonmembers—several of whom have since joined TMA or reactivated their memberships. That's exactly the kind of impact we're aiming for: creative programming that builds community and drives sustained growth.

As I wrap up my term as CRRC chair and pass the baton to Ronald Gellert, I'm proud of what this committee has accomplished, and would like to take a moment to thank each individual that served on CRRC in 2024 and 2025 for your time and dedication. I'm also excited about what's next. Every chapter has unique challenges and opportunities, and the CRRC is here to help you take smart risks, experiment with new ideas, and build events that energize your members.

If your chapter has a great idea and needs a little extra backing to make it happen, please reach out to your CRRC mentor. Let's make 2026 the year every chapter feels empowered to innovate.

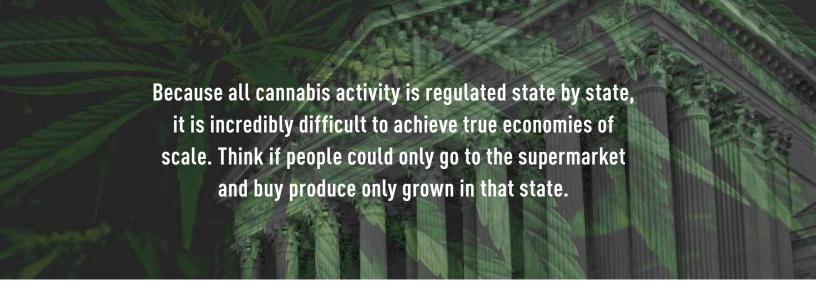
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BROKE & CONFUSED: THE AWKWARD INTERSECTION OF U.S. CANNABIS & INSOLVENCY LAWS

BY MICHAEL BRANDESS, PARTNER, HUSCH BLACKWELL LLP & SCOTT MOSKOL, PARTNER, BLANK ROME LLP

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- Internal Revenue Code Section **280E.** Despite cannabis's federal illegality, Uncle Sam still likes to wet his beak. Yes, cannabis companies must still pay taxes to the federal government like any other normal business. However. unlike other normal businesses, those in the cannabis space cannot deduct expenses against federal taxes other than so-called cost of goods sold (COGS). IRC Section 280E provides that "[n]o deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by [f]ederal law or the law of any Isltate in which such trade or business is conducted." It turns out, this is a pretty big deal. At least one expert has suggested that the result of IRC 280E is that marijuana retailers often pay tax rates of more than 70%, according to research by Whitney Economics. But hope springs eternal—rescheduling might be on the horizon, with President Donald Trump reportedly considering the change.
- Cost of Capital. You know what's not particularly chill? Very high interest rates. But alas, what is a mid-market business to do when

- the bank lenders say, "No thanks"? And they all say it. Because most institutional lenders operate in multiple states and the high cost of continued monitoring to ensure compliance with the Bank Secrecy Act, the risk and expense of transacting business with a federally criminal enterprise are simply too great a cost for many financial institutions. Accordingly, the market is filled with private lenders willing to lend to cannabis businesses, but for a premium. Frankly, due to the numerous risk factors attendant to this industry, not all of which are just because of the federal illegality of cannabis, higher interest rates are likely appropriate. But it further reduces the margins of profitability.
- Other Common Issues. Cannabis companies are often plagued with numerous other problems, including illicit market competition, over-licensing, inconsistent licensing between municipalities, vague laws, unsophisticated management teams (it happens more than one might think), and so on. Also, because all cannabis activity is regulated state by state, it is incredibly difficult to achieve true economies of scale. Think if people could only go to the supermarket and buy produce only grown in that state. Prices would skyrocket. It is an industry with an unshakeable stigma that attracts incredible amounts in investment dollars while traversing a regulatory environment designed to manifest failure.

Breaking news! Businesses with incredibly tight profit margins, onerous regulations, and inexperienced management teams are having trouble. But alas, what is a cannabis company to do when it falls upon tough times? As stated above but often forgotten due to short term memory lapses, cannabis related businesses are federally illegal. U.S. bankruptcy law is a federal remedy. Cannabis companies, therefore, cannot avail themselves of this protection.

Alternative remedies for cannabis companies are generally the same as non-cannabis companies. They include receiverships, assignments for the benefit of creditors, out-ofcourt workouts and compositions, and foreclosures. But these are state law remedies, and state laws are not uniform. Nor does an order in one court necessarily cross state lines, although most states do provide comity. Multijurisdictional business adds complication. One additional nuance is that, because Canada does not have the same puritan views as Uncle Sam, many cannabis companies seeking to raise capital went public in Canada but maintained substantially or in many cases all their operations in the U.S.

Take fictional Company X for purposes of example. At its peak, Company X, which was wholly owned by a Canadian holding company, operated approximately 35 retail stores and five cultivation facilities collectively in 10 U.S. states. In 2023, Company X's Canadian parent company filed for bankruptcy under the Bankruptcy Insolvency Act, and its U.S. entities

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entered into a receivership in California. Despite operating in multiple states, the receivership order provided that all of Company X's assets were included as part of the receivership estate. But the receiver was tested with two basic questions:

Would the California court have authority to approve the sale of non-California operating assets?

Even if the California court did have authority, would regulators approve the license transfer in each respective state?

Traversing relatively vague statutes, scant common law (due to the relatively novelty of the legal cannabis industry), and state bureaucracies is a headache within a headache within a headache. The simple fact is that while ancillary receivership proceedings are not uncommon, generally, if a company with assets and subsidiaries across multiple states needs a judicial insolvency proceeding, the company files for federal bankruptcy protection—but that's not an option for Company X!

And so, for Company X, our fictional receiver has had to traverse sales and regulatory issues in 10 U.S. states to effectuate the company's winddown. This is easier in some states than others. Many states will allow for an ancillary receivership proceeding to effectuate the sale of assets in those specific states, but that has its only complications. In Illinois, for instance, the state legislature only just voted to approve a statutory receivership act for companies. The act will be made law on January 1, 2026. Accordingly, any Illinois judge dealing with corporate receiverships in the cannabis space will need to address both the new statute, of which there will initially be no helpful common law to interpret the statute, as well as cannabis regulatory issues.

For Company X's receiver, they must assess whether an alternative process, such as an assignment for the benefit of creditors or a friendly Article 9 secured party sale, is a better vehicle to sell Illinois-based assets. In other states, the process of selling assets either in the California receivership or in an ancillary proceeding in that respective state might be a less complicated process.

It is a situation that cries for U.S. bankruptcy relief where one forum, with a stay in place, can serve as the



Michael Brandess is a partner with Husch Blackwell LLP. He focuses on financial services and capital markets. He focuses on all areas of corporate restructurings, crises management, and transactions involving financial distress. Brandess routinely counsels debtors, creditors, asset purchasers, assignees, creditors' committees, and trustees, among others, who require sound judgment and a deep knowledge of how to navigate the U.S. Bankruptcy Code.



Scott Moskol is a partner with Blank Rome LLP. He has developed a national platform representing and counseling clients with respect to all legal issues that may arise in restructurings, workouts, bankruptcies, receiverships, and other insolvency-related matters including distressed mergers and acquisitions. Moskol's practice also consists of advising clients with respect to the purchase and/or sale of distressed assets, companies, and loan portfolios.

vehicle under which complex multistate businesses can be efficiently reorganized, wound down, or sold. While everyone is very much entitled to their opinions concerning the appropriateness or ethics of legal cannabis, the federal government's approach to cannabis, and particularly cannabis in distress, is to bury its head under its pillow while screaming, "Bring me back to the 1950s! Bring me back to the 1950s!" This fundamentally ignores the fact that, as of 2025, the cannabis industry includes hundreds of businesses, more than \$30 billion in annual revenue, and almost half a million full-time employees. The train has left the proverbial station, and the federal government's decision to ignore the problem is an affront to common sense.

But what about rescheduling? Great question. Rescheduling refers to the categorization of drug under the Controlled Substances Act which "places all substances which were in some manner regulated under existing federal law into one of five schedules." Cannabis is currently a Schedule I drug, which means there

are no known medical benefits. Scarily, Schedule II drugs include cocaine, morphine, and methamphetamine. There have been numerous efforts to reschedule cannabis in Congress, but each of these efforts has generally stalled out. However, President Donald Trump has recently indicated that he is considering rescheduling cannabis to Schedule III. Rescheduling would immediately alleviate financial pressures on cannabis businesses by addressing the 280E issues and potentially making companies more bankable. However, it appears less clear that cannabis companies would be able to avail themselves of bankruptcy protection even after rescheduling.

This article didn't even touch upon the bizarre nuances between hemp derived THC as opposed to marijuana derived THC, which is creating other highly publicized issues to layer on to those referenced herein.

In any event, to quote the wise philosopher and reggae legend Peter Tosh, "[Federally] legalize it. Don't criticize it. [Federally] legalize it, yeah, yeah. And I will [reorganize] it."

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BRIDGING THE CHANNEL:

Mutual Recognition of Proceedings Between the UK & EU



BY SIMON BEALE, SENIOR COUNSEL & JATINDER BAINS, PARTNER, MACFARLANES LLP t 11 p.m. on Thursday, December 31, 2020, the United Kingdom left the European Union.

This has since enabled staff in many airports in continental Europe, often with unconcealed delight, to direct British citizens to much longer queues than they would have needed to join had the U.K. remained an EU Member State.

From a restructuring and insolvency perspective, however, Brexit has also created a degree of inconvenience. While the U.K. remained in the EU, it enjoyed the benefits of the EU Regulation on Insolvency Proceedings (as recast in 2015), which applies in all EU member states apart from Denmark. It provides a mutually applicable set of rules governing when

insolvency proceedings can be opened in an EU Member State, requiring that proceedings which have been properly opened be recognized by the courts of other Member States and determining which member states laws will apply once proceedings have been opened. The EU Insolvency Regulation would previously have allowed recognition of U.K. collective insolvency proceedings such as administration and liquidation.

The U.K. also enjoyed the benefits of the EU Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (as recast in 2012), which requires the courts of one Member State to recognize the judgments of another. U.K. practitioners have evoked the EU Judgments Regulation as a route to recognition of U.K. schemes of

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arrangement. The U.K.'s restructuring plan closely resembles a U.K. scheme of arrangement, albeit some regard it as a little closer to an insolvency procedure.

So far as other EU member states are concerned, therefore, the U.K. has exited two mutually applicable legal frameworks, and it has entered a world where recognition of insolvency proceedings and judgments relies instead on the domestic law of each state concerned. It is rare for nations to move from a more legal comprehensive framework to one that is less so, and this creates scope for conflicts of law that might not previously have existed.

As such, the U.K.'s experience might be interesting for others, both in relation to "incoming" proceedings (i.e., proceedings in another EU Member State where the U.K. courts are asked to assist) and "outgoing" proceedings (U.K. proceedings where the courts of another EU Member State are asked to assist).

Before completing this introduction, however, it is worth mentioning one other principle of U.K. domestic law which practitioners in other jurisdictions have frequently complained creates conflicts. This is the so-called "rule in Gibbs," whereby the English courts will not allow debts governed by English law to be compromised by a foreign restructuring or insolvency process where the creditors have not submitted to that jurisdiction. The UK's erstwhile membership of the European Union had no effect on this long-established rule. However, some are speculating that the U.K.'s exit may indirectly

result in changes to the rule if the U.K. decides that changes of this kind are needed to prevent it from being seen as an international outlier. This article will touch further on the rule in Gibbs later.

Incoming Proceedings:

The EU Insolvency Regulation was "preserved" in U.K. domestic law by the European Union (Withdrawal) Act 2018. However, it would be wrong to give the impression that the text of this regulation was preserved in full. The majority of its operative provisions, or "Articles," were disapplied. Accordingly, under the resulting legislation (the Retained Insolvency Regulation), the U.K.'s domestic law has retained only those operative provisions of the EU Insolvency

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Regulation only has U.K. domestic law status, there will be no automatic recognition in EU Member States of proceedings opened in the U.K. in relation to debtors whose COMI is in the U.K. or which have an establishment in the U.K.

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Regulation that govern when proceedings may be opened in the U.K. The Retained Insolvency Regulation does not provide any route for automatic recognition of proceedings opened in EU member states.

The European Court of Justice no longer plays any direct role in resolving disputes in the application of even the retained provisions, although its further decisions on how to a determine a debtor's center of main interest (COMI) will continue to carry weight.

The U.K. has also adjusted the retained provisions relating to the opening of proceedings to make it clear that the grounds for jurisdiction to open insolvency proceedings provided by those retained provisions are in addition to, rather than in substitution for, any grounds for jurisdiction to open such proceedings which apply under other U.K. law.

There are, however, a number of other routes by which the U.K. may recognize proceedings opened elsewhere, including in EU member states.

First, the U.K. has adopted the UNCITRAL Model Law on Cross-Border Insolvency into its domestic law. The provides a route for recognition of both foreign main proceedings, i.e. proceedings taking place in a state in which the company has its COMI, and foreign nonmain proceedings, i.e., proceedings taking place in a state in which the company has an "establishment." It also provides a route for seeking

other forms of assistance or relief in relation to those proceedings.

Perhaps helpfully for those in other EU member states who might now wish to take advantage of this route, the U.K. courts confirmed some time ago that, for this purpose, they will interpret a company's COMI in the same way as they would under the Retained Insolvency Regulation which, as stated above, reflects the EU Insolvency Regulation.

Second, Section 426 of the U.K.'s Insolvency Act 1986 requires the courts having insolvency jurisdiction in the U.K. to assist the equivalent courts in any other "relevant country or territory." Section 426 is perhaps of limited relevance here, given that only one EU Member State, the Republic of Ireland, has been designated as a "relevant country or territory." However, it did prove to be of use in the recent Irish case of *Silverpail Dairy*.

Silverpail was an Irish company that had entered examinership in Ireland and which was proposing an Irish scheme of arrangement to restructure its debts. It had a number of creditors in England, including the U.K. tax authorities, that it wished to compromise. The Irish High Court sent a letter of request to its English counterpart to seek recognition by the English court of the examiner's appointment and an order that the English creditors would be bound by the scheme. The English High Court duly granted the assistance sought.

The decision has received attention in both England and Ireland. Because the debts compromised in England were

governed by English law, commentators have suggested that this decision marked an erosion of the rule in Gibbs. However, another view is that Section 426 always provided a statutory route for the English courts to allow a compromise of English law-governed debt by a non-English insolvency procedure, but only where the request to do so is made by a court in a relevant country or territory such as Ireland.

Finally, English common law can also have a role to play where, for whatever reason, none of the above routes is available to provide the assistance being sought.

Outgoing Proceedings

Naturally, U.K. practitioners are also interested to know the level of assistance that the courts of other EU Member States are likely now to provide.

Because the Retained Insolvency Regulation only has U.K. domestic law status, there will be no automatic recognition in EU member states of proceedings opened in the U.K. in relation to debtors whose COMI is in the U.K. or which have an establishment in the U.K.

In addition, only four EU member states (Greece, Poland, Romania, and Slovenia) have so far chosen to import the UNCITRAL Model Law into their domestic legislation.

Mercer Agencies Limited provides a recent example of a case where the courts of an EU member states recognized an U.K. insolvency procedure under the provisions of its domestic law. The company in question was in administration in

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Northern Ireland. The administrators made a request to the High Court in the Republic of Ireland for an order recognizing the administrators' appointment, the power of the administrators to bring and defend proceedings in the name of the company, and the power of the administrators to collect and gather in the property of the company. It appears that the main purpose of the application was to enable the administrators to institute proceedings in Ireland for the collection of debts. The court made the order sought in May 2025.

The judge specifically noted that, prior to Brexit, such applications had generally been unnecessary due to the U.K. being a party to the EU Insolvency Regulation, resulting in a lack of precedents for applications of this kind. However, in granting the orders sought, the judge was able to rely on an earlier Irish High Court decision in which it had granted orders to aid liquidators appointed in the British Virgin Islands. The judge believed that this precedent required him to find that there was sufficient equivalence between the UK administration and the insolvency regimes available in Ireland and that the orders were sought for a legitimate purpose, but he was satisfied in both regards.

The judge still felt obliged to consider a decision of the Irish Supreme Court in which it had adopted a restrictive approach to recognition and enforcement of foreign insolvency proceedings under Irish domestic law, but fortunately he did not feel constrained by that decision.

By way of contrast, in an August 2025 interim ruling, the Frankfurt am Main Regional Court declined to recognize the U.K. restructuring plan of the Luxembourg entity Project Lietzenburger Straße Holdco (PLSH), which is part of the "Aggregate" group, under any of the three possible laws that might allow him to afford recognition to foreign restructuring proceedings. This restructuring plan had been sanctioned by a judgment of the English High Court in early 2024.

First, the judge noted that, although Section 343 of the German Insolvency Code would have allowed for automatic recognition of foreign insolvency proceedings where the full body of a debtor's creditors were included in the proceedings, PLSH's restructuring plan had not included all its creditors.



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Second, he observed that, whilst section 328 of the German Code of Civil Procedure might have applied had the German court been satisfied that an English court would have given reciprocal recognition to an equivalent German judgment, expert evidence on recognition was not admissible at the present level of the proceedings.

Finally, he looked at the EU Judgments Regulation but concluded that it could not be applied to a judgment of an English court following Brexit.

The restructuring plan in question had been required because PLSH had wished to amend the maturity date of its finance debt but had never received the unanimous approval that would have been required under the senior loan agreement. Given that the restructuring plan which obliged the dissenting creditors to accept the extension has not been recognized in Germany, the German courts would conceivably not regard creditors as bound by the maturity extension, leaving PLSH liable to repay those creditors immediately.

Commentators have noted that this is unlikely to be the final decision in this particular process. They have

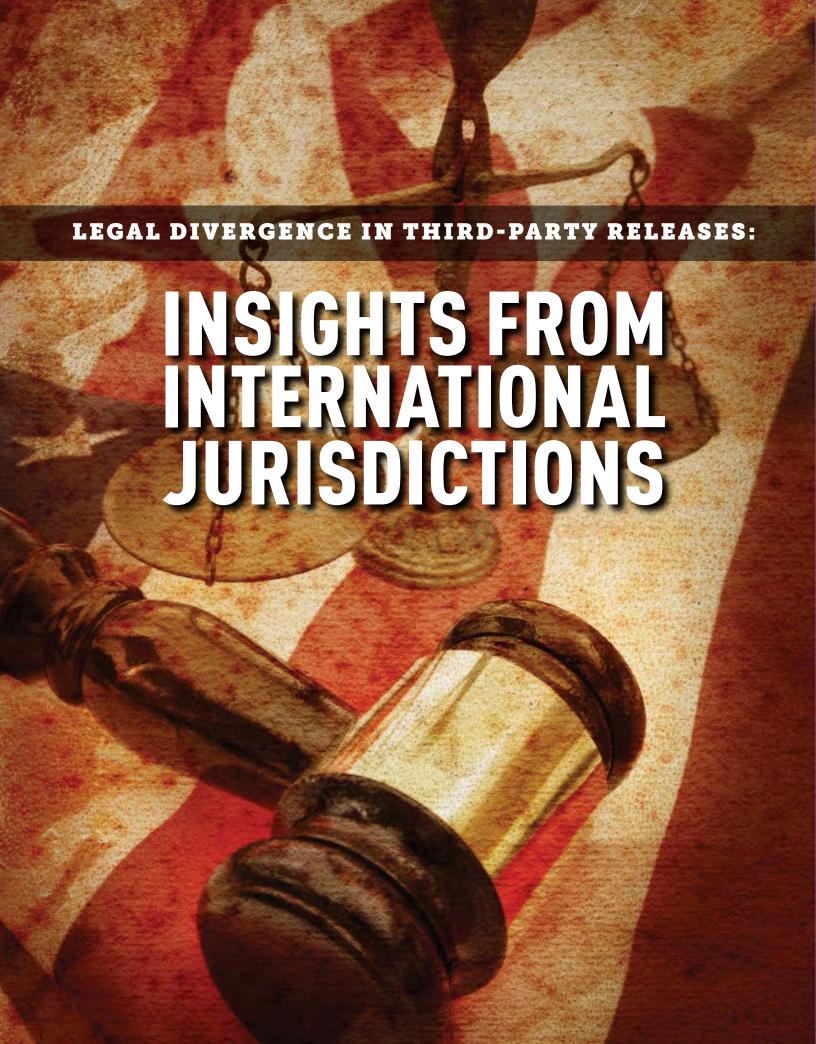
suggested that an appeal to the Higher Regional Court of Frankfurt may lead to a different decision.

It appears that expert evidence on recognition would be available at a subsequent hearing and could be used to seek to convince the appeal court that the German Code of Civil Procedure applies. However, other commentators have noted that the rule in Gibbs might yet provide an obstacle in this respect. If a German court found that the rule in Gibbs would prevent an English court from recognizing a decision of a German court compromising debt governed by English law, it might not be convinced that true reciprocity exists.

Concluding Thoughts

Perhaps unsurprisingly, it appears that the U.K. and Ireland have found it easiest to find solutions to the legal issues outlined above, and this is to a large part due to those two countries' shared common law heritage. It remains for practitioners to find solutions which are equally effective vis-à-vis the U.K. and other EU member states, but this might be viewed as a test for practitioners' ingenuity rather than as an insurmountable obstacle.

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BY SPENCER KLUG, ASSOCIATE, MCMILLAN & MARTHA WYRICK, ASSOCIATE, HAYNES BOONE

hird-party (or non-debtor)
releases are provisions in courtsupervised restructurings that
extinguish defined claims against
specified non-debtors for conduct
generally tied to the debtor or the
restructuring. The specified nondebtors may include owners, directors,
lenders, insurers, or other affiliates.

International legal systems diverge sharply on whether courts may extinguish claims against non-debtors. Some jurisdictions prohibit binding dissenting creditors to such releases, while others routinely approve targeted releases as part of court-sanctioned restructurings. Recent high-profile cases, including most notably the U.S. Supreme Court Case *Purdue Pharma*, have brought this issue to the forefront, underscoring the divergent approaches between international insolvency regimes.

This article examines *Purdue* and the state of non-consensual third-party releases in the United States through comparison to such releases in Canada. It closes with a sampling of different jurisdictions and their current disposition of third-party releases.

U.S. Perspective. The U.S. Supreme Court's core ruling in *Purdue* is that the Bankruptcy Code does not authorize a Chapter 11 reorganization plan to include non-consensual third-party

releases. This ruling means a Chapter 11 plan cannot discharge claims against non-debtors without the consent of the affected creditors. In the U.S. Supreme Court's view, such releases would improperly extend to non-debtors the U.S. Bankruptcy Code discharge protections that are ordinarily reserved for debtors.

Notably, the U.S. Supreme Court explicitly clarified that the Bankruptcy Code does not question consensual third-party releases. This clarification underscores a central issue-namely, the definitional boundaries of consent. U.S. courts take different approaches to determine how a debtor can obtain consent from creditors to provide thirdparty releases. Some U.S. bankruptcy courts accept an opt-out mechanic, under which a debtor must prove that the third-party releases are clearly worded, prominently presented, and supported by a history of clear and consistent disclosure. The debtor must also demonstrate sufficient economic incentives for the affected parties to consent to the third-party release. Other U.S. bankruptcy courts use an opt-in mechanic. The opt-in mechanic can take a few forms. In practice, an opt-in generally means that only creditors who affirmatively vote in favor of the plan are bound by the third-party release. Creditors that vote against the plan or do not vote are not bound by the third-party release.

In the context of mass tort cases like *Purdue*, demonstrating consent can be a significant hurdle. As one commentator observed, "ordinary notions of notice and informed assent can be especially problematic in cases involving social debt. ... In Purdue Pharma, for instance, many claimants likely lacked housing or were incarcerated, brutal consequences of opioid addiction of many individuals," according to Jonathan Lipson and Pamela Foohev in, "The End(s) of Bankruptcy Exceptionalism: Purdue Pharma and the Problem of Social Debt," published in the Cardozo Law Review.

Red River Talc LLC showcased how consent could work in the post-Purdue landscape for mass torts. There, the debtors attempted to demonstrate satisfactory consent based, in part, on ballots submitted by counsel representing groups of personal injury plaintiffs. In many cases, however, the court found that counsel did not have the power of attorney to vote for their clients, and therefore, the court found that counsel settled claims without client approval.

Canadian Perspective. Under Canadian law, court-supervised restructurings may include thirdparty releases when they are integral to a successful outcome and fair to

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The U.S. Supreme Court's core ruling in *Purdue* is that the Bankruptcy Code does not authorize a Chapter 11 reorganization plan to include non-consensual third-party releases. This ruling means a Chapter 11 plan cannot discharge claims against non-debtors without the consent of the affected creditors.

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stakeholders. Moreover, Canadian courts do not distinguish between consensual and non-consensual releases in the way that U.S. courts do. Instead, once the required creditor majority approves a plan and the court sanctions it, all affected creditors, including dissenters, are bound.

When deciding whether to approve third-party releases, Canadian courts apply a now-familiar set of factors. These factors include evaluating whether:

- The claims to be released are rationally connected to the purpose of the restructuring.
- The released parties contributed to the restructuring.
- The release is fair, reasonable, and not overly broad.
- The restructuring could succeed without the release.
- The release benefits the debtor(s) and the creditors generally.

Courts also consider the nature of the claims being released and claims involving fraud, gross negligence, or willful misconduct are typically excluded from release provisions.

An early influential case is *Metcalfe & Mansfield*, which arose from the 2008 asset-backed commercial paper crisis. The Ontario Court of Appeal upheld a plan that released claims against numerous third parties, including banks and dealers, finding that the releases

were essential to restoring market stability and reasonably connected to the restructuring. The court noted that just as a creditor may agree to release a third party in a private contract, a plan may include similar provisions. Once the statutory voting and court approval requirements are met, the plan, including its release provisions, binds all affected creditors, including the dissenting minority.

In the 2013 proceedings of Sino-Forest Corporation, the court approved a settlement of fraud and class-action claims related to the debtor's auditor. The claims were rooted in allegations that the auditor failed to detect and disclose material misstatements in the company's financial reporting. In exchange for a full release of all claims, the auditor contributed \$117 million to the estate. The release was upheld despite objections from investors, with the court finding that the claims were intertwined with the restructuring and that the release was essential to effect any distribution. The decision confirmed that dissenting stakeholders could be bound by the court-approved settlement.

In Lydian International, the court reaffirmed the five-factor framework and approved broad third-party releases, including resolving certain pre-filing claims, in a cross-border mining restructuring. The released parties included directors, lenders, and court-appointed advisors, all of whom had contributed meaningfully to the restructuring. The court found that the plan would not proceed without the releases, and that the released claims were rationally connected to the restructuring's implementation.

The court held that the releases were fair and not overly broad. This decision confirmed that such provisions could extend to parties beyond the debtor when justified by the circumstances.

Although formal plans are less common in Canadian restructurings today, courts continue to approve third-party releases when justified. Increasingly, restructurings proceed by way of reverse vesting orders (RVOs), which preserve the debtor's operating business while shedding legacy liabilities. Courts have recognized that third-party releases may be appropriate in the RVO context, particularly where the released parties have contributed to the transaction or where the releases are necessary to facilitate the transfer of the business. For example, in Harte Gold Corp., the court granted an RVO that included third-party releases, finding that they were integral to the transaction and consistent with the principles established in earlier plan cases.

Broader International Perspectives.

Outside of the U.S. and Canada, approaches to third-party releases vary considerably, reflecting differing statutory frameworks. The following provides a high-level overview of how courts in several key jurisdictions have addressed the issue:

Mexico Perspective. In Crédito Real, the U.S. Bankruptcy Court for the District of Delaware recently addressed non-consensual third-party releases contained in a Mexican concurso plan when evaluating whether to grant recognition to the foreign plan under Chapter 15 of the U.S. Bankruptcy Code. In so doing, the court overruled an

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objection and enforced the concurso plan in its entirety. The concurso plan at issue contained "exculpatory provisions" protecting key players in the restructuring, including the ad hoc group of unsecured creditors, the Mexican liquidator, former directors and officers, and the indenture trustee. The court found this type of release was customary under Mexican bankruptcy law. This case stands in contrast to Vitro S.A.B. de CV. There, the U.S. Fifth Circuit Court of Appeals affirmed a bankruptcy court's decision to deny enforcement of the debtor's concurso plan. Evidence showed that insiders of the debtor were allowed to vote on the plan, and the debtor failed to establish "unusual circumstances" necessitated the release.

United Kingdom Perspective. Under U.K. law, schemes of arrangement and restructuring plans may include non-consensual third-party releases of parties, such as non-debtor parents or guarantors. In general, courts uphold these releases because without them, the third parties could remain liable despite the principal debtor's release, which could lead to claims that compromise the restructuring. English courts have not addressed the opt-in/opt-out distinction. Similar to Canada, if a class votes for a plan with a non-consensual third-party release, all members of the class are bound. Moreover, with respect to schemes of arrangement, it is important that any non-consensual third-party release be explicit in the proposed scheme. Notably, schemes and plans that address mass tort liability are rare in the U.K.

Dutch Perspective. There are limited examples of third-party releases under Dutch law. Indeed, the Wet Homologatie Onderhands Akkoord (WHOA) was recently enacted in January 2021. The WHOA, however, does include an explicit statutory basis for the release of non-debtor affiliate guarantors. The prevailing view is that non-consensual third-party releases are not allowed in Dutch suspension of payment proceedings or under the WHOA.

Brazilian Perspective. Brazilian insolvency law does not explicitly provide for third-party releases and generally maintains creditor rights against guarantors and co-obligors. Nonetheless, recent developments suggest a cautious judicial evolution. In 2025, the U.S. Bankruptcy Court





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for the Southern District of New York recognized and enforced the Brazilian reorganization plan of Odebrecht Engenharia e Construção S.A. under Chapter 15, including provisions that functionally barred U.S. litigation against certain non-debtor parties that substantially contributed to the bankruptcy's success. While the Brazilian plan itself did not contain a nonconsensual third-party release, the U.S. recognition order included injunctive relief that effectively enforced the plan's discharge provisions across U.S. jurisdictions as to "the Debtors [and] their property." The court—while disputing whether its order even created a nonconsensual third-party releaseheld that, arguendo, Chapter 15 permits such relief in support of a foreign proceeding, distinguishing it from the limitations imposed by the U.S. Supreme Court in *Purdue*. This recognition underscores that, although third-party releases remain exceptional under Brazilian law, courts may enforce them when they are integral to a confirmed plan and consistent with principles of comity and creditor protection.

Singapore Perspective. Pursuant to recent precedent issued in the case

Pathfinder v. Empire Capital, Singapore insolvency law "is broad enough to cover the release of claims against third parties" provided that "there must be a 'nexus or connection' between the company's debt and the third-party's debt that is sought to be released."

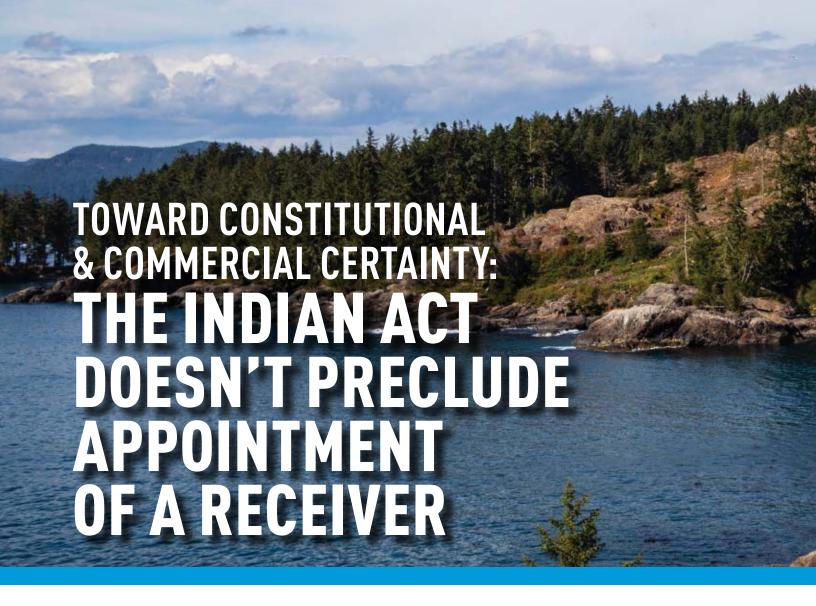
In this case, the third-party releases against the co-guarantor were not objectionable. Third-party releases for director liability remain an open issue.

Conclusion

The treatment of third-party releases continues to evolve across jurisdictions. While U.S. courts have drawn sharper lines around consent, especially particularly in the wake of Purdue, Canadian and other international regimes maintain a more flexible approach. As courts increasingly confront complex, multi-stakeholder restructurings, the legal boundaries of third-party releases will remain a dynamic and contested space. Stakeholders navigating cross-border proceedings will need to continue accounting for these nuanced positions between jurisdictions.

Adam Schmit, an associate with Haynes Boone, contributed to this article.

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BY JARED ENNS, PARTNER, JOSHUA GORDON, ASSOCIATE & DANIEL B. JOLIC, ARTICLING STUDENT, CASSELS

[Editor's note: The printed version of the December 2025 issue of the Journal of Corporate Renewal contained inaccurate biographies for Jared Enns, Joshua Gordon, and Daniel B. Jolic. These errors were solely the responsibility of the JCR editorial staff. The information in all digital versions of the article is now accurate. A correction will also run in the January/February 2026 edition of the JCR. We apologize for any confusion and regret the errors.]

n Scala Development Consultant Ltd. v. Spirit Bay Developments Limited Partnership, the British Columbia Supreme Court (BCSC) pronounced a receivership order in respect of certain leasehold interests located on an Indigenous reserve. In doing so, the BCSC held that, depending on the circumstances and nature of the property, it has sufficient jurisdiction to appoint a receiver over on-reserve assets despite the prohibition against seizure of "real and personal property of an Indian or a band situated on a reserve" contained in Section 89 of the Indian Act R.S.C., 1985, c. I-5.

In Scala, the BCSC reached this conclusion because the assets subject to the receivership order (certain lease-hold interests) were "owned by the general partners" and, thus, the BCSC reasoned, as corporate assets, the prohibition under Section 89 "barring seizure of Sc'ianew's personal property [was] not engaged." In addition, the BCSC rejected Sci'ianew's argument

that provincial legislation providing for the appointment of a receiver was "constitutionally inapplicable...by operation of the doctrines of federal paramountcy and interjurisdictional immunity," holding that:

There was "no operational conflict to resolve" between the provincial enactments and Section 89.

Under the principle of cooperative federalism, courts are "required to take 'a restrained approach,' and harmonious interpretations of federal and provincial legislation should be favored over interpretations that result in incompatibility."

Though Scala is currently subject to an appeal before the British Columbia Court of Appeal (BCCA), it follows a growing judicial trend in which Canadian courts have rejected an interpretation of Section 89 that would otherwise produce the unintended consequence of "limiting the ability

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of First Nations and individual members living on reserve to access credit and develop the land." Indeed, in deciding to appoint the receiver, the BCSC highlighted "what seems... like a very real risk to future development projects for Sc'ianew, which to be economically viable will always require the ability to provide security to investors and a collection remedy for service contractors."

Background— The Spirit Bay Story

Beecher Bay First Nation (Sc'ianew), a First Nation located on southern Vancouver Island with "eight 'reserves' within the meaning of the Indian Act," was a limited partner in Spirit Bay Developments Limited Partnership and the sole shareholder of its general partner, Beecher Bay GP Ltd.

On February 28, 2014, Sc'ianew, through its general partners, granted four virtually identical headleases located within the Economic Development

Zone of its reserve to Spirit Bay. Thereafter, on November 2015, Spirit Bay entered into a contract with Scala Development Consultant Ltd. to build houses on certain subleased lots. The housing contract required Spirit Bay to pay Scala based on certain milestones being achieved.

Scala worked on the development project for approximately three years, at which time Spirit Bay failed to make various payments under the housing contract and significant arrears began to accumulate. In December 2018, Scala stopped working on the housing development and claimed that "Spirit Bay had breached the [h]ousing [c]ontract or alternatively had been unjustly enriched."

The housing contract contained an arbitration clause, pursuant to which Scala initiated an arbitration proceeding against Spirit Bay seeking to recover approximately \$1.8 million in damages. Spirit Bay, through its general partner, counterclaimed for about \$1.5 million, alleging that some of Scala's construction work was deficient. In October 2019, Spirit Bay initiated a second arbitration proceeding alleging deficiencies in Scala's civil site servicing work. After a lengthy hearing, the arbitrator found in favor of Scala and awarded Scala approximately \$1.8 million in damages. The arbitrator also dismissed Spirit Bay's counterclaim.

On October 15, 2020, Spirit Bay sought leave to appeal the Arbitral Award. Leave was granted, and the appeals process eventually culminated in the BCCA dismissing its appeal and restoring the Arbitral Award.

Following Spirit Bay's refusal to pay the Arbitral Award, Scala commenced a proceeding seeking the appointment of a receiver to collect on the Arbitral Award. Both



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Sc'ianew and Spirit Bay opposed this appointment on the basis that:

- The appointment of a receiver was barred by Section 89, which protects the property of an Indian or a band situated on a reserve from seizure.
- The appointment of a receiver was barred by the Beecher Bay First Nation Land Code.
- Section 39 of the Law & Equity Act and Rule 10-2(1) of the Supreme Court Civil Rules were constitutionally inapplicable under the doctrines of federal paramountcy and interjurisdictional immunity.

After reviewing the extensive background and contractual disputes between the parties, the BCSC turned to the central legal issue raised in these proceedings—namely, whether the appointment of a receiver was barred by Section 89.

The Untouchable Assets? Section 89 & the Appointment of a Receiver

Section 89 states that "[s]ubject to this [a]ct, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favor or at the instance of any person other than an Indian or a band."

In considering whether this section absolutely prohibited the appointment of "a receiver who would have control over the [h]eadleases (and subleases) in order to enforce" the arbitral award, the BCSC posed the following question: "What does Sc'ianew own

as limited partner in Spirit Bay?" This question was particularly relevant as Sc'ianew contended that, as a limited partner, it had an interest in Spirit Bay's assets, particularly the headleases, which therefore constituted its personal property and was protected from seizure under Section 89.

The BCSC held that the answer to this question, though novel, must be determined by partnership law:

The issue... is what comprises Sc'ianew's interest as a limited partner in Spirit Bay and specifically, whether that interest includes a personal property interest in the headleases (and subleases) within the meaning, and thus ambit of protection, of [Section 89]. The nature of Sc'ianew's interest in Sprit Bay is determined by the law governing limited partnerships.

Noting that "[l]imited partnerships are a creation of statute," the BCSC, after reviewing the relevant sections of the Partnership Act R.S.B.C. 1996, c. 348, and jurisprudence, rejected Spirit Bay's argument that "limited partners have an ownership interest in partnership property or an interest that could be characterized as personal property" for the following reasons:

- A limited partnership is not a legal entity.
- General partners are fully liable for the debts and obligations of the limited partnership.
- Only general partners can hold partnership property.
- General partners have exclusive control over partnership property and the business of the partnership.

- Limited partners are essentially passive investors, with liability limited to the extent of their contribution.
- Limited partners otherwise have an entitlement to the return of their contribution and a share in the profits of the partnership as specified by the limited partnership agreement, as well as tax advantages.

In addition, after reviewing the terms of the limited partnership agreement (LPA), the BCSC noted that:

Perhaps most significantly, the only provision dealing expressly with limited partners and limited partnership property... renders impermissible what may well be permitted by "applicable law," by stipulating no limited partner will have any ownership interest in any Spirit Bay property in "its individual name or right," as well as each limited partner's units will be personal property for all. Although poorly drafted, considered in the context of the LPA as a whole and consistent with the parties' objective intention to create a commercially viable property development, the only reasonable interpretation of the provision is that the limited partners have no ownership interest in the assets of Spirit Bay, but the units of each limited partner are their personal property.

The BCSC went on to conclude that, since it would be Spirit Bay's assets—the headleases, owned by the corporate general partners—subject to the receivership order, the "prohibition contained in [Section 89] barring seizure of Sc'ianew's personal property [was] not engaged."

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Daniel B. Jolic is an articling student at Cassels. He holds a law degree and certificate in Aboriginal legal studies from the University of Toronto, a master's degree in political management from Carleton University, and a bachelor's degree in commerce from Queen's University. Before law school, Daniel worked in government at the federal, provincial, and territorial levels.

Constitutional Clash— Federal vs. Provincial Powers

As noted above, Sc'ianew also argued that section 39 of the LEA and Rule 10-2(1) of the Supreme Court Civil Rules were constitutionally inapplicable under the doctrines of federal paramountcy and interjurisdictional immunity.

Sc'ianew focused most of its argument on the federal paramountcy doctrine, whereby the onus was on it "to demonstrate that the federal and provincial laws are in fact incompatible by establishing either that it is impossible to comply with both laws or that to apply the provincial law would frustrate the purpose of the federal law." Sc'ianew asserted that the second kind of conflict, a frustration of the purpose of federal law, applied in this case. Sc'ianew argued that the doctrine of interjurisdictional immunity therefore would apply "to prevent provincial enactments like the Law and Equity Act and Supreme Court Civil Rules from regulating the leases and other on-reserve land interests and thereby impairing the core federal power over 'Indians, and

Lands reserved for the Indians' found in s.91(24) of the Constitution Act.

Ultimately, the court held that the doctrine of interjurisdictional immunity did not apply because "appointing a receiver [would] not affect, let alone impair, Sc'ianew's regulatory function or the Land Code, nor any other core aspect of the federal jurisdiction over 'Indians, and [l]ands reserved for the Indians' under s.91(24)" for the following reasons:

The receiver's powers under the proposed receivership order were already exercisable by the general partners, which themselves, the BCSC noted, are not "Indians" or "[b]ands."

The general partners would continue to "own" the leasehold interests transferred by Sc'ianew under the headleases.

The receiver would be required to comply with the Land Code.

Conclusion & Key Takeaways

As noted above, the Scala decision is currently under appeal before the

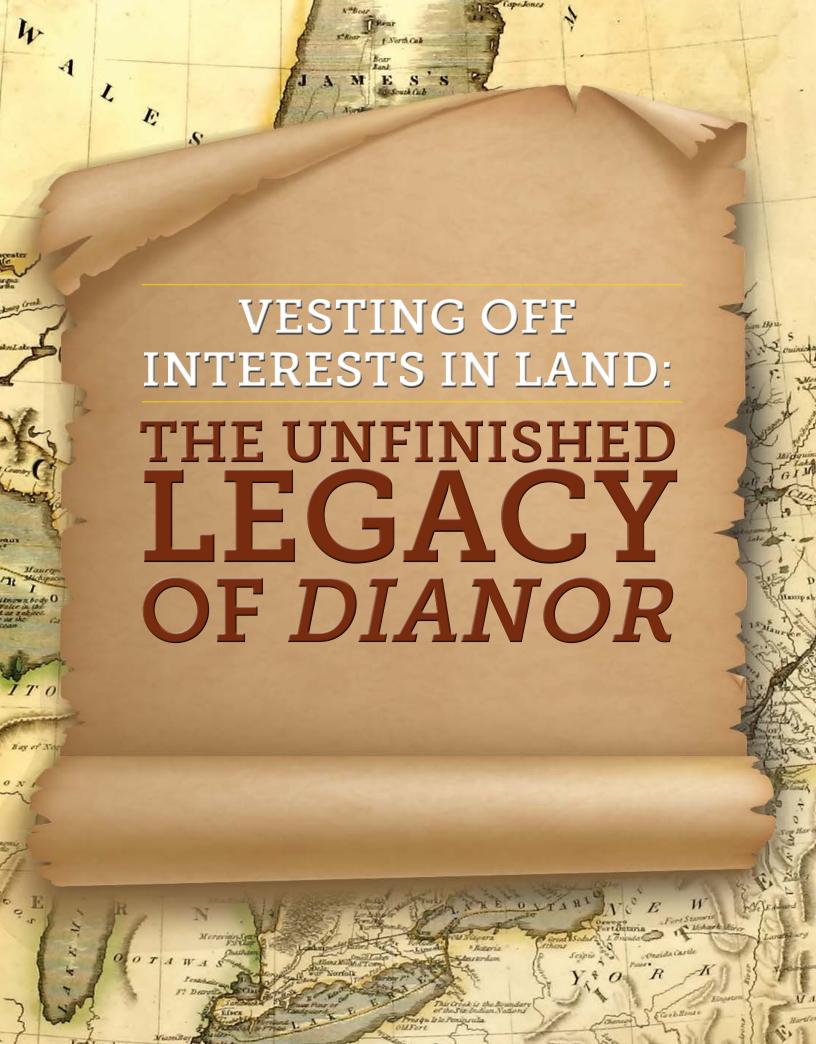
BCCA, and it therefore remains to be seen whether its conclusions on the following two issues will be upheld:

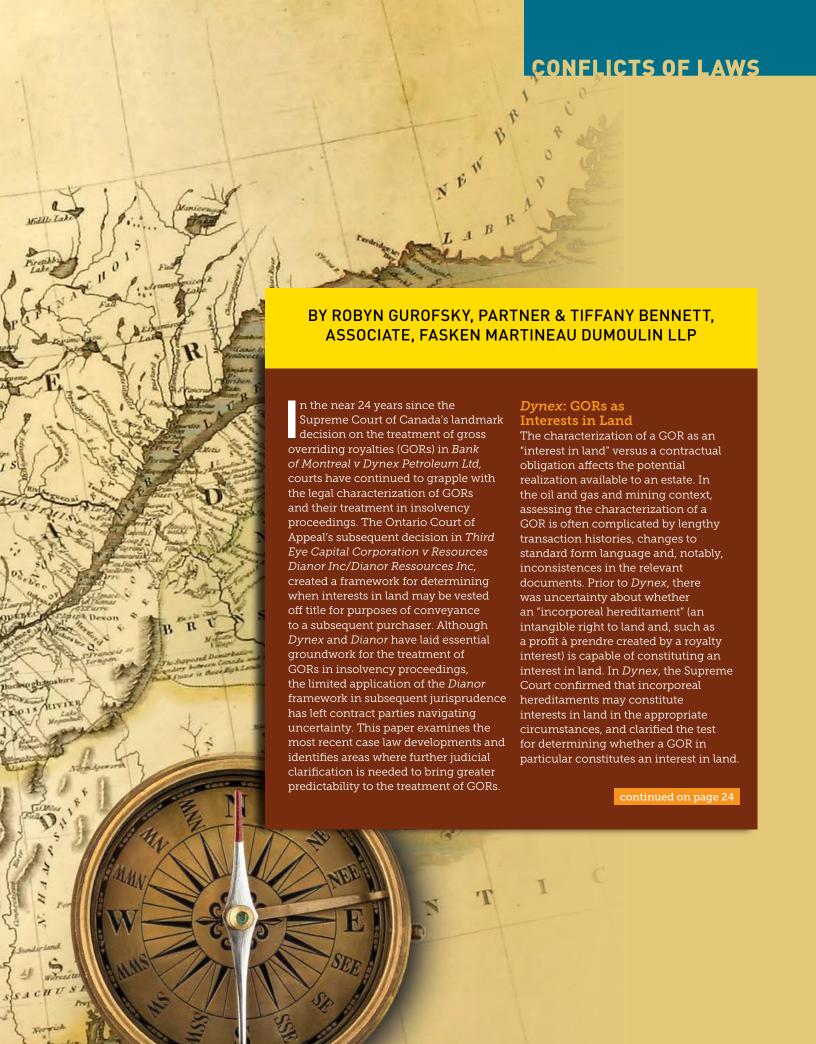
Provisions of the Partnerships Act apply in the context of Indigenous-owned partnerships to determine whether or not partnership assets, located on reserve lands, are protected by Section 89.

Whether the appointment of a receiver over on-reserve partnership assets is precluded by Section 89.

As there are an "increasing number of Indigenous-owned projects... appearing in all regions and all industries across Canada," this case is one that will no doubt be closely watched by governments, lenders, Indigenous partnerships, and industry stakeholders, all of whom require certainty in the context of financing and funding on-reserve projects. No matter the outcome, all stakeholders will benefit from much-needed clarity on the scope, applicability, and limitations of the prohibition against seizing on-reserve assets provided for in Section 89.

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The court acknowledged the framework but did not rigorously test the facts against it. This omission leaves open certain questions regarding how the test should be applied, creating uncertainty for stakeholders about how their interests will be treated, particularly in complex insolvency proceedings involving competing interests.

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As confirmed in *Dynex*, a royalty interest (including a GOR) is an interest in land if both:

The language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land.

The interest, out of which the royalty is carved, is itself an interest in land.

The *Dynex* test is a conjunctive test: A GOR must satisfy both parts of the test to constitute an interest in land. This formulation of the legal analysis comes from the Alberta Court of Queen's Bench's 1989 decision in *Vandergrift v Coseka Resources Ltd*, the substance of which was largely overturned by *Dynex*. However, portions of *Vandergrift* remain good law and provide guidance for the application of the second part of the *Dynex* test.

In particular, the second part of the test formulated by Justice Virtue was whether the grantor's interest, out of which the royalty was carved, was itself an interest in land. This second step is, in effect, a reframing of the legal maxim nemo dat quod non habet (no one can give what they do not have). As will be discussed below, while most subsequent jurisprudence on this second branch of the test focuses on the nature and substance of the underlying estate from which the subject royalty interest is carved, in Vandergrift the issue at this stage of the analysis was one of timing.

At the time the royalty grantor and grantees entered into the royalty agreement, the grantor did not have a lease interest in the lands, only the right to earn a lease interest by

satisfying certain drilling requirements. The grantor only earned its lease interest after it had drilled wells, more than two years after executing the royalty agreement. Accordingly, the grantor did not have an interest in land at the time of granting the royalty interest, and the royalty granted was thus not carved out of an interest in land. Vandergrift was not an insolvency decision, but the Supreme Court's subsequent adoption of Justice Virtue's two-part test in Dynex underscored its significance to insolvency practitioners.

In Dynex, the characterization of the subject royalty as an interest in land or a contractual right affected the priorities of competing claims against the bankrupt estate. The chambers judge found that GORs were, as a matter of law, incapable of constituting an interest in land. The Court of Appeal rejected this determination. Instead, the court's analysis focused largely on ascertaining the parties' intention. The court considered several prior decisions (although it did not cite Vandergrift), confirming that contractual intention is determined from the substance of the transaction, not minuscule differences in language selected. In addition, the court identified a non-exhaustive list of factors from which courts may glean whether the parties intended to create an interest in land, namely:

The underlying interest is an interest in land (whether corporeal or incorporeal).

The intention of the parties, as evidenced by the language of the grant and any admissible evidence of the surrounding circumstances or behavior, indicate that it was understood that an interest in land was created/conveyed.

The interest is capable of lasting for the duration of the underlying estate.

The Supreme Court affirmed the Court of Appeal's decision, but referred instead to *Vandergrift* in its formulation of the applicable test. However, the Supreme Court did not endorse the specific analysis conducted by Justice Virtue in each step of this analysis. A close reading of the *Dynex* decision reveals that the Supreme Court rejected what was arguably an emphasis on "form over substance" in interpreting the royalty agreement in *Vandergrift*, focusing not on the specific words but the overall agreement read as a whole.

Dianor: Vesting Off Through a Cascading Framework

Although *Dynex* set out the framework for determining when a royalty interest constitutes an interest in land, questions remained as to whether, if deemed an interest in land, a royalty interest may nonetheless be vested out. The Ontario Court of Appeal provided some additional guidance with respect to the vesting out of royalty interests in the Dianor proceedings in two decisions. In its preliminary decision, the court overturned the motion judge's finding that certain GORs attached to mining claims did not constitute interests in land. The court applied the *Dynex* test confirming that the GORs did meet the criteria for interests in land: however, it invited further submissions to determine whether and under what circumstances a court could extinguish such interests.

In its final decision, the Court of Appeal held that insolvency courts do in fact have jurisdiction to extinguish third party interests in land through vesting orders. However, it emphasized that this power must be exercised cautiously and only after applying a "rigorous cascade analysis." The court found that the motion judge erred in extinguishing the GORs without properly applying this analysis. Despite this, the appeal was dismissed as it was filed out of time, leaving the vesting order intact.

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The cascade analysis introduced by the court involves a step-bystep framework to assess whether extinguishing an interest in land is appropriate. It includes:

Determining the nature of the interest (for example, fee simple vs. monetary interest);

- Assessing whether the parties consented to the vesting; and
- Evaluating the equities of the situation, including fairness and compensation.

The establishment of this test is a significant step toward structuring judicial discretion in extinguishing third party interests in land. However, while the Ontario Court of Appeal introduced the test in *Dianor*, the court did not fully apply or elaborate on each step in the context of that case, finding that ultimately, because the interest was a true GOR, akin to a fee simple interest, and thus it could not be vested out. In particular, based on the court's comments, it may be argued that GORs could never be vested out on application of the *Dianor* test.

Thus, the court acknowledged the framework but did not rigorously test the facts against it. This omission leaves open certain questions regarding how the test should be applied, creating uncertainty for stakeholders about how their interests will be treated, particularly in complex insolvency proceedings involving competing interests. As a result of this uncertainty, courts in subsequent cases have varied in their approach, often defaulting to commercial expediency or contractual interpretation. The cascade analysis remains underdeveloped and requires further judicial clarification to ensure consistent and fair application across cases.

Post-Dynex & Dianor: Uncertainty Remains

Dynex and Dianor have been cited in a number of written decision in the intervening years; however, the proper application of the tests established in these decisions remains unclear. In response to Dynex, for example, it is now common practice for oil and gas royalty grants to include those "magic words," which state that contracting parties intend the royalty interest granted to be an interest in land. However, judicial approaches as to

the presence of these magic words in the granting clause have evolved as courts grapple with the Supreme Court's apparent acceptance in *Dynex* of divergent approaches taken in *Vandergrift* and in *Dynex* CA. Similarly, while *Dianor* sets out a theoretical framework for how a GOR that is an interest in land may be extinguished, courts have not meaningfully applied the *Dianor* analysis to ultimately extinguish an interest in land.

In this section, we consider four significant Alberta decisions issued after *Dianor* which demonstrate that uncertainty remains in the treatment of GORs in oil and gas insolvency proceedings.

Accel: Principles of Contractual Interpretation Apply to Determine the Parties' Objective Intention. In

Accel Canada Holdings Limited (Re), Justice Horner considered whether certain royalty interests constituted interests in land. The analysis in Accel largely turned on the first arm of the *Dynex* test, and in this case the court expressly referred to those leading cases on contractual interpretation, which required that courts read contracts as a whole, with a view to the surrounding circumstances known to the parties at the time of contract formation, to ascertain their objective intention. The court in this instance cited the Court of Appeal in *Dynex* CA, again recognizing that the first part of the *Dynex* test looks to the parties' objective intention. Where ambiguity exists, courts may look to post-contractual conduct to inform their assessment.

PrairieSky: the Magic Words Create a Rebuttable Presumption. In

PrairieSky Royalty Ltd v Yangarra Resources Ltd, the contracting parties' intention was again the primary issue in characterizing the subject royalties. PrairieSky provides the court's first express recognition of the "magic words" as creating "a strong, but rebuttable presumption that the royalty is indeed an interest in land." What other factors would the courts consider? Here, Justice Bourque considered a number of factors found in the agreements themselves, such as whether the royalty holder could take its royalty in kind, the royalty grantor's ability to pool or unitize the lands with/without the royalty holder's consent, the circumstances under which the grantor may assign its interest in the royalty lands, and the impact of any such assignment.

In this case, the court assessed each potential factor as weighing in favor or against, or was otherwise neutral, to a finding of an interest in land. The framing of an "interest in land" clause as a rebuttable presumption follows the contextual, objective analysis taken by the Court of Appeal in Dynex CA.

NewGrange: Nemo Dat as a Timing

Issue. The first three cases considered thus far have all focused on Part 1 of the *Dynex* test: whether the agreements demonstrate the parties' objective intention to create an interest in land. In Invico Diversified Income Limited Partnership v NewGrange Energy Inc, the Court of King's Bench of Alberta considered, for the first time, Part 2 of the *Dynex* test as an issue of timing. *NewGrange* arose in the context of oil and gas insolvency proceedings, and the characterization of the GOR at issue impacted the secured creditor's ability to acquire the underlying assets, free and clear of the subject GOR, in a credit bid reverse vesting transaction.

The royalty holder in *NewGrange* acquired the GOR as part of an asset transaction with the grantor. The royalty agreement contained the "magic words," creating a presumption that the parties intended to create an interest in land, which may be rebutted by accounting for the surrounding circumstances which inform the interpretation of the relevant agreement. In Justice Hollins' words, "Simply calling something an interest in land does not, by itself, make it so."

NewGrange also raised questions about the application of Part 2 of the Dynex test: whether the underlying interest, out of which the royalty is carved, is itself an interest in land. This second branch of the test has not received much judicial consideration and when courts have previously turned their minds to Part 2 of the test, the question largely focused on the nature of the grantor's interest. In NewGrange, the timing was critical, as the royalty grant occurred one month prior to the grantor acquiring title to the assets in question.

The court found guidance in the British Columbia Supreme Court's decision in *Quest University Canada (Re)*, which dealt with whether rights of first refusal (ROFRs) and an unregistered leasehold interest could be vested off. Justice Fitzpatrick relied on the court's broad

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jurisdiction under the Companies' Creditors Arrangement Act and the remedial objective of the statute, together with an assessment of the relative equities, ultimately concluding that the equities of the insolvency proceeding favored the vesting off of the ROFRs. On the second issue, the court found that the lease interest had not yet crystallized and therefore could be vested off. Justice Hollins in NewGrange relied on Quest University to confirm the nemo dat principle applies to conveyance of interests in land.

The royalty holder has appealed NewGrange to the Court of Appeal, and a decision from the appellate court is pending.

Durham: Endorsement of a Contextual Approach to Dynex. More recently, the Court of King's Bench of Alberta again contended with the "interest in land" question in Durham Creek Energy Ltd. v Chimera Management Group Ltd. The court noted that uncertainty remained following *Dynex* as to whether the Supreme Court intended to endorse the strict method of contractual interpretation taken in Vandergrift, in

rejection of the more contextual approach taken in *Dynex* CA. In particular, the court expressly endorsed the three indicia set out in Dynex CA to determine whether a rovalty is an interest in land, confirming that these indicia are consistent with, if not a better articulation, of Part 1 of the Dynex test. Further, the court rejected the

Dynex/Vandergrift requirement for language that is "sufficiently precise" to create an interest in land, stating in all instances that the assessment is one of determining, on a balance of probabilities, the parties' objective intention.

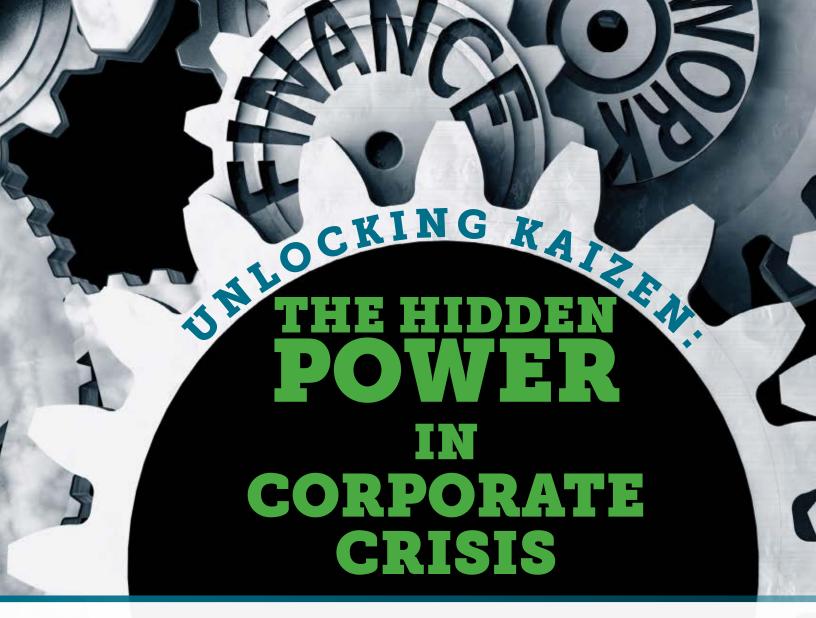
Conclusion

Recent decisions reflect a growing number of GOR-related issues arising in insolvency proceedings. Yet, significant uncertainty persists around the proper application of the *Dianor* framework. Despite its introduction of a structured cascade analysis for vesting out interests in land, courts have yet to consistently apply or elaborate on its steps. Greater judicial guidance is needed to clarify when and how the Dianor test should be used. Without such clarity, stakeholders continue to face unpredictability in insolvency proceedings.





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BY COLIN D. BAIRD, MANAGING PARTNER, 5 WHY LEADERS & JOHN R. GORDON JR., MANAGING DIRECTOR AND PARTNER, CR3 PARTNERS LLC

n the high-stakes world of corporate restructuring, the difference between success and failure isn't measured in percentages—it's measured in survival. When it comes to leading transformations, few executives are better positioned to bring about rapid change than the chief restructuring officer. But bringing about the correct type of change is non-negotiable. Do it wrong, and the consequences are devastating-no more Christmas cards, executive bonuses, or employee salaries. Families lose livelihoods. Communities lose anchors. Dreams evaporate overnight.

Do it right, however, and you'll witness something remarkable—powerful, immediate improvements that breathe new life into struggling enterprises and the people who depend on them.

While 75% of restructuring efforts fail to deliver sustainable results, leaving trails of broken promises and

shattered hopes, those embracing the Kaizen philosophy consistently beat these odds. When a lender delivers that heart-stopping ultimatum demanding leadership and operational overhaul, that critical turning point offers not just a challenge, but a profound opportunity for transformation.

Kaizen—the Japanese philosophy of continuous improvement—delivers precisely the kind of breakthroughs organizations need to navigate through their darkest hours. But what does this look like in real-world restructuring scenarios where real people's futures hang in the balance? Here's how.

From Crisis to Cultivation: Kaizen Rescues Farming

Picture this: In 2022, a 70-year-old West Coast agricultural powerhouse with \$350 million in revenue teeters at the precipice of Chapter 11 bankruptcy. This wasn't just any agribusiness—it

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was a multi-generational legacy outfit, specializing in growing and processing corn, carrots, peas, and lima beans across sprawling fields that had fed America for generations. The soil held not just crops but decades of family history.

Years of covenant violations and millions in annual losses had exhausted their lender's patience. The board's personal extravagances—gleaming boats, luxury cars, cliffside estates purchased with company funds—combined with the CEO and COO's inability to operate profitably, had pushed this once-proud company to the brink of oblivion.

The bank's ultimatum landed like a thunderclap. After multiple nights of heated, sometimes tearful arguments among family members about the company's direction, the board reluctantly surrendered leadership to a CRO and his team. The situation was packed with

resentment, fear, and a desperate hope that, somehow, this last-ditch effort might salvage what generations had built.

Rather than commanding change from above with cold directives, the CRO sought an operating partner who could apply Kaizen principles with both precision and empathy at every level of the organization. The goal wasn't just financial recovery—it was preserving a legacy.

The team began with modest yet strategic improvements. Instead of sequestering themselves in the war room demanding cost reductions from shipping vendors, the CRO and his team did something radical—they ventured into the heart of operations, where soil-stained workers had insights that no spreadsheet could capture. The Japanese call this practice, "Genshi genbutsu" at the "gemba"—going to observe and learn firsthand how things work at the physical place where

customer value is created, where hands meet earth and produce.

On the production floor, amid the hum of machinery and the earthy scent of fresh harvest, they filmed, observed, and analyzed how finished inventory was stacked onto standard 40-by-40-inch wooden pallets. Their hypothesis was simple yet powerful: If a pallet could safely carry more inventory, shipping costs would drop dramatically on a per-unit basis.

Over three intense days, engineers methodically tested different stacking configurations, determining precisely how high products could be stacked without compromising stability during transport. The growing excitement as stacks were built, dismantled, and rebuilt while engineers calculated load capacities with increasing

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Rather than imposing cold, top-down solutions that treated people as mere cost centers, the financial advisor deployed an unusual approach bringing in Kaizen experts to drive immediate production improvement while deploying Kaizen training with a newly-organized continuous improvement group.

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confidence could be felt. But theoretical calculations weren't enough in a business where real trucks would navigate real roads with precious cargo.

They loaded fully packed pallets with the new stacking design onto the front skids of forklifts and drove them over bumpy dirt roads surrounding the plant—the drivers' faces tense with concentration as they subjected their solution to real-world conditions. Workers gathered to watch, skeptical at first, then leaning forward with interest as load after load maintained its integrity despite the challenging terrain.

The rigorous testing confirmed their hypothesis: The new configuration with edge protectors and plastic wrapping allowed 30% more finished goods per pallet, creating tighter, more stable loads. Safety improved. Quality increased. And shipping costs? They plummeted by over \$1 million—a breathtaking result from such a seemingly minor operational change.

The victory wasn't just financial. The expressions of long-time employees showed hope again, with renewed energy in team meetings and the gradual restoration of pride that had been slipping away with each year of decline.

The Historical Roots: Kaizen Brings Peace & Prosperity

This approach isn't new—in fact, it helped America survive its darkest hour and emerge victorious. In 1940, the United States faced the terrifying possibility of losing a large-scale global conflict that threatened democracy itself. The urgent need to quickly produce high-quality tanks, ships, guns, and munitions collided with a critical shortage of skilled manufacturers with the right capabilities. The nation's future hung in the balance.

To address this existential challenge, the government created Training Within Industries (TWI) in 1940. There was no time for half-measures or uncertain experiments—lives depended on getting this right. At the heart of TWI was the Kaizen management philosophy—a revolutionary combination of structured leadership training and continuous improvement methodologies that would transform both organizational culture and production speed across American industry.

The impact wasn't just impressive it was nothing short of miraculous. Military equipment production soared from \$8.5 billion in 1941 to \$60 billion by 1944—a 600% increase in just three years that astounded even the most optimistic planners. Aircraft production jumped from 5,865 planes in 1939 to nearly 100,000 by 1944-a 1,600% increase that overwhelmed enemies who had laughed at America's initial production capabilities. Ship tonnage exploded from 1 million tons in 1941 to 19 million in 1943-growth that transformed the oceans from enemy hunting grounds to highways for Allied victory.

This wasn't just industrial mobilization—it was Kaizen on a national scale, creating one of the greatest productivity miracles in American history and proving that when facing extinction, the human spirit can achieve what cold calculation deems impossible.

Grassroots Transformation: Kaizen Saves the Co-Op

Fast forward to 2023. An East Coast agricultural co-op stood on the brink of dissolution after cycling through 13 prior forbearance agreements and multiple restructuring outfits before its lenders demanded it to bring in a financial advisor (FA) with operational turnaround horsepower. The air at headquarters was thick with desperation—each employee carried not just their own financial worries

but the weight of entire communities that would collapse if the co-op failed. Families who had farmed alongside each other for generations faced the prospect of watching their way of life vanish.

Rather than imposing cold, topdown solutions that treated people as mere cost centers, the FA deployed an unusual approach bringing in Kaizen experts to drive immediate production improvement while deploying Kaizen training with a newly organized continuous improvement group. The combined FA-Kaizen team began carefully identifying employees whose eyes still lit up when they spoke about the company's intrinsic value—those rare individuals with a burning passion to save the organization from being broken up or sold off to faceless investors while watching their communities wither.

During the first four weeks of intensive Kaizen training, the energy in the room was transformed, with the gradual kindling of hope where resignation had taken hold. The FA-Kaizen team identified exactly eight "early adopters of Kaizen" whose commitment was unshakable. These eight champions joined him and the newly appointed CEO and COO on daily Kaizen journeys.

Instead of wasting precious energy battling the "naysayers of change"— those whose bitter cynicism suggested the organization's culture would never improve—they focused exclusively on men and women who harbored the courage to become part of the Kaizen solution. Each small victory became a beacon that attracted others.

Word spread rapidly through the organization, whispered in break rooms and discussed over family dinners, that the external consultants weren't harbingers of doom but partners in renewal—not there to dismantle, but to repair old

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methods, materials, machinery, and information flows. The atmosphere shifted from fear to cautious hope, from resignation to possibility.

The result? The team of early adopters grew exponentially. Within just two months, Kaizen had placed roots widely and deeply throughout the organization's culture, transforming skepticism into enthusiasm, cynicism into purpose.

The transformation wasn't just remarkable—it was deeply moving and showed in the financial results. After a short five months on site, EBITDA surged from \$10 million to over \$24 million annualizeddramatically exceeding the Company's own improvement goal of \$17 million. Inventory decreased by 40%, freeing cash flow and enabling deep repayment of the company's revolver. The company ended is cycle of forbearances, effectuating a longer-term credit amendment. What had been a company on life support became one of the most profitable middle-market turnarounds of 2023.

Behind these cold numbers were warm human stories—employees whose children could now attend college, communities that continued to thrive, generations of agricultural heritage preserved. The secret wasn't executive control or spreadsheet manipulation—it was unleashing the dormant power of employee ideas for continuous improvement through a performance-driven yet deeply humanistic approach.

Leaders and workers alike dedicated themselves to learning by doing Kaizen at the gemba where value was created. They discovered that the answers weren't in distant conference rooms but in the wisdom and experience of those who touched the product every day.

Why Kaizen? Why Now?

Traditional financial restructuring often isolates decision-making in executive suites and sterile war rooms, where the human cost of decisions becomes abstract, distant, and easy to dismiss. Kaizen demands the opposite—an unobstructed flow of ideas and information from every possible source, acknowledging that wisdom doesn't flow from titles but from understanding and experience. It honors the dignity of work by harnessing tribal knowledge, employee creativity, and leadership



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vision to focus every available resource on saving not just balance sheets but human livelihoods.

This collaborative approach creates what's called the unified "Voice of Cooperation" that becomes the beating heart of a new operating culture. It shifts executive attention away from the cold comfort of controlling costs from an office toward the humbling yet transformative practice of going to the gemba—seeing firsthand with open eyes, observing with genuine curiosity, and actively listening to employees. This shift allows everyone, from the CEO to the newest hire, to immediately address the root causes of inefficiency rather than merely treating symptoms while the patient slowly expires.

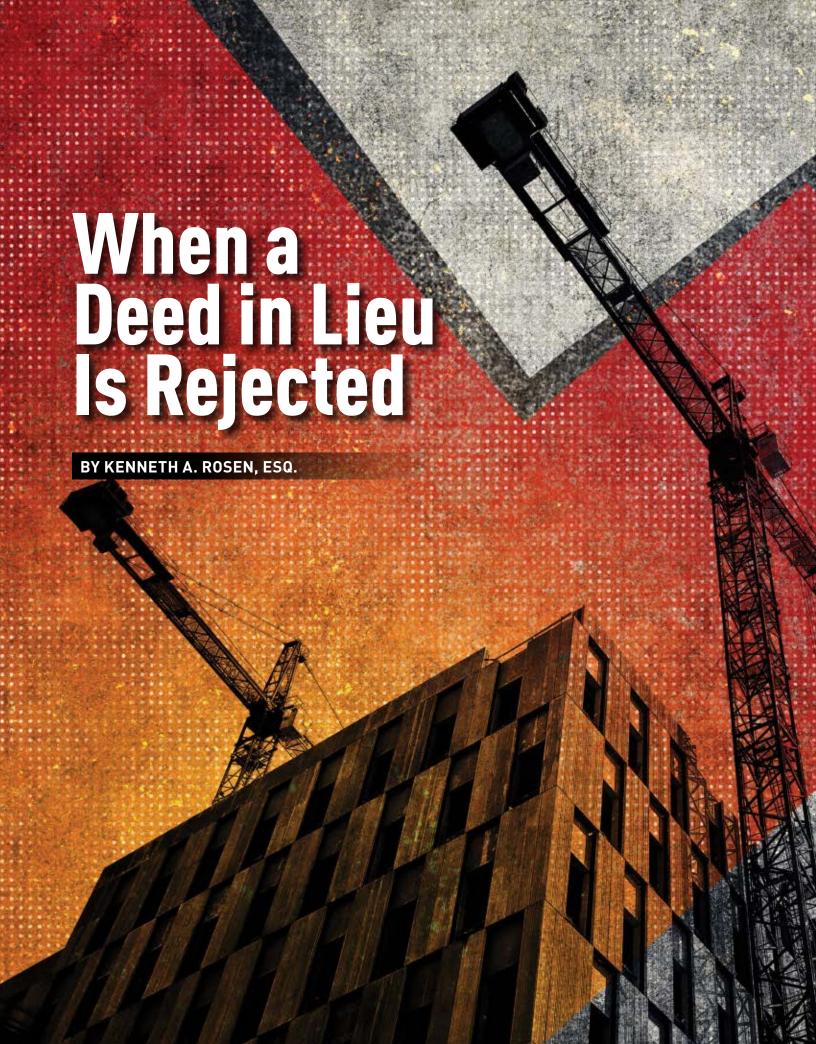
Like a flawlessly choreographed ballet elegantly illustrating harmony, unity, and precision—where individual excellence serves collective beauty—Kaizen creates a continuous stream of intrinsic value that nourishes every aspect of the organization. Imagine it as a gentle stream flowing perpetually from the mountains to the sea—life-giving value unimpeded by excessive inventory, frustrated

workers searching for materials, poorly performing equipment, heartbreaking quality defects, or latearriving raw materials and information from suppliers that cascade into disappointment and missed promises.

Kaizen doesn't just reduce costs—it reinvigorates the human spirit within organizational culture by directly addressing the causes of operating inefficiencies that prevent people from taking pride in their work and organizations from fulfilling their purpose. It transforms not just balance sheets but restores the sacred contract between companies and the communities they serve.

For restructuring professionals seeking lasting results rather than temporary fixes that will require another painful intervention a few years later, crisis provides not just necessity but fertile ground to implement Kaizen. The philosophy doesn't just save companies—it does something far more precious: It rekindles hope, restores dignity, and fundamentally transforms the relationship between people and the work that gives meaning to their lives.

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No implied obligation under law or contract exists for lenders to accept a deed in lieu. The acceptance is a voluntary agreement between the mortgagor and the mortgagee—and both parties must consent to it.

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means that the property remains part of the mortgagor's estate, and the mortgagee retains the right to pursue foreclosure if desired.

Waste

Mortgage agreements often include "waste clauses" requiring the borrower to maintain the property.

Santander also claimed L+M's failure to make units available constituted waste, invoking personal liability. However, failing to fund a nowunviable project due to a change in law may not meet the legal threshold for willful misconduct or waste unless there is clear evidence of bad faith.

In the lender's default notice filed with the court stated, Santander argued, "The [g]uarantor is liable for all losses incurred by the [l]ender with respect to waste to the [m]ortgaged [p]roperty, which includes the intentional act of failing to make units available for occupancy."

A mortgagor failing to pay for insurance, taxes, or maintenance due to financial hardship could constitute waste, but whether it is legally actionable depends on several factors. Waste refers to any action (or inaction) by the borrower that materially reduces the property's value or jeopardizes the lender's security interest. There are two main types: voluntary (intentional damage) waste and permissive (neglect) waste.

Willful neglect (reckless behavior) is more likely to be deemed waste. Financial inability (no funds to pay) may not always be treated as waste if the borrower acted in good faith.

Willful misconduct is conduct that is intentional, reckless, knowing, or

unjustifiable under the circumstances. Waste is any act or omission by a person in lawful possession of real property that permanently impairs the value, condition, or use of the property to the detriment of another party with an interest in the property.

If a mortgagor determines that a project is no longer economically feasible due to a change in law and, as a result, declines to proceed with or make the property available, whether this constitutes an intentional act of failing to make the property available depends on the legal context and governing documents—but generally, it is not automatically considered intentional misconduct.

Force Majeure

A force majeure clause is a contractual provision that relieves parties from fulfilling their contractual obligations when a specified event, beyond their control, renders performance impossible or impracticable. Typically, such clauses enumerate specific events that qualify as force majeure, including natural disasters, war, or government actions. The applicability of a force majeure clause depends on its precise wording and whether the event in question falls within the scope of the clause.

If the force majeure clause does not apply, parties may rely on doctrines like impossibility or frustration of purpose. Frustration of purpose applies if an event destroys the contract's principal purpose, but it requires extreme hardship and doesn't apply if the contract allocates such risks.

The New York Court of Appeals in Kel Kim Corp. v. Central Markets, Inc. clarified that force majeure must specifically include the preventing

event. Changes in law listed in the clause may excuse performance—economic difficulty alone typically does not unless explicitly stated.

Impossibility

The doctrine of impossibility applies when fulfilling a contract becomes objectively impossible due to an unforeseen event. This means that the event must prevent any party from performing the contractual obligations under the new circumstances.

The event causing the impossibility must be one that the parties could not have anticipated or guarded against at the time of the contract's formation. Typical examples include natural disasters, the death of a party when personal services are involved, or a change in the law that renders performance illegal.

The party claiming impossibility must not have contributed to the cause of the impossibility and must not have assumed the risk of such an event occurring under the contract.

Economic hardship or increased difficulty of performance is generally insufficient to invoke the doctrine of impossibility.

Impracticality

The doctrine of commercial impracticability is a legal principle that can excuse a party from fulfilling contractual obligations when unforeseen events make performance excessively difficult or prohibitively expensive. Key elements of the doctrine are:

Performance of a contractual obligation becomes impracticable due to an event that significantly increases the difficulty or cost of performance beyond what

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was anticipated by the parties at the time of contract formation.

- The impracticality causing event must have been unforeseeable to the parties when the contract was made.
- The impracticable event must relate to a basic assumption on which the contract was made, meaning the event was fundamental to the agreement and not a risk that the party seeking relief assumed or should have anticipated.

The party seeking relief under this doctrine must not have caused or contributed to the condition making performance impracticable.

The doctrine can apply to situations where complete performance is impracticable, but courts may also consider it when partial performance suffices under changed circumstances.

Legal Considerations

Intent vs. Business Judgment:

Courts distinguish between badfaith actions and legitimate business



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decisions made in response to unforeseen legal changes.

Contract Terms: Obligations may be governed by specific clauses (e.g., force majeure or MAC clauses).

Frustration of Purpose: Legal changes that render performance impracticable may excuse certain obligations.

Conclusion

Lenders are not legally bound to accept a deed in lieu of foreclosure, but strategic, equitable, and economic arguments may still influence the outcome. Borrowers remain obligated under loan covenants unless released, and both parties must weigh the legal, financial, and reputational costs of their chosen path.



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Michelle Garcia, *De Grandpre Chait LLP*Florence Jarry
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Muhammad Awan, Deloitte
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Eric Reubel, *Dundon Advisers LLC*Suneer Sood, *M3 Partners LP*

Jason Soto, AlixPartners

Jocelyn Szekretar, Oak Point Partners

Benjamin Wertz, M3 Partners LP

Northeast

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John Cronin, Tiger Capital Group LLC
Henry Griffin, BankruptcyData
Madeline Hammond, BankruptcyData
Nicholas Montgomery, BankruptcyData
Raphael Rothschedl

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Jason Harbinson,
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Abigail McDonald, Rutgers Law School

Keiana Miller, Rutgers Law School

 ${\it Patrick\ Thompson,\ Rutgers\ Law\ School}$

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Pittsburgh

Jordan Kelly, Raines Feldman Littrell LLP
Alexis Leventhal, Campbell & Levine LLC
Jacob Willmann,
Carnegie Mellon University

Rocky Mountain

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Keystone National Group

Southern California

Michael Carter

Steve Donell, FedReceiver Inc

John-Patrick Fritz, Levene, Neale, Bender, Yoo & Golubchik LLP

George Kekejian, SLR Business Credit

George Koutouras, Berkeley Research Group LLC

Zak Northrup, The Riverside Company

Pranav Popat, 5 Mile Partners Nick Vaglica, CR3 Partners

Toronto

Stephen Bogle, University of Toronto
Colin Hunt, Reconstruct LLP
Kyla Morreau,
Blake Cassels & Graydon LLP
Matthew Nanan, Ernst & Young LLP

Upstate New York

Rebecca Izzo, Lippes Mathias LLP

Alyssa Russell, Phillips Lytle LLP

December 2025

Connections

NORTH AMERICA

Minnesota

DECEMBER 6: Wine Tasting Charity/ Networking Event, 4-6:30 p.m., at Golden Valley Country Club in Golden Valley, Minnesota.

West Michigan

DECEMBER 20: NextGen Drop-In Happy Hour, 5-6 p.m., at the Chateau Grand Rapids in Grand Rapids, Michigan.

Rocky Mountain

DECEMBER 14: TMA Rocky Mountain & RMA Pickleball Challenge, 10 a.m.-12 p.m., at Club Pickleball USA in Sandy, Utah.

DECEMBER 18: Holiday Party & Annual Meeting, 5:30-8 p.m., at the Denver ChopHouse in Denver.

Northern California

DECEMBER 20: Holiday Reception With BABF and SFNet, 5:30-8:30 p.m., at the San Francisco Wine Society in San Francisco.

TMA Global

FEBRUARY 10-13: 2026 TMA Distressed Investing Conference, at the Encore at Wynn in Las Vegas.

Chicago/Midwest

JANUARY 15: 2025 Economic Outlook, 5-8 p.m., at the Ivy Room in Chicago.

JANUARY 22: 21st Annual Post-Holiday Party, 5-8 p.m., at the Pfister Hotel in Milwaukee.



HAPPENINGS

Detroit

DECEMBER 7: Detroit Pistons Game With TMA Detroit & SFNet Michigan, 5:30-9:30 p.m., at the Little Caesars Arena in Detroit.

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TMA Northern Ohio

DECEMBER 10: TMA Northern Ohio 2025 Holiday Party, 5:30-8:30 p.m., at the Great Lakes Brewing Tasting Room in Cleveland.



Northeast

DECEMBER 9: TMA Northeast Holiday Gala, 6-9 p.m., at the Langham Boston in Boston.

Long Island

DECEMBER 3: TMA Long Island Holiday Gathering, 6-8 p.m., at Limani in Roslyn, New York.

JANUARY 27: TMA Long Island Annual Judiciary Night, 5:30-8 p.m., Hofstra University Club in Hempstead, New York.

Pittsburgh

JANUARY 8: TMA Pittsburgh 2026 Economist Panel, 11:45 a.m.-2 p.m., at the Fairmont Hotel in Pittsburgh.

Carolinas

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DECEMBER 16: 2025 Joint TMA-SFNet Holiday Party, 5:30-7:30 p.m., at the Palm in Charlotte, North Carolina.

Atlanta

DECEMBER 9: TMA/SFNet Atlanta Holiday Reception, 6-9 p.m., at the Capital City Club in Atlanta.

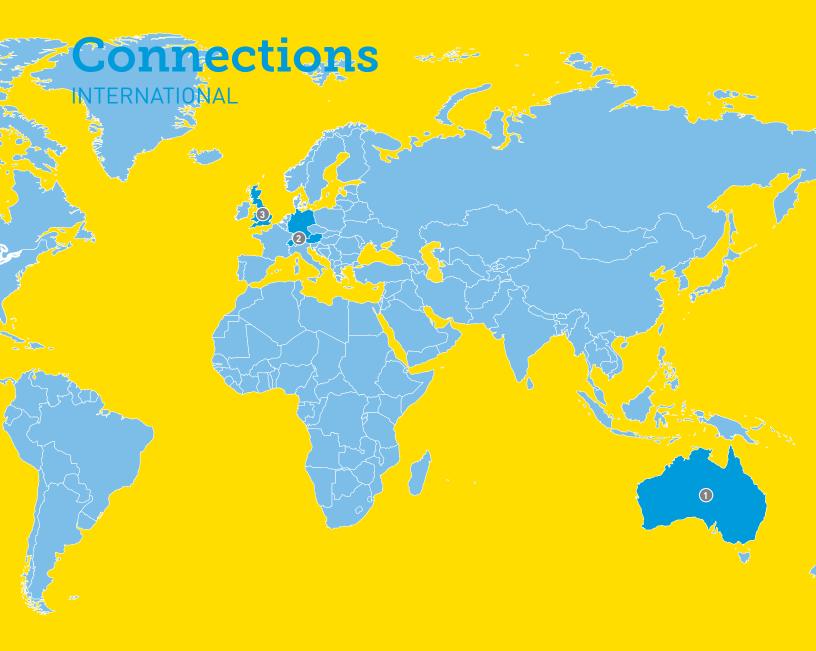
Florida

DECEMBER 9: 16*4*22 Golf Tournament, 11 a.m.-8 p.m., at the Jacaranda Golf Club in Plantation, Florida.

DECEMBER 11: 2025 Annual TMA-SFNet Holiday Reception, 5:30-8:30 p.m., at the Coral Ridge Yacht Club in Fort Lauderdale, Florida.

JANUARY 22: 2026 TMA/SWFBPA New Year Kickoff Social, 5:30-7:30 p.m., at the Tarpon Cove Yacht θ Racquet Club in Naples, Florida.

December 2025



Australia

DECEMBER 4: TMA Sydney Christmas Drinks, 5:30-8 p.m., at Ashurst in Sydney.

DECEMBER 4: TMA Brisbane Christmas Drinks, 6-9 p.m., at Norton Rose Fulbright in Brisbane.

Germany, Switzerland & Austria

JANUARY 22-23: TMA DACH Region Event, 1-6 p.m., at Advestra AG in Zurich. **United Kingdom**

DECEMBER 3: TMA UK Christmas Lunch, 12:30-5:30 p.m., at the Montague on the Gardens in London.

JANUARY 7: TMA UK Annual Review/ Preview 2026, 6-9 p.m., at Howden in London.

TMA Global

FEBRUARY 10-13: 2026 TMA Distressed Investing Conference, at the Encore at Wynn in Las Vegas.

December 2025

Journal of Corporate Renewal

For the most up-to-date information on TMA and chapter events, visit the Events page at **turnaround.org**.

SAVE THE DATE!



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FEBRUARY 10-13

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