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Heightened Scrutiny on Potential Bankruptcy Tourism

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KEY POINTS

- Chapter 15 is a comity-driven statute with near mechanical recognition requirements; it contains no express good faith requirement and only a narrow public policy exception under section 1506.
- *In re New Fortress Energy* introduces a set of "cautionary principles" that bankruptcy courts may consider when evaluating strategic COMI relocation, but these principles lack an express statutory hook under Chapter 15.
- The developing case law, from *Mega Newco* through *New Fortress Energy*, confirms that broad creditor support and the absence of insider manipulation remain the most significant practical factors in obtaining Chapter 15 recognition despite COMI tourism concerns.

INTRODUCTION

The creation of synthetic jurisdiction and venue is not a new topic of controversy in restructuring proceedings. Courts and parties in interest alike have confronted purported fabrication and manipulation of jurisdictional issues for several years, with each ultimately arriving at substantially the same conclusion: the Bankruptcy Code and related federal jurisdiction and venue statutes provide clear guidelines with respect to jurisdictional and venue-related issues and, absent bad faith, do not leave room for bankruptcy courts to reject a request for relief by an insolvent party that has otherwise met the Bankruptcy Code's statutory requirements. Center of main interests (COMI), according to Judge Glenn's recent opinion in *New Fortress Energy*, Case No. 26-11268 (MG) (Bankr. S.D.N.Y., July 14, 2026) is no different.

New Fortress Energy, Inc. (NFE), headquartered in New York, implemented a restructuring through two UK schemes of arrangement after facing increased liquidity pressures from market shifts, environmental headwinds, and unanticipated project delays. The restructuring was processed through two entities: NFE Global Holdings Limited, incorporated in 2021, and NFE Brazil Newco Limited, incorporated in April 2026. The schemes were sanctioned on June 18, 2026 with nearly full creditor support, and recognition under Chapter 15 of the Bankruptcy Code was subsequently sought. By routing the restructuring through English incorporated entities, including NFE Brazil Newco Limited, which was formed only months before the schemes were sanctioned, NFE established the debtors' COMI in the UK notwithstanding its New York headquarters, thereby positioning the UK schemes for recognition as foreign main proceedings under Chapter 15.

In his opinion granting Chapter 15 recognition to the UK restructuring proceedings, Judge Glenn focused on the strategic relocation of a debtor's COMI prior to the commencement of restructuring proceedings and whether such a strategic maneuver, a/k/a COMI tourism, should be considered in granting or denying recognition.

KEY ISSUES

Chapter 15's Framework and the Absence of a Good Faith Requirement

As cross-border practitioners are aware, Chapter 15 is a comity-driven statute that provides near-mechanical requirements which, if met, trigger mandatory recognition of a foreign proceeding. Of particular importance, Chapter 15 does not include a good faith requirement on the foreign representative when seeking recognition. Rather, section 1506 provides only a narrow public policy exception that may preclude recognition where the foreign proceeding would be manifestly contrary to the public policy of the U.S. That exception has consistently been applied with considerable restraint. *See, e.g., In re The Cannabist Co. Holdings Inc.*, No. 26-10426 (BLS), Docket No. 82 (Bankr. D. Del. May 9, 2026) (declining to find that section 1506 precluded recognition of a foreign debtor related to cannabis operations).

Mega Newco and the Emergence of COMI Tourism Concerns

In raising and ultimately dismissing potential synthetic COMI concerns, Judge Glenn relied on guiding precedent from *In re Mega Newco Limited*, Case No. 24-12031 (MEW), 2025 WL 60146 (Bankr. S.D.N.Y. Feb. 24, 2025). There, the court expressed skepticism regarding the creation of an English subsidiary to restructure certain notes under an English law restructuring plan and then use Chapter 15 to enforce that arrangement in the United States. The court stated that this type of COMI tourism could call into question the prerequisites of Chapter 15, render its requirements meaningless, and distort the protections granted to creditors. Nevertheless, the bankruptcy court ultimately granted recognition of the English restructuring plan as a foreign main proceeding, finding that "in light of the support of all of the affected parties and their overwhelming consent to the . . . [scheme] . . . and the other factors that I have cited, I see no cause in this particular case to look past the form of the transactions or to pursue theoretical issues that no affected party wishes to pursue."

New Fortress Energy and the 'Cautionary Principles'

The decision and reasoning in NFE's recognition proceeding followed a similar path, focusing on the broad consent and support of creditors with respect to the NFE schemes of arrangement, as well as the absence of any statutory requirement that COMI determinations or Chapter 15 recognition include a finding of good faith. The opinion can be distilled to several "cautionary principles" that bankruptcy courts may consider in connection with the increasing trend of COMI tourism in cross-border restructuring:

1. Fairness of the foreign process;
2. Degree and nature of creditor support;
3. Evidence of insider exploitation or "untoward manipulation";
4. Whether the result could have been achieved under the Bankruptcy Code; and
5. "Bad faith COMI manipulation" as a potential strike against recognition.

It bears emphasis, however, that these factors have no express statutory hook under Chapter 15. They do not derive from section 1506's public policy exception or section 1517's recognition requirements. Rather, they exist as a potential common law overlay functioning like a multi-factor test not previously considered in the context of Chapter 15 recognition proceedings.

CONCLUSION

New Fortress Energy and *Mega Newco* mark important developments in the evolving Chapter 15 treatment of COMI tourism. Together, they confirm that strategic COMI relocation, standing alone, does not bar recognition. However, these cases also signal that bankruptcy courts are increasingly attentive to the circumstances surrounding such maneuvers. Going forward, particular consideration should be paid to developing a record that is supportive of: (1) procedural fairness, (2) creditor support, and (3) the absence of insider manipulation and ultimate bad faith tactics that have a detrimental impact on creditors and cut against relief available under the Bankruptcy Code.

For questions related to Chapter 15 recognition, COMI determinations, or cross-border restructuring matters, please contact Evelyn J. Meltzer, Kenneth A. Listwak, or Michael A. Sabino, or another member of Troutman Pepper Locke's Bankruptcy + Restructuring Practice Group.

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