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OCEAN RIG: CHARTING A COURSE THROUGH CHAPTER 15 PROVISIONAL RELIEF, RECOGNITION, AND APPEALS

The Ocean Rig chapter 15 proceedings produced precedent setting rulings regarding the scope of provisional relief available prior to a recognition hearing, the steps necessary to establish a debtor's COMI prior to the commencement of a foreign proceeding, and the applicability of appellate standing and equitable mootness doctrines to appeals from recognition orders. The authors discuss these issues and provide useful insights for parties involved in cross-border restructurings.

By Evan C. Hollander and Emmanuel B. Fua *

The recent chapter 15 bankruptcy proceedings of offshore drilling contractor Ocean Rig UDW Inc. ("UDW") and three of its subsidiaries generated several precedent setting decisions under chapter 15 of title 11 of the United States Code (the "Bankruptcy Code").¹ These decisions may serve as a useful guide for distressed corporations that wish to avail themselves of foreign restructuring regimes, but face threats of hostile creditor or shareholder action in United States. The topics covered in this article include: (1) provisional relief available under chapter 15 including the automatic stay under section 362; (2) recognition, with particular emphasis on the pre-petition establishment of a debtor's center of main interests ("COMI"); and (3) appellate

defense of a recognition order on prudential standing and equitable mootness grounds.

BACKGROUND

UDW is the holding company of the Ocean Rig Group, an international offshore oil drilling contractor and owner and operator of drilling rigs. UDW is also the direct parent company of Drill Rigs Holdings Inc. ("DRH"), Drillships Financing Holding Inc. ("DFH"), and Drillships Ocean Ventures Inc. ("DOV"). We refer to DOV collectively with DRH and DFH, as the "Subsidiary Debtors," and the Subsidiary Debtors collectively with UDW, as the "Debtors" or the "Ocean Rig Debtors." Prompted by a severe and prolonged oil and gas industry downturn, and substantial debt payments coming due in 2017, these four companies began considering restructuring alternatives.

¹ Orrick acted as restructuring counsel to the Ocean Rig Debtors and lead counsel in their chapter 15 proceedings and chapter 15 appeal.

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