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# Managing Distribution to Claimants in Cross-Border Enterprise Group Insolvency

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# MANAGING DISTRIBUTION TO CLAIMANTS IN CROSS-BORDER ENTERPRISE GROUP INSOLVENCY

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Multi-national enterprise insolvency cases have been managed effectively as single enterprises in insolvency cases, at the reorganization phase and at the realization phase. This is not an unexpected outgrowth of modified universalism in practice. At the distribution stage, however, cases have a tendency to retreat back to territorialism. Claims are evaluated on a national basis, and on an entity basis, even though asset realization might have been accomplished with little or no attention to either of these notions. Why is this so? More importantly, why *should* it be so? What if the principles of modified universalism are applied at the distributional stage as well? This Article posits that the future of multi-national insolvency proceedings requires the creative solutions of modified universalism at the distribution stage to achieve more successful outcomes.

Consider that, under modified universalism, the starting proposition is that the insolvency of an enterprise located in multiple jurisdictions ought to be managed from a single jurisdiction (hence the notion of COMI).[1] The *lex concursus* is set (optimally) in the country that is the debtor's COMI. Accommodations are made, as needed, for local interests,[2] but the starting proposition is that, conceptually, there is but one insolvency proceeding.[3]

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1. Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 MICH. L. REV. 2276, 2282 (2000); Andrew T. Guzman, *International Bankruptcy: In Defense of Universalism*, 98 MICH. L. REV. 2177, 2178 (2000); Irit Ronen-Mevorach, *The Road to a Suitable and Comprehensive Global Approach to Insolvencies Within Multinational Corporate Groups*, 15 J. BANKR. L. & PRAC. 5 art. 1, Oct. 2006, at 84.

2. Westbrook, *supra* note 1, at 2282; JAY LAWRENCE WESTBROOK, AM. LAW INST., TRANSNATIONAL INSOLVENCY: COOPERATION AMONG THE NAFTA COUNTRIES 3 (2003).

3. Purely territorial solutions made it difficult to coordinate the sale or the restructuring of an enterprise on a going concern basis, because of variations in the *lex concursus* of the various jurisdictions. In addition, territorial approaches honor local interests above the interests of the creditor body as a whole, leading to piecemeal liquidations. Jay Lawrence Westbrook, *Theory and Pragmatism in Global Insolvencies: Choice of Law and Choice of Forum*, 65 AM. BANKR. L.J. 457, 461 (1991); Guzman, *supra* note 1, at 2181; *see also* Lynn M. LoPucki & William C. Whitford, *Venue Choice and Forum Shopping in the Bankruptcy Reorganization of Large, Publicly Held Companies*, 1991 WIS. L. REV. 11, 52 (1991) (stating that, to effectuate the policies

The UNCITRAL Guide on Insolvency Law facilitates this concept by recognizing the representative of the main proceeding (again, optimally), and giving the representative access to the courts of other jurisdictions to achieve a variety of tasks that amount to extensions of the representative's insolvency powers beyond the borders of the main proceeding and into other countries where the representative has an interest on behalf of the insolvency estate. Articles 20 and 21 authorize a wide variety of actions in the foreign (enacting) jurisdiction, many of which make reorganization and asset realization across borders possible.[4] The international community recognizes there is further work to be done. The need to elaborate with regard to multinational enterprise groups has been recognized, and the task has been taken up.[5]

Courts have cooperatively authorized asset realizations, either by way of asset sales or by way of reorganizations, for multinational enterprise groups, relying on principles of modified universalism.[6] At the point of distribution, however, the tendency is to retreat into territorialist solutions, in part because of the difficulty of resolving varying priority schemes in different countries,[7] and in part because of the allegiance to *lex situs* with respect to the determination of claims.[8]

Yet, the future direction of enterprise insolvency of necessity is being driven by fundamental changes in the way global enterprises are doing business. As one observer put it:

> There is another major force that is provoking a rethink of traditional legal principles—globalization, through which the internationalization and

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of bankruptcy, "it is generally recognized that a single bankruptcy court must be able to control, or at least coordinate, all aspects of the reorganization of the business").

4. U.N. COMM'N OF INT'L TRADE LAW, UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT AND INTERPRETATION, arts. 20, 21, U.N. Sales No. E.14.V.2 (1997) [hereinafter UNCITRAL MODEL LAW].

5. *See* U.N. COMM'N OF INT'L TRADE LAW, UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW PART III: TREATMENT OF ENTERPRISE GROUPS IN INSOLVENCY, para. 3, U.N. Sales No. E.12.V.16 (2012) [hereinafter UNCITRAL LEGISLATIVE GUIDE PT. III]; *see also* U.N. Comm'n on Int'l Trade Law, Rep. of Working Group V (Insolvency Law), Rep. on its 44th Sess., Dec. 16–20, 2013, paras. 16–17, U.N. Doc. A/CN.9/798 (Jan. 8, 2014). A working paper entitled "Facilitating the Cross-Border Insolvency of Multinational Enterprise Groups" will be taken up at the Dec 15–19, 2014 meeting of Working Group V in Vienna. The working paper suggests a new mechanism for selecting the "lead case" (see paras. 12–20) and the new "synthetic" procedure for managing the interests of local creditors (see paras. 25–28). *See* U.N. Comm. on Int'l Trade Law, Working Group V, 46th Sess., Dec. 15–19, 2014, U.N. Doc. A/CN.9/WG.V/WP.124 (Oct. 2, 2014), *available at* http://www.uncitral.org/uncitral/en/commission/working_groups/5Insolvency.html.

6. *See, e.g.*, *In re* Singer Co., N.V., No. M–47 (MBM), 2002 WL 10452, at *1 (Bankr. S.D.N.Y. Jan. 3, 2002); *In re* Everfresh Beverages, Inc., 238 B.R. 558 (Bankr. S.D.N.Y. 1995); *In re* Inverworld, Inc., 267 B.R. 732, 740 n.10 (Bankr. W.D. Tex. 2001).

7. *See* Jose M. Garrido, *No Two Snowflakes the Same: The Distributional Question in International Bankruptcies*, 46 TEX. INT'L L.J. 459 (2011).

8. *See* U.N. COMM'N OF INT'L TRADE LAW, UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW, rec. 30, U.N. Sales No. E.05.V.10 (2005).

> regionalization of commercial operations and practice are proceeding apace. National courts and other institutions are under increasing pressure to solve legal problems that spill over national boundaries and press local legal principles and comparative ingenuity to greater and greater lengths (in some countries to better effect than others). It may well be, however, that real progress in this regard will come from international bodies that have the advantage of combining the multiple jurisdictions of their constituent members from which to forge an international governing system. Their disadvantage lies in the tension this establishes between whatever international system is established and the municipal systems of the constituent members.[9]

The need to develop equally creative solutions to the distributional aspects of multi-national enterprise group insolvencies is as great or greater than was the need to create structures to accomplish cross-border realization of asset value. And strangely enough, the need may be greatest when the enterprise group is liquidated. For it is in that circumstance that the counterproductive consequences of asset and claims allocation are most pronounced. Allocation is an expensive and uncertain process,[10] and is all

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9. Harry Rajak, *Corporate Groups and Cross-Border Insolvency*, 44 TEX. INT'L L.J. 521, 535 (2009).

10. The Nortel insolvency proceeding may be the most glaring example of this in recent years. After failed mediation efforts over allocation, the courts presiding over the matter ordered a joint trial to resolve the allocation issue. The preparation for the process has been massively expensive. *See* Peg Brickley, *Judge Demands a Reckoning of Nortel Cash Fight Costs*, DOW JONES (Nov. 19, 2013), http://bankruptcynews.dowjones.com/article?an=DJFDBR0020131119e9bjnysus&from=alert&pid=10&ReturnUrl=http%3a%2f%2fbankruptcynews.dowjones.com%2farticle%3fan%3dDJFDBR0020131119e9bjnysus%26from%3dalert%26pid%3d10 (Canadian judge demanded an accounting from the army of lawyers preparing for a massive trial on allocation of asset realizations to creditors); Jeff Gray, *From $100—E-mails to $300,000 for Photocopies and Meals, How Nortel Racked up a $755-million Tab*, GLOBE AND MAIL (Jan. 25, 2013 1:02 PM), http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/from-100-e-mails-to-300000-for-photocopies-and-meals-how-nortel-racked-up-a-755-million-tab/article7826280/ (noting that litigation costs continue to climb while bondholders, pension claimants and other creditors remain unsatisfied); *see also* Peg Brickley, *Nortel $7.3 Billion Cash Settlement: To Be Continued*, WALL ST. J. (Jan. 18, 2013), http://blogs.wsj.com/bankruptcy/2013/01/18/nortel-7-3-billion-cash-settlement-to-be-continued/. The article stated:

> A record-breaking $4.5 billion sale of Nortel's patent portfolio capped the effort, a result that sent bond prices soaring. Technically, Nortel was solvent, able to cover its debts, and bondholders figured that entitled them to payment in full with lots of interest.
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> Retired workers left with sharply reduced pensions, disabled employees thrown onto the welfare rolls and other non-U.S. creditors, however, protested that it would be grossly unfair to leave the people who built Nortel in need while hedge funds celebrated a windfall. Former workers in Canada and Europe say they have nothing to lose from saying "no" to a cheap deal with Nortel's bondholders.
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> Failure to come to terms in Justice Winkler's mediation means litigation for Nortel in courts around the world, a prospect that judges involved in the case say is all but unthinkable. Years of litigation will eat into the $10 billion in cash that Nortel has stacked up in banks, as an army of lawyers and advisers continues to rack up fees.

too often prone to result in unfair outcomes.[11] What is more, the allocation process does not end with simply assigning allocation of proceeds to the respective entities that "owned" the assets.[12] There must also be an assignment of claims to entities, a resolution of relative priority of claims (along with a determination of the basis on which those priorities will be decided), and a reconciliation of inter-company claims (because, in an allocation, the claims of one company against another company within the corporate family, if not reconciled, will result in a windfall to the creditors of one entity, and a countervailing diminution of asset value to the creditors of the other entity). In addition, there may be wrongful transactions among entities, or on behalf of entities, that would need to be recovered in order to assure a full and fair distribution to all creditors.

The cost of such a process for enterprise groups is massive even on a domestic level.[13] It is legitimate to question whether it is necessary, especially in the context of a cross-border insolvency, where the allocation questions are complicated by choice of law and choice of forum questions, as well as the overlay of insolvency law onto the claims allowance procedure.[14] However, beyond the cost lies another deeper reality—that our

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*Id.* The trial ultimately took place in two jurisdictions (with one court spending over $1 million to make a joint trial possible). Legal fees exceeded $1.3 billion by May 2014, before the litigation even began. *See* Jeff Gray, *Billion Dollar Nortel Tab Boosts Pressure over Runaway Legal Costs*, GLOBE AND MAIL (May 14, 2014), http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/billion-dollar-nortel-tab-boosts-pressure-over-runaway-legal-costs/article18669475/. *See also* David Ullmann, *Nortel Allocation Trial a Cross-Border First, But Will It Be Worth It?*, MONDAQ (Jul 20, 2014), http://www.mondaq.com/canada/x/331370/.

11. *See* Richard Squires, *Strategic Liability in the Corporate Group*, 78 U. CHI. L. REV. 605 (2011). Prof. Squires argues for a theory of corporate groups that attempts to accommodate two theories: (1) the traditional compartmentalization of risk view and (2) the assignment of risk to the group as a whole, through a web of guarantees. His proffered theory is that "the perforated internal structure of the corporate group reflects a type of shareholder opportunism termed *correlation-seeking*. When a corporation engages in correlation-seeking, it intentionally incurs contingent liabilities that are especially likely to come due when the corporation is insolvent." *Id.* at 607. Corporate groups, he posits, tend to fail as a group. Thus, the cross-guarantees function to reduce credit costs, and to transfer value from the group's non-guaranteed creditors to its shareholders for so long as the enterprise is functioning. Upon insolvency, the shareholders are out of the picture, so the outcome is irrelevant to them. Meanwhile, the guarantees function to enhance recoveries for guaranteed creditors, at the expense of non-guaranteed creditors.

12. Recall that the realization of assets may be accomplished across entity lines and national boundaries (as was done in *Nortel*), without regard to allocation at that stage.

13. *See* William H. Widen, *Report to the American Bankruptcy Institute: Prevalence of Substantive Consolidation in Large Public Company Bankruptcies from 2000 to 2005*, 16 AM. BANKR. INST. L. REV. 1, 15 (2008) (reporting that a large number of public company insolvency cases employed substantive consolidation, at least in part to manage complexity).

14. The point here is that distributional issues in an insolvency proceeding are governed by the *lex concursus*—more particularly the law of the insolvency proceeding that is the center of main interests for an enterprise. *See* Edward Janger, *Fourth International Colloquium: Choice of Law in Cross-Border Cases*, U.N. COMM'N OF INT'L TRADE LAW (Dec. 16, 2013), http://www.uncitral.org/pdf/english/colloquia/insolvency-2013/A2_Convention_3_Janger_vers2.pdf. The destructive effects of lex concursus in the context of allocation and distributional resolutions is felt most strongly at the appellate level, where ultimate

traditional assumption about the role of the corporate form, especially in the context of multi-national enterprise groups, may not be valid. As Professor Widen observed with respect to domestic enterprise groups seeking relief under U.S. chapter 11 (and employing substantive consolidation as an alternative to asset partitioning):

> To my mind, the very high percentage use of substantive consolidation is unlikely to be adequately explained simply by a decision in particular cases to save transaction costs while ignoring deliberately created asset partitions that have been properly maintained. Either the asset partitions formed inside many corporate groups were not deliberately created to match discrete assets with discrete liabilities or they were created and then ignored. At this point in the research program, my view is based more on intuition than on proof. Certainly some substantive consolidations may be effected for cost saving reasons even with well maintained asset partitions. The magnitude of the substantive consolidation phenomenon suggests to me that other factors must be at work.
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> ...
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> The data presented in this report suggest ... that within consolidated groups separate legal entities are not used primarily to match assets with liabilities because the majority of large public company bankruptcies use substantive consolidation to accomplish reorganizations. This finding undercuts judicial statements that substantive consolidation should be used sparingly, calling into question the rationale behind limited use. This finding also casts doubt on the centrality of various academic theories of corporate form that are based on asset partitioning to understanding the structure of consolidated groups because, in light of the data, these theories no longer appear to explain the allocation of assets to liabilities in a majority of consolidated groups under the stress of insolvency. To the extent asset partitioning is a factor in explaining

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resolution must turn on application of purely territorial principles. If two different nations are involved in deciding the same question, the potential for inconsistent rulings is higher. One commentator described the process slated to be followed in *Nortel* thus:

> [T]he actual trial proceedings are to follow legal practices and rules of civil procedure in each country for portions of the trial conducted in each jurisdiction. On a technological level, the Nortel parties invested in special technology to allow for the trials to be concluded simultaneously in each jurisdiction. There is a private closed circuit feed of the live proceedings that can be watched in each jurisdiction, and lawyers can chat privately with each other online. The judges of each jurisdiction are conducting the trial live in each jurisdiction simultaneously. Counsel in one court wait while counsel and witnesses in the other court proceed. Both judges take note of the evidence produced in the other jurisdiction's court room. The judges are then to render independent decisions, which may or may not coincide. Although there have previously been simultaneous cross-border hearings (in *Nortel* if not others), a full-blown trial of this kind has never been attempted.

*See* Ullmann, *supra* note 10.

the internal structure of corporate groups, it appears that it is merely one of many factors to be considered.[15]

Many multi-national enterprises today are operating with a considerable amount of fluidity with regard to their constituent corporate entities.[16] In these cases especially, the case for asset allocation or partitioning becomes harder, as the process then becomes truly artificial, an attempt to allocate where no such allocation actually existed in practice prior to insolvency.[17] In that circumstance, it is sensible to ask why an estate must expend scarce resources on such an endeavor.[18]

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15. Widen, *supra* note 13, at 27–28.

16. *See* Rajak, *supra* note 9. A similar phenomenon has been observed domestically. *See* William H. Widen, *Corporate Form And Substantive Consolidation*, 75 GEO. WASH. L. REV. 237 (2007). Observes Prof. Widen:

> We find three key functions performed by the corporate form: (1) asset partitioning, (2) artificial personality, and (3) asset identification. All three functions operate actively when the corporation is independent. When, however, the corporation becomes a subsidiary active use of the artificial personality structures may largely cease. Further, the asset identification function may suffer if internal transactions do not receive proper documentation. A substantial identity between a parent and a subsidiary may exist because the artificial personality of the subsidiary is shut down or because systems of asset identification break down. Thus, in many cases we find a haphazard structure of asset partitions within a corporate group. A structure of asset partitions may arise for reasons of convenience and expediency rather than for the specific purpose of partitioning assets in a particular manner—in these cases, the asset partition is merely a by-product of procedures (such as stock acquisitions) selected for other reasons. I suggest that parties may more easily ignore the "incidental" asset partition in bankruptcy proceedings than the asset partition expressly established to segregate assets and liabilities.

*Id.* at 261–62.

17. An example of this can be seen in the development of transfer pricing mechanisms, used by taxing authorities and others to impose an "arms' length" costing structure on internal transfers and transactions for which there may be no internal accounting, or for which the internal accounting is artificial. *See* Jamal Hejazi & Eric Koh, *IFRS: Transitional Impact on Transfer Pricing Analysis*, MONDAQ (Jul. 3, 2012), http://www.mondaq.com/canada/x/184694/Transfer+Pricing/IFRS+Transitional+Impact+On+Transfer+Pricing+Analysis (explaining how new international accounting standards for transfer pricing, used for tax assessment, may differ from the way in which members' corporate groups may account for contributions to revenue at the group level). Say the authors:

> Transfer pricing involves the determination of an arm's length price that one member of a multinational firm should charge another for the sale of goods, services and intangibles across provincial/state and international borders. The determination of arm's length price for a transaction between related parties is a complex, subjective and lengthy exercise. The planned switch to International Financial Reporting Standards ("IFRS") in many countries will considerably complicate matters.

*Id.*

18. Part III of the UNCITRAL Legislative Guide on Insolvency Law, regarding the treatment of enterprise groups in insolvency, recommends standards for when and how a single distribution to creditors ought to take place. *See* UNCITRAL LEGISLATIVE GUIDE PT. III, *supra* note 5, rec. 220.

The sticking point for extending modified universalism principles to the distributional phase of multi-national enterprise group insolvencies has been the inability to bridge the strictures of traditional notions of corporate separateness. Legal-entity concepts have traditionally governed notions of liability though those traditional notions are being reexamined in light of modern business practice. Domestic law struggles with this tension, on the one hand honoring the primacy of corporate form for purposes of assigning liability, while at the same time developing concepts for breaking down the corporate form (such as corporate veil piercing, trust fund liability, fraudulent conveyance theory, and substantive consolidation) to avoid inequitable outcomes upon default. [19] In the international insolvency context, those traditional principles can often be inconsistent with modified universalism and the ideal of a unified equitable distribution.[20] The same logic that points to maximization of value through a global, non-territorial realization of assets ought to lead to a presumption against both territorial

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19. Various theories for breaking down entity lines are, unfortunately, confusing and unpredictable. *E.g.*, PHILLIP I. BLUMBERG, BLUMBERG ON CORPORATE GROUPS § 10.02[B] ("[T]he rules [regarding veil-piercing and the corporate form] developed by the courts have confused rather than clarified the problem."); J. William Callison, *Rationalizing Limited Liability and Veil Piercing*, 58 BUS. LAW. 1063, 1069 (2003) ("[I]t is difficult to discern any overarching doctrine that assists in determining when the limited liability veil will be pierced and when it will not."); Associated Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d 825, 838–40 (1962) (providing twenty-two non-exclusive factors that have been used in California's veil-piercing jurisprudence) (cited for ten of these factors by Ahcom, Ltd. v. Smeding, No. 07–1139 SC., 2011 WL 3443499, at *5 (N.D. Cal. Aug. 8, 2011)).

20. The inherent unfairness of allocation as the presumed solution for distribution in an enterprise group context is particularly apparent when one considers the problem of double proof. *See* Widen, *supra* note 16. The "double proof" problem arises in the situation in which one creditor is a multiple source creditor, with access to more than one source of payment, while another otherwise similarly entitled creditor has but a single source of payment. Were all sources of payment solvent at all times, the situation poses no difficulty. When the sources of payment are not solvent, however, an inequity can result. To quote Professor Widen:

> In some sense, a multiple-source creditor who first pursues a shared source for payment gratuitously harms the single-source creditor. Equity may intervene to stop this result. The principle of fairness that emerges from this general fact pattern is sometimes identified as the solution to the "two funds" problem. . . . In the classic multiple-entity scenario, the senior creditor holds a senior claim on the alternate payment source (by virtue of structural seniority to investors and their creditors) but holds a claim ranked *pari passu* with the junior creditor on the assets in the shared payment source. The competition among *pari passu* claims for entitlement to the shared payment source raises the problem known as "double proof." The general rule is that a creditor may prove but a single claim with respect to a particular debt. A double proof results when multiple claims are made with respect to a single debt. The effect of double proof is to dilute the recoveries of other creditors with respect to their debts by multiplying claims with respect to the particular debt that is double proved.

*Id.* at 301–02. Interestingly, the Model Law anticipates this potential inequity in the cross-border context by providing for a balancing of distribution when territorial allocations otherwise skew the percentage recoveries in favor of creditors with claims in multiple jurisdictions, relative to similar creditors without access to recovery in multiple jurisdictions. *See* UNCITRAL MODEL LAW, *supra* note 4, art. 32. The rule, though it is not parallel, at least rhymes.

and entity-based distributions of that realization, with narrow exceptions where appropriate. In particular, such a distribution is most likely to correspond to the actual expectations of creditors in dealing with an integrated global enterprise operating under a single brand.[21]

For a global debtor, there are added very complex and unsettled questions of choice of corporate law and insolvency law quite unlikely to have governed or even influenced the expectations of creditors. These questions cannot be avoided if the task undertaken is to attempt to allocate realization values to corporate entities in different nations. Additionally, because the rationale for an allocation process is that, somehow, all assets and creditors can be matched up with legal entities, so as to approximate a territorial distribution, the process must also include adjustments of intercompany claims and liabilities. It should also include intercompany avoidance actions among the various insolvency estates, in which the legal issues are governed by the debatable applicability of national laws sounding in contract, tort, corporate, and insolvency law. These are enormous tasks, but they cannot be avoided in a territorialist world. The difficulty of this task of unraveling all these potential assets and liabilities explains why parties to enterprise insolvencies so often opt for single-plan solutions.

The job of allocation in a multinational enterprise insolvency proceeding should not be undertaken until there is a demonstrated need to allocate and, if so, for the need to develop a method for allocation. One who would allocate on a corporate basis or, even more repugnant to universalism, on a territorial basis, must come forward with good reasons and solid evidence to support a need to allocate. This may be an especially compelling argument when the allocation or partitioning is taking place in a liquidation, where the need to shelter shareholders is no longer present. The only policy supporting a commitment to corporate form at the distributional phase must be a vested expectation of creditors. Thus the party claiming that an allocation by entity or by country (or both) is necessary should be required to present evidence of their peculiar reliance interest, beyond a mere *ex post* desire to be preferred.[22]

With this proposition as a starting rule, it seems that most cases could resolve easily around readily recognizable concepts. Absent a demonstrated "no dilution" expectation, objectively verifiable, creditors similarly situated in kind ought to anticipate, in a multi-national enterprise insolvency proceeding, that their claims will be satisfied out of the enterprise as a

21. Principles of traditional corporate liability are increasingly out of step with the actual conduct of modern global business, which has in recent decades tended to move with greater fluidity across both corporate and national boundaries. The constellation of subsidiaries and affiliates, together with the web of guarantees and cross-guaranties both within and among the members of the group, may serve a different function than simply compartmentalization of liability, as traditional corporate theory would suggest. *See* Squires, *supra* note 11.

22. *See id.*

whole. If asset partitioning could be readily accomplished efficiently, and if asset partitioning accurately portrayed the expectations of creditors, then demonstrating that should be straightforward. The very fact that asset partitioning proves to be difficult and expensive ought to signal that creditors did not rely on such a partitioning as part of their credit calculus in the first place, or that at the least, engaging in such an exercise using scarce assets may not be worth the candle.[23]

International insolvency cases should be managed as much as possible toward the ideal of a single worldwide proceeding, within the limits established by a pragmatic realization that the ideal is not the actual and that jurisdictions committed to the ideal must advance toward it step by thoughtful step.

23. And it should not be forgotten that the candle in such cases requires, in fairness, a calculus of intercompany claims. *See In re* RHTC Liquidating Co., 424 B.R. 714 (Bankr. W.D. Penn. 2010) (creditors of U.S. entity brought an involuntary proceeding in order to challenge an intercompany debt owed to parent entity, the value of which the parent's senior lender relied upon). Such pursuits are not inexpensive, requiring as they do extensive accounting and disaggregation.