International Secured Transactions and Insolvency

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The following report surveys the significant developments from opinions decided or reported by federal courts in the United States during 2004 addressing issues of international insolvency in general, and in particular practice under § 304 of the United States Bankruptcy Code.

I. The Context

Section 304 of the Bankruptcy Code allows certain representatives of a debtor involved in an insolvency proceeding in a foreign state to seek the recognition of such proceeding in the United States, and thereby apply for injunctive and other relief to protect and extend the effects of the foreign proceeding.[1] Practice under § 304 is well established in the United States. Foreign representatives often succeed in enjoining creditor action, given the breadth of foreign proceedings that may be recognized and the flexibility afforded to American courts in fashioning relief under the statute. Section 109 of the Bankruptcy Code also permits a foreign debtor or the representative of a foreign debtor to commence an original, plenary proceeding in the United States so long as the debtor has some property in the United States (see discussion below).[2] The code also permits an involuntary proceeding to be commenced against a foreign-based debtor.[3]

The result is that American courts frequently extend authority and cooperation in foreign insolvency proceedings described, in the literature of international insolvency, under the rubric of "modified universalism" or "quasi universalism."[4] Modified universalism exists as

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1. 11 U.S.C. § 304 (2004).

2. *Id.* § 109.

3. *See id.*

4. Jay Lawrence Westbrook, *Multinational Enterprises in General Default: Chapter 15, the ALI Principles, and the EU Insolvency Regulation*, 76 AM. BANKR. L. J. 1, 5-10 (2002) (a thorough discussion of the theoretical differences between territorialism and universalism).

a construct relative to two different extremes in the concepts of how domestic courts treat the insolvency of cross-border enterprises. Under the approach often referred to as "territorialism," the courts of each state in which a cross-border enterprise has assets assert jurisdiction over the assets in that state to the exclusion of the jurisdiction or results of related proceedings in other states.[5] Under the approach often referred to as "universalism," a court in one state where the cross-border enterprise can establish jurisdiction—presumably the state containing the corporate headquarters or the most assets—asserts authority over all assets and creditors' claims wherever found.[6] Territorialism is the historical norm which has eroded over time, and universalism is seen as the ultimate goal of international cooperation, the extension of comity by domestic courts, and, most ideally, through international treaties.[7] Cases decided in the United States reveal consistently that the current, practical reality exists somewhere in between with debtors and creditors, depending on the procedural circumstances, ever seeking to expand the reach of a proceeding commenced in one state to other states where adverse results are possible.

II. The Decisions

Four separate decisions in 2004 demonstrate the tensions that result when debtors and creditors seek the intervention of American courts to resolve disputes involving businesses centered outside of the United States that have sought the protection of U.S. courts during their restructuring.

A. In re Aerovias Nacionales De Colombia S.A. Avianca

The first significant decision, *In re Aerovias Nacionales De Colombia S.A. Avianca*, involved the bankruptcy of Columbia's national airline, Avianca.[8] *Aerovias* illustrates the quest for universalism and the naturally related questions of jurisdiction and forum selection. Avianca and its U.S. operating subsidiary filed voluntary Chapter 11 petitions in the Southern District of New York, but commenced no similar or concurrent proceedings in Columbia, Avianca's "home" jurisdiction.[9] Several creditors filed motions asking the bankruptcy court to dismiss the Chapter 11 proceeding since Avianca held most of its assets and generated most of its income outside of the U.S. and had not filed for bankruptcy protection in Columbia.[10]

The bankruptcy court denied the motions to dismiss. The court concluded that Avianca easily met the test for eligibility to be a debtor under the Bankruptcy Code. Under § 109, the provision of the Bankruptcy Code that determines who or what may be a "debtor" eligible to commence a plenary proceeding, a debtor must possess only a minimal amount of property in the U.S. to allow a bankruptcy court to establish jurisdiction.[11] Although most of Avianca's assets were in Columbia, Avianca had twenty-eight employees and con-

5. *Id.* at 5.
6. *Id.* at 6.
7. *Id.* at 8.
8. In re Aerovias Nacionales De Colombia S.A. Avancia, 303 B.R. 1, 3 (Bankr. S.D.N.Y. 2003).
9. *Id.*
10. *Id.* at 3-4, 7. Settlements ultimately reduced the number of movants seeking dismissal to one.
11. *Id.* at 8-9.

tinuing operations in the United States, leased most of its equipment from U.S. lessors, and owed a significant amount of its overall debt to U.S. creditors.[12]

The bankruptcy court also declined to dismiss Avianca's Chapter 11 petitions on the basis of § 305 of the Bankruptcy Code. Section 305(a)(1) permits a bankruptcy court to dismiss or suspend a case if such action would benefit the debtor and creditors.[13] The movants failed to demonstrate that dismissal would benefit Avianca since it was uncertain whether Avianca could assert jurisdiction over its largest creditors—particularly its equipment lessors—in Columbia.[14] Columbia's counterpart to Chapter 11, which was recently enacted, provided no mechanism similar to § 365 of the Bankruptcy Code through which Avianca could reject burdensome equipment leases.[15]

Section 305(a)(2) permits a bankruptcy court to dismiss or suspend a case in favor of a pending foreign proceeding involving the debtor if the factors of § 304(c) are satisfied.[16] No grounds existed for relief under § 305(a)(2) in this case since no proceeding had been commenced in Columbia.[17] Furthermore, in the view of the bankruptcy court, "it would be unwarranted to impose an obligation on Avianca to file a proceeding in its 'home' court, or to assume that if such proceeding were filed it would justify suspension or dismissal of the U.S. case."[18] Avianca had not acted in bad faith or unfairly manipulated where it filed its Chapter 11 case, the application of the principle of the Bankruptcy Code would not prejudice the company's creditors, and there was little to no evidence that adverse creditor action in Columbia dictated the commencement of a proceeding in a jurisdiction other than Avianca's home jurisdiction.[19] Section 304 likewise failed to impose a duty on Avianca to commence a primary or plenary proceeding in its home jurisdiction.[20]

B. In re Board of Directors of Multicanal

The financial straits of Argentine cable operator Multicanal, S.A. resulted in a struggle between a group of dissident note holders seeking protection in the United States from the largely consensual, pre-packaged reorganization prosecuted in Argentina. The dispute has, to date, resulted in two reported opinions: *In re Board of Directors of Multicanal* (*Multicanal I*) and *In re Board of Directors of Multicanal* (*Multicanal II*).[21]

Multicanal defaulted in 2002 on its bank debt and the payments due under five series of notes that the company had issued between 1997 and 2001.[22] Management negotiated a financial restructuring with a group of creditors holding approximately 25 percent of the outstanding notes.[23] Although the vast majority of the notes were held by institutional

12. *Id.* at 3-6.
13. *Id.* at 9.
14. *Id.* at 10.
15. *Id.*
16. *Id.* at 11.
17. *Id.* at 12.
18. *Id.*
19. *Id.* at 13-14.
20. *Id.* at 15-16.
21. In re Bd. of Dirs. of Multicanal S.A., 307 B.R. 384 (Bankr. S.D.N.Y. 2004) [hereinafter Multicanal I]; In re Bd. of Dirs. of Multicanal S.A., 314 B.R. 486 (Bankr. S.D.N.Y. 2004) [hereinafter Multicanal II].
22. *Id.* at 492.
23. *Id.* at 493.

investors, approximately 5 percent of the outstanding aggregate principal of the notes was held by individuals, often referred to as retail investors, in the United States.[24] Management solicited acceptance of the restructuring from holders of the notes and commenced an *acuerdo preventivo extrajudicial* (APE) proceeding in Argentina.[25]

Multicanal commenced the APE proceeding on December 17, 2003, and a dissenting note holder (objector) sued in New York two days later to collect the amounts due under the notes it held.[26] Multicanal's board of directors responded by filing a petition under § 304 in the Southern District of New York seeking recognition of the APE and to enjoin the objector from proceeding with the state court litigation.[27]

The objector first sought to dismiss the ancillary proceeding by establishing the supremacy of the Trust Indenture Act (TIA) over the right of Multicanal's directors to relief under § 304.[28] The objector asserted that protections found in the TIA required the bankruptcy court to deny recognition of the APE proceeding.[29] Specifically, the objector maintained that recognition under § 304 should be denied because the APE proceeding violated TIA provisions requiring the consent of note holders before their interests could be impaired or affected in any way.[30] Even though the note holders conceded that their rights could be impaired in a U.S. proceeding notwithstanding the TIA, they contended that the bankruptcy court must require that a foreign insolvency proceeding provide protections identical to those in an original Title 11 proceeding before granting § 304 recognition.[31]

The bankruptcy court rejected the objector's position. From the seminal decision of *Canada Southern Railway Co. v. Gebhard*,[32] decided in 1883, to recent § 304 practice under *Cunard Steamship. Co. v. Salen Reefer Services AB*,[33] American courts have granted comity to foreign insolvency proceedings, which might produce results contrary to U.S. law.[34] The foreign proceeding need not be identical either in procedure or result to gain recognition.[35]

The objector read the protection of the TIA too broadly in the eyes of the bankruptcy court.[36] The central purpose of the relevant TIA provisions was to prevent one group of bondholders (typically insiders of a debtor) from agreeing to amend an indenture to the detriment of other holders and to preserve the right of a holder to take direct action to enforce the debt upon default.[37] Although the TIA and § 304 serve different aims, the legal texts could be read together, yet the bankruptcy court refused to condition ancillary relief

24. *Id.* at 493-94.
25. *Id.* at 493. The APE is one of three types of insolvency proceedings that was available to Multicanal in Argentina. The other two were a *concurso preventivo*, or reorganization proceeding, or a *concurso liquidatorio*, or a liquidation proceeding. An APE may affect only unsecured claims and must be supported by a qualified majority of impaired (i.e. affected) claims before commencement of the proceeding.
26. *Id.* at 499.
27. *Id.*
28. Multicanal I, *supra* note 21, at 387.
29. *Id.* at 388.
30. *Id.*
31. *Id.* at 391-92.
32. Canada S. Ry. Co. v. Gebhard, 109 U.S. 527 (1883).
33. Cunard S.S. Co. v. Salen Reefer Servs. AB, 773 F.2d 452 (2d Cir. 1985).
34. Multicanal I, *supra* note 21, at 389-90.
35. *Id.* at 391, 393.
36. *Id.* at 392-93.
37. *Id.* at 388-89.

on changes to the APE that would, in the objector's view, harmonize the APE with the TIA.[38]

The bankruptcy court next decided in *Multicanal II* whether to grant recognition to the APE under § 304, and whether to dismiss an involuntary petition against Multicanal.[39] The note holders urged three reasons why the APE proceeding contained such a degree of dissimilarity with American bankruptcy laws that Multicanal's directors could not meet the standards of § 304(c).[40] The note holders first urged that, because the APE was a form of a prepackaged reorganization that came under judicial review late in the approval process, the APE lacked sufficient judicial oversight.[41] The court's involvement was limited and began after the directors completed solicitation of votes in favor of the reorganization.[42] The bankruptcy court rejected this argument because the Argentinian procedures were similar to the controls and degree of judicial oversight established in the United States for solicitation and approval of prepackaged plans.[43] Section 304(c) does not require that foreign distribution schemes match the Bankruptcy Code. So the lack of the equivalents of a good faith standard in forming and executing the plan standard, the lack of a creditors' best interest test or an absolute priority rule, and the lack of avoidance actions to recover preferences and fraudulent conveyances under APE law would not prevent ancillary relief.[44]

Second, the objector protested several aspects of the voting procedures used in gaining approval of the APE plan.[45] The objector complained that placing all note holders in one group for voting purposes was unfair because the plan's treatment for the U.S. retail note holders provided only a limited cash payout, whereas the other note holders could elect to receive the same cash payout or new notes.[46] This argument failed because class voting under the law of the home jurisdiction is not necessary under § 304 and the classification and voting majority requirements of the APE system were closely in line with those of the Bankruptcy Code.[47] Although the APE also limited the payment election to holders voting for the plan, the limitation did not amount to coercion in voting in the sense that due process was denied to the objector.[48] The objector contested confirmation in the Argentine court and was denied relief.[49]

Voting procedures which were more cumbersome for "no" votes than "yes" votes and a method for determining numerosity that differed from U.S. law were not grounds to deny § 304 relief.[50] The bankruptcy court expressed considerable concern about a criminal investigation launched by one of Multicanal's directors against several representatives of the objector regarding its demands in the APE proceeding.[51] The threat of criminal prosecution

38. *Id.* at 392-94.
39. Multicanal II, *supra* note 21, at 491.
40. *Id.* at 503.
41. *Id.* at 503-04.
42. *Id.* at 504.
43. *Id.* at 504-06.
44. *Id.* at 506, 508-09 (discussing 11 U.S.C. §§ 1129(a)(3), 1129(a)(7), and 1129(b)).
45. *Id.* at 509.
46. *Id.* at 510.
47. *Id.* at 510-11.
48. *Id.*
49. *Id.* at 512.
50. *Id.* at 513-14.
51. *Id.* at 516.

in a home court jurisdiction would be contrary to recognition under § 304.[52] Accordingly, the court required that Multicanal provide justification for the charges before the court would enter a final order granting § 304 relief.[53]

The objector found some additional success in its third argument against § 304 relief, namely that the APE plan only provided for a limited cash distribution for retail note holders, whereas all other holders could elect between the cash payment or from one of two new series of notes.[54] Multicanal's directors justified the disparate treatment as a means to avoid compliance hurdles under U.S. securities law that would have been necessary upon the issuance of the substitute notes.[55] Regardless of the justification, the bankruptcy court concluded that the differing treatment for the U.S. retail note holders constituted discrimination outside of the boundaries of § 304 and was short of the standards required by 304(c)(1), (2) and (4).[56] The bankruptcy court conditioned the entry of a final order on § 304 relief by requiring Multicanal to take steps to eliminate the discrimination.[57]

The bankruptcy court easily decided to dismiss the objector's involuntary proceeding. The continuation of the involuntary case would be contrary to § 304's goals of avoiding piecemeal distribution of the estate by allowing one group of creditors to gain an advantage.[58] The APE was nearing its conclusion and Multicanal's only asset in the United States was a bank account containing $9,500. This account provided a questionable nexus to the United States to allow the court to assert personal jurisdiction over the company.[59]

The bankruptcy court granted a preliminary injunction to last until the court received the additional information concerning both the criminal proceedings commenced in Argentina, as well as the proposed remedy for the discrimination against the U.S. retail note holders.[60] The docket in the Southern District of New York reveals that the court entered both a Final Order and a Memorandum Opinion on January 6, 2005, giving full force and effect to the APE proceeding in the United States, granting a permanent injunction against creditors who would take any action contrary to the APE proceeding, and dismissing the involuntary proceeding.[61]

C. In re Globo Comunicacoes E Particpacoes S.A.

In *In re Globo Comunicacoes E Participacoes S.A.*, a group of creditors appealed an involuntary petition in district court that the bankruptcy court had previously dismissed.[62] The district court reversed the bankruptcy court's decision and remanded for further proceedings.[63] The putative debtor, referred to as "Globopar" by the district court, was a producer

52. *Id.*
53. *Id.*
54. *Id.* at 516-17.
55. *Id.* at 517-18.
56. *Id.* at 518.
57. *Id.* at 520.
58. *Id.* at 521.
59. *Id.* at 522-23.
60. *Id.* at 523.
61. *See* Order Signed on 1/6/2005 Granting Section 304 Petition and Issuing Permanent Injunction and Dismissing Involuntary Petition, In re Multicanal S.A., 314 B.R. 486 (Bankr. S.D.N.Y. 2004) (Nos. 04-10280, 04-10523).
62. *See* In re Globo Communicacoes E Participacoes S.A., 317 B.R. 235, 240 (S.D.N.Y. 2004).
63. *Id.*

of television programming and held the vast majority of its assets in Brazil.[64] The petitioning creditors were among the holders of $750 million worth of bond debt.[65] Globopar also carried approximately $200 million of revolving credit with various U.S. and international banks.[66] The Brazilian monetary devaluation in 2002 ultimately led to Globopar's default on the debt.[67] Globopar then entered into consensual restructuring negotiations with committees representing the bonds and the banks, but three bondholders later broke away and filed the involuntary bankruptcy petition in the Southern District of New York on December 11, 2003.[68]

Globopar responded by contesting the court's jurisdiction and seeking the petition's dismissal.[69] The bankruptcy court held a single hearing on February 19, 2004, and dismissed the involuntary petition for several reasons, including the potential awkwardness of an involuntary debtor in possession being left to administer an estate and the paucity of Globopar's U.S. assets and operations.[70] The bankruptcy court also sustained Globopar's argument that the Brazilian courts would not recognize any judgments or orders issued in the involuntary proceeding, thus preventing a U.S. court from assembling and managing the debtor's assets.[71] The bankruptcy court made two further determinations based on the instruments governing the bond issue. First, the court concluded that Globopar's consent to New York jurisdiction in the bond instruments extended only to lawsuits enforcing the bond debt, and did not constitute consent to bankruptcy jurisdiction.[72] The court also determined that certain "no action" clauses in the trust deeds associated with the bonds rendered the petitioning creditors' involuntary petition an abuse of the bankruptcy process, thus warranting dismissal under 11 U.S.C. § 105.[73] The bankruptcy court believed the involuntary petition was an effort to circumvent the need to solicit the support of either additional creditors or the trustee of the notes in order to enforce Globopar's obligations under normal circumstances.[74]

On appeal, the district court reversed the bankruptcy court's dismissal of the voluntary petition and remanded the case for further proceedings.[75] The district court disagreed with virtually all of the conclusions reached by the bankruptcy court that led to dismissal pursuant to § 105.[76] First, the district court determined that the involuntary petitions did not constitute an abuse of process that could be remedied under § 105 practice.[77] No abuse was present because the involuntary petition was neither patently fraudulent nor clearly prohibited by the Bankruptcy Code.[78] The "no action" clauses in the bond instruments, when

64. *Id.* at 240-41.
65. *Id.* at 242.
66. *Id.*
67. *Id.* at 242-43.
68. *Id.* at 243.
69. *Id.*
70. *Id.* at 244.
71. *Id.*
72. *Id.*
73. *Id.* at 244-45.
74. *Id.*
75. *Id.* at 235.
76. *Id.* at 259.
77. *Id.* at 247-48.
78. *Id.* at 247.

read with the rest of the instruments' text, were ambiguous, and this ambiguity led the bankruptcy court to err in its legal conclusion that the clauses affirmatively barred the filing of the petition.[79] Instead the text of the "no action" clauses did not clearly prohibit the petitioning creditors from filing the petition without the consent of the trustee of the notes and any ambiguity should have been the subject of more evidence introduced into the bankruptcy court's record.[80]

The bankruptcy court also erred in determining, without holding any evidentiary proceedings, that Globopar could not qualify as an involuntary debtor. The record was incomplete as to the extent of Globopar's interest in a U.S. bank account containing $32,000, but only a nominal amount of property is required under § 109 of the Bankruptcy Code for a foreign corporation to qualify as a debtor; therefore, the bank account alone may have been sufficient.[81] The district court also disagreed with the bankruptcy court's reticence at the awkwardness of an involuntary debtor in possession by noting that § 303 specifically authorizes petitioning creditors to commence involuntary proceedings under Chapter 11.[82]

The district court found little merit in the bankruptcy court's conclusion that a U.S. bankruptcy court could not grant effective relief to Globopar's creditors because of both the perceived inability to subject all of Globopar's assets to the U.S. bankruptcy court and the anticipated lack of cooperation from Brazilian courts.[83] The district court believed the bankruptcy court reached this conclusion without having engaged in any "sustained analysis regarding its ability to subject Globopar to personal jurisdiction in matters related to the petition, and without evaluating whether it could in fact grant effective, if not perfect, relief to creditors. . . ."[84] Congress intended bankruptcy proceedings launched in the United States to have global reach as evidenced by, for example, the inclusion of the debtor's property "wherever located" as property of the estate under § 541.[85]

The extraterritorial extension of jurisdiction over a debtor's assets remains consistent with due process under the U.S. Constitution once a bankruptcy court establishes in personam jurisdiction over the debtor.[86] Contrary to the conclusions reached by the bankruptcy court in *Multicanal II*, the district court concluded that the focus of the inquiry on whether to extend the bankruptcy court's jurisdiction does not center on the current location of the debtor's assets but instead examines the nature and extent of the debtor's contacts with the U.S.[87] Even if the bankruptcy court could neither extend its jurisdiction to all of Globopar's creditors, or obtain the cooperation of the Brazilian court, the bankruptcy court was obligated to exercise all of the jurisdiction given to it (aside from or before any considerations of comity).[88] Accordingly, the district court included among its recommendations for remand proceedings an instruction that the bankruptcy court examine the extent of Globopar's contacts with United States and whether the exercise of personal jurisdiction over

79. *Id.* at 248.
80. *Id.* at 248-49.
81. *Id.* at 249.
82. *Id.* at 249-50.
83. *Id.* at 250.
84. *Id.*
85. *Id.*
86. *Id.* at 251.
87. *Id.* at 252.
88. *Id.* at 253.

Globopar would be reasonable under the circumstances.[89] The jurisdictional determination should include an examination of Globopar's consent to New York jurisdiction in the relevant bond instruments. Despite the defects in the bankruptcy court's dismissal of the petition, the district court noted that the involuntary petition might be ripe for dismissal either under abstention pursuant to § 305 or on the grounds of forum non conveniens, and therefore directed the bankruptcy court to examine these aspects upon remand.[90]

D. In re Yukos Oil Company; Yukos Oil Company v. Russian Federation et al.

As was widely reported in the media, in December of 2004, Yukos Oil Company faced the imminent sale of its principal producing assets through a tax foreclosure sale scheduled by the Russian government.[91] Yukos filed, simultaneously, a voluntary Chapter 11 petition in the Southern District of Texas and an adversary proceeding against both the Russian Federation and several potential lenders believed to be prepared to finance the bidder(s) who would be participating in the Russian tax sale.[92] Yukos filed a motion seeking a temporary restraining order (TRO) against the Russian Federation and the lenders to halt the sale. Thus, the bankruptcy court conducted an emergency hearing on December 16, 2004.[93]

The bankruptcy court's opinion first examines whether jurisdiction existed for the bankruptcy case. Yukos claimed the seizure and sale of its production assets was improper under Russian law, and that it was entitled to the arbitration of its tax claims.[94] Yukos did not request that the bankruptcy court adjudicate the underlying tax claims; instead, the main basis of Yukos' TRO request was its need for an injunction lasting a few days so Yukos could obtain authority from shareholders to commence a plenary proceeding in Russia.[95]

Yukos claimed the Texas court possessed jurisdiction based on a $2 million Texas bank account, a $6 million retainer held by its Texas lawyers, and the fact that 15 percent of the company's shares were held by U.S. investors.[96] Citing *Aerovias* and *Globopar*, the Court recognized the low threshold of property located in the United States necessary for an entity to qualify as a debtor under § 109 and thus obtain jurisdiction of the U.S. bankruptcy court.[97] The bankruptcy court concluded that it had jurisdiction to hear the adversary proceeding and the request for emergency injunctive relief.[98]

The bankruptcy court concluded that Yukos had met the elements necessary for the entry of a TRO. First, the bankruptcy court concluded that Yukos demonstrated a substantial likelihood of success on the merits in its challenge to the validity of the assessed taxes, even though the bankruptcy court recognized the "exceptional importance" of deference to another state's judicial determinations.[99] Second, based on the testimony concerning the an-

89. *Id.* at 257.
90. *Id.* at 255-59.
91. In re Yukos Oil Co., 320 B.R.130, 132 (Bankr. S.D. Tex. 2004). A number of the pleadings from the bankruptcy case and the adversary proceeding are *available at* www.yukosbankruptcy.com.
92. *Id.*
93. *Id.*
94. *Id.* at 133.
95. *Id.*
96. *Id.* at 132.
97. *Id.*
98. *Id.* at 133.
99. *Id.* at 136.

ticipated bidding level in the tax auction, the court found a substantial threat of irreparable injury due to the likelihood that their assets would be sold for far less than the true value.[100] Third, the court held that the public interest would not be disserved by delaying the tax sale when compared to the value in seeking vindication of investor's rights and the sanctity of international commercial law.[101]

The tax sale ultimately proceeded despite the TRO, as was widely reported by the general media.[102] The Yukos' main bankruptcy case was dismissed on February 24, 2005, and Yukos sought to overturn the dismissal.[103] The motion practice and range of issues taking place in the Yukos' bankruptcy and the adversary proceeding will surely be the subject of significant future discussion.

III. Conclusion

The cases reported during 2004 stand as the potential foundations for the maintenance of plenary proceedings in the United States for enterprises that largely conduct their operations and maintain most of their assets outside of U.S. borders. Such an exercise of jurisdiction lies at the outer boundaries of, or perhaps just beyond, the prevailing notion of modified universalism. Although the *Multicanal* decisions demonstrate the limitations of launching a plenary proceeding in the United States in direct competition to a similar proceeding in a debtor's home jurisdiction, *Aerovias* and *Globopar* demonstrate the acceptance of a plenary proceeding in the United States. *Aerovias* and *Globopar* also show the willingness of U.S. courts to maintain plenary proceedings in spite of concerns about the effectiveness of the proceedings in the home jurisdiction as both courts overcame concerns about the enforceability of the results of the Chapter 11 proceeding in the home jurisdiction. *Globopar and Yukos* also show the limitations to the maintenance of a plenary proceeding, considering the *Globopar* court's favorable discussion of the possibility that the United States could be ruled to be an inconvenient forum and considering the practical limitations of the reach of the injunction issued by the *Yukos* court and the ultimate dismissal of the case. The *Multicanal* and *Yukos* cases are both the subject of appeals, and, in *Globopar*, the bankruptcy court as of this writing has yet to issue an opinion on remand. If the debtors and creditors continue to prosecute these cases on appeal, significant developments could occur in 2005 concerning the reach of U.S. courts in serving as a central forum of global insolvencies.

100. *Id.* at 137.

101. *Id.* at 137-38.

102. *See generally*, BBC News, *Yukos Seeks Action on Sale* (Dec. 22, 2004), *available at* http://news.bbc.co.uk/1/hi/business/4117271.stm; China Daily, *Yukos Awaits Russia's Next Move After Mystery Sale* (Dec. 20, 2004), *at* http://www2.chinadaily.com.cn/english/doc/2004-12/20/content_401786.htm; Elise Labbot, *US Warns Russia Over Yukos Sale* (Dec. 23, 2004), *at* http://www.cnn.com/2004/BUSINESS/12/22/russia.yukos.rosneft/index.html.

103. *See* Memorandum Opinion, *In re Yukos Oil Company*, 320 B.R. 130 (Bankr. S.D. Tex. 2004) (Nos. 04-47742).