IAN FLETCHER INTERNATIONAL INSOLVENCY MOOT COMPETITION 2026

NUZILIA BANKRUPTCY COURT

In the matter of: Aqualis Agribusiness Corp., Aqualis Utopian Ltd., Aqualis Oriental Ltd., Aqualis SeaFoods Ltd. **Debtors**	
v.	**Case No.: 26-12706**
The Association of Environmental Victims of Extravaganza **Creditor**	

SUBMISSION FOR RESPONDENT

REPRESENTED BY TEAM 14

A. THE UTOPIAN PROCEEDING DOES NOT QUALIFY FOR RECOGNITION UNDER CHAPTER 15 OF THE NUZILIAN INSOLVENCY LAW.

1. The Foreign Representative (FR) has no Locus Standi to apply for Legal Recognition.

1.1. §101(23)[1] defines the term 'foreign proceeding' as a 'collective judicial or administrative proceeding'. A collective proceeding is designed to provide equitable treatment to creditors, by treating similarly situated creditors in the same way, and to maximize the value of the debtor's assets for the benefit of all creditors.[2]

1.2. Courts construing §101(23) have established seven criteria to be established by party seeking relief under Chapter 15.[3] One of which is being 'collective in nature'.[4] For a proceeding to be collective within the meaning of section 101(23), it must be instituted

[1] 11 U.S.C. §101(23).
[2] In re Ashapura Minechem Ltd., 480 B.R., 129, 136 (S.D.N.Y 2012).
[3] In Re Betcorp 400 B.R. 266, 277 (Bankr. D. Nev. 2009).
[4] In re ENNIA Caribe Holding N.V., 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018).

for the benefit of creditors generally rather than for a single creditor or class of creditors.[5]

1.3. The Utopian reorganization plan is unjust as tort claims are not paid in full, and their payment is scheduled without interest or monetary adjustment even though the tort claims and trade claims (suppliers' claims) fall within the same priority class.[6] Hence, several creditors from Extravaganza and Nuzilia are disadvantaged in the Utopian plan.

2. <u>The Utopian Proceeding does not qualify as a foreign main proceeding (FMP).</u>

2.1. FMP takes place in a debtor's Centre of Main Interests (COMI).[7] The concept of a debtor's centre of main interests is fundamental to the operation of the Model Law.[8] Essentially, the location of COMI is supposed to be a place where the central administration of the debtor takes place, readily ascertainable by creditors.[9]

The presumption of COMI under Chapter 15 is a rebuttable presumption.

2.2. §1516[10] or Article 16(3) of the Model Law on Cross Border Insolvency (MLCBI)[11] presumes debtor's place of registration is debtor's COMI. However, such a presumption is rebuttable in nature. This presumption can be rebutted by circumstances as of the time that a debtor files its Chapter 15 petition.[12]

COMI should be determined on a debtor-by-debtor basis.

2.3. Additionally, when there is a group of companies applying for reorganization, COMI must be determined on entity-by-entity basis.[13] Each debtor's COMI must be examined separately, rather than the enterprise group, for purposes of chapter 15 recognition.[14]

2.4. In the landmark case of re Servicos de Petroleo Constellation S.A,[15] though the Constellation Group was discussed as a group entity throughout the case, the Court eventually granted recognition on an individual debtor by debtor basis.

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[5] In re British Am. Ins. Co. Ltd., 425 B.R. 884, 902 (Bankr. S.D. Fla. 2010).
[6] Problem [26].
[7] 11 U.S.C. §1502(4).
[8] UNCITRAL Model Law Cross-Border Insolvency with Guide to Enactment 2013 (GE) [144].
[9] Ibid.
[10] 11 U.S.C. §1516.
[11] MLCBI 1997, Article 16.
[12] Re: Iovate Health Sciences International Inc, 25-11958-mg (Bankruptcy Southern Dist. N.Y. 2025).
[13] In re OAS S.A., 533 B.R. 83, 92 n.8 (Bankr. S.D.N.Y. 2015).
[14] In re Black Press Ltd., No. 24-100044 (MFW) (Bankr. D. Del. Feb. 14, 2024).
[15] In re Servicos de Petroleo Constellation S.A., 600 B.R. 237, 244 (Bankr. S.D.N.Y. 2019).

2.5. Aqualis Oriental Ltd., though a part of reorganization proceedings was incorporated in Extravaganza with assets and operations located in Extravaganza.[16] Moreover, the Company's Board of Directors consist exclusively of Extravaganza citizens.[17] Further, company is also subjected to financial reporting and accounting regulations.

2.6. Similarly, Aqualis Occidental Foods LLC was incorporated in Nuzilia and is responsible for import of the group in Nuzilian states.[18] Further, the Company operates through Nuzilian bank account. Hence, when determined on a debtor-by-debtor basis; both these company's COMI fall outside Utopia.

The 'Nerve Centre' of Aqualis Group is not in Utopia.

2.7. U.S. Courts have now and again relied upon the 'nerve-centre' test to decide upon the COMI of a company. COMI inquiry must focus on the location of debtor's 'nerve centre'.[19] Nerve centre refers to the 'place where debtor's activities are directed and controlled, in a manner ascertainable by third parties.'[20]

2.8. According to this test, COMI is the place where the debtor conducts the administration of its interests on a regular basis.[21] The court also applied this concept in the case of re Loy wherein COMI was analogised to the "nerve centre" concept employed in corporate jurisdiction, i.e., where management and policy decisions are made.[22]

2.9. The core operations of Aqualis Agribusiness Corp. were relocated to Extravaganza in 2010.[23] By 2024, all its fish farms were closed in Utopia with approximately 80% workforce being laid off.[24] Hence, the nerve centre of Aqualis Group cannot be Utopia.

3. <u>The Aqualis Group is engaging in 'forum shopping' through re-organisation proceeding.</u>

[16] Problem [10].
[17] Ibid.
[18] Ibid.
[19] Morning Mist Holdings v. Krys, 714 F.3d 127, 137 (2d Cir. 2013).
[20] Ibid.
[21] In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007).
[22] In re Loy, 380 B.R. 154, 162 (Bankr. E.D. Va. 2007).
[23] Problem [7].
[24] Problem [8].

3.1. It is established that a court could refuse to grant recognition if it was convinced a foreign decision was the result of corruption.[25] Reorganization should not be used by a debtor to evade a class of creditors. Improper forum shopping[26] and bad faith[27] have been upheld as a valid ground for non-recognition.

3.2. The group has performed forum shopping while applying for reorganization proceedings in Utopia. Applying the tests as recognised by Nuzilian courts, COMI of the group is no longer Utopia and hence an appropriate forum to file such a reorganization proceeding would be Extravaganza or Nuzilia.

4. Thus, we urge this court to declare that:

4.1. FR has no locus standi to apply for legal recognition.

4.2. Utopian proceeding is not an FMP.

4.3. Aqualis has engaged in forum shopping.

4.4. Utopian Proceeding cannot be recognised.

[25] Gerova Financial Group, Ltd., 482 B.R. 86, 94 (Bankr. S.D.N.Y. 2013).
[26] Octaviar Administration CLOUT 1483.
[27] Perry Koplik 357 BR 213.

B. THE RELIEF SOUGHT, PARTICULARLY THE ENFORCEMENT OF THE PLAN AND THIRD-PARTY RELEASES, SHOULD BE DENIED.

5. Enforcement is discretionary, recognition does not compel enforcement.

Article 21 relief is permissive, not mandatory.

5.1. Article 21[28] provides that the court "may grant" relief following recognition, not "shall grant." This discretionary language preserves judicial authority to refuse enforcement where appropriate, even after recognition is granted.

5.2. Courts have granted recognition but denied enforcement where such enforcement would be contrary to public policy.[29] The court must independently assess whether enforcement serves justice.[30]

5.3. Courts must exercise caution when enforcement would extinguish rights of local victims or contravene domestic legal principles.[31] Nuzilia's court retains full discretion to deny enforcement where public policy, fairness, or justice require.

6. Enforcement of the Utopian plan would be manifestly contrary to Nuzilia's public policy.

Article 6 permits refusal of enforcement where public policy is violated.

6.1. Recognition is subject to the public policy exception under Article 6 of the Model Law[32] and §1506.[33] This exception is grounded in domestic law and interpreted in accordance with national sensibilities.[34] While public policy is restricted to only the most fundamental policies, it provides essential protection against serious impingement of constitutional or statutory rights.[35]

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[28] UNCITRAL Model Law on Cross-Border Insolvency, art. 21.
[29] *In re Vitro, S.A.B. de C.V., 2012 Bankr. LEXIS 2682, 30–31 (Bankr. N.D. Tex. June 13, 2012).*
[30] Re Zetta Jet Pte Ltd [2018] SGHC 16 [45--48] (Sing.); In re Condor, 627 B.R. 366, 388 (Bankr. S.D.N.Y. 2021).
[31] Ibid.
[32] UNCITRAL Model Law on Cross-Border Insolvency, art. 6.
[33] 11 U.S.C. § 1506.
[34] UNCITRAL Judicial Perspective on Cross-Border Insolvency (2013); UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment 2013 (GE).
[35] UNCITRAL Guide, supra note 8, [68–70]; In re PT Bakrie Telecom Tbk, 628 B.R. 859, 900 (Bankr. S.D.N.Y. 2021).

6.2. The public policy exception applies to individual effects of enforcement, protecting against serious impingement of statutory rights.[36] The Model Law's Modified Universalism allows flexible accommodation of local laws when fundamental principles are threatened.[37] The plan is under appeal[38] in Utopia on these exact grounds, discriminatory treatment and unlawful cross-guarantee cancellation, raising questions about finality and appropriateness for enforcement.

7. The plan violates multiple fundamental principles of Nuzilian law.

Non-consensual third-party releases violate established Nuzilian public policy.

7.1. Nuzilian insolvency law expressly prohibits non-consensual third-party releases, reflecting fundamental policy choices about personal accountability and creditor consent.[39] The Utopian plan's approval of such releases renders enforcement manifestly contrary to Nuzilian public policy under Article 6.

7.2. Courts must refuse recognition where foreign judgments conflict with fundamental domestic legal principles.[40] Bankruptcy Law has no authority to authorize such releases absent explicit statutory facilitation.[41] Enforcement would absolve wrongdoers without victim consent, contravening personal accountability principles. Commercial expedience cannot override constitutional protections even where releases are "integral."

7.3. In Harrington v. Purdue Pharma, the Court held non-consensual third-party releases violate the Bankruptcy Code. Petitioners claim Purdue Pharma is limited to Chapter 11. However, the Court's holding, that discharging non-debtor obligations without consent exceeds bankruptcy authority, reflects constitutional limits on bankruptcy power that apply equally to Chapter 15 recognition. While Chapter 15 operates under comity principles, comity cannot require Nuzilian courts to enforce mechanisms that violate fundamental bankruptcy law principles as articulated by the highest court.

The plan violates fundamental principles of access to justice and due process.

7.4. The Utopian plan extinguishes tort claims without consent or adjudication, violating access to justice principles.[42] Victims of environmental contamination, caused by

[36] In re Qimonda AG, 561 B.R. 456, 479–80 (Bankr. N.D. Cal. 2016).
[37] Rubin v. Eurofinance SA [2012] UKSC 46 [47–50]
[38] Problem [26].
[39] Clarifications [5].
[40] *supra* note 37.
[41] Harrington v. Purdue Pharma L.P., 603 U.S. 204, 227 (2024).
[42] Clarifications [37].

contaminated aquafeed,[43] pesticide misuse,[44] and inspector bribery,[45] lose their right to pursue civil liability claims against responsible entities.

7.5. Manifestly contrary encompasses denial of due process or violations of fundamental principles.[46] Relief must be refused where foreign proceedings fail to provide adequate procedural fairness or improperly extinguish rights without consent.[47] The Utopian proceeding failed through: (i) voting rules excluding unliquidated tort claims; (ii) 90% discounts while paying others fully; (iii) non-consensual releases. This combination collectively denied Extravaganza claimants meaningful access to justice.

7.6. Granting releases would undermine ongoing Nuzilian proceedings, usurping court jurisdiction over local torts. This extraterritorial overreach cannot be sanctioned under the guise of comity.[48]

7.7. Releases improperly affect entities outside reorganization. Aqualis Occidental Foods LLC, defendant in Nuzilian proceedings, was excluded from consolidation.[49] Yet releases extinguish claims against "shareholders, directors, officers, and affiliates," potentially shielding parent directors despite Occidental not being a debtor.

The plan discriminates unfairly against tort creditors.

7.8. The plan violates Article 13's equitable treatment principle.[50] Labor and supplier claims are paid in full,[51] while tort claims face a $10,000 cap, 90% write-off,[52] and delayed payment without interest. Extravaganza tort creditors face $100 million exposure,[53] resulting in $90 million losses while others receive full payment.

7.9. Enforcement must be refused where a plan "unfairly disadvantages certain creditors" or creates discriminatory classifications that shock the conscience.[54] All admitted Extravaganza plaintiffs voted against the plan but represented less than 1% of votes because most tort claims remain unliquidated and excluded.[55] This systematically

[43] Problem [11].
[44] Ibid.
[45] Problem [12].
[46] *supra* note 8, [68–70].
[47] Re Toft [2004] EWCA Civ 752.
[48] HIH Casualty & Gen. Ins. Ltd. v. Pluim Construction Pty Ltd. [1998] HCA 30 (Austl.).
[49] Problem [10 (d)].
[50] *supra* note 28, art. 13.
[51] Problem [20].
[52] Problem [21].
[53] Problem [13].
[54] *Supra* note 29, at 40
[55] Problem [25].

disenfranchised tort creditors. The 75% approval[56] is therefore meaningless as to their interests. Under Extravaganza insolvency law, tort and trade claims fall within the same priority class and must be treated equally.[57] A plan paying suppliers 100% while tort victims receive 10% shocks the conscience.[58] Article 6 permits refusal where foreign law produces such manifestly contrary results.

7.10. The plan unlawfully cancels the cross-guarantee previously granted by Aqualis Utopian Ltd., replacing it with a subordinated post-petition guarantee of $70 million. This replacement is illusory: subordination renders it worthless as pre-petition debt exceeds $38 million.[59] By the time priority claims are satisfied, no value remains. Under Extravaganza insolvency law, this cancellation is unlawful and deprives creditors of security.[60]

The plan violates environmental sovereignty and accountability.

7.11. Nuzilian law treats pollution liabilities as non-dischargeable. Civil liability claims arise from egregious violations, inspector bribery and compliance undermining, leading to criminal convictions. These represent accountability for intentional environmental destruction affecting hundreds, not commercial liabilities. Nuzilian law treats such liabilities as non-dischargeable due to fundamental public interests.[61] Enforcing the plan undermines regulatory sovereignty.

7.12. Aqualis Group strategically filed in Utopia,[62] where the parent is incorporated but operations relocated, to avoid Extravaganza law where harm occurred. Filing months after contamination disclosure demonstrates timing. Consolidation binds foreign subsidiaries to Utopian discharge rules.

7.13. Extravaganza claimants challenged the plan for violating Extravaganza's insolvency framework,[63] including unlawful cross-guarantee cancellation and unequal creditor treatment. These arguments are likely persuasive as a matter of Extravaganza's insolvency law. Enforcing a plan contravening the insolvency laws where harm

[56] Problem [26].
[57] Clarifications [26].
[58] Problem [21].
[59] Problem [22].
[60] Clarifications [14].
[61] Clarifications [5].
[62] Problem [17].
[63] Problem [26].

occurred would undermine international comity and the Model Law's cooperation principle.

8. <u>Enforcement would amount to extraterritorial overreach by Utopia.</u>

The Utopian plan improperly dictates outcomes for Nuzilian citizens.

8.1. Utopia's plan should not override Nuzilian law regarding local victims. While Aqualis Oriental Ltd. maintains cash collateral in Nuzilia,[64] this represents passive assets, not operations. The Aqualis Group has no operational presence.[65] Passive cash collateral does not establish sufficient nexus to justify extinguishing Nuzilian citizens' rights or imposing Utopian standards on Nuzilian proceedings.

8.2. Comity has limits and cannot require courts to abandon fundamental policy choices.[66] The Model Law preserves national interests through Article 6,[67] permitting refusal of relief where enforcement would be manifestly contrary to public policy.

8.3. While comity promotes cooperation, courts refuse comity when public policy, constitutional values, or victim rights are threatened.[68] Comity does not require enforcement contravening fundamental laws.[69] Protecting environmental victims' rights and access to justice outweigh efficiency gained by enforcing a discriminatory plan.[70]

9. Thus, we respectfully urge this Court to declare that:

9.1. **Enforcement of the Utopian plan is discretionary and may be denied.**
9.2. **The plan is contrary to Nuzilian public policy.**
9.3. **Non-consensual third-party releases are invalid.**
9.4. **The plan unfairly discriminates against tort creditors and victims.**
9.5. **Enforcement would undermine sovereignty and domestic regulatory accountability.**
9.6. **Recognition cannot permit extraterritorial overreach violating justice and due process.**

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[64] Problem [28].
[65] Problem [28].
[66] Lazard Bros. & Co. v. Midland Bank Ltd. [1973] 1 W.L.R. 1073 (appeal taken from Eng.).
[67] UNCITRAL Model Law on Cross-Border Insolvency, art. 6.
[68] *supra* note 28, art. 6.
[69] *supra* note 29, at 40.
[70] *supra* note 31.