

Passport to Relief

How Distressed U.S. Companies Are Restructuring Abroad

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If you were a CFO staring down a wall of unsecured notes maturing in eighteen months, would you automatically reach for Chapter 11? Increasingly, the answer is no. A growing number of U.S. companies are heading to London, Toronto, or Amsterdam to fix specific aspects of their balance sheets, then coming home to have U.S. courts enforce the result. This isn't an exotic fringe tactic deployed only by offshore holding companies. Fossil Group, a public company listed on the Nasdaq and based in Texas, blazed this trail with a Part 26A restructuring in the United Kingdom in late 2025. Others have followed the same playbook in an assortment of other jurisdictions. In an elevated interest rate environment and with significant corporate debt maturities on the horizon in 2026 through 2028, selective international restructurings of this type are likely to occur with increasing frequency.

The Surgical Strike

The primary appeal of foreign restructuring is precision and efficiency. Traditional Chapter 11 is a blunt instrument: File a petition and suddenly everything is on the table—loans, bonds, trade payables, leases, contracts, pension obligations, and more—and numerous constituents are *at* the table. Professional fees mount quickly and litigation frequently ensues. That's fine if the whole capital structure needs a reset or the business has systemic issues requiring the unique tools available under the Bankruptcy Code. But what if you have exactly one problem? What if it's only the 2026 unsecured notes that are keeping you up at night?

Foreign restructuring tools, such as the United Kingdom's Part 26A restructuring plan, Canada's Companies' Creditors Arrangement Act (CCAA), and the Dutch WHOA scheme, can operate more like a scalpel than a sledgehammer. Target the problem tranche, get bondholder approval, and leave everything else untouched. Trade creditors may never even know it happened.

Speed reinforces the appeal. Chapter 11 cases frequently run for many months or even years, with professional fee burn that can reach hundreds of millions of dollars in complex cases. U.K. and Canadian proceedings, on the other hand, frequently wrap up in just a few months. Court oversight is lighter. Disclosure requirements are less onerous. Voting mechanics are simpler. Litigation in the context of targeted foreign restructuring schemes is much less common than in Chapter 11. For issuers, that means less value leakage, less management distraction, and less reputational damage. For creditors, it means earlier clarity on recoveries, though sometimes with less procedural leverage than a U.S. case would afford.

The *Purdue* Effect

If speed and cost were the only drivers, this trend would be interesting but not transformative. The real accelerant is legal. In 2024, the U.S. Supreme Court's *Purdue Pharma* decision gutted the ability to obtain nonconsensual third-party releases in Chapter 11. Before that ruling, sponsors, directors, and officers could often be shielded from lawsuits as part of a reorganization plan, even without an explicit creditor vote in their favor. After *Purdue*, the door to nonconsensual releases is largely or entirely closed.

Abroad, the door is still open. Courts in the United Kingdom and Canada have shown a consistent willingness to sanction restructuring plans with broad third-party releases, provided the releases are fair, reasonable, and necessary to the restructuring. When those plans are later recognized in the U.S. under Chapter 15, American courts have declined to import *Purdue's* constraints even over public policy objections by the United States Trustee, enforcing the foreign orders as-is so long as public policy standards (which courts have routinely construed narrowly) and basic due process requirements are met. For sponsors, executives,

and boards who want comprehensive liability protection, this is no small thing.

Fossil Group: The Prototype

The Fossil Group restructuring became a market-defining moment. Fossil Group, a Texas-based publicly traded consumer accessories company, faced \$150 million of 7% senior unsecured notes maturing in 2026 that it could not refinance on acceptable terms.

Rather than filing Chapter 11, Fossil developed a targeted strategy to address only the problematic tranche of unsecured notes. First, the company quietly incorporated a new U.K. subsidiary, Fossil UK, in August 2025, and joined Fossil UK as a guarantor of the 2026 notes. The company next sought noteholder consent to amend the governing law of the notes from New York law to English law, explicitly disclosing that the purpose was to enable a foreign restructuring plan if an exchange offer failed. The transparency of that disclosure was important: English courts scrutinize jurisdictional engineering for signs of abuse, but the High Court was satisfied that this structure was legitimate.

The “stapled exchange” offered noteholders the option to participate in a \$32.5 million new-money offering of 9.5% first-out senior secured notes, or receive 7.5% second-out secured notes without the new-money premium. All noteholders also were to receive warrants. The exchange offer required 90% participation to close out-of-court, but only reached 72%. As a result, Fossil pivoted to the restructuring alternative.

Fossil UK proposed its Part 26A plan to the High Court on October 9, 2025. The plan required approval from 75% of *voting* creditors by value—not 75% of all outstanding notes, just the holders who showed up to vote. Approval came in at 99.99%. Two days later, the High Court sanctioned the plan. Two days after that, Judge Christopher Lopez of the Southern District of Texas recognized the Part 26A plan under Chapter 15 as a foreign main proceeding, granting it full force and effect in the United States.

The plan included nonconsensual third-party releases. The United States Trustee, which has objected to such releases in other Chapter 15 cases, filed no objection. The entire process, from exchange offer launch to U.S. recognition, took mere weeks.

O Canada

The U.K. is not the only foreign destination venue. Canadian CCAA proceedings have become a favored path for U.S.-based companies with meaningful Canadian ties.

The common thread is Chapter 15’s “center of main interests” (COMI) test. To obtain U.S. recognition of a foreign restructuring as a foreign main proceeding, a debtor must demonstrate that its center of main interests is located in the foreign jurisdiction. U.S. courts assess COMI as of the Chapter 15 petition date, not the date of incorporation, and they look at substance over form—where management sits, where decisions are made, where the restructuring is being run.

Recent cases illustrate how broad the COMI inquiry has become. In a May 2025 bench ruling in *Li-Cycle Holdings*, Judge Bentley of the Southern District of New York recognized Canadian CCAA proceedings as foreign main proceedings for three Delaware corporations, overruling the United States Trustee’s objection to recognition of CCAA proceedings of three U.S.-based entities as foreign main proceedings. The court pointed to suspended U.S. operations, Canadian-based restructuring officers, and a sale process managed out of Canada. The court also noted that the secured lender’s agreement to fund the sale process was conditioned on Chapter 15 recognition of the CCAA proceedings, and that the debtors “would likely have to liquidate at fire sale prices” without a recognition order. In *Iovate Health Sciences* (2025), Judge Glenn, also of the Southern District of New York, found a Delaware corporation’s COMI to be in Canada because

accounting, finance, HR, and management were all centralized in Ontario. In *Lion Electric* (2024), Judge Cleary of the Northern District of Illinois recognized Canadian proceedings for eight debtors, five of which had registered U.S. offices.

Canadian courts, like their U.K. counterparts, have been willing to approve third-party releases under a multi-factor reasonableness standard that is more permissive than post-*Purdue* Chapter 11. And U.S. courts have consistently enforced those releases through Chapter 15 recognition, without questioning whether *Purdue* should apply. One practical advantage unique to Canada: Restructurings are typically supervised by a court-appointed monitor in lieu of an official committee of unsecured creditors, which meaningfully reduces administrative costs and adversarial friction but essentially requires creditors to fend for themselves.

Restructuring Alternatives at a Glance

Feature	UK Part 26A	Canada (CCAA)	Chapter 11
Scope	Selective (down to a single tranche) or full restructuring	Frequently a full restructuring but can be narrower in scope	Full restructuring
Approval threshold (voting creditors)	75% in amount (no headcount test)	2/3 in amount + majority in number	2/3 in amount + majority in number
Timeline	3–4 months	3–6 months	12–24 months
3rd-party releases	Permitted	Permitted	Restricted post- <i>Purdue</i>
Absolute priority rule	Does not apply	Flexible	Applies
Cost	Low–moderate	Moderate	High

Note: WHOA (Netherlands) and Singapore IRDA schemes offer additional options with similar advantages; Cayman schemes remain widely used for offshore-structured debt.

What to Watch For

The early warning signs of a potential foreign filing often hide in plain sight, usually months before any formal proceeding is announced. The creation of a new foreign subsidiary, particularly one that quietly joins as a guarantor of existing debt with a near-term maturity, is the clearest tell. So is a consent solicitation asking to amend governing law provisions to specify foreign law. Retention of foreign restructuring counsel or other professionals is another signal that warrants attention.

For issuers, the strategic calculus has shifted equally. Governing law elections, guarantor structures, and consent thresholds are no longer boilerplate, but instead have become active negotiating points in new indentures. Sophisticated borrowers and their advisors are building foreign restructuring optionality into documentation from the outset, while sophisticated lenders are pushing back with protective covenants designed to limit it.

A Note on the Limits

Not every foreign filing sails through the Chapter 15 recognition process. Courts remain vigilant about artificial COMI manipulation, with one court describing the indicators of COMI manipulation as “insider exploitation, untoward manipulation, and overt thwarting of third-party expectations.” The Fossil UK structure survived because the governing law change was transparently disclosed in advance and agreed upon, the process was demonstrably fair, and the economic terms were independently defensible. That is, Fossil’s COMI essentially migrated to the United Kingdom through a series of transparent and consensual steps, not through unilateral manipulation. By contrast, a foreign subsidiary incorporated a week before

a restructuring announcement, with no employees, no contracts, and a retainer in a U.S. law firm's trust account as its lone jurisdictional hook might invite hard questions.

There is also the *ConvergeOne* wrinkle to consider. In a September 2025 decision, the District Court for the Southern District of Texas reversed confirmation of a Chapter 11 plan that gave an exclusive backstop opportunity to a subset of creditors, finding that exclusive economic opportunities constitute treatment of a claim and thus must be offered to all class members or subjected to a market test. The Fossil UK structure arguably skirted this issue by making the new-money opportunity technically available to all noteholders (even if, practically, smaller retail holders were unlikely to participate). Whether this distinction holds in future cases, and whether *ConvergeOne's* reasoning migrates into Chapter 15 jurisprudence, remains an open question.

Forum shopping isn't new. What is new is the sophistication and speed with which it is being executed and the creative use of foreign law and venue. For distressed companies, the global menu of restructuring options is becoming increasingly broad and appealing at a time when filing Chapter 11 has become very expensive. For creditors, that means paying attention to, and understanding, what's happening abroad even if your customer is based in the United States.

About the Author



Andrew Behlmann leverages his background in corporate finance and management to approach restructuring problems from a practical, results-oriented perspective. With a focus on building consensus among multiple parties that have competing priorities, Andrew is equally at home both in and out of the courtroom, and he has a track record of turning financial distress into positive business outcomes. Clients value his counsel in complex Chapter 11 cases, where he represents debtors, creditors' committees, purchasers, and investors.