

Delaware Bankruptcy Court Grants Injunctive Relief in Cross-Border Dispute

10/18/23



Selendy Gay achieved a total victory in Delaware Bankruptcy Court on behalf of Chilean businessman Álvaro Saieh Bendeck and several of his family members and business associates. In this cross-border dispute, the Selendy Gay team sought injunctive relief from claims brought by a creditor in a Chilean court that violated an injunction ordered by the Delaware court.

The bankruptcy court not only granted our motion for injunctive relief but also ordered the recovery of 100% of our clients' attorneys fees associated with bringing the action.

After Corp Group Banking S.A., a subsidiary of Mr. Saieh's conglomerate Corp Group, filed for chapter 11 bankruptcy protection in Delaware, our clients obtained releases from the debtors of all claims that could have been brought by the estate, and the court enjoined all parties from bringing any such claims in any venue. Claims brought by the Unsecured Creditors Committee during the bankruptcy proceedings were settled, but MBI Servicios, one of the creditors who sat on the UCC, later filed a querella with the Chilean public prosecutor which could have resulted in MBI Servicios obtaining a monetary recovery in excess of its ratable share of settlement proceeds distributed through the bankruptcy court.

Our team argued that the claims asserted in the querella (a criminal instrument that initiates a criminal investigation and allows a civil damages claim to proceed within the context of a criminal proceeding) were Estate Causes of Action that were released under the plan and subject to the injunction, in part because the querella was initiated by a private party, and in part because that party had the prospect of recovering damages.

In granting our motion, the court held that the claims in the querella were substantively identical to the ones the UCC sought and, in any case, therefore violated the injunction. The court ordered MBI Servicios to withdraw its querella within 14 days and to pay our clients' related attorneys fees and costs. The court's order prompted more than 70 other unsecured creditors, who had filed similar querellas, to swiftly withdraw them in tandem.

The team at Selendy Gay was led by partner David Flugman and included partners Philippe Selendy and Lauren Zimmerman and associates Masha Simonova and Manuel Valderrama.

Attorneys

- David S. Flugman
- Philippe Z. Selendy
- Lauren Zimmerman
- Manuel Valderrama

Practice

- Bankruptcy and Insolvency