



Kobre & Kim's International Private Client Contacts



Igor Margulyan

New York

igor.margulyan@kobrekim.com



Jason J. Kang

Shanghai / Hong Kong

jason.kang@kobrekim.com



Paul Hughes

Dubai

paul.hughes@kobrekim.com



Polly Wilkins

London

polly.wilkins@kobrekim.co.uk



**Victor D. V.
Clementino**

São Paulo

victor.clementino@kobrekim.com

New tools to defend against aggressive non-U.S. insolvencies

Non-U.S. persons can and do get targeted by entities from their home country trying to get an aggressive insolvency and asset forfeiture campaign recognized in U.S. courts. Below, our team lays out how a recent U.S. Bankruptcy Court decision has shed light on how targets in the U.S. can defend against non-U.S. insolvency proceedings and successfully defeat a recognition application.

Non-U.S. citizens currently in the U.S. may be targeted by an individual or entity in their home countries who seek to bring foreign insolvency proceedings against them in a U.S. court.

In *In re Natalia Pirogova*, the U.S. Bankruptcy Court for the Southern District of New York refused to recognize a Russian bankruptcy under Chapter 15 of the U.S. Bankruptcy Code because the creditor, a Russian bankruptcy trustee, had failed to meet his burden of showing the debtor—who moved from Russia to the U.S.—retained sufficient links to Russia. The Bankruptcy Court's decision subsequently was affirmed on appeal to a federal district court in New York.

These decisions open up new potential tools for parties to defend against non-U.S. insolvencies.

Removing the veil on corrupt foreign insolvency proceedings.

Cases like *Pirogova* originate from Russia, where aggressive insolvency proceedings and predatory corporate raids (referred to as *reiderstvo*) are common tools used in corrupt asset seizures.

Reiderstvo may involve corrupt or illegal tactics to wrest control of a business away from its owners, including bribery, involuntary insolvency proceedings, asset seizure, incarceration and even violence. Russia's criminal justice system has incarcerated thousands of business owners, sometimes at the behest of business rivals alleged to have paid corrupt police, prosecutors and judges.

When preparing a defense, it is important to identify and highlight evidence of the corrupt nature of proceedings in non-U.S. jurisdictions which may cause a U.S. court to deny recognition of those proceedings on public policy grounds.

Distancing yourself from the foreign jurisdiction.

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In *Pirogova*, the court denied recognition of the Russian bankruptcy mainly due to demonstrated lack of sustained ties between the debtor and Russia. The judge rejected tangential evidence, such as the debtor's membership in a Moscow yacht club, unpaid utility bills in Russia, or the fact that criminal and civil proceedings against the debtor were still pending in Russia.

Demonstrating that an individual has no continued presence or activity in the foreign jurisdiction can be a first line of defense against Chapter 15 recognition of foreign insolvencies in the U.S. That can be accomplished by ensuring the individual has minimized or even severed any business, economic or residential links to the foreign country before a Chapter 15 proceeding is filed.

Green cards, family members and assets: Documenting your life in the U.S.

In *Pirogova*, the debtor provided her green card, obtained in 2008, as evidence that she intended to leave Russia and establish a life in the United States.

By bolstering connections with the United States, individuals can demonstrate that they have cut ties with the foreign jurisdiction in question; for example, pointing out permanent residence and employment in the U.S., family members brought to America, or assets and creditors within the U.S.

As attempts to bring aggressive foreign asset forfeiture campaigns into the U.S. grow more frequent, *Pirogova* offers a blueprint on how potential targets can set up an effective defense. Understanding where the burden of proof lies, as well as the defensive options available, can help these targets increase their chances of defeating a Chapter 15 application.

About Kobre & Kim's International Private Client Team

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Our International Private Client team provides offensive and defensive cross-border litigation and crisis management strategies to ultra-high-net-worth individuals (UHNWIs) with global business interests, to preserve their assets, liberty and reputation. Our multidimensional approach to UHNWI disputes, which includes the deployment of both in-court and out-of-court strategies, is the premier solution for resolving business disputes and sovereign-driven investigations, tracing and recovering misappropriated funds, defending against asset attacks, as well as acquiring and strategically deploying information to provide UHNWIs with a commercial advantage in their disputes and investigations.

Our lawyers -- including an integrated group of U.S. litigators, offshore lawyers qualified in key jurisdictions, Hong Kong solicitors, and English barristers and solicitors -- litigate in courts around the world.