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## [CohnReznick LLP v. Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. \(In re Platinum Partners Value Arbitrage Fund L.P.\)](#)

United States District Court for the Southern District of New York

June 29, 2018, Decided; June 29, 2018, Filed

18cv5176 (DLC)

### Reporter

2018 U.S. Dist. LEXIS 109684 \*

In Re: PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (IN OFFICIAL LIQUIDATION), et al. Debtors in Foreign Proceedings. **COHNREZNICK** LLP, Appellant, -v- FOREIGN REPRESENTATIVES OF PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (IN OFFICIAL LIQUIDATION) and FOREIGN REPRESENTATIVES OF PLATINUM PARTNERS VALUE ARBITRAGE FUND (INTERNATIONAL) LIMITED (IN OFFICIAL LIQUIDATION), Appellees.

**Prior History:** [In re Platinum Partners Value Arbitrage Fund L.P., 583 B.R. 803, 2018 Bankr. LEXIS 1156 \(Bankr. S.D.N.Y., Apr. 17, 2018\)](#)

### Core Terms

Liquidators, bankruptcy court, discovery, Funds, arbitration, Workpapers, documents, parties, proceedings, arbitration clause, pending appeal, subpoena, courts, merits, discovery order, investigate, engagement, bankruptcy proceedings, discoverable, briefing, Appeals, audit, irreparable injury, cross-border, irreparable, insolvency, services, factors, cases

**Counsel:** [\*1] For the appellant: David M. Cheifetz, James Lawrence Bernard, Stroock & Stroock & Lavan LLP, New York, New York.

For appellee Foreign Representatives of Platinum Partners Value Arbitrage Fund (International) Limited (In Official Liquidation): Bruce R. Grace, Jack B. Gordon, Lewis Baach Kaufmann Middlemiss PLLC, Washington, DC.

For appellee Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation): Warren E. Gluck, Barbra R. Parlin, Holland & Knight LLP, New York, New York.

**Judges:** DENISE COTE, United States District Judge.

**Opinion by:** DENISE COTE

### Opinion

#### OPINION AND ORDER

DENISE COTE, District Judge:

This appeal arises out of the liquidations of a hedge fund incorporated in the Cayman Islands, Platinum Partners Value Arbitrage Fund L.P. (the "Master Fund") and its feeder funds, Platinum Partners Value Arbitrage Fund (International) Limited (the "International Fund"), and Platinum Partners Value Arbitrage Fund Ltd. ("Intermediate Fund," and, collectively, the "Funds"). A former auditor of the Funds, **CohnReznick** LLP ("**CohnReznick**"), has made a motion under *Rule 8007(b), Fed. R. Bankr. P.*, for a stay pending appeal of an order of the bankruptcy court requiring its compliance with a subpoena in a Chapter 15 bankruptcy [\*2] proceeding. For the following reasons, the motion for a stay pending appeal is denied.

The facts of this appeal are exhaustively discussed in the bankruptcy court's thorough and well-reasoned opinion, [In re Platinum Partners Value Arbitrage Fund L.P. \(In Official Liquidation\), 583 B.R. 803 \(Bankr. S.D.N.Y. 2018\)](#) ("April Order"), and therefore this decision describes only those facts particularly relevant here. Each of the three Funds is organized under the laws of the Cayman Islands and was managed by Platinum Management (NY) LLC ("Platinum Management"), which is headquartered in New York. In August 2016, following their failure to honor redemption requests from investors in a timely manner, the Master Fund and International Fund were placed into liquidation by order of the Grand Court of the Cayman Islands.

On October 18, 2016, two months after the liquidations began, the court-appointed liquidators of the Master Fund and International Fund ("Liquidators") sought recognition of the Cayman Islands liquidation proceedings for the two Funds in this district's bankruptcy court as foreign main proceedings under Chapter 15 of the Bankruptcy Code. The bankruptcy court consolidated the two cases on October 25, 2016, and on November 22, 2016, without [\*3] objection, granted recognition of the two liquidations as foreign main proceedings.<sup>1</sup>

On December 14, 2016, a federal grand jury in the Eastern District of New York indicted certain senior executives of Platinum Management on charges of conspiracy, securities fraud, investment advisor fraud, and wire fraud in connection with their management of the Funds. On December 19, 2016, the Securities and Exchange Commission ("SEC") filed a complaint against Platinum Management and the indicted individuals seeking relief for their allegedly fraudulent activities. The indicted individuals have apparently asserted their *Fifth Amendment* rights when questioned in proceedings concerning Funds-related matters.

Under Cayman Islands law, the Liquidators are obligated to collect, realize, and distribute the assets of the Funds, and are empowered to investigate the promotion, business, dealings, and affairs of the Funds, including the causes of their failure. Pursuant to the bankruptcy court's November 22, 2016 recognition order, the Liquidators were authorized to "examine witnesses, take evidence, and seek the production of documents within the territorial jurisdiction of the United States concerning the assets, affairs, [\*4] rights, obligations or liabilities of the [f]unds, the [f]unds affiliates and the [f]unds subsidiaries."

Appellant **CohnReznick** is a New York City firm that provides accounting, assurance, tax, and business advisory services. **CohnReznick** was engaged to provide audit services to the Funds for their last two full years of activity: 2014 and 2015. **CohnReznick** provided an audit letter for the 2014 year, but its services were terminated prior to the completion of the 2015 audit. **CohnReznick** was responsible for auditing roughly \$1.2 billion in assets managed by the Funds.

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<sup>1</sup>The Intermediate Fund was placed into liquidation in the Cayman Islands in 2017. Its Chapter 15 proceeding was consolidated with the other Platinum Partners proceedings on September 7, 2017, and its Cayman Islands liquidation was recognized as a foreign main proceeding on October 12, 2017.

The engagement letters between each Fund and **CohnReznick** contain an arbitration clause ("Arbitration Clause"), which reads in relevant part:

Any dispute, controversy, or claim arising out of or relating to the services or the performance or breach of the Agreements (including disputes regarding the validity or enforceability of this Agreement) or in any prior services or agreements between the parties shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("IICPR") Rules for Non-Administered Arbitrations . . .

Such arbitration shall be binding and final. In agreeing to [\*5] arbitration, the parties acknowledge that in the event of any dispute (including a dispute over fees) the parties are giving up the right to have the dispute decided in a court of law before a judge or jury and instead the parties are accepting the use of arbitration for resolution.

(Emphasis supplied.) The engagement letters also provide that they are to be governed by New York law.

As part of the investigation into the affairs of the Funds, the Liquidators sought documents from **CohnReznick** regarding its work for the Funds. Although **CohnReznick** produced some documents (described as the property of the Funds), it did not provide others, including its workpapers for the engagement. On August 31, 2017, the International Fund liquidators served a subpoena upon **CohnReznick**.<sup>2</sup> The subpoena sought, among other things, engagement documents, communications, representations, invoices, and workpapers (collectively, "Workpapers"). After negotiations over the scope of the subpoena failed, on January 25, 2018, the International Fund Liquidators filed a motion to compel, in which the Master Fund Liquidators joined. The bankruptcy court, after full briefing and oral argument, issued the April Order granting [\*6] the motion to compel on April 17, 2018. [583 B.R. 803](#).

On May 1, **CohnReznick** timely filed a notice of appeal. In its May 15 Statement of Issues on Appeal, **CohnReznick** asserts that the "central" issue is:

Whether a foreign debtor's representatives can use chapter 15 for wide-ranging discovery to investigate potential claims against a U.S. entity where the foreign representatives

(i) are bound by the debtor's agreements with the

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<sup>2</sup>The Master Fund Liquidators consented to the issuance of the subpoena by the International Fund Liquidators.

U.S. entity to arbitrate any such claims under rules providing for only limited discovery and (ii) lack the power under the laws of their home jurisdiction to take the requested discovery.

At a conference on May 23, which followed another round of briefing and oral argument, the bankruptcy court denied motions by **CohnReznick** to stay the April Order and to certify the order for direct appeal to the Second Circuit. *In re Platinum Partners Value Arbitrage Fund L.P.*, No. 16-12925-SCC, Dkt. 88 (Bankr. S.D.N.Y. May 23, 2018) ("Stay Opinion"). Those rulings were memorialized in two orders dated May 31.

In the Stay Opinion, the bankruptcy court addressed the four factors relevant to whether a stay should be granted pending appeal. On irreparable harm, the bankruptcy court found "that any [\*7] potential harm to **CohnReznick** in proceeding with discovery while its appeal is pending fails to overcome the weight of the other three factors," and that, "as a practical matter, this circumstance is no different from many other situations in which a stay is requested to free a party from doing something it maintains it should not be required to do or to be affected by." *Id.* at 96-97. On potential harm to other parties, the bankruptcy court said that "[w]ere a stay to be imposed, the Liquidators' ability to timely administer the liquidation of the Funds would be affected," and that **CohnReznick's** arguments for lack of harm to the Liquidators were either "patently untrue" or "without any basis of fact." *Id.* at 97-98. It further found that "the Master Fund Liquidators have a need for **CohnReznick's** audit workpapers in pursuing their wide-ranging investigation into the alleged one-billion-dollar fraud involving approximately one billion dollars in assets that were audited by **CohnReznick** directly before the commencement of the Funds' liquidation proceedings." *Id.* at 99. On substantial probability of success on appeal, the bankruptcy court concluded that **CohnReznick** "has failed to demonstrate a substantial possibility of [\*8] success on appeal." *Id.* at 102. Finally, with respect to the public interest, the bankruptcy court decided that "[t]he public interest here is best served by requiring compliance with the discovery order and permitting the Liquidators to continue their investigation unfettered so that they may pursue timely claims on behalf of creditors of the funds prior to the running of applicable statutes of limitations." *Id.* at 103-04. The bankruptcy court declined to set a schedule for production, however, "because **CohnReznick** was not given notice" of the Liquidators request, and because the bankruptcy court did not "want to be perceived as in any way pressuring the decision of whatever court you

go to next."

The appeal from the April Order was assigned to this Court on June 8. A June 11 Order set a briefing schedule, requiring all briefing on the merits appeal to be completed by July 16. On June 12, the parties each filed letters addressing a contemplated motion to stay the effect of the April Order pending appeal. A June 13 Order directed the filing of simultaneous briefs on June 18 and set oral argument on the motion to stay for June 20.<sup>3</sup>

At the June 20 conference, the parties agreed to further expedite briefing on [\*9] the appeal on the merits from the April Order. The briefing on the merits is fully submitted today and an Order of today denies the appeal.

At the June 20 conference, the Court ordered **CohnReznick** immediately to begin to prepare for production of the Workpapers so that there would be no delay should the bankruptcy court set a deadline for that production. **CohnReznick** represented that a partial production could begin immediately and the production could be substantially complete within two weeks of the June 20 conference. Pursuant to the parties' submissions to the bankruptcy court on June 21 and June 22, 2018, the bankruptcy court recently set a deadline of July 16, 2018 for the production of the Workpapers.

## **DISCUSSION**

The legal standard for granting a stay pending appeal of a bankruptcy court order requires application of the familiar four-factor test:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

[Nken v. Holder, 556 U.S. 418, 426, 129 S. Ct. 1749, 173 L. Ed. 2d 550 \(2009\)](#); see also [In re World Trade Center Disaster Site Litig., 503 F.3d 167, 170 \(2d Cir. 2007\)](#). The Second [\*10] Circuit has held that these criteria

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<sup>3</sup> No motion has been made in this Court for certification of a direct appeal to the Second Circuit Court of Appeals.

should be applied "somewhat like a sliding scale . . . more of one excuses less of the other." [Thapa v. Gonzales](#), 460 F.3d 323, 334 (2d Cir. 2006) (citation omitted).<sup>4</sup> The burden of establishing entitlement to a stay rests with the appellant. [Nken](#), 556 U.S. at 433-34. Each of the Nken factors will be addressed in turn.

### I. Likelihood of Success on the Merits

[CohnReznick](#) has not shown that it is likely to succeed on its appeal from the April Order, much less made a strong showing of a likelihood of success.<sup>5</sup> The Bankruptcy Court acted well within its authority in granting the Liquidators' motion to compel production of the [CohnReznick](#) Workpapers.

The relevant provisions of the bankruptcy laws give the bankruptcy court broad authority to compel discovery in aid of foreign bankruptcy proceedings. In 2005, Congress added Chapter 15 to the Bankruptcy Code through the Bankruptcy Abuse Prevention and Consumer Protection Act. *Pub. L. No. 109-8*, § 801, 119 Stat. 23 (codified at [11 U.S.C. §§ 1501-1532](#)). In doing so, Congress included an explicit statement of its purposes:

[t]he purpose of [Chapter 15 of the Bankruptcy Code] is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the [\*11] objectives of:

(1) cooperation between --

<sup>4</sup>Although there might be some doubt as to whether the Second Circuit's sliding-scale approach survives decisions such as [Nken](#) and [Winter v. Natural Resources Defense Council, Inc.](#), 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008), in the related context of motions for a preliminary injunction, the Second Circuit has reaffirmed the validity of the sliding-scale approach. See [Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.](#), 598 F.3d 30, 37-38 (2d Cir. 2010). Because the appellants' request fails regardless of the standard to be applied, it is unnecessary to address this issue further.

<sup>5</sup>[CohnReznick](#) argues that it need only show a "possibility" of success on appeal. That standard purports to derive from [ACC Bondholder Gp. v. Adelpia Comm's Corp.](#), 361 B.R. 337, 346 (S.D.N.Y. 2007), which in turn cites [Hirschfeld v. Bd. of Elec. in City of New York](#), 984 F.2d 35, 39 (2d Cir. 1993). [Hirschfeld](#) required that a possibility of success on the merits be "substantial," and [Nken](#) specifically rejects the mere "possibility" standard. [Nken](#), 556 U.S. at 434-35.

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade an investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

### [11 U.S.C. § 1501.](#)

In aid of these purposes, Chapter 15 provides for the recognition of foreign bankruptcy proceedings in United States courts. See [11 U.S.C. §§ 1515-1524](#); see generally [In re Fairfield Sentry Ltd.](#), 714 F.3d 127, 132-33 (2d Cir. 2013). Upon recognition of a foreign proceeding, and at the request of the foreign representative, the bankruptcy court is empowered to allow discovery to be taken. It can "provid[e] for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's affairs, rights, obligations, or liabilities." [11 U.S.C. § 1521\(a\)\(4\)](#). Under [§ 1521\(a\)\(7\)](#), the bankruptcy court may also [\*12] "grant[] any additional relief that may be available to a trustee," subject to exceptions not applicable here. [11 U.S.C. § 1521\(a\)\(7\)](#). Accordingly, it may also authorize foreign representatives to take discovery pursuant to [§ 542\(e\) of the Bankruptcy Code](#), and [Federal Rule of Bankruptcy Procedure 2004](#), each of which provides for discovery of the affairs of a debtor.

The bankruptcy court's April Order authorizing discovery of the Workpapers fits comfortably within this broad grant of powers. After all, discovery of an auditor's workpapers and related documents and communications for the two-year period immediately preceding a massive business failure of any entity would be highly relevant. Moreover, the decision by a court to allow discovery is a discretionary one. See [In re Barnet](#), 737 F.3d 238, 248 (2d Cir. 2013). Review of a discovery order is for abuse of that discretion. See [In re Lyondell Chem. Co.](#), 585 B.R. 41, 52 (S.D.N.Y. 2018).

Finally, Chapter 15 expresses a strong preference for providing assistance to foreign representatives in



appropriate circumstances. That congressional preference is not to be lightly disturbed.<sup>6</sup>

**CohnReznick** makes two arguments regarding the merits of the April Order and its likelihood of succeeding with its appeal from that order.<sup>7</sup> First, it argues that the Arbitration Clause precludes the discovery the Liquidators seek. Not so. The Arbitration Clause applies to a "dispute, controversy [\*13] or claim" between the Funds and **CohnReznick**. There is no such pending proceeding brought by the Liquidators against **CohnReznick**.<sup>8</sup> The bankruptcy court was clear that she was doing "nothing" to take away **CohnReznick's** right to have a dispute heard in an arbitral forum.<sup>9</sup> Stay Opinion at 25. In its submission of June 25, **CohnReznick** admits as much.<sup>10</sup>

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<sup>6</sup>As the bankruptcy court found, there were other compelling reasons to grant the Liquidators' motion to compel, including that the Funds' assets were largely U.S.-based and held by U.S. subsidiaries, the anticipated lack of cooperation by the Funds' executives in the Liquidators' investigation, and the alleged criminal fraud with respect to the Funds. [April Order, 583 B.R. at 821](#). While each of these factors underscores the soundness of the bankruptcy court's exercise of its discretion, even in their absence **CohnReznick** has failed to show that the bankruptcy court abused its discretion.

<sup>7</sup>While **CohnReznick** originally resisted production of its Workpapers by arguing principally that a Cayman Islands court would not order them to be produced, and secondarily referred to the Arbitration Agreement, in support of a stay and on appeal it relies principally on the existence of the Arbitration Agreement.

<sup>8</sup>It is telling that **CohnReznick** did not show below that in the event there were an arbitration between the Liquidators and **CohnReznick**, any specific category of documents covered by the April Order would not be required to be produced. It is difficult to imagine how the Workpapers would not be discoverable in any arbitrated dispute between **CohnReznick** and the Funds.

<sup>9</sup>If a claim were filed by the Liquidators against **CohnReznick**, then a bankruptcy court would likely apply the pending proceeding rule. See [In re Enron Corp., 281 B.R. 836, 840 \(Bankr. S.D.N.Y. 2002\)](#) ("the well-recognized rule [is] that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by [Rule 2004](#)"). Through that mechanism, the bankruptcy and arbitration regimes are, in the words of the Liquidators, "harmonized." Stay Opinion at 54.

<sup>10</sup>As **CohnReznick's** June 25 brief acknowledges, "To be sure, the [April] Order does not prevent **CohnReznick** from

The subpoena was a request for production of documents from a witness. The Liquidators seek the Workpapers to investigate the affairs of the Funds and in connection with any and all claims that the Funds' estates may have against any and all third parties. As the bankruptcy court observed, "**CohnReznick** and its employees are among the most significant witnesses" in connection with the bankruptcy proceeding and its Workpapers "are directly material" to that work. Stay Opinion at 99. Taken to its logical conclusion, if **CohnReznick's** argument prevailed, an accountant's workpapers would never be discoverable when the accountant's engagement letter contained an arbitration clause. Unsurprisingly, **CohnReznick** cites no support for that sweeping proposition. As the Liquidators observe, an arbitration clause does not immunize a witness from civil discovery. [\*14] Again, the bankruptcy court was entirely correct when it observed that its discovery order did not violate the Arbitration Clause. Stay Opinion at 23.

**CohnReznick's** primary response is to urge this Court to follow [In re Daisytek, Inc., 323 B.R. 180 \(N.D. Tex. 2005\)](#). [Daisytek](#) does not alter the preceding analysis.

In [Daisytek](#), a bankruptcy trustee sought an examination of Ernst & Young ("E&Y"), the debtor's auditor, explaining that the examination might support future claims against E&Y for accounting malpractice. [Id. at 183](#). E&Y resisted, arguing that such discovery would circumvent the arbitration provisions in its engagement agreement with the debtor. The district court remanded the case with instructions to the bankruptcy court to determine whether the trustee was seeking to bring state-law accounting malpractice claims based on pre-petition conduct or an action to avoid preferential and fraudulent transfers. It reasoned that the former could be brought in a forum other than a bankruptcy court, and the latter derived exclusively from the Bankruptcy Code. If the proceeding derived exclusively from the Bankruptcy Code, the bankruptcy court would have discretion to refuse to enforce an arbitration agreement and order discovery. By contrast, if the claim was a state law claim, [\*15] the arbitration clause would govern, and discovery related to those claims would have to proceed in accordance with an arbitration. [Id. at 187-88](#). The approach taken in [Daisytek](#) is not persuasive and has been criticized,<sup>11</sup> but it is in any

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having any claims by the Liquidators heard in an arbitral forum."

<sup>11</sup> See [In re Millennium Lab Holdings II, LLC, 562 B.R. 614,](#)

event inapposite. The Liquidators' request here is not analogous to the trustee's request in Daisytek. It seeks the documents pursuant to Chapter 15 and to investigate the affairs of the Funds and any claims the Liquidators might bring against any third parties.

**CohnReznick** makes one more attempt to show that it may succeed in overturning the April Order. It contends that the Liquidators would be unable to obtain the Workpapers under Cayman Islands law. Even if **CohnReznick** were correct (the bankruptcy court did not find it necessary to resolve that issue),<sup>12</sup> neither principles of comity nor any foreign discoverability requirement weigh against granting the Liquidators' motion to compel. In the analogous context of 28 U.S.C. § 1782 proceedings, the foreign discoverability rule has been roundly rejected, and this Court declines to impose such a rule for Chapter 15 proceedings. See Mees v. Buiter, 793 F.3d 291, 303 (2d Cir. 2015). The bankruptcy court's April Order was issued pursuant to the statutory authorization for discovery [\*16] provided in Chapter 15 and the ancillary provisions of the Bankruptcy Code and Rules. It did not issue its order pursuant to Cayman Islands law.

**CohnReznick** argues that a bankruptcy decision, In re Hopewell, 258 B.R. 580 (Bankr. S.D.N.Y. 2001), requires bankruptcy courts to determine whether documents would be discoverable under foreign law. Not so. Hopewell was issued before the passage of the law creating Chapter 15, which provided new statutory authority for bankruptcy courts to authorize discovery in cross-border insolvency cases. Hopewell involved a pending arbitration proceeding, and thus implicated the pending proceeding rule. Id. at 582. One of the key factors undergirding the decision in Hopewell was the distinction between locating and remitting assets, which is what the Liquidators seek to do here, and the administration thereof, which was what the debtor sought to do in Hopewell. Id. at 584-85. As Hopewell notes, even the predecessor to Chapter 15, 11 U.S.C. § 304, "would likely allow the court in an appropriate case to provide discovery in aid of the claim liquidation efforts of a foreign representative." Id. at 585. And, Hopewell notes that the law that eventually became Chapter 15

631 (Bankr. D. Del. 2016); In re Friedman's, Inc., 356 B.R. 779, 783-84 (Bankr. S.D. Ga. 2005).

<sup>12</sup>The bankruptcy court examined with care the parties' submissions regarding Cayman Islands law and found that it had "not been provided with evidence sufficient to enable it to conclude that Cayman law prohibits the discovery sought in the Subpoena." April Order, 583 B.R. at 815.

would "specifically permit a recognized foreign representative to examine witnesses and take evidence [\*17] regarding the debtor's assets, affairs, obligations, or liabilities." Id. (citation omitted).<sup>13</sup>

Even if a Cayman Islands court would not itself order production of the documents, Cayman Islands courts are receptive to evidence obtained through U.S. discovery proceedings. April Order, 583 B.R. at 816. Accordingly, **CohnReznick** has not shown that it is likely to succeed on the merits of its appeal.

## II. Irreparable Injury

**CohnReznick** has also failed to show irreparable injury in the event its request for a stay is denied. For example, **CohnReznick** has made no assertion that the documents sought by the Liquidators are privileged or otherwise protected by the trade secret or similar doctrine. As the bankruptcy court cogently explained below, a requirement to produce documents, at least absent a claim of privilege or sensitivity, is not generally the type of injury that is irreparable. See Stay Opinion at 96-97.

Moreover, as discussed above, **CohnReznick** did not provide any analysis or evidence to the bankruptcy court demonstrating that the Workpapers would not be discoverable in an arbitration, should one ever be conducted, [\*18] between these parties. It relies solely on the uncontroversial observation that discovery in arbitration is generally more limited than that allowed in bankruptcy proceedings and is subject to its own set of procedures. That unremarkable proposition does not suggest irreparable injury. **CohnReznick** had to demonstrate that specific categories of documents would not be producible, and that production of those documents would cause irreparable harm. It has not.

<sup>13</sup>**CohnReznick** also relies upon In re Condor Ins. Ltd., 601 F.3d 319, 326-27 (5th Cir. 2010), In re ABC Learning Centers Ltd., 728 F.3d 301, 306 (3d Cir. 2013), and an article, Allan L. Gropper, The Curious Disappearance of Choice of Law as an Issue in Chapter 15 Cases, 9 Brook. J. Corp. Fin. & Com. L. 57 n. 152 (2014). Neither case is contrary to the result here, but in any event both involve entirely different contexts. As for the Gropper article, although **CohnReznick** cites it for the proposition that a bankruptcy court in Chapter 15 must apply lex fori concursus -- the law of the jurisdiction where the main insolvency proceeding is pending -- the article in fact concludes that "[n]o U.S. case has so held" that lex fori concursus governs. Id. at 178.

**CohnReznick** asserts that it would suffer irreparable injury because the issuance of a stay would moot its appeal of the April Order. This does not constitute irreparable injury. While the Court of Appeals allows appeals from discovery orders in Chapter 15 proceedings as an exception of the final order rule for the reasons explained in [In re Barnet, 737 F.3d at 244](#), the right to appeal does not require a stay to be issued. A showing of irreparable harm requires more than the possibility of mootness, particularly because courts have the ability to fashion at least some form of relief if a discovery production order is reversed on appeal. See [United States v. Jicarilla Apache Nation, 564 U.S. 162, 169 n.2, 131 S. Ct. 2313, 180 L. Ed. 2d 187 \(2011\)](#).

The reversal of discovery orders by the Court of Appeals is understandably rare, given the broad discretion granted lower [\*19] courts in management of discovery. The issuance of a stay of discovery pending a decision on appeal is even rarer.

The sole case cited by **CohnReznick**, [In re Barnet](#), does not suggest a stay is appropriate here. In [Barnet](#), the bankruptcy court certified an appeal and the Court of Appeals stayed the entirety of the Chapter 15 proceeding while it addressed whether the debtor was statutorily authorized to proceed under that chapter. [Barnet, 737 F.3d at 241](#). No comparable issue is implicated by this appeal.

### III. Injury to Other Parties

The bankruptcy court correctly found that the Liquidators would "suffer substantial injury if a stay were granted." Stay Opinion at 97. The Liquidators are facing the expiration of certain statutes of limitations in November 2018, [id.](#) at 98, and further delay of the production of the documents will impair their ability to investigate and bring claims prior to the expiration of the limitations periods. [Id.](#) at 98-99. And, because of the criminal investigations and related proceedings against the former managers of the Funds, the Liquidators have few alternatives to obtain documents regarding the financial condition and affairs of the Funds but to seek documents from **CohnReznick**. [Id.](#) at 99. Among other things, the [\*20] Workpapers will assist the Liquidators in linking transactions that appear in the financial statements with assets in the management accounts, and reveal witness statements to the auditors. Stay Opinion at 21. Accordingly, this factor weighs strongly against granting a stay of the bankruptcy court's order pending appeal.

**CohnReznick** has no persuasive response to this analysis. It observed that the bankruptcy court did not set a final date for production even though it denied the motion for a stay. It nakedly asserts that the Liquidators' investigation of others will not be impeded because the **CohnReznick** papers reflect its own work and the Liquidators already have millions of other documents. These arguments may be swiftly rejected. The bankruptcy court repeatedly expressed its belief that a prompt production of the subpoenaed records was critical. See Stay Opinion at 98-99. The bankruptcy court has now set a July 16 date for production of the Workpapers.

### IV. The Public Interest

Finally, this Court agrees with the bankruptcy court that the purposes underlying Chapter 15 and the sound administration of bankruptcy proceedings weigh firmly against a stay of the bankruptcy court's order pending [\*21] appeal. The sound administration of justice in federal courts counsels against interference with a court's discovery orders. A stay on appeal of discovery orders delays litigation, adds uncertainty to the proceedings, and increases the costs of litigation. Stays are rarely issued, even in appeals of [§ 1782](#) proceedings. Staying discovery ordered by the bankruptcy court in a Chapter 15 proceeding should also be a rare outcome.

In the circumstances here, a stay would be particularly inappropriate. The U.S. Government investigations accuse the Funds and their managers of engaging in a massive fraud. Liquidators appointed by a foreign bankruptcy court are seeking assistance from this nation's courts. The Liquidators face imminent expiration of applicable statutes of limitations. The bankruptcy court is vested with broad discretion to grant access to discovery in order to fulfill the purposes of Chapter 15, and has exercised that discretion with great care.

### CONCLUSION

The June 12, 2018 motion for a stay pending appeal of the bankruptcy court's April 17, 2018 Order is denied.

SO ORDERED:

Dated: New York, New York

June 29, 2018

/s/ Denise Cote

DENISE COTE

United States District Judge

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