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English High Court Stays Proceedings in Cross-Border Uptier Dispute

By James R. Read and Clare Tanner*

In this article, the authors examine a recent English High Court judgment of particular relevance to note trustees and security agents involved in contentious restructurings, illustrating how the English courts may approach parallel restructuring litigation where issues of transaction validity, creditor status, and enforcement rights are closely intertwined across jurisdictions.

A recent English High Court judgment provides guidance for note trustees and security agents involved in cross-border liability management transactions, particularly where a New York law indenture sits alongside an English law intercreditor agreement. Although a case-management decision rather than a merits-based decision, its analysis is notable: it shows how English courts may manage parallel restructuring litigation where questions of transaction validity, creditor status and enforcement rights are closely intertwined across jurisdictions.

BACKGROUND

The dispute arose from a 2024 uptier transaction (Uptier) effected under an indenture (Indenture) followed by enforcement steps taken in 2025 pursuant to an intercreditor agreement (ICA). Certain creditors brought proceedings in New York challenging the validity of the Uptier and later commenced English proceedings challenging the distressed disposal under the ICA. The defendant company, Hunkemöller International BV, and the security agent applied for a stay of the English proceedings pending the outcome of the New York action.

THE JUDGMENT

Applying a single test—whether it is in the interests of justice to grant a case management stay—the High Court stayed the entire English claim until determination of the New York proceedings. The two actions were materially parallel because both involved overlapping issues as to the alleged breach of the Indenture. Allowing both actions to proceed in parallel would create a real risk of inconsistent judgments, duplication of evidence and costs, and an "ugly rush" to judgment. Further, the claim in the New York proceedings was governed by New York law and further advanced. These factors outweighed other considerations, such as prejudice to the claimants caused by delay before the determination of the English claim.

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The stay is not indefinite or unconditional: the court stayed the English claim until first-instance judgment in the New York proceedings, expressly granting permission for the defendants to seek a further stay pending any appeal and for the claimants to apply to vary or discharge the stay if there is a material change of circumstances, including significant delay in New York or specific prejudice to the claimants.

KEY POINTS

Exclusive Jurisdiction Clause in the ICA Did Not Preclude a Stay

The ICA contained an English exclusive jurisdiction clause. The claimants argued, amongst other things, that they could rely on it directly, but the judge rejected this on the basis of the "no look through" principle. The court held that, on the proper construction of the ICA, the registered holders rather than the beneficial owners were the noteholders. That defeated the claimants' attempt to anchor the English proceedings by way of third-party rights under the ICA, including its jurisdiction clause.

The court accepted that the ICA's exclusive jurisdiction and forum non conveniens clauses gave the claim a nexus with the jurisdiction of the English court and that the court had jurisdiction to grant negative declarations in relation to the enforcement steps taken under the ICA. This was a relevant factor when deciding whether to grant a case management stay, but it was not decisive. It was outweighed by the overlap with the New York proceedings, the risk of inconsistent outcomes and the fact that the New York case was already far more advanced than the English proceedings. Further, it was desirable for the New York court to decide the New York law claims.

The judgment highlights that an exclusive jurisdiction clause may establish nexus and it does not eliminate the English court's discretion to stay overlapping proceedings.

The English Law Challenge to Majority-Creditor Conduct Could Not Be Isolated From the New York Law Validity Issues

The claimants argued that, even if the New York proceedings were to continue first, the English court could still determine their claim that the majority creditors' conduct breached an implied English law constraint on the exercise of majority powers, referred to in the judgment as the "Assenagon Term." The court rejected that argument. It held that the claimants' challenge could not be cleanly separated from the New York law issues because it was closely bound up with valuation questions and with whether the Uptier was valid. The judge indicated he would have been prepared to stay only the Uptier claim and allow the claimants' challenge to proceed if he had been confident the two could be determined separately, but he concluded this was not possible and

instead stayed the whole English claim instead. An English law challenge to majority-creditor conduct may not be severable where its practical and economic consequences depend on the validity and effect of the underlying restructuring.

The Risk of Inconsistent Judgments and Uncertainty Regarding Issue Estoppel Strengthened the Case for a Stay

The risk of inconsistent judgments by the New York and English courts in relation to the Uptier claim was a strong reason for the court to grant a case management stay. Further, the prospect of issue estoppel played a meaningful role in the court's reasoning. Issue estoppel prevents a party from re-arguing an issue that has already been conclusively decided between the same parties in earlier proceedings. The judge accepted that a prior New York ruling on whether the Uptier breached the Indenture could give rise to issue estoppel in the English proceedings against the company on the core overlapping issues. That mattered because the overlap between the proceedings was not merely superficial; it meant that central issues could be conclusively determined in New York and then be relied upon in England.

At the same time, the court acknowledged considerable uncertainty about the precise scope and effect of any such estoppel. That uncertainty did not weaken the case for a stay. Rather, it reinforced the case for pausing the English proceedings, since otherwise the English court might later have to grapple with difficult questions about which New York findings were binding, including in relation to valuation and related issues, and whether any special circumstances affected the application of estoppel.

Valuation and Fairness-Opinion Evidence Were Relevant Beyond the Merits

The court treated the valuation issues as part of the reason why the English and New York proceedings could not readily be separated for case management purposes. The security agent relied on a financial adviser's opinion and related valuation material in support of the enforcement steps, while the claimants challenged both the security agent's ability to rely on that material and the substance of the valuation. The judge considered those issues to be closely connected with the wider dispute over the validity and effect of the Uptier, including the economic position of the minority noteholders. In that sense, the valuation disputes reinforced the court's conclusion that parallel proceedings created a real risk of overlapping factual and legal determinations. The judgment therefore shows that valuation questions in these cases may affect not only the merits but also whether related claims can sensibly proceed in different forums at the same time.

PRACTICAL OBSERVATIONS FOR NOTE TRUSTEES AND SECURITY AGENTS

The judgment highlights several points that may be relevant to note trustees and security agents involved in cross-border restructurings, particularly where the transaction documents divide governing law and jurisdiction across different forums. These points are as follows:

- Procedural disputes about sequencing and parallel proceedings may arise alongside substantive merits issues. Where a liability management transaction and any connected enforcement steps are challenged in different jurisdictions, early applications for stays or case management directions could materially affect how, when and in which forum related claims are determined.
- Registered-holder mechanics may affect who can rely on a jurisdiction clause, and the "no look through" principle can be critical in determining who may assert rights, give consents or instructions, authorise amendments, or invoke rights under the intercreditor agreement.
- Where related proceedings are progressing in another forum, issue estoppel considerations may need to be factored into procedural analysis and wider litigation strategy. Conduct-based challenges to enforcement can become entangled with challenges to the underlying transaction where valuation is disputed. Developments in related proceedings in other jurisdictions could be relevant to positions taken elsewhere, even where a party is not directly involved in those proceedings.

CONCLUSION

The judgment illustrates how parallel proceedings may affect the procedural landscape in contentious cross-border restructurings, particularly where the financing arrangements involve both a New York law indenture and an English law intercreditor agreement. Questions about registered-holder status, instruction and consent mechanics, and the sequencing of related proceedings may all influence where and when issues are determined.