

## **The Canadian RVO: the Answer to the Texas Two-Step Setback?**

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In *re LTL Management* marked the first bad faith dismissal of a Texas Two Step case. The Third Circuit held that based on the facts LTL was not in financial distress. At the same time, the other features of Chapter 11 filings - namely non-consensual third-party releases and their use in mass tort filings have caused some critics to argue "Against Bankruptcy", while waiting for the Supreme Court's decision in *Purdue*. The critics of the current uses of Chapter 11 and those in favour of the status quo both agree that reforms are needed to protect against the potential for abuse, especially as far as tort claimants are concerned.

This paper offers a Canadian intervention or case study of what such protective features may look like in a "reformed" Chapter 11. In particular, the Canadian experience with the Reverse Vesting Orders ("RVOs"), where entities can only file if they are insolvent is examined in detail. The potential abuses under Chapter 11 that are raised in the current American debates and litigation are mapped onto the Canadian experience with RVOs. In addition, the implications of the recent Supreme Court's decision in *Purdue* are taken into account.

A RVO allows for the transfer of liabilities or unwanted assets out of the debtor company into a newly formed entity or existing subsidiary, prior to transfer of the shares of the existing debtor company, cleansed of unwanted liabilities, to a purchaser. RVOs have gained popularity in the context of insolvency proceedings in Canada in highly regulated industries - such as cannabis and mining - where governmental licenses and permits or tax losses would be difficult or impossible to transfer in an asset sale. Notably, at least one RVO has been approved in the context of an American Canadian cross-border proceeding.