

## Granting Foreign Representatives Automatic Section 108 Relief in Chapter 15 Cases

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Cite as: *Granting Foreign Representatives Automatic Section 108 Relief in Chapter 15 Cases*, 4 ST. JOHN'S BANKR. RESEARCH LIBR. NO. 32 (2012)

### Introduction

In a matter of first impression, the Bankruptcy Court for the Southern District of New York (the “Court”) in *In re Fairfield Sentry Ltd.*<sup>1</sup> was confronted with the issue of whether the tolling provisions of section 108 of the Bankruptcy Code (the “Code”) are automatically available to Foreign Representatives<sup>2</sup> in chapter 15 cases. As written, section 108(a) of the Code gives trustees, rather than Foreign Representatives, a minimum two-year extension from when the order for relief is entered to commence claims in the interest of the debtor’s estate.<sup>3</sup>

However, in *In re Fairfield Sentry Ltd.*, the Court looked to relevant sections of the Code and the

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<sup>1</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. 52, 52 (Bankr. S.D.N.Y. 2011).

<sup>2</sup> A Foreign Representative in chapter 15 proceedings is “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24) (2006). For an explanation of how Foreign Representatives operate in chapter 15 proceedings, see *infra* Part I.

<sup>3</sup> 11 U.S.C. § 108(a) (2006). Although subsections (b) and (c) are also within the purview of the *In re Fairfield Sentry Ltd.* ruling, the focus of this paper is subsection (a). Subsections (b) and (c) provide shorter tolling periods for procedural scenarios other than commencing claims in the interest of a debtor’s estate. For a concise explanation of how subsections (a), (b) and (c) relate to one another, see 1 NORTON BANKRUPTCY LAW AND PRACTICE § 64:1–4, at 16–1 to –10 (William L. Norton, Jr. ed., 3d ed. 2008). An order for relief refers to the commencement of a bankruptcy case under the Code. See 13 NORTON BANKRUPTCY LAW AND PRACTICE DICT. OF BANKR. TERMS 190–91 (William L. Norton, Jr. ed., 3d ed. 2008).

Model Law on Cross-Border Insolvency<sup>4</sup> (the “Model Law”), as well as extant case law, to hold that Foreign Representatives in chapter 15 cases are also entitled to section 108’s tolling provisions.<sup>5</sup>

To appreciate the effect *In re Fairfield Sentry Ltd.* may have on chapter 15 cases, one must first understand the relevant terminology and procedures of chapter 15. Therefore, Part I of this memorandum will give a brief overview of the provisions of chapter 15 relevant to *In re Fairfield Sentry Ltd.* Next, Part II will explain the facts and procedural posture of the case, while Part III will identify six reasons supporting the Court’s holding and rationale. Finally, Part IV will explore some policy implications and practical considerations resulting from *In re Fairfield Sentry Ltd.*

### **Part I: Chapter 15 Overview**

Chapter 15 of the Code “provide[s] effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.”<sup>6</sup> It allows a debtor in a foreign insolvency proceeding with assets in the United States to commence a bankruptcy proceeding in the United States that is ancillary to the foreign insolvency proceeding. The ancillary proceeding is commenced when a foreign representative files a petition for recognition of the foreign proceeding in a United States Bankruptcy Court.<sup>7</sup>

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<sup>4</sup> UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY (1997). The Model Law on Cross-Border Insolvency was promulgated by the United Nations Commission on International Trade Law in 1997. It served as the basis for chapter 15, which replaced section 304 of the Code in 2005. *See Chapter 15: Ancillary and Other Cross-Border Cases*, USCOURTS.GOV, <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter15.aspx> (last visited Feb. 11, 2012).

<sup>5</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 64.

<sup>6</sup> *Chapter 15: Ancillary and Other Cross-Border Cases*, *supra* note 4. *See also* 11 U.S.C. § 1501 (2006) (stating the purpose of chapter 15 is to codify the Model Law on Cross-Border Insolvency with five distinct objectives).

<sup>7</sup> 11 U.S.C. § 1504 (2006).

The court may issue an order recognizing the foreign proceeding as a foreign main proceeding or a foreign non-main proceeding, or deny the request for recognition altogether.<sup>8</sup> If a United States Bankruptcy Court recognizes the foreign proceeding as either a main proceeding or a non-main proceeding, certain relief is available to be granted on a discretionary basis by the court “where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors.”<sup>9</sup> Whether relief could be available automatically under section 108 was the issue the Court faced in *In re Fairfield Sentry Ltd.*

## **Part II: Factual Background and Procedural Posture of *In re Fairfield Sentry Ltd.***

On April 21 2009, shareholders and creditors of Fairfield Sentry Ltd. (the “Debtor”), an investment firm,<sup>10</sup> commenced insolvency proceedings in the British Virgin Islands (the “BVI”).<sup>11</sup> The BVI court appointed two joint-liquidators for the Debtor, who petitioned the

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<sup>8</sup> 11 U.S.C. § 1517 (2006). The distinction between these two is that a foreign main proceeding is a proceeding pending in a country where the debtor's center of main interests are located, while foreign non-main proceeding is a proceeding pending in a country where the debtor has an establishment, but not its center of main interests. 11 U.S.C. § 1517(b) (2006).

<sup>9</sup> 11 U.S.C. § 1521 (2006). For a discussion of the discretionary relief allowed by sections 1507 and 1521 of the Code, see *infra* note 18.

<sup>10</sup> Based in the British Virgin Islands, Fairfield Sentry Ltd. was the largest feeder fund for Fairfield Greenwich Group, a master investment fund for whom Bernard Madoff served as an investment advisor. Prior to the economic collapse in 2008, Fairfield Sentry Ltd. appeared to be so wildly successful that, as writer Katherine Burton remarked, the perception of many investors was, “Hey, this is free money.” However, as the state of the economy declined, many investors began to pull money from Fairfield Sentry Ltd. Shortly before Madoff was exposed, it is reported that he called Fairfield Sentry and demanded they stem the bleeding. Efforts by the fund’s managers to raise new capital failed, and in December of 2008 it was revealed that Bernard Madoff had been operating a Ponzi Scheme. Madoff’s investments for Fairfield Sentry Ltd. and others were illusory – he had defrauded investors of billions of dollars. *See Frontline: The Madoff Affair* (Transcript) (PBS television broadcast, May 12, 2009), available at <http://www.pbs.org/wgbh/pages/frontline/madoff/etc/script.html>.

<sup>11</sup> *In re Fairfield Sentry Ltd.*, 452 B.R., 52, 55 (Bankr. S.D.N.Y. 2011). The British Virgin Islands court is formally the “Commercial Division of the High Court of Justice, British Virgin Islands.” *Id.* at 54.

Court on June 14, 2010 for recognition of the BVI proceeding.<sup>12</sup> After a hearing, the Court issued an order recognizing the Debtor's BVI proceeding as a foreign main proceeding on July 22, 2010 (the "Recognition Order").<sup>13</sup> Therefore, as of July 22, 2010, the Debtors were simultaneously part of two proceedings: a foreign main proceeding in the British Virgin Islands, and an ancillary chapter 15 proceeding in the Court.

After the Court recognized the BVI proceedings as foreign main proceedings, the Foreign Representatives filed a motion on September 20, 2010 requesting (1) "that the relief provided to a trustee under section 108 be made available to the Foreign Representatives," and (2) that July 22, 2010 "be the date that the 'order for relief' was entered in the Debtors' Chapter 15 cases for purposes of applying section 108 of the Bankruptcy Code."<sup>14</sup> The Foreign Representatives asserted that the plain language of section 103(a) could provide automatic section 108 relief, while the legislative history of sections 1507 and 1521(a)(7) could provide discretionary section 108 relief.<sup>15</sup> On May 23, 2011, the Court held that the tolling provisions of section 108 applied automatically through section 103(a), and that sections 1507 and 1521(a)(7) provided alternative discretionary means of relief for the Foreign Representatives.<sup>16</sup> The Court also retroactively held that July 22, 2010 was the date on which section 108's tolling provisions began to take effect.<sup>17</sup>

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<sup>12</sup> *Id.* at 55.

<sup>13</sup> *Id.*

<sup>14</sup> Foreign Reprs. Mot. Granting Relief at 6–7, *In re Fairfield Sentry Ltd.*, 452 B.R. 52 (Bankr. S.D.N.Y. 2011) (No. 10-13164). The order for relief date under section 108 signals the beginning of the tolling period. 11 U.S.C. § 108 (2006). The operation of section 108 is explained in Part III.1 *infra*.

<sup>15</sup> Foreign Reprs. Mot. Granting Relief, *supra* note 14 at 8.

<sup>16</sup> *In re Fairfield Sentry Ltd.* 452 B.R. at 64. Under section 1507, if recognition is granted a bankruptcy court may provide additional assistance to a foreign representative under the Code other laws of the United States. 11 U.S.C. § 1507 (2006). Similarly, section 1521(a)(7) allows a bankruptcy court to, at the request of the Foreign Representatives, grant any additional relief that may be available to a trustee upon recognition of a foreign proceeding, "where necessary to

### Part III: The Holding and Rationale of *In re Fairfield Sentry Ltd.*

The Court advanced six identifiable arguments to support automatically extending section 108 relief to foreign representatives in chapter 15 cases.

#### *1. The Plain Language of the Code Supports Applying Sections 108 and 103(a) to Foreign Representatives in Chapter 15 Cases*

First, at the core of the Court's rationale in *In re Fairfield Sentry Ltd.* are sections 108(a) and 103(a) of the Code. Section 108(a) states:

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of – (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief.<sup>18</sup>

Section 108(a) gives bankruptcy trustees an extension of at least two years to commence actions on behalf of the debtor. Although courts could grant similar relief pursuant to sections 1507 and 1521(a)(7)<sup>19</sup> of the Code, section 103(a) is an automatic means of achieving the same end because section 103(a) makes section 108 automatically available in chapter 15 cases.<sup>20</sup> The

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effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1521(a)(7) (2006).

<sup>17</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 54. Using the date of the Recognition Order as the date for the order for relief under section 108 was cursorily addressed by the Court in one paragraph. For the Court's reasoning, see *id.* at 62–63.

<sup>18</sup> 11 U.S.C. § 108(a) (2006) (emphasis added).

<sup>19</sup> 11 U.S.C. § 1507; 11 U.S.C. §1521(a)(7). There are two identifiable occasions on which United States Bankruptcy Courts have used the discretionary provisions of chapter 15 to implement section 108's tolling provisions. See, e.g., *In re Fairfield Sentry Ltd.*, 452 B.R. at 64 (extending tolling provisions of section 108 to Foreign Representatives through section 1507 of the Code); Order Granting Motion for Relief Pursuant to 11 U.S.C. § 1521(a)(7) for the Application of 11 U.S.C. § 108, *In re Condor Ins. Ltd.*, No. 07-51045, 2008 WL 2858943 (Bankr. S.D. Miss. Oct. 10, 2007) (extending tolling provisions of section 108 to Foreign Representatives through section 1521(a)(7) of the Code).

<sup>20</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 57–58; 11 U.S.C. §103(a) (2006). Section 103(a) of the code states that “this chapter [one] appl[ies] in a case under chapter 15.” 11 U.S.C. § 103(a).

Court characterized the relationship between section 103(a) and section 108 in the context of chapter 15 cases as “unambiguous.”<sup>21</sup> Therefore, even though section 108 refers only to trustees and not Foreign Representatives, the Court held that “the plain language of section 103(a) of the Code instructs that the tolling provisions of Section 108 are automatically available to the Foreign Representatives in these chapter 15 cases.”<sup>22</sup>

### *2. Discretionary Relief Does Not Operate to the Exclusion of Automatic Relief*

Second, although section 1520(a)(3)<sup>23</sup> is the only provision of chapter 15 that explicitly enumerates which non-chapter 15 provisions apply to Foreign Representatives, it does not operate to the exclusion of section 108.<sup>24</sup> The Court asserted that sections 363 and 552 are enumerated in section 1520(a)(3) precisely because they are left out of section 103(a).<sup>25</sup> Section 103(a) only extends chapter one, sections 307, 362(0), 555 through 557, and 559 through 562 to cases under chapter 15.<sup>26</sup> The absence of sections 363 and 552 from this list meant that Congress had to find another vehicle of incorporation for these provisions without diminishing the force of section 103(a); section 1520 is that vehicle.

### *3. A Narrow Reading of the Term “Trustee” Is Not Supported by the Code*

Third, the Court reasoned that the word “trustee” should not be read so narrowly as to exclude a Foreign Representative in chapter 15 cases.<sup>27</sup> Section 1502 states that a “trustee *includes* a trustee, a debtor in possession in a case under any chapter of this title, or a debtor

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Because section 108 is part of chapter one of the Code, section 103(a) operates as a mechanism for implementation.

<sup>21</sup> *In re Fairfield Sentry Ltd.* 452 B.R. at 57.

<sup>22</sup> *Id.* at 57–58.

<sup>23</sup> 11 U.S.C. §1520(a)(3) (2006) (extending sections 363 and 552 to Foreign Representatives in chapter 15 cases).

<sup>24</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 59.

<sup>25</sup> *Id.*

<sup>26</sup> 11 U.S.C. § 103(a) (2006).

<sup>27</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 59.

under chapter 9 of this title.”<sup>28</sup> Noticeably absent from this list is the term “Foreign Representative.” However, Congress uses the words “include” and “mean” with deliberation and “a purpose to give to each a meaning not attributable to the other.”<sup>29</sup> Therefore, the definition of the word “trustee” in chapter 15 of the Code does not operate to the exclusion of the term “Foreign Representative.”

#### *4. Trustees and Foreign Representatives Are Functionally Indistinguishable From One Another*

Fourth, the Court emphasized that a trustee in bankruptcy is “functionally indistinguishable” from a Foreign Representative in chapter 15 cases.<sup>30</sup> The Court stated the purpose of both the trustee and Foreign Representative is to “provide the entity stepping into the shoes of the debtor additional time to evaluate and preserve a debtor’s rights.”<sup>31</sup> The language of the Code confirms the Court’s understanding. A Foreign Representative is a person or body “authorized in a foreign proceeding to *administer* the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.”<sup>32</sup> A trustee is defined in several ways throughout the Code, but a feature shared by all the definitions is the responsibility for administering a bankruptcy case.<sup>33</sup> The duty of administration shared by a

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<sup>28</sup> 11 U.S.C. § 1502(6) (2006) (emphasis added).

<sup>29</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 60 (citing *Am. Sur. Co. of New York v. Marotta*, 287 U.S. 513, 517 (1933)).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 11 U.S.C. § 101(24) (2006) (emphasis added).

<sup>33</sup> 13 NORTON BANKRUPTCY LAW AND PRACTICE DICT. OF BANKR. TERMS 269–70 (William L. Norton, Jr. ed., 3d ed. 2008). Note that chapter 15’s definition of trustee is only minimally helpful because it is in part self-defining. 11 U.S.C. § 1502(6) (2006) (A “trustee includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title.”).

Foreign Representative and a trustee reinforces the Court’s assertion that the two are “functionally indistinguishable” from one another.<sup>34</sup>

*5. The Legislative Histories of the Code and the Model Law Support Automatically Extending Section 108’s Tolling Provisions to Foreign Representatives*

Fifth, the Court found that the Model Law and the legislative history of the Code supported its decision to recognize the automatic extension of the tolling provisions of section 108 to Foreign Representatives.<sup>35</sup> The primary legislative purpose of chapter 15 of the Code was to incorporate the Model Law on Cross-Border Insolvency “so as to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.”<sup>36</sup> The Court compared Article 20 of the Model Law with section 1520(b) of the Code to show that Congress anticipated that section 108 would apply in chapter 15 cases.<sup>37</sup> The Model Law states that the automatic stay imposed upon recognition of a foreign proceeding “does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.”<sup>38</sup> Similarly, section 1520(b) states that the automatic stay “does not affect the right to commence an individual action or proceeding *in a foreign country* to the extent necessary to preserve a claim against the debtor.”<sup>39</sup> The Court reasoned that the inclusion of the term “foreign country” in the Code’s corollary provision was because Congress recognized that section 108 “*provides the tolling protection intended by Model Law article 20(3)*, so no exception is necessary [in section 1520]

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<sup>34</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 60.

<sup>35</sup> *Id.* at 60–61.

<sup>36</sup> *Chapter 15: Ancillary and Other Cross-Border Cases*, *supra* note 4. See also *In re Fairfield Sentry Ltd.*, 452 B.R. at 60 (citing 11 U.S.C. § 1501 (2006)).

<sup>37</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 60–61.

<sup>38</sup> UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY pt. 1, ch. 3, art. 20(3) (1997).

<sup>39</sup> 11 U.S.C. § 1520(b) (2006).

for claims that might be extinguished under United States law.”<sup>40</sup> Although the cited legislative history of the Code arose in the context of section 108(c), and not section 108(a), the Court emphasized that the legislative history refers broadly to all of section 108.<sup>41</sup>

#### 6. Extant Case Law Does Not Contradict the Court’s Rationale

Sixth, the two cases that have considered the issue did not do so squarely, but neither did they suggest anything contrary to the Court’s analysis. The court in *In re Condor Ins. Ltd.*,<sup>42</sup> determined that section 108 relief was available to Foreign Representatives on a discretionary basis pursuant to the section 1521(a)(7).<sup>43</sup> Although *In re Condor Ins. Ltd.* did not apply section 108 automatically, it also “did not indicate any objection to the automatic availability of such relief or consider section 103(a) of the Code.”<sup>44</sup> The Court also relied on *In re Bancredit Cayman Ltd.*<sup>45</sup> There, the court denied section 108 relief to Foreign Representatives because the

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<sup>40</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 61 (emphasis added) (citing H.R. Rep. No. 109–31(I), at 115 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88). Another similarity between the Code and the Model Law is how the latter defines the term “Foreign Representative.” The Model Law defines a Foreign Representative as a “a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding.” MODEL LAW ON CROSS-BORDER INSOLVENCY pt. 1, ch. 1, art. 2(d).

<sup>41</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at n. 10 (citing H.R. Rep. No. 109–31(I), at 115 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88). “[T]he Court can conceive of no reason why the same policy goals should not be enforced with respect to actions by and against the debtor for these purposes.” *Id.*

<sup>42</sup> *In re Condor Ins. Ltd.*, No. 07-51045, 2008 WL 2858943 (Bankr. S.D. Miss. Oct. 10, 2007).

<sup>43</sup> Order Granting Motion for Relief Pursuant to 11 U.S.C. § 1521(a)(7) for the Application of 11 U.S.C. § 108, *In re Condor Ins. Ltd.*, No. 07-51045, 2008 WL 2858943 (Bankr. S.D. Miss. Oct. 10, 2007); 11 U.S.C. § 1521(a)(7) (“Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including: granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).”).

<sup>44</sup> *In re Fairfield Sentry Ltd.*, 452 B.R. at 61.

<sup>45</sup> *In re Bancredit Cayman Ltd.*, No. 06-11026, 2007 WL 3254369, at \*3 (Bankr. S.D.N.Y. Nov. 2, 2007), *aff’d*, No. 07-CIV-11338, 2008 WL 919533 (S.D.N.Y. Mar. 31, 2008).

issue was “presently unnecessary” and “plainly inappropriate” as a procedural matter for the resolution of the litigation.<sup>46</sup> However, the court also stated that “[n]othing in this decision should be read to decide the ultimate issue: whether § 108 is available to foreign representatives.”<sup>47</sup> *In re Condor Ins. Ltd.* and *In re Bancredit Cayman Ltd.* did not squarely address the issue raised in *In re Fairfield Sentry*, and consequently could not stand alone to justify the Court’s decision. However, the cases did leave the door ajar for this Court to reach the decision it did. The Court considered *In re Condor Ins. Ltd.* and *In re Bancredit Cayman Ltd.* in the aggregate along with the other reasons supporting the automatic extension of section 108’s tolling provisions to Foreign Representatives in chapter 15 cases.

#### **Part IV: Policy Implications and Practical Considerations**

Because *In re Fairfield Sentry Ltd.* is a recent case of first impression, it is unclear what effects the ruling will have on domestic and foreign bankruptcy jurisprudence. Currently, the only other reported case to adopt the reasoning of *In re Fairfield Sentry Ltd.* is *In re Millennium Global*,<sup>48</sup> which was also decided in the Bankruptcy Court for the Southern District of New York (although by a different judge).<sup>49</sup> There, the court embraced the “thorough and convincing analysis” of *In re Fairfield Sentry Ltd.* to confirm that the Foreign Representatives enjoyed automatic relief under section 108 of the Code.<sup>50</sup> It remains to be seen what other jurisdictions

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<sup>46</sup> *In re Bancredit Cayman Ltd.*, No. 06-11026, 2007 WL 3254369, at \*2.

<sup>47</sup> *Id.* at \*3.

<sup>48</sup> *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63 (Bankr. S.D.N.Y. 2011).

<sup>49</sup> The judge presiding over *In re Millennium Global* was the Hon. Allan. L. Gropper. *In re Millennium Global*, 458 B.R. at 63. The judge presiding over *In re Fairfield Sentry* was the Hon. Burton R. Lifland. *In re Fairfield Sentry Ltd.*, 452 B.R. at 52.

<sup>50</sup> *In re Millennium Global*, 458 B.R. at 87. The *In re Millennium Global* court specifically refers to the *In re Fairfield Sentry* court’s statutory interpretation, but not its case law analysis of *In re Condor Ins. Ltd.* and *In re Bancredit Cayman Ltd.* Perhaps this suggests what parts of this

will adopt the holding of *In re Fairfield Sentry Ltd.*, but in a bankruptcy jurisdiction as active and influential as the Southern District of New York, the effects are potentially far-reaching.

Although it is difficult to forecast the reach of *In re Fairfield Sentry*, there are certainly identifiable benefits to the outcome of the case. The holding has a practical utility because it provides a bright-line rule for practitioners and judges. It allows parties to plan for bankruptcy litigation, and gives sufficient time to litigants to fully investigate and commence claims for recouping shareholder and creditor losses. Foreign Representatives in the S.D.N.Y. will no longer have to rely on the discretionary provisions of sections 1507 and 1521(b)(6) of the Code, thus alleviating any doubt as to whether the minimum two-year tolling provision of section 108 will apply. The effects of *In re Fairfield Sentry Ltd.* are sure to benefit practitioners, litigants, and judges in the jurisdictions that choose to adopt its holding.

## **Conclusion**

*In re Fairfield Sentry Ltd.* stands for the proposition that the tolling provisions of section 108 of the Code are automatically available to Foreign Representatives in chapter 15 cases. While this decision is certainly justifiable, it remains to be seen whether other United States Bankruptcy Courts will embrace it. Until more jurisdictions choose to adopt the rule established by the Bankruptcy Court for the Southern District of New York, the discretionary provisions of the Code will remain useful mechanisms to effectuate the purpose of chapter 15: to “provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.”<sup>51</sup>

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Court’s analysis will be emphasized by future courts adopting the *In re Fairfield Sentry Ltd.* holding.

<sup>51</sup> *Chapter 15: Ancillary and Other Cross-Border Cases*, *supra* note 4. See also 11 U.S.C. § 1501 (2006).