

INSOL Global Insolvency Practice Course
Co-operation and Co-ordination in Practice

Hypothetical Case Study - Global Petroleum Corporation¹

An important note to participants: The purpose of this case study is to provide participants with an opportunity to experiment in the negotiation and identification of core elements that may be incorporated in a cross-border insolvency protocol. It is not intended that you seek to "solve" the problems identified in the case study, nor is it necessary to develop a restructuring plan / strategy. The output we are seeking – which is the task to be undertaken during our session together (not before!) – is a robust discussion of the terms of the protocol that can be agreed during the live negotiation. And – importantly – the process is intended to be fun and good-humoured!

I. Company Overview

Global Petroleum Corporation ("GloboPetro") is a diversified energy company incorporated in Delaware (U.S.), whose many divisions and affiliates (the "Group") operate throughout the world. Its three primary business segments—upstream operations, downstream operations, and research and development—are carried on by separate affiliates.

The upstream segment, which explores for and extracts petroleum, is primarily conducted through GP Drilling S.A. ("GPD"), a Brazilian corporation. GPD's operations are distributed across Latin America, but center in Brazil, where GPD maintains vast proven reserves and accounts for 25% of total national oil production. All of GPD's drilling and exploration blocks are governed by concession agreements with the Brazilian government through 2025–2030, terminable by the government upon certain enumerated events.

The downstream segment, which refines, transports and markets petroleum, is primarily conducted through GP Refining Corp. ("GPR"), a Delaware corporation. GPR refines and markets products at 25 refineries in North America, Europe and the Asia-Pacific region. Its network can process 3 million barrels of crude per day, and its massive

¹ GloboPetro is a fictional company, and this case study is not intended to reflect any particular existing companies.

inventory of refined products is the Group's largest assets. Its four largest oil refineries, located in Mississippi (U.S.), constitute a large portion of GPR's PP&E value.

The R&D segment, which develops technology to support the upstream and downstream businesses and to sell to third parties, is primarily conducted through GP Tech Ltd. ("GPT"), a UK corporation. GPT is largely based in Europe. GPT's IP is another valuable asset on the Group's balance sheet: it holds over 10,000 active patents and receives \$300 million per year in licensing revenues from third parties.

Although GPD, GPR and GPT each have separate purposes, their operations are inextricably intertwined.

II. The Present Situation

The Group is nearly out of cash and faces insolvency.

In 2015, one of GPD's Campos Basin rigs exploded, killing 50 workers and rupturing the well pipes. GPD, GloboPetro and other entities in the Group face tens of billions of dollars in fines and costs from civil and criminal litigation pending in Brazil. Amid this litigation, Brazil terminated all of GPD's concessions, depriving GPD of the overwhelming majority of its revenue.

GPD has filed for bankruptcy under Brazilian Bankruptcy Law No. 11101/05 ("BBL"). GloboPetro and GPR will soon file for bankruptcy under chapter 11 of the U.S. Bankruptcy Code. GPT, too, has recently commenced a U.K. insolvency proceeding, and an administrator has been appointed in the U.K. GPR's Mississippi refineries or GPT's patents could be sold to pay for GloboPetro's mounting legal costs. The Group's largest single asset is still its substantial store of refined petroleum products.

III. The Need for Cooperation

At issue is how the separate estates of GloboPetro, GPD, GPR and GPT will coordinate the sales of inventory, the Mississippi refineries and the GPT patents. Each entity will likely claim a stake in the worldwide GloboPetro operations. With assets spread across jurisdictions, the business will require administration in multiple fora, each with different—and possibly conflicting—rules.

A quick sales process is crucial because a major investor from Omaha has submitted a 90-day cash offer at a 20% premium to market for GPT's IP, GPR's oil inventory and GPR's refineries, provided that the Group can deliver these assets free and clear of liens. Separately, a major global oil services company is willing to offer a competitive price for GPT's IP alone. When considering the sale, it will be necessary for the companies to agree on how to sell their globally integrated assets and to divide the proceeds among creditors in the various proceedings, as each business segment contributed to the final product. For instance, the production of GPR's inventory

depended on the inputs of each major GloboPetro affiliate: GPD provided some of the crude oil, GPR refined it, and GPT made the technology that made both drilling and refining possible.

The Group's capital structure also represents a challenge for the concurrent proceedings. Much of the Group's debt consists of GloboPetro's bank loans, guaranteed by each of the three affiliates. Apart from this debt, however, each of GPD, GPR and GPT has entered into term loans with banks in their respective countries. GPT's separate debt was issued by a U.S.-based bank and is secured by GPT's rights in GloboPetro's IP and "products and proceeds thereof" (a phrase whose interpretation is subject to doubt).

GPD also owes substantial unpaid debts to its former workers, its local trade creditors and Brazilian tax authorities, and many of these claims would be entitled to priority under Brazilian law. Recent media quoted the Brazilian Attorney General promising to defend the rights of GPD's local creditors.

Additionally, GloboPetro faces major liability related under the GPR workers' multiemployer pension plan. Based on GPR's union contract, both GPR and GloboPetro must maintain defined-benefit pensions for their workers and retirees. Once GPR and GloboPetro file for bankruptcy, both will face withdrawal liability (i.e., their share of the multiemployer plan's underfunded vested benefits). Moreover, under U.S. pension law, GPD and GPT may also be jointly and severally liable for the withdrawal based on their common ownership under GloboPetro. Given the separate insolvency proceedings, a protocol must address the pension withdrawal liability, in addition to the other issues.

A single U.S. counsel is leading negotiations on behalf of both GloboPetro and GPR, although any sale it agrees to must be approved by independent committees of GloboPetro's and GPR's boards. Each of the entities have retained separate local counsel. The newly appointed administrator of GPT has previously suggested that U.K. administrators cannot easily fulfil their fiduciary duties if they become subject to orders of foreign courts.

Issues for Protocol Negotiation

Roles

GPD (Brazil)

1. GPD counsel
2. Attorney General of Brazil

GPT (U.K.)

3. GPT administrator
4. IP lender counsel

GloboPetro and GPD (U.S.)

5. GloboPetro and GPD counsel
6. Counsel to admin agent for GloboPetro
bank debt