

Jordan Chavez, Alex Kirincic and Cameron Scales Author Article on ‘Texas Two Step’ in Pratt’s Journal of Bankruptcy Law

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The authors discuss a strategy being used by more and more companies seeking to resolve mass liabilities in bankruptcy.

In the restructuring space, entities are utilizing a strategy dubbed the “Texas Two Step” to resolve mass liabilities through the bankruptcy process. The process involves converting a business entity into a Texas organization and subsequently splitting it into one or more separate entities, with the bulk of the tort or other liabilities allocated to one entity. Subsequently, the entity holding such liabilities enters Chapter 11 in an effort to achieve a global resolution of the claims.

WHAT IS A MERGER?

The Texas Two Step is made possible by the Texas Business Organizations Code, which defines a “merger” to include “the division of a domestic entity into two or more new domestic entities or other organizations.” At its core, a divisive merger is similar to a traditional merger. The agreement and plan of merger must clearly identify the assets and liabilities allocated to each entity involved.

The Texas Two Step has been utilized by several companies facing mass tort liabilities resulting from asbestos exposure. Companies such as Bestwall and Aldrich Pump LLC filed Chapter 11 after each was created using the divisive merger statute.

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