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THE SUPERIOR COURT OF JUSTICE DETERMINES THAT CONTRACTS MAY BE RENEWED COMPULSORILY IN COURT-SUPERVISED REORGANIZATION

On August 19, 2025, the 3rd Panel of the Superior Court of Justice (STJ) decided, in case RESP 2218453/AL (2025/0149946-0) involving TV Gazeta de Alagoas and TV Globo, that a contract may be renewed compulsorily by order of the judge responsible for the court-supervised reorganization, provided it is deemed essential for the maintenance of the company and its restructuring process. TV Gazeta, currently under court-supervised reorganization, requested the renewal of its retransmission contract with TV Globo for an additional five years, critical for the continuity of its operations, which are linked to the Organization Arnon de Mello, associated with former President Fernando Collor. Failure to renew could lead to bankruptcy.

This issue sparked a vigorous debate, requiring a broad interpretation of the provisions of Law No. 11,101/2005, which regulates court-supervised reorganizations and bankruptcies. The decision, resulting from a 3 to 2 voting, was primarily guided by the votes of justice Humberto Martins, joined by justices Moura Ribeiro and Daniela Teixeira. Conversely, the dissenting view from reporting justice Ricardo Villas Bôas Cueva and justice Nancy Andrighi argued that compulsory renewal could have serious consequences for Brazil's court-supervised reorganization system.

This understanding was based on Article 47 of Law No. 11,101/2005, which establishes that court-supervised reorganization aims to overcome the debtor's crisis and ensure maintenance of the company and generated jobs for the benefit of creditors. The majority concluded that the contract renewal issue, which was discussed incidentally in the reorganization process, could be assessed by the judge in charge, since it was intrinsically related to the company's sustainability.

Alternatively, it could be argued that since the matter involved a third party who was not a creditor in the reorganization, it should be addressed in a separate action in the ordinary courts of the state of Alagoas. However, justice Martins's vote expanded the interpretation of what constitutes an essential capital asset, encompassing not only physical assets but also contracts, which are crucial for the company's operations.

Justice Martins emphasized that the analysis should prioritize the principles guiding the legislation over a literal interpretation of the legal text. He argued that the focus should be on reinstating the economic and corporate activity of the company in crisis, fostering collaboration between creditors and debtors aimed at recovery. The jurisdiction to decide on the essential nature of the contract with TV Globo was left to the discretion of the reorganization judge, and the STJ was prohibited from reevaluating facts and evidence in this context.

Therefore, in exceptional situations, it is possible to override the principle of party autonomy governing contractual relationships in Brazil. Such intervention is justified in the context of court-supervised reorganization, where the public interest in preserving the company must prevail over individual contractual agreements. Globo's stance of not renewing the contract with TV Gazeta reinforced the decision for intervention.

This decision by the 3rd Panel of the STJ highlights the complexity of contractual interactions within the context of court-supervised reorganization, indicating that while there may be room for judicial interventions in exceptional circumstances, the protection of party autonomy and compliance with due process remain fundamental principles that cannot be overlooked. This discussion underscores the interplay between the goal of economic recovery and the need to protect contractual rights, addressing one of the primary challenges faced by the Brazilian legal system in regulating corporate crises.

TENSIONS BETWEEN BANCO DO BRASIL AND THE FEDERAL COUNCIL OF THE BRAZILIAN BAR ASSOCIATION (OAB)

The Brazilian agribusiness sector, one of the pillars of the national economy, faces a challenging landscape marked by financial crises, fluctuations in commodity prices, and adverse climate factors. The recent crisis in the sector was exacerbated by the drought in 2023 and floods affecting the South in 2024, resulting in a significant increase in delinquency, especially among large producers. According to Banco do Brasil data, approximately 808 clients in this sector filed for court-supervised reorganization, leading to a 60% drop in the bank's profits in the second quarter of 2025.

In this context, Tarciana Medeiros, the bank's president, during a press conference for the presentation of the second-quarter balance, stated that the bank is considering legal action against lawyers allegedly advising rural producers to file court-supervised reorganization petitions without first seeking debt renegotiation.

The Federal Council of the Brazilian Bar Association (OAB in Portuguese), stirred by this statement, notified the president extrajudicially, arguing that her declaration represents an attempt to criminalize the legal profession. Hence, should Banco do Brasil proceed with its intention to sue law firms, it will take all necessary legal measures to defend the prerogatives of the legal professionals.

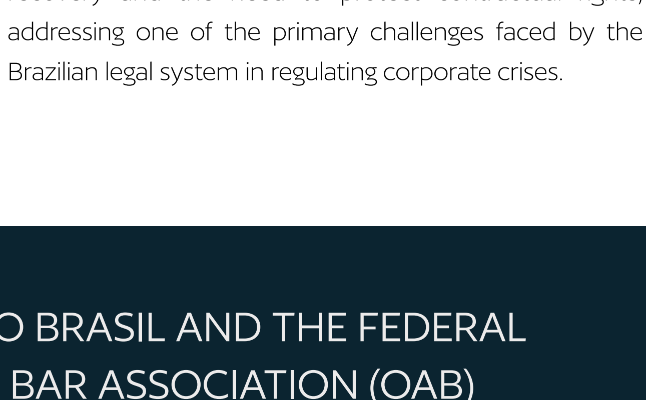
"It is unacceptable that, in 2025, a member of the upper echelon of government, leading one of the country's largest banks, attempts to criminalize the legitimate exercise of the legal profession," stated the institution.

In response, Banco do Brasil affirmed its respect for and appreciation of the legal profession while combating inadequate practices by some professionals that "overburden the Brazilian judiciary system and harm the lives of rural producers." The bank also noted that it has already reached out to OAB to address the matter.

END OF ECOVIX'S COURT-SUPERVISED REORGANIZATION

Ecovix Construções Oceânicas S/A, owner of Estaleiro Rio Grande (ERG), which filed for court-supervised reorganization in December 2016, with liabilities exceeding R$8 billion, had its request for closing the court-supervised reorganization decreed on July 22, 2025. Judge Fabiana Gaier Baldino of the 2nd Civil Court of Rio Grande (RS) authorized the closing, emphasizing that "the process is suitable for judicial closing, allowing the Ecovix group to return to the market independently, thus consolidating its financial balance more swiftly and securely."

The court-supervised reorganization of Ecovix was the result of a significant crisis affecting the Brazilian naval sector, exacerbated by Operation Car Wash, which uncovered a complex corruption scheme involving Petrobras, politicians, and major companies both in Brazil and abroad. This turmoil led to the cancellation of crucial contracts for vessel construction by Ecovix, generating unsustainable debts for the company and jeopardizing its operations.



Closing of the court-supervised reorganization marks an important milestone not only for Ecovix, now on a path of recovery and reintegration into the market, but also for the naval sector, which has sought stability and innovation in a challenging competitive environment. This illustrates how court-supervised reorganization can be an effective tool for restructuring and revitalizing distressed companies, enabling them to overcome crises and contribute effectively to the growth and competitiveness of the sector.

SUPERIOR COURT OF JUSTICE AFFIRMS DEBTOR'S FREEDOM TO DEFINE CREDITOR CLASSES IN OUT-OF-COURT REORGANIZATION

In the judgment of REsp 2032993/MG (2022/0323339-0), the 4th Chamber of the Superior Court of Justice (STJ) reaffirmed that in out-of-court reorganization, the debtor has the necessary freedom to define the classes or groups of creditors that will be included in the reorganization plan, as long as the criteria used relate to the original characteristics of the claims involved. This understanding was consolidated in a decision that upheld the confirmation of the out-of-court reorganization plan of Grupo Fidens, which operates in heavy construction and mining sectors.

The decision also addresses the application of the so-called cram down, a mechanism that allows for imposing the reorganization plan even without the unanimous consent of all creditors. Initially as provided for in the text of Law No. 11,101/2005, the approval threshold for affected claims required three-fifths; however, Law No. 14,112/2020 reduced this requirement to a simple majority. The Superior Court of Justice (STJ in Portuguese) highlighted that the legislator's intention was to streamline out-of-court reorganization, allowing for the aggregation of creditors in similar conditions.

In the case analyzed, the inclusion of micro and small enterprises in the same group of unsecured creditors was discussed. The rapporteur, justice João Otávio de Noronha, noted that there is no legal prohibition against such grouping as long as homogeneous treatment among participants is guaranteed. This interpretation aligns with the logic of legislative reform, which eliminated the distinction of these claims in the order of bankruptcy classification.

This decision reinforces the notion that out-of-court reorganization should be viewed as a more flexible instrument based on negotiation, prioritizing the autonomy of the parties and the pursuit of overcoming the economic crisis, while respecting minimum parameters of equality among the participating creditors.

SUPERIOR COURT OF JUSTICE EVALUATES FEES IN OBJECTION TO CLAIM IN REORGANIZATIONS AND BANKRUPTCIES

On September 4, 2025, the 2nd Section of the Superior Court of Justice began to rule on whether there is an order for payment of legal fees in cases where the incident of objection to claim is upheld in judicial reorganization and bankruptcy cases.

So far, only the rapporteur, justice Humberto Martins, has voted to establish a thesis affirming the applicability of legal fees. Justice Isabel Gallotti requested further consideration.

Three cases are being judged together based on the same issue of law. The panel will define a binding precedent that will be followed in the ordinary courts.

Objection to Claim

The proof of claim in court-supervised reorganization or in bankruptcy is filed by the debtor, who informs the court of the creditors to be included in the restructuring plan or bankruptcy process.

Objection aims to correct a claim deemed improperly included. It is a procedural incident provided for in Article 8 of Law No. 11,101/2005.

In interpreting the case, justice Humberto Martins started from the premise, based on norms from the Code of Civil Procedure, which points out that there are fees when the case involves the provision of legal services in a non-optional manner.

Therefore, he concluded that it is appropriate to impose fees in cases where the objection to filing proof of claim in court-supervised reorganization or bankruptcy is granted, with the caveat that the basis for calculation should be, whenever possible, the economic benefit obtained by the party.

He even proposed a more complex and lengthier thesis. Despite justice Isabel Gallotti's request for further consideration, justice Nancy Andrighi offered a more concise wording for the statement.

Proposed Thesis

Payment of all legal fees is applicable in the objection to filing proof of claim in court-supervised reorganization or bankruptcy, without prejudice to the application of the principle of causality, and utilizing the economic benefit criterion whenever possible.

Reference: REsp 2.090.060; Reference: REsp 2.090.066; Reference: REsp 2.100.114

SUPERIOR COURT OF JUSTICE DECIDES THAT LCI CLAIMS ARE UNSECURED

In the judgment of RESP 1.773.522-SP, the 4th Panel of the Superior Court of Justice unanimously ruled that credits arising from Real Estate Credit Letters (LCI) should be classified as unsecured claims in bankruptcy proceedings, lacking the nature of real rights, even when backed by real estate claims secured by mortgage or fiduciary sale.

In this case, the creditor sought to include amounts owed by the bankrupt estate of a bank in the category of claims with real rights, which have priority over unsecured claims. However, the request was denied both by the First Instance Court and the São Paulo Court of Justice (TJSP in Portuguese), which argued that the negotiable instrument in question should not be equated to a real right merely because it is supported by credits of that nature.

During the judgment, the justice-rapporteur emphasized that there are two distinct relationships to consider: one between the financial institutions granting credit and the respective creditors, and another between the financial institution and the investors acquiring the LCIs.

Moreover, the dynamics of these relationships illustrate that LCI holders do not have credits secured by real rights, as financial institutions are the true creditors when providing funds to entrepreneurs and acquirors. Consequently, the justice-rapporteur concluded that it is unfeasible to extend the protection granted to credits secured by real rights to LCIs, since these letters are backed by legal relations secured by mortgages or fiduciary sale.

RECORD NUMBER OF COMPANIES THAT CLOSED THEIR COURT-SUPERVISED REORGANIZATIONS AND WENT BANKRUPT IN 2025

Valor Econômico, on August 19, 2025, highlighted a concerning statistic: the number of companies that failed to restructure and filed for bankruptcy reached a record high at the close of the first semester. In the second quarter, 147 companies terminated their court-supervised reorganizations, of which nearly 30% (43 companies) went bankrupt, marking the highest rate since April 2023, according to the Monitor RGF report by RGF & Associates.

Recently, the bankruptcy rate hovered around 20%, but in the last quarter, 58% of companies managed to resume their activities without legal oversight, overcoming their recovery period. Conversely, 13% had their registrations cancelled or terminated or were deemed ineligible or suspended due to pending issues — situations that may be reverted by resolving the irregularities.

This increase in bankruptcies occurs against a backdrop of a record number of court-supervised reorganizations. By the end of the second quarter, 4,965 companies were in restructuring processes, representing a 1.7% growth compared to the first quarter and a 17.5% rise compared to the same period in 2024.

Experts point to high-interest rates as the primary cause for the increase in both court-supervised reorganizations and bankruptcies. Despite the economic indicators of the country not being overly negative, the business sector's crisis has intensified since the pandemic.

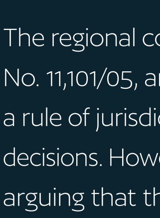
FEDERAL SUPREME COURT DECIDED THE EXCLUSIVITY OF BANKRUPTCY COURT IN DISREGARDING THE CORPORATE ENTITY OF COMPANIES UNDER COURT-SUPERVISED REORGANIZATION

The Federal Supreme Court (STF in Portuguese), in a decision handed down by justice Gilmar Mendes in Claim 83.535/SP, revoked an order from the Regional Labor Court of the 2nd Region (TRT-2) that allowed the Labor Court to hold partners of companies in court-supervised reorganization liable for labor debts. According to the justice, the disregard of corporate entity of companies in bankruptcy must be exclusively decided by the bankruptcy court.

The regional court had interpreted that Article 82-A of Law No. 11,101/05, amended by Law No. 14,112/20, did not define a rule of jurisdiction, but rather formal requirements for the decisions. However, the justice objected to this interpretation, arguing that the clause of plenary reservation establishes that only the full STF can waive the application of a law. Mendes warned that adopting different criteria — the application of the "minor theory" of disregard in labor matters and the "major theory" in ordinary courts — could result in inequalities among creditors. He argued that allowing different courts to initiate disregard incidents could lead to unequal treatment among creditors, resulting in some receiving priority in settling claims.

In summary, the justice's decision reaffirms the exclusive jurisdiction of the bankruptcy court to handle the disregard of corporate entity in cases involving companies in bankruptcy, promoting uniformity and equity in the treatment of creditors.

PARTNER RESPONSIBLE FOR THE NEWSLETTER:



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Our firm's **Restructuring and Insolvency** team is available to provide further clarification on the bulletin.