



The Texas Two Step

Fancy foot-work for resolving mass tort cases in chapter 11?

Moderator: Kenric D. Kattner, Haynes Boone, LLP, Houston, TX

Panelists:

Bruce A. Markell, Northwestern Pritzker School of Law, Chicago, Illinois

Theodore E. Tsekerides, Weil, Gotshal & Manges LLP, New York, New York

1

The Texas Two Step What is it?



- Based on divisional merger statutes
 - Operations, assets and liabilities of one business entity can be allocated between two or more surviving entities
- Has been used in several mass tort bankruptcies in order to separate mass tort liabilities from an operating company's good assets
- Mass tort liabilities are allocated to a specific entity that files chapter 11 after the allocation is implemented

2

The Texas Two Step Statutory Origins



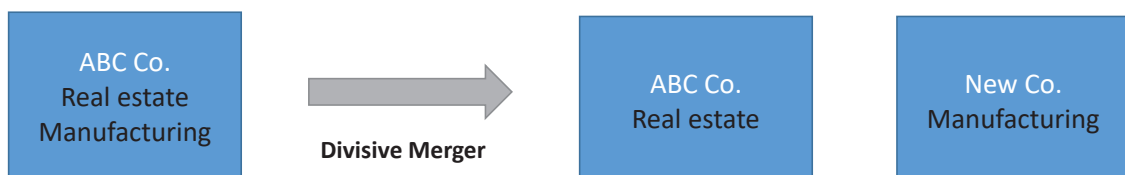
- Originally enacted in Texas in 1989 in section 5 of TBCA. Now moved to section 10 of the TBOC
- Texas statute applies to any domestic entity, including LLC's, LP's and corporations
- Delaware enacted a similar statute in 2018, however, it only applies to Delaware LLC's

3

The Texas Two Step How does it work?



Original Divisive merger concept:



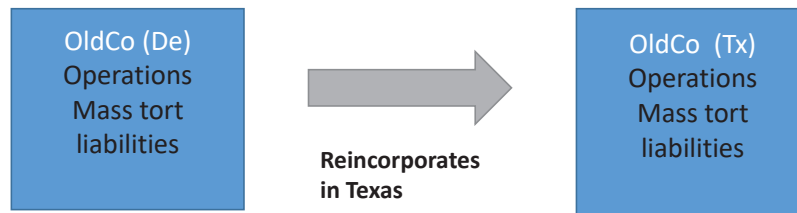
4

The Texas Two Step

How does it work?



Original Company (OldCo) reincorporates in Texas to take advantage of the Texas statute:



5

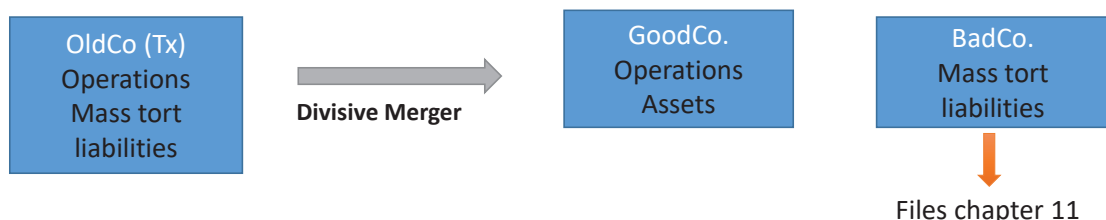
The Texas Two Step

How does it work?



Step 1: OldCo implements a plan of merger under the Texas statute.

Step 2: BadCo files bankruptcy



- Good assets and operations are allocated from OldCo to GoodCo
- Mass tort liabilities are all allocated to BadCo
- OldCo ceases to exist
- GoodCo reincorporates into home state of its choosing
- BadCo may reincorporate into favorable venue for chapter 11
- BadCo files chapter 11

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Texas Two Step

Also available as part of the eCourse

[2022 Jay L. Westbrook Bankruptcy eConference](#)

First appeared as part of the conference materials for the 41st Annual Jay L. Westbrook Bankruptcy Conference session "Texas Two Step and Bankruptcy vs. Mass Tort"