Mexico City, Federal District, December nineteenth of two thousand two

WHEREAS, Resolution to resolve the Acts of the acknowledgment of foreign bankruptcy proceedings and the petition for international cooperation No. **29/2001**, filed by **W. STEVE SMITH**, in his capacity as Foreign Trustee in representation of the bankruptcies of **JACOBO, FELIPE, and JOSE MARIA, ALL SURNAMED XACUR ELJURE**, in respect to the petition for the acknowledgment of the foreign proceedings and sentence.

WHEREAS

FIRST. On the twenty-sixth of January of two thousand one, DARIO ULISES OSCOS CORIA, in his capacity as general agent for suits and collections by W. Steve Smith, trustee for the Bankruptcy Assets of Jacobo Xacur, Felipe Xacur and Jose Maria Xacur, debtors before the Bankruptcy Court of the United States for the Southern District of Texas, Houston Division, filed a petition for **international cooperation and the acknowledgment of foreign bankruptcy proceedings**, suiting the following benefits: *"I. Based on Article 291 of the Commercial Bankruptcy Law, I request of Your Honor the acknowledgment of the foreign bankruptcy proceedings that I have identified in Chapter Three of this suit. II. Based on Articles 304 and 305 of the Commercial Bankruptcy Law, I request international coordination and cooperation in respect to the aforementioned foreign bankruptcy proceedings, which I have described in Chapter Six of this suit."*

SECOND. This Court, having been assigned through the corresponding shifts to hear the said suit, admitted it for processing, and ordered the subpoena of Felipe Xacur Elure and Jose Maria Xacur Eljure at their respective domiciles, so that they may respond, within a period of five days, in respect to the acknowledgment requested by the aforesaid petitioner, being warned that if they have nothing to declare in regard thereto, they shall be considered as having accepted the suit, unless there is proof to the contrary.

In regard to the summons of Jacobo Xacur Eljure, since the petitioner did not know the address of the said defendant, it was ordered that a letter be sent to the Mexican Social Security Institute, the Federal Voter Registration Institute, the Secretaryship of Transportation and Traffic of the Federal District, and the Federal Judicial Police Department, requesting their cooperation with this Court by providing information in regard to the address of Jacobo Xacur Eljure. Once this had been done, it was ordered that the said codefendant be summoned by means of edicts.

At this point, it was seen in the files that the subpoenas could not be served on Felipe Xacur Eljure and Jose Maria Xacur Eljure at the addresses indicated by the petitioner. Therefore, it was ordered that they too be summoned by means of published edicts.

In the ruling accepting the petition, it was also ordered that an official letter be sent to the Federal Institute of Commercial Bankruptcy Specialists, so that the corresponding trustee could be designated.

THIRD. The files show that the codefendants in this case were summoned by means of edicts published in Diario Oficial de la Federación and in the Gaceta Oficial of the Federal District, which were exhibited by the petitioner in a writ submitted on August 31 of the year 2001.

The files also show that Felipe Xacur Eljure has answered the suit in a writ submitted on August 16 of 2001 by his Agent, Elias Gassan Zacarias Fadel. Jose Maria Xacur Eljure also answered the suit in a writ submitted by his Agent, Juan Jose Gonzalez Galvan, on August 20 of the same year. Finally, Jacobo Xacur Eljure, through his Agent Alejandro Valenzo Peralta, answered the suit on the 22nd day of the same month and year. Rulings were made in regard to these writs, by means of an accord pronounced on October 18 of 2001, acknowledging the response by the codefendants to the suit filed against them and their objections and rebuttals.

FOURTH. In a decision pronounced on October 18, in which a hearing for the submission of proofs and allegations by the parties was established, a ruling was made in regard to the proofs offered by the parties.

At this stage, the reply to interrogatories by the codefendants, Jacobo Xacur Eljure, Jose Maria Xacur Eljure, and Felipe Xacur Eljure were admitted as evidence on the part of the petitioner. The reply to interrogatories of the first two codefendants were entered at a hearing that took place on January 16 of 2002, while the reply to interrogatories of the last-named codefendant was entered at a hearing that took place on February 7 of this year.

Also entered as evidence for the petitioner was the testimony by Raul Lopez Castilla, Mariano Peraza Padilla, Fernando Gomez de Parada Miranda, and Roberto Cuaron Ibarguengoitya. The testimony of the first two witnesses named above was heard at a hearing that took place on November 29 of 2001, and the testimony of the last two was heard on March 6 of 2002.

Also heard was the testimony by Jose Huerta Morales and Carlos de la Fuente, which was declared lapsed on November 29 of 2001.

The following documentation was also admitted:

PUBLIC DOCUMENT, consisting of the certified copy issued by the Honorable City Council of Merida on March 14 of 1995, notarized by the Attorney Raul Heredia Carrillo, Notary Public No. 82 of the State of Yucatan.

PUBLIC DOCUMENT, consisting of the certified copy dated April 8 of 1999, in three pages, of the General Power for judicial affairs involving suits and collections, granted on February 6 of 1996 by Jacobo Xacur Eljure in favor of Miguel Angel Harta-Sanchez Noguera, Gerardo Ramirez Ornelas, and Alejandro Valenzo Peralta before the notary public Virginia L. Thomas, in Houston, Texas.

PUBLIC DOCUMENT, consisting of the certified copies of the public writs by Lic. Julian Real-Vazquez, notarized by the notary public No. 200.

PUBLIC DOCUMENT, consisting of the certified copies of the following public writs:

a. Public Writ No. 248,339, recorded before the notary public No. 10 of the Federal District, Lic. Francisco Lozano Noriega.
b. Public Writ No. 241,285, recorded before the notary public No. 10 of the Federal District, Lic. Francisco Lozano Noriega.
c. Public Writ No. 3,223, recorded before the notary public Jorge Hernandez Arias, showing the incorporation of the company called Proteinas y Aceites del Bajio, S.A. de C.V.
d. Public Writ recorded before the notary public Pedro Solis Aznar, in Merida, Yucatan.
e. Public Writ No. 206, recorded before the notary public Pedro Solis Aznar, in Merida.
f. Public Writ No. 183, recorded before the notary public Pedro Vicente Solis Cano, notary public No. 63 in the city of Merida, protocolizing the Minutes of the Special General Shareholders' Meeting of Hidrogenadora Yucateca, S.A. de C.V.

g. Public Writ No. 35, recorded by the Notary Public Pedro Vicente Solis Cano, notary public No. 63 in the City of Merida, protocolizing the Minutes of the Special General Shareholders' Meeting of Hidrogenadora Nacional, S.A. de C.V.

PUBLIC DOCUMENT, consisting of certified copies of several I.O.U's.

PUBLIC DOCUMENT, consisting of certified copies of several IOUs showing that they were authorized by Jose Maria Xacur Eljure and Felipe Xacur Eljure, and also signed in the name of various businesses.

PUBLIC DOCUMENT, consisting of the certified copy of various procedural acts derived from the general commercial lawsuit filed by Lic. Miguel Angel Harta-Sanchez N. in the name of Jacobo Xacur Eljure against Bancomer S.A. and others.

PUBLIC DOCUMENT, consisting of original documents and certifications, with an apostille of the documents in English that are described below, accompanied by their corresponding translation into Spanish by a certified translator:

1. Order approving the petition by the Trustee for the issuance of the Certification in support of the Cooperation in International Processes, and the Certification in support of Cooperation in International Processes.

2. Authentic and true copies of the following legal provisions in the United States: 11 U.S.C., Sections 109, 303, 304, 323, 263, 541, 542, 544, 704, and 721, and 28, U.S.C. Section 1781 (b) (1).

3. A copy of the Fifth Circuit Appellate Court's decision in Fidelity Standard Life Company Vs. First National Bank & Trust Company of Vidalia, Georgia, 510 F. 2d. 372 (5th Cir. 1975).

3. /sic/ Certified copies of the notifications delivered, showing the individual summons of each of the debtors.

4. Certified copy of the Bankruptcy Court's Sentence, in which it rules to declare the debtors in bankruptcy.

5. A certified copy of the Bankruptcy Court's sentence, containing the order granting the petition to declare the debtors in bankruptcy.

6. Certified copy of the Notification of the Designation of Trustee, and the Trustee's bonds.

7. Certified copy of the preliminary precautionary measures pronounced by this Court against the debtors

8. Certified copy of the preliminary precautionary measures pronounced by this Court against Capital Alliance Corporation.

10. /sic/ Certified copy of the Contempt ruling by this Court against Jacobo Xacur and Felipe Xacur.

11. Certified copy of the decision of the District Court of the United States for the Southern District of Texas, Houston District, regarding the appeal by the debtors.

12. Certified copy of the decision of the Fifth Circuit District Court of the United States regarding the appeal by the debtors against the District Court's resolution.

13. Certified copy of the resolution of the Supreme Court of the United States regarding the petition for revision filed by the debtors.

14. Certified copy of the acknowledgment of credits submitted by certain petitioning creditors in bankruptcy cases.

15. Certified and acknowledged copy of the order authorizing the use of Dario Oscos as the special Mexican assessor in international bankruptcy proceedings.

17. /sic/ Certified and acknowledged copy of the document in which the Trustee declares that he has no knowledge of any other bankruptcy proceeding by the Debtors.

PUBLIC DOCUMENT consisting of a copy of the file from the records of the Tax Administration Service of the Secretaryship of the Treasury and Public Credit, for Jacobo Xacur Eljure, Felipe Xacur Eljure, and Jose Maria Xacur Eljure.

PUBLIC DOCUMENT consisting of the actua folios issued by the Public Registrar of Property in the Federal District, which show that Messrs. Jacobo, Felipe and Jose Maria own real estate property in the Federal District.

PUBLIC DOCUMENT consisting of the mercantile folios of various mercantile companies, issued by the Public Registrar of Property and Commerce of the Federal District, showing that the domicile of these companies, in which Messrs. Jacobo, Felipe, and Jose Maria Xacur Eljure hold shares, is located in the Federal District

PUBLIC DOCUMENT consisting of the certified copies of public writs containing the minutes of the shareholder meetings of various mercantile companies, showing that the legal domicile of these companies, in which Messrs. Jacobo, Felipe, and Jose Maria Xacur Eljure hold shares, is located in the Federal District.

PRIVATE DOCUMENT consisting of the certified copy issued by Attorney Raul Heredia Carrillo, Notary Public No. 82 of the State of Yucatan of the invoice No. 078, dated March 14 of 1996, issued by Mr. Jacobo Xacur Eljure in favor of Mr. Humberto Ivan Gongora Aguilar, recording the commercial sale of 20,468 kilograms of live steers for a value of 143,276.00 pesos.

PRIVATE DOCUMENT consisting of the list of goods and properties that are known to be in the name of Mr. Jacobo Xacur Eljure, located in the Federal District and in the Mexican Republic.

PRIVATE DOCUMENTS consisting of the list of goods and properties that are known to be in the name and to be the property of Mr. Felipe Xacur Eljure, and public documents consisting of certificates of property issued by the respective Public Registrar of Property.

PRIVATE DOCUMENT consisting of the list of goods and properties that are known to correspond and belong to Jose Maria Xacur Eljure.

PRIVATE DOCUMENTS consisting of a list of IOUs authorized and signed, personally and in his capacity as sole administrator of various mercantile companies, by Mr. Jacobo Xacur Eljure.

PRIVATE DOCUMENTS consisting of the list of IOUs authorized by Messrs. Felipe and Jose Maria Xacur Eljure, and in the representation of various mercantile companies.

PRIVATE DOCUMENTS consisting of the list of mercantile companies in which Messrs. Jacobo, Felipe and Jose Maria Xacur Eljure act as sole administrators or legal representatives.

PRIVATE DOCUMENT consisting of the list of ownership or shareholder participation in each of the mercantile companies in which Messrs. Jacobo, Felipe and Jose Maria Xacur Eljure are shareholders.

Also admitted as evidence was,

INFORMATION ON VARIOUS CREDIT INSTITUTIONS, consisting of the report by the following banking institutions in relation to Messrs. Jacobo, Felipe and Jose Maria Xacur Eljure, in respect to the following points for the past ten years:

1. Bank of the Army and Air Force
2. Banca Mifel Bank, S.A.
3. Banco Industrial, S.A.
4. Banco del Sureste, S.A.
5. Banco Bilbao Vizcaya Argentaria Bancomer, S.A.
6. Banco Nacional de Mexico, S.A.

7. Banco Nueva Scotia Inverlat, S.A.
8. Banco Santander Mexicano Serfin, S.A.
9. Bank of America, S.A.
10. City Bank, S.A.
11. ABN Amro Bank,

As well as the presumptive evidence in its double aspect and the instrumental evidence in the acts. All this evidence was admitted in due course and was considered according to its individual and special nature.

As evidence submitted by the codefendant Felipe Xacur Eljure, the Court admitted the following evidence:

The reply to interrogatories by W. Steve Smith, as well as the documents consisting of:

1. The Official Letter No. 23-22/541.1, dated January 22 of 1999
2. The sentence pronounced on August 4 of 2000 in the trial for the suspension of payments by Detergentes y Jabones Sasil, S.A. de C.V., File No. 112/95, tried before the First Bankruptcy Judge in the Federal District.
3. Official Letter No. 3921, File No. CH/350/01, dated July 24 of 2001.

All this documentation was admitted in due course and was considered according to its individual and special nature.

In regard to the evidence submitted by the codefendant Jose Maria Xacur Eljure, the Court admitted the following:

The reply to interrogatories of the Trustee, W. Steve Smith.

The documents consisting of:

1. Certified copy of the file No. 112/95 from the Secretaryship B related to the suspension of payments by the publicity company Hinsa, S.A. de C.V. y Grupo Xacur S.A. de C.V., tried before the First Bankruptcy Court of the Federal District.

2. Certified copy of Official Letter No. 0551, sent by the Secretaryship of Foreign Relations.

In regard to the codefendant Jacobo Xacur Eljure, the following evidence was admitted:

The reply to interrogatories by W. Steve Smith.

The following documentation:

1. Proofs and certifications of documents in English, with marginal annotations, submitted by the petitioner.
2. The reports issued by the Attorney General of the Republic, dated March 28 of 2000.

3. Certified copy of the ruling pronounced on April 20 of 1999 by the First Bankruptcy Judge of the Federal District in the trial HIDROGENADORA NACIONAL, S.A. de C.V.; HIDROGENADORA YUCATECA, S.A. de C.V.; OLEOPROTEINAS DEL SURESTE, S.A. de C.V.; ACEITERA DEL GOLFO, S.A. de C.V.; LICUOENVASES, S.A. de C.V.; HARINAS DEL SURESTE, S.A. de C.V.; PROMOTORA HINSA, S.A. de C.V.; PROTEINAS Y ACEITES DEL BAJIO, S.A. de C.V.; and DETERGENTES Y JABONES SASIL, S.A. de C.V.

4. Certified copy of Article 303 of the Bankruptcy Law of the United States of America.

As well as the presumptive evidence in its double aspect and the instrumental evidence in the Acts. All this evidence was admitted in due course and was considered according to its individual and special nature.

Finally, having considered all the evidence admitted, at the hearing held on August 30 of 2002 for the hearing of evidence and allegations, the parties were duly cited to appear to hear the following sentence.

WHEREAS

FIRST. This Court is competent to hear and resolve this trial, according to the provisions in Article 104, Fraction 1-A of the Political Constitution of the United Mexican States; Article 53, Fraction I of the Organic Law of the Judicial Power of the Federation; Articles 1090; 1092; and 1093 of the Code of Commerce in relation to Article 17 of the Law of Mercantile Bankruptcy.

SECOND. The procedural method chosen is admissible, since in accordance with the provisions of Article 292, Fraction III, final paragraph of the Law of Mercantile Bankruptcy, the petition for the acknowledgment of a foreign proceeding shall be processed as an incidental matter, following the provisions contained in Title Ten of the aforesaid law, in which the trustee will be proceeding in an incidental manner when filing the said petition.

THIRD. The legitimization of the petitioning trustee to appear before this jurisdictional entity to petition for the acknowledgment of the foreign proceeding and sentence and for international cooperation, has been duly accredited with the certified copies of the trustee's appointments and posting of the bond, dated August 25 of 1997, documents to which full probatory value can be given, under the terms of the provisions in Article 1237 of the Code of Commerce, suppletorily applied to the Law of Mercantile Bankruptcy, in relation to Article 295, second paragraph of the last ordinance mentioned, which gives the undersigned the faculty to presume that the documents accompanying the petition for acknowledgment are authentic, whether they have been legalized or not. Also, based on the Jurisprudential Thesis XIX.1o. J/7, of the Ninth Epoch, First Court of the Nineteenth Circuit, published in the Judicial Weekly of the Federation and its Gazette, Volume IX, April of 1999, found on page 342, the title and contents of which is as follows: "**FOREIGN PUBLIC DOCUMENTS, LEGALIZATION OF**. *In conformance with the provisions of Articles 2, 3, 4 and 5 of the Convention to Eliminate the Requirement for the Legalization of Foreign Public Documents, subscribed by the government of Mexico and approved by the Senate of Mexico by means of a decree published in the Diario Oficial de la Federación of January 17 of 1994, promulgated by the President and published for its due observance in the same publication on August 14 of 1995. The only formality that is required for the probatory efficacy of the said instruments is that they contain the corresponding "apostille," affixed by the competent authority of the State from which the instrument originates. Therefore, if a document of that nature lacks that formality, it cannot be accorded probatory value, and it cannot be used for any legal purpose."*

The documents, which, besides being duly supplemented with the apostille, as stipulated by the Hague Convention of October 5 of 1961, have been duly translated -- are seen to fully accredit the petitioner's capacity as trustee, since in the cases numbered 96-48540 mdl, 96-48541 rfw, and 96-48538 kkb, the debtors Felipe, Jose Maria, and Jacobo, all surnamed Xacur, respectively, were notified of the appointment of the provisional trustee, W. Steve Smith, who according to the document being analyzed is considered to have accepted the post in respect to each of the debtors, since he did not reject the post within a period of five days, as established in the document itself, and since there is no evidence in this case indicating otherwise. The capacity of the foreign trustee is therefore validly acknowledged.

Added to the above, in accordance with the stipulations in Fraction IV of Article 279, in relation to Article 286 of the Commercial Bankruptcy Law, the foreign representative, including a provisional trustee, is the person or entity who has been authorized in a foreign proceeding to administer, reorganize or liquidate the merchant's goods or businesses, or to act as the representative of the foreign proceeding, and he can also be considered as authorized to appear directly in the courts that are conducting proceedings under the cover of the Commercial Bankruptcy Law.

Therefore, W. Steve Smith is found to be duly authorized to act in this case, having accredited with the aforementioned documents that he is the foreign representative, with sufficient faculties to administrate the goods or businesses of the defendants.

Likewise, the codefendants Jacobo, Felipe, and Jose Maria, all surnamed Xacur Eljure, are found to be passively authorized to appear in this case for the acknowledgment of a foreign proceeding and sentence and for international cooperation, since they are the persons who were declared bankrupt in the bankruptcy proceedings under Chapter 7 (seven) of the Bankruptcy Code (Chapter 11 in the United States) by Karen K. Brown, judge of the United States Bankruptcy Court of the Southern District of Texas, which has been accredited with the certified copy of the said declaration on August 22 of 1997, exhibited by the petitioner in his Attachment Two, iii, b), duly annotated and accompanied by its translation, a document to which full probatory value has been given in conformance with Article 1237 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law in relation to Article 295, second paragraph of the last ordinance cited.

Therefore, the stipulation established in Article 1 of the Federal Code of Civil Procedures suppletorily applied to the Commercial Bankruptcy Law has been met, since it is established thus in Article 8, having accredited his juridical faculty to initiate a proceeding or to intervene therein so that this Court may declare or establish a right, or pronounce a sentence.

FOUR. After a thorough analysis of this incident, the undersigned is proceeding to resolve the appeals for reversal filed by the parties.

In regard to the appeal filed by Dario Ulises Oscos Coria, in his capacity as Agent for the petitioning Trustee in his writ number 7452 against the sentence of June 5 of 2002, the said appeal is rejected.

In effect, the petitioner alleges that the said sentence should be annulled because it violates the provisions of Article 267, Fraction II of the Commercial Bankruptcy Law in relation to Article 1202, in a contrary sense, and Articles 1378 and 1061 of the Code of Commerce, since the codefendant Felipe Xacur Eljure should have offered and exhibited the documents of whose existence he was fully aware, and that he could easily have obtained in his capacity as an active member of the companies comprising the Xacur Group of companies, and because he was a creditor in the suspension of payments of the company Promotora Hinsa, S.A. de C.V., and not now be submitting documents as supervening evidence, when he even had access to the file of the said suspension of payments because he was notified by the First Bankruptcy Judge of a meeting of creditors that would take place on December 1 of 1998, whereby he was in a position to have directly requested the documents from the said Judge, or to establish the denial of his request. By not proceeding in this manner, he is illegally and unduly taking advantage of their arrival at these proceedings. Added to the above, his offer is now untimely, since he should have submitted them within three days after the codefendant Jose Maria Xacur Eljure answered the suit in which the said evidence was introduced.

These allegations are unfounded, since contrary to the indications by the objector, the sentence of June 5 of 2002 does not violate the provisions of Article 267, Fraction II of the Commercial Bankruptcy Law in relation to Articles 1061, 1202 and 1378 of the Code of Commerce. The said sentence reads as follows:

> "Mexico City, Federal District, on June 5 of 2002.
> (. . .) In respect to the supervening evidence being submitted, consisting of various documents that were sent by the First Bankruptcy Judge of this city, as well as *ad cautelam* the demurrer of reflex efficacy of *res judicata*, based on the provisions of Article 1061, Fraction III, last paragraph of the Code of Commerce suppletorily applied to the Commercial Bankruptcy Law, and since the said codefendant declares under oath that he was unaware of their existence, despite being from dates prior to the writ of response, the certified documents sent by the aforesaid authority and indicated below are admitted as supervening evidence, to be considered according to their individual and special nature (. . .) Notify."

In effect, from the evidence in this case, to which full juridical efficacy has been conceded, under the terms of Article 1294 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, no irregularity can be observed, as adduced by the Objector, nor much less that Felipe Xacur Eljure had knowledge of and access to the file on the suspension of payments of the company Promotora Hinsa, S.A. de C.V., whereby he could have introduced the said documents into the case as evidence in his favor from the moment he appeared at the trial. There is no evidence, nor much less proof, that the aforesaid defendant appeared before the First Bankruptcy Judge of this city to claim his rights as a creditor of the company Promotora Hinsa, S.A. de C.V. Therefore, since there is no manifest and undoubted evidence that Felipe Xacur Eljure did have knowledge of
the material that was admitted as supervening evidence, the allegations of the Appellant are unfounded, independently of the fact that, according to the plaintiff, by being a shareholder of the firm Detergentes y Jabones Sasil, S.A. de C.V. it is presumed that he did have knowledge thereof. But even with this circumstance, the fact of being a shareholder of a company does not prove that he appeared at the suspension of payments as a physical person. First, because the creditor is the company of which he is a shareholder, and second, because it has not been proved that Felipe Xacur Eljure is the legal representative of Detergentes y Jabones Sasil, S.A. de C.V.

In regard to the allegation that his submission of the evidence is untimely because he should have submitted the said evidence at the time that the codefendant Jose Maria Xacur Eljure introduced it, submitting a simple copy thereof, -- this allegation is also incorrect, because as Felipe Xacur Eljure has emphasized at the time the appeal was heard, simple photographic copies do not have probatory value, and even though they existed in simple copies, their admission and legalization was subject to the remission of the said documents in copies certified by the First Bankruptcy Judge, since it can be seen in the files that the evidence that was actually offered and admitted was the certified documents, and not the simple copies. Moreover, the defendant has complied with the provisions in Fraction VI of Article 1079 of the Code of Commerce when he submitted the said evidence within three days after they were received and considered by this Court. Consequently, the allegations by the plaintiff are contrary to Law and his request for annulment is therefore denied, leaving the sentence of June 5 of 2002 firm and in effect.

In regard to the appeal for annulment filed in writ No. 9162 by Alejandro Valenzo Peralta, the Agent for the codefendant Jacobo Xacur Eljure against the ruling of July 19 of 2002, denying the admission of the incident of dismissal of the acknowledgment of foreign bankruptcy proceedings and request for international cooperation, the said appeal is hereby denied.

The Appellant indicates that the said sentence should be reversed because the consideration on which the motion of dismissal was rejected is contrary to the sense and literal meaning contained in the writ by which the said motion was filed, since the processing of this matter introduces an irrelevant question, to wit, the sentence pronounced by the First District Civil Trials Judge in the Federal District, as well as the writ for revision filed by W. Steve Smith, where he objects that the bankruptcy sentence that originated the proceedings of this trial should be executed in our country in conformance with the Bankruptcy and Suspension of Payments Law. These allegations are without legal foundation.

In effect, although it may be true that the sentence of November 26 of 2001, pronounced by the First District Civil Trials Judge in the Federal District is an irrelevant matter in this trial, it is no less true that, despite this fact, the said resolution for relief resolves the judgment of guarantees interposed by the plaintiff through his Agent, Manuel Huacuja, against the interlocutory sentence of June 29 of 2001, pronounced by the First Bankruptcy Judge of the Federal District, which denied the appeal against the sentence of April 27 of 1999, the said sentence having ruled against the acknowledgment of the efficacy of the foreign sentence, based on the "Inter-American Conference on International Competence for the Extraterritorial Efficacy of Foreign Sentences." Therefore, on the objection based on reflective res judicata interposed by the codefendant
Jacobo Xacur Eljure in his writ of response, it can be gathered that it is based on that last resolution, that is, on the sentence of April 27 of 1999, the decree on which the objection is based, which results in and concludes with the resolution of November 26 of 2001, pronounced by the Federal Judge indicated thereon. And this, contrary to the allegations by the Appellant, essentially produces the objection based on reflective res judicata*,* wholly independent of the fact that the sentence granting relief is an irrelevant matter, because, as was affirmed in the sentence now being impugned, the dismissal has the same bases as the objection alluded to, which cannot be adjudged to be a new and supervening fact that would justify the dismissal of the proceedings. Therefore, the allegations being unfounded, since they coincide with the objection based on reflective res judicata, the appeal for reversal is hereby denied and the sentence of July 19 of the present year shall therefore remain firm and in effect.

The appeals for reversal filed by the Agent for the Trustee, by means of the writs recorded under the numbers **9351 and 9416** against the rulings of **July 23 and 25 of 2002** are hereby denied.

The Appellant bases his appeals substantially on the fact that when the codefendants Jacobo and Felipe, both surnamed Xacur, were allowed to introduce supervening evidence to support their objection based on reflective res judicata, they were thereby allowed to untimely introduce new documents into the proceedings, when the codefendants have at all times had knowledge of and access to the file from which the supposed supervening evidence originated, since Alejandro Valenzo Peralta was the agent for both the codefendant Jacobo Xacur Eljure and for Sociedad Grupo Xacur, S.A., from which it may be presumed that they had knowledge of the sentence of November 26 of 2001 from the moment it was pronounced and not on the date on which it was submitted, because of the double capacity of Alejandro Valenzo Peralta as the

agent, and that in that capacity he could very well have communicated this event to the brothers Xacur Eljure; and that moreover, in the case of Jacobo Xacur Eljure, he offered this evidence at the time in which he filed the motion for dismissal of the acknowledgment, which remained in his possession when the motion was denied, and his move to introduce that evidence was therefore untimely, as is the move by Felipe Xacur Eljure to introduce this evidence, since it was made after the three-day period established in Article 1079, Fraction VI of the Code of Commerce, which stipulates a general period when the said ordinance does not provide for a special period.

However, it must be said that these allegations are unfounded, and therefore contrary to law for the reversal of the sentences impugned, since, as was established in the rulings of July 23 and 25, the supervening evidence submitted by Jacobo and Felipe, both surnamed Xacur Eljure, was admitted because these codefendants declared under oath that they were unaware of the existence of this evidence, consisting of the certified copy of the sentence pronounced on November 26 of 2001 by the First District Civil Judge in the Federal District, or of the writ filed by the Agent for the plaintiffs' Trustee, which contains the appeal for revision against the resolution pronounced by the said Constitutional Control entity, which moreover did not exist at the time they responded to this suit. Therefore, based on these declarations, the court proceeded to admit the said evidence, in accordance with the provisions of Article 1061, Fraction III, in relation to Article 1202, both of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, which does not constitute a violation of the provisions indicated.

This is so because, contrary to the allegations by the Appellant, the said decree does not violate the articles cited, since neither the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law in accordance with the stipulations in Article 8, nor the Federal Code of Civil Procedures establish a period of time for the filing and admission of the documents whose existence was ignored by the party, either because they had no knowledge of them or because they originated on a subsequent date. Therefore, they can validly be submitted as supervening evidence up to a time before the Hearing of Allegations is held, as established in Fraction III of Article 267 of the pertinent law. This is deduced from a harmonic interpretation of the provisions ruling the submission of evidence, which are referred to in Articles 1202 and 1205 of the Code of Commerce, as well as from the isolated thesis hereby invoked by analogy, corresponding to the Eighth Epoch of the Fourth Civil Trials Court of the First Circuit, published in the *Semanario Judicial de la Federación,* Volume VI, Second Part-1, July to December of 1990, Page 148, which reads as follows: "**SUPERVENING DOCUMENTS IN AN ORDINARY COMMERCIAL TRIAL – HYPOTHESIS FOR THEIR ADMISSION**. *In conformance with Article 1387 of the Code of Commerce, the parties in an ordinary commercial trial may submit documentary evidence outside the legal period of time up to the time just before the pronunciation of sentence, if they can declare under oath that they had no prior knowledge of it, or could not obtain it up to that time. However, if the sworn statement does not correspond to the facts, and this becomes patently evident because the files reveal that the party did have prior knowledge of the instruments being submitted, or that he was in a position to introduce it into the process in a timely manner, the judge must reject them, since the logical foundation for the admission of such evidence resides in the fact that it could not be submitted in the normal period of time, and that no one is obligated to perform the impossible."*

Moreover, although it's true that Article 267, Fraction II of the Commercial Bankruptcy Law establishes that, with the initial writ and the writ responding to the suit the parties must submit their evidence, in the text of this Article the reception of documents subsequent to the

said writs is excluded, a juridical interpretation that leads one to conclude that this rule is not applicable in the case of evidence that must be classified as supervening, since, aside from the fact that this circumstance prevented its timely exhibition – and no one is obligated to perform the impossible – it must be taken into account that the process and the rules by which it is governed is the instrument created for the solution of the conflict in its substantial aspect, and therefore the judge has the faculty to resort to all the means necessary to arrive at the truth. Consequently, the reception of supervening documents that will significantly contribute to a greater access to elements for the solution of the conflict while adhering to the Law cannot be considered as illegal.

Therefore, the general standard provided in Fraction VI of Article 1079 of the Code of Commerce, which concedes the parties a period of three days to exercise a procedural act or right, cannot be applied, since the ordinance itself does not provide a special rule, because this would be contravening the rules of evidence. Nor has it been accredited in this case that Alejandro Valenzo Peralta is the agent for the codefendant Jacobo Xacur Eljure or for the firm Grupo Xacur, S.A., and that because of this fact Felipe Xacur had knowledge of the event, since this presumption by the Appellant is of such a nature that it necessarily requires reliable and unimpeachable evidence that they did in effect have knowledge of the said documents, and that this notwithstanding they did not offer them in evidence. Therefore, since there is no proof to accredit this asseveration, it must be concluded that his allegation is unfounded, and the appeals for the reversal of the sentences pronounced on the 23rd and 25th of July are denied. Consequently, the said decrees shall remain firm and in effect.

Finally, in regard to the appeal for reversal filed by Ildefonso Perez Sanchez, in his capacity as Agent for the codefendant Felipe Xacur Eljure by means of the writ recorded under the number 10492 against the sentence of August 21 of 2002, this appeal is hereby denied.

In effect, since in this appeal, the same as the ones filed by the plaintiff against the rulings of July 23 and 25, the general period of three days referred to in Article 1079, Fraction VI of the Code of Commerce is not applicable in the case of the submission of supervening evidence, because otherwise the evidentiary standards would be violated, as has been established in the preceding paragraphs, and therefore, without unnecessary repetitions of the obvious, the said appeal must be denied for the reasons declared in the resolution of the appeals for reversal filed by the Agent for the plaintiff. Consequently, the ruling of August 21, 2002, shall remain firm and in effect.

FIFTH. Since no other question remains in the case that needs to be first resolved, the Court hereby proceeds to the study of the central issue.

Pursuant to Article 384 of the Federal Code of Civil Procedures, suppletorily applied to the Commercial Bankruptcy Law, the Court shall first study the objections filed, and if any of them are found to be admissible the Court shall abstain from delving into the bottom of the matter.

Towards this effect, at the time that **Felipe Xacur Eljure** appeared for this proceeding, he objected that there was no international reciprocity; that the homologation requirements established in the Constitution were absent; that he was not a merchant; and the inapplicability of the Commercial Bankruptcy Law.

On his part, **Jose Maria Xacur Eljure** objected that the Commercial Bankruptcy Law was inapplicable because he was not a merchant; that the plaintiff's representative was not duly authorized; that commercial bankruptcy proceedings could not be accumulated against two or

more persons; the inapplicability of Title XII of the Commercial Bankruptcy Law because it is contrary to the international treaties; the inapplicability of the Commercial Bankruptcy Law because it was being applied retroactively; and the objection based on reflective res judicata.

Jacobo Xacur Eljure objected to the jurisdiction because he is not a merchant; the jurisdiction on the grounds that the Commercial Bankruptcy Law cannot be applied retroactively, according to Transitory Article 5; the extraterritorial nullity according to Article 280 of the Commercial Bankruptcy Law in relation to the Inter-American Conference on International Competence; and the objection of *res judicata.*

Considering the content of the declarations on which each of the debtors has based his objections, it is observed by the Court that they are similar in content. Therefore, in observance of the principal of procedural economy, it shall study the objections in a combined manner, except for the objection regarding the representation of the plaintiff's agent, and the one regarding the nonaccumulation of commercial bankruptcy proceedings against two or more persons, which were filed only by the debtor Jose Maria Xacur Eljure.

In regard to the objection to the lack of authorization, it is alleged that the petitioner has exhibited a Power of Attorney granted by the trustee before a "notary public" of the United States, which is any person, which does not comply with the requirements suited by the notarial laws, especially in the Federal District. And that moreover, the said "notary public" did not comply with the provisions in the "Protocol for the Uniformity of the Legal Regimen of Powers," published in *Diario Oficial de la Federación* on December 3 of 1953, having certified the judicial order of July 21 of 2000, contrary to what was originally certified therein, since the plaintiff's trustee was only authorized to contract Mr. Dario Ulises Oscos Coria as the juridical assessor and agent, and did not authorize the contracting of other persons in any manner whatsoever, such as the various persons who appear in the notarial letter of power exhibited by the plaintiff, and therefore the power exhibited is invalid for the accreditation of the faculties of any of the agents, since if the nullity were not declared any of the other agents could appear and continue acting in this trial.

This objection is overruled.

Under the terms of the "Protocol for the Uniformity of the Legal Regimen of Powers" published in *Diario Oficial de la Federación* on December 3 of 1953, it can be observed that in the case of powers granted abroad, to be exercised in our country, certain standards must be followed, which are for the purpose of international integration.

That is why the said protocol establishes, in the part with which we are concerned, the following:

> "ARTICLE I. In the powers that are granted in the countries comprising the Pan American Union, to be exercised abroad, the following rules shall be observed:
> 1. If the power is granted in his own name by a physical person, the official authorizing the act (Notary, Registrar, Judge, or any other official to whom the respective country attributes that function) shall attest that he knows the grantor, and that the said grantor has the legal capacity to grant it. (. . .)
> ARTICLE IV. (. . .) In the general powers for suits and collections or for administrative or judicial powers, it need only be stated that they are granted with all the general faculties and for the special faculties requiring a special clause, in conformance with the law, and they shall be understood to be conferred without any restriction or limitation whatever. The provisions of this Article shall be in the

> nature of a special rule, which shall prevail over the general rules that in any other sense have been established in the legislation of the respective country.
> ARTICLE V. In each of the countries comprising the Pan American Union, the powers granted in any of the other countries shall be legally valid if they adhere to the rules formulated in this protocol, as long as they have also been legalized in conformance with the special rules of legalization.
> ARTICLE VI. The powers granted in a foreign country and in a foreign language may be translated within the body of the same instrument into the language of the country in which they will be exercised. In such cases the translation thus authorized by the grantor shall be considered as exact in all its parts. The translation can also be made in the country in which the mandate will be exercised, according to the usage or legislation in that country.
> ARTICLE VII. The powers granted in the foreign country do not need to be recorded or protocolized in specific offices, but the recording or protocolization must be carried out when the law demands this special formality in certain cases. (. . .)"

From the rules of the "Protocol for the Uniformity of the Legal Regimen of Powers," compared with the notarial instrument No. three thousand one hundred nineteen, notarized by the Notary Public No. two hundred thirty-seven of the Federal District, whereby the powers granted to Dario Ulises Oscos Coria to act in representation of W. Steve Smith were protocolized, it is inferred that, contrary to the allegations in the objection, the standards established in the said protocol were complied with, since it can be observed that in the City of Houston, Harris County, State of Texas, United States of America, W. Steve Smith appeared before Vallery R. Cowden, a notary public duly authorized to act in and for the said city and county, to declare that in his capacity as trustee for the bankruptcy assets of Jacobo, Felipe, and Jose Maria Xacur Eljure, jointly administered in the case No. 96-48538-H5-7, he was granting powers in favor of the Licentiates Dario Ulises Oscos Coria; Gerardo Octavio Oscos Coria, and Ciceron Arturo Grajales Padilla to severally and jointly exercise a general power for suits and collections with all the faculties, including the special faculties that according to the law require a special clause. Likewise, the Notary Public attests that she is personally acquainted with the grantor, that he has legal and natural capacity to grant the powers contained in the said instrument; that Mr. W. Steve Smith is in fact the trustee of the bankruptcy assets of each of these debtors, and that the said representation is legitimate, according to the authentic instruments that were exhibited to her, consisting of the sentence pronounced on August 22 of 1997 against the debtors in this case, in conformance with Section 7 of the Bankruptcy Code of the United States for the Southern District of Texas, Houston Division; the certifications dated 71499 and 8122000 of ____ of 2000 (sic) which accredit that the trustee was designated on August 25 of 1997; and the judicial order dated July 21 of 2002, issued by the Bankruptcy Court of the United States of America, Southern District of Texas, Houston Division, authorizing the trustee to grant the powers now being analyzed. The type of powers granted have also been inserted, including the stipulations established in Article 2554 of the Federal Civil Code.

Then, the second affidavit in his order, number three thousand one hundred and nineteen, with which the representation of Dario Ulises Oscos Coria is accredited, complies with the stipulations in the Articles indicated of the "Protocol on the Uniformity of the Legal Regimen of Powers," since the foreign notary, who is the person authorized by the laws of the respective

country which attributes this function, inserts and makes known the capacity of the grantor, his faculty to confer powers of attorney, and the capacity under which he does so. It is also duly protocolized and legalized, and it inclusively adds the appendix of the power of attorney granted in the foreign country, with its respective translation. Therefore, the said documentation produces its legal effect, and under the terms of the provision in Article 1292 of the Commercial Code, suppletorily applied to the Commercial Bankruptcy Law, has full probatory value, since it is a public document.

Without hindering the foregoing, the declaration by the objecting party to the effect that the said power should be declared null, since the foreign Notary Public can be any person, and this therefore fails to meet the requirements suited by our notarial laws, especially in the Federal District – we should not overlook the fact that in regard to the formalities required for the granting of powers in a foreign country, the rule "locus regit actum" applies, which can be translated as "the place rules the act," which means that the acts are ruled by the laws of the place in which they are carried out, a principle that is found in Article 13, Fraction IV of the Federal Civil Code, which provides that:

> "The determination of the applicable law will be made in accordance with the following rules:
> (. . .) IV. The form of the juridical acts shall be ruled by the laws of the place in which they are carried out. However, in the case of Federal matters, they may be subjected to the forms prescribed in this Code when the act will produce effects in the Federal District or in the Republic.

Consequently, in conformance with this principle of Law established in current legislation, the form of the juridical acts is ruled by the law of the place in which they are carried out, which in the present case means that the form of the granting of powers is not subject to the standards of the Civil Code nor to Mexican notarial laws, but rather are subject to the laws of the foreign country, and if in the State of Texas, City of Houston, Harris County, United States of America the capacity of Notary Public is conferred, with due authorization to act in and for the said city and county, upon Vallery R. Cowden under the legislation in which the act took place, it is clear that the form with which the act is invested has full validity, and therefore has juridical effect in this city.

In support of the foregoing, by analogy, the jurisprudence P./J. 14/94, Eighth Period of the Plenum of the Supreme Court of Justice of the Nation, published in the *Gaceta del Semanario Judicial de la Federación,* Volume 78, June of 1994, Page 12, which reads as follows: "**POWERS GRANTED BY COMPANIES ABROAD TO BE EXERCISED IN MEXICO, WHEN THEY ARE RULED BY ARTICLE I OF THE PROTOCOL ON UNIFORMITY OF THE LEGAL REGIMEN OF POWERS, DO NOT NEED TO OBSERVE THE REQUIREMENTS OF FORM ESTABLISHED IN OTHER MEXICAN LAWS FOR POWERS GRANTED IN NATIONAL TERRITORY.** *To examine the validity of a power granted by a company abroad, to be exercised in Mexico, to which only the Protocol on the Uniformity of the Legal Regimen of Powers of February 17, 1940 is applicable, and which was ratified by Mexico and published in Diario Oficial de la Federación on December 3 of 1953, it is not necessary to observe the formal requirements that other Mexican Laws – such as the Notarial Laws of the Federal District and of the States, the Code of Commerce, or the General Law of Mercantile Companies – demand for the granting of powers in Mexico, nor the legal*

interpretation that has been made of the said requirements, but only the precepts of Article I of the said protocol, since its rules must be understood to be incorporated into our laws, in accordance with Article 133 of the Fundamental Law, which are therefore of obligatory compliance and direct application in this regard, because they specifically regulate the powers granted abroad, a case that is different from the one with which those laws which refer to the granting of powers in Mexican territory are concerned.

In regard to the other allegation to the effect that the power is invalid because the foreign judge only authorized the trustee to grant powers to Dario Ulises Oscos Coria and not to various other persons, this objection is overruled because, first, the power in question complies with the provisions of the protocol by which it is ruled because it is a foreign power; and second, because the fact of having included other persons in it does not affect its validity, but rather the document continues to produce all the legal effects of the act consigned in the instrument in question, since despite the said circumstance, the person appearing at the proceeding is precisely the person who was authorized by the Bankruptcy Court in the United States of America to act in the name and representation of the trustee for the assets of the bankrupt debtors, as can be seen in the judicial order of July 21 of 2000. Therefore, the person appearing has been duly authorized and acknowledged through the notarial instrument number three thousand one hundred and nineteen, which being a public document, the court reiterates, is a document that has full probatory value under the terms of Article 1292 of the Code of Commerce, suppletory to the pertinent law.

Therefore, the Court concludes that the objection based on the lack of authority of the plaintiff's representative filed by the codefendant Jose Maria Xacur Eljure is denied.

In regard to the objection based on the accumulation of commercial bankruptcy proceedings against two or more persons, the Appellant adduces that Article 15 of the Commercial Bankruptcy Law establishes the principle of the nonaccumulation of the commercial bankruptcy of two or more merchants. In this particular case, the Appellant cites three cases:

Case No. 96-48538-H5-7, of Jacobo Xacur Eljure.

Case No. 96-48540-H5-7, of Felipe Xacur Eljure.

Case No. 96-48551-H5-7, of Jose Maria Xacur Eljure

The Appellant also affirms that the bankruptcy assets are jointly administered by the Trustee in Case No. 96-48538-H5-7, pertaining to Jacobo Xacur Eljure.

That based on this, and since the bankruptcy cases have different numbers and were processed separately, they should have been submitted before this Court in the same manner, and not accumulated, violating the legal precept invoked. [But] the Appellant narrates in an indistinct manner the proceedings of each of the defendants in the facts on which he bases his appeal, violating in the same manner the said Article 15 of the pertinent law.

Having studied the objection, it is denied.

It's true, as the appellant claims, that Article 15 of the Commercial Bankruptcy Law prohibits the accumulation of proceedings against two or more merchants.

The doctrine refers to the accumulation as a trial procedure, in which diverse circumstances must occur to carry it out, whether by the subjects, the actions, or by the causes. The accumulation of cases is the material combining of the files under a single judge, in order to continue the substantiation so that they can be resolved in a single sentence, to avoid contradictions.

From the above, we can see that the ends pursued by the accumulation of cases are two: The first consists in obtaining a procedural economy, since several suits joined into a single

procedure requires less activities than would be required in separate trials. The second, is to avoid contradictory sentences. These ends do not in any way tend to affect the substantive rights of the parties involved in the accumulated disputes. The effects produced by the accumulation are purely procedural.

Now, from the correct interpretation of Article 15 of the Commercial Bankruptcy Law, we find that the said prohibition is only applicable in regard to the proceedings carried out before the competent jurisdictional entities when a commercial bankruptcy is to be initiated in the Mexican Republic under Chapter One, endeavoring, in any event, to preserve the companies and avoid the generalized noncompliance with the payment obligations which would place the viability of the said companies at risk. The two successive phases of which the commercial bankruptcy consists, conciliation and bankruptcy, applicable to all those persons who fall under the stipulations of Articles 9 and 10 of the same law, should be exhausted.

However, in the present case, the Trustee is not initiating a new bankruptcy proceeding under the said Chapter One, but rather the acknowledgment of a foreign proceeding and the execution of the sentence pronounced therein, which concerned itself with studying the juridical situation of the debtors, deciding that in a generalized manner they had not complied with their obligations, which led to a single sentence pronounced on August 22 of 1997, declaring them bankrupt and the decision that the debtors were subject to bankruptcy under the United States Bankruptcy Law, and that the cases presented would be jointly administered under the case number 96-485348-H5-7. To now pretend something contrary by accepting the objection would be to violate the principle of juridical security that should rule every proceeding, especially when involving a *res judicata*, in conformance with the laws of the foreign country, which decided the case under its jurisdiction with a single sentence, which cannot be divided, given the unity of the cause. Therefore, we reiterate, the objection is contrary to Law.

In respect to the objections referring to the inapplicability of the Commercial Bankruptcy Law because it is being applied retroactively, the objections are denied.

The appellants state that the Commercial Bankruptcy Law is inapplicable because it violates the provisions of Constitutional Article 14 in relation to the transitory Article 5 of the pertinent law when it is retroactively applied to the foreign proceeding for which acknowledgment and international cooperation is being requested, since the said foreign proceeding took place and was resolved when the Bankruptcy and Suspension of Payments Law was still valid, and the sentence derived from the foreign proceeding – principally the definitive sentence – was pronounced when that law was still valid. That is, on August 22 of 1997, the Bankruptcy and Suspension of Payments Law was still in effect. Therefore, the current law should have been applied, according to the provisions of Transitory Article 5 of the Commercial Bankruptcy Law, which stipulates:

"FIFTH. The bankruptcy and suspension of payments proceedings that were initiated prior to the adoption of this law shall continue to be ruled by the Bankruptcy and Suspension of Payments Law published in *Diario Oficial de la Federación* on April 20 of 1943."

And since the article cited makes no distinctions between a national or foreign proceeding, the Bankruptcy and Suspension of Payments Law is applicable to this case, because the sentence for which acknowledgment has been requested took place prior to the adoption of the Commercial Bankruptcy Law, which went into effect on May 13 of 2000, and the sentence resolving the bankruptcy of the debtors was pronounced on August 22 of 1997, executable

beginning on the 25th of the same month and year. Therefore, its acknowledgment should be ruled in conformance with the derogated Bankruptcy and Suspension of Payments Law.

These allegations are unfounded, and the appeal is therefore denied.

In effect, although it may be true that the said transitory Article 5 of the Commercial Bankruptcy Law stipulates that the said law will not apply to bankruptcy and suspension of payment proceedings initiated before it went into effect, without distinguishing between national and foreign proceedings, it's also true that when "proceedings" is indicated, it is referring to the trials already filed and prepared by the competent jurisdictional entity and which were pending resolution at the time the said law went into effect – that is, that they were being processed.

However, in the present case, despite the fact that the sentence whose acknowledgment and execution is being requested is from a date prior to the adoption of the Commercial Bankruptcy Law, the exception established in the transitory Article 5 is not applicable to this specific case because the trials from which the sentence under consideration derived were already concluded as "res judicata, and the proceeding for acknowledgment and international cooperation brought before this jurisdictional entity was initiated under the current Commercial Bankruptcy Law, whose scope of application -- since it is a procedural law -- is determined by the time at which it is in effect. And this does not violate any substantive right because, being a procedural law, it is clear that it becomes effective once the proceeding has been initiated.

Contrary to the allegations by the appellants, it must be said that in order for a law to be considered retroactive, it must be shown that it violates rights acquired under prior substantive laws, which is not the case in this specific instance, because, although the sentence whose acknowledgment and execution is being sought is from a date prior to the adoption of the Commercial Bankruptcy Law, it does not violate any acquired right, since its scope of application is circumscribed to the procedural standard, which cannot violate previously acquired substantive rights because it is applicable at the moment a proceeding is initiated. Therefore, if previously acquired rights were acknowledged by the Bankruptcy Court of the United States, the said rights cannot be violated by the application of an adjective standard.

In effect, the Commercial Bankruptcy Law is not being applied retroactively, and therefore does not violate the provisions of Constitutional Article 14, because its rules imply a legal adjective standard which, for the substantiation of a judgment, provides for the systemization of the concatenated acts comprising the proceeding, which are not realized or developed in a single moment, but rather take place over time, and it is this different moment of realization of the procedural acts that must be considered in order to determine which standard should rule the act in question. That is to say, the rules contained in the law under discussion is of an adjective nature, that is, procedural, since it establishes the procedure to which the parties must submit to produce the action in question. For this reason, the principle of retroactivity has not been applied here, because the standards of the proceeding cannot produce retroactive effects, since the proceeding is comprised of successive acts, which are each ruled by the provisions in force at the time they took place.

In support of the foregoing, the jurisprudence corresponding to the Ninth Period of the Eighth Civil Court of the First Circuit is applicable, which was published in Semanario Judicial de la Federacion y su Gaceta, Volume V, April of 1997, thesis I.8o.C. J/1, on page 178, which reads as follows: "RETROACTIVITY OF PROCEDURAL STANDARDS. For a law to be considered as retroactive, it must have effects on the past, and violate rights acquired under previous laws, which is not the case with procedural standards. In effect, procedural standards are understood to be those standards that rule the proceeding. They establish the attributions,

terms, and means of defense available to the parties so that, with the intervention of the competent Judge, they may obtain the judicial sanction from their own rights. Those rights arise from the proceeding itself, are exhausted in each procedural phase in which they originate, and are ruled by the current standard by which they are regulated. Therefore, if the legislator modifies the processing of a procedural phase before it is initiated, eliminates a recourse, expands a term, or modifies the rules related to the valuation of evidence, one cannot consider this a retroactive application of the law, since the new law does not deprive anyone of a faculty that was already available, and the new law must therefore be applied."

Also applicable is the thesis in the Eighth Period, from the First Court of the Sixteenth Circuit, Gaceta del Semanario Judicial de la Federación, Volume 72, December of 1993, Thesis XVI.1o. J/15, page 89, which says: "NONEXISTENT RETROACTIVITY IN PROCEDURAL MATTERS. The procedural laws cannot produce retroactive effects, since the acts of that nature are ruled by the provisions current at the time they took place. Therefore, if the transitory articles of the decree that contains reforms to a procedural law do not establish the manner in which they are applicable to cases being processed, the phase in which each specific case is found must be considered, to thereby determine if the application of the reforms is juridically possible, specifically verifying the time in which the procedural acts took place, since those reforms can only be applied to the procedural acts that take place after the reforms go into effect, since the acts executed will necessarily have observed the legal provisions that were in effect on the date they took place, and not observing, of course, the reforms that were not applicable at that time. If this were not so, we would incur the error of suiting, based on the reforms, that the procedural acts comply with requirements that were not imposed by the previous law."

Therefore, it can be said that the Commercial Bankruptcy Law is the procedural law current at the time of the petition for international acknowledgment and procedural cooperation, and since its application is not considered retroactive or in violation of substantive acquired rights, it is concluded that the objections being studied are contrary to law.

In regard to the objections based on res judicata and reflective res judicata which the defendants allege, claiming that the petition for international cooperation is contrary to law because when the plaintiff appeared before the First Bankruptcy Judge of the Federal District, in the case No. 112/95 in relation to the suspension of payments by Promotora Hinsa, S.A. de C.V. and Grupo Xacur, S.A. de C.V. for the purpose of realizing acts of execution derived from the foreign proceeding, the said judge denied the request in his decision of April 27 of 1999, ruling that in the case of the execution of foreign sentences regarding bankruptcy, international cooperation is not applicable, in conformance with the provisions of Article 6 of the "Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences" (sic); an opinion that was reiterated in the sentence of June 29 of 2001 when resolving the appeal for reversal that was filed against the said sentence. And since the foreign proceeding constitutes the cause for the petition in both cases, it is considered as res judicata.

Added to the foregoing is the opinion sustained by the First Civil District Judge in the Federal District in the resolution of November 26 of 2001, in which the protection and relief of Federal Justice was denied to W. Steve Smith in his capacity as Trustee for the bankruptcies of Felipe, Jacobo, and Jose Maria, all surnamed Xacur Eljure in his appeal against the decision of the First Bankruptcy Judge in this city, consisting in the resolution of June 29 of 2001; that these sentences, in regard to the central issue petitioned for, constitute res judicata, including reflective res judicata, and that any petition deriving from the foreign proceeding is improper, because a

resolution exists that pronounced sentence on the persons, objects and causes derived from the foreign proceeding, and that any act involving the execution of the foreign sentence derived from the bankruptcy of the debtors must therefore be understood as res judicata.

The objections in question must be denied.

In principle, res judicata implies the immutability of the resolution of the central issue in the firm sentence or resolution, which for reasons of juridical security implies no further discussion in any future trial of a matter already resolved in the first trial, but without denying that the first trial is a precondition for the processing of the final one.

So, in order for the presumption of res judicata to produce effects in another trial, it is necessary that between the case resolved by the sentence and the one in which res judicata is invoked there be an identical matter, cause, litigants, and capacities of the persons involved. That is, there must be a sentence on the same object, the thing suited must be the same, the suit must be based on the same cause, and it must be between the same parties and filed by or against them in the same capacity. Two actions that have a single diverse element are two individualities, distinct from each other, even though they may be joined together by the other two elements.

This study must begin from the basis that, in respect to the identity of things, the doctrine has been consistent when it establishes that res judicata can only be applied to the same object that has served as the base for the previous dispute, and that in the sentences the identity of the goods derives from the nature of the benefit that is suited, whether there is an obligation to give, do, or not do. In the first, the benefit may refer to a specific thing, or quantity of things, in which the modifications, increases or decreases it may undergo are not taken into account because its juridical identity remains the same, since it cannot be denied that the thing continues to be the same. If the obligation is to do or not do, the object consists of the promised or prohibited act. In declarative actions, the object is determined by the nature of the declaration that is asked for, whether the existence or nonexistence of a right is affirmed or denied, and in respect to essential actions, it shall be the new juridical relation brought about by the sentence.

That is to say, in order to determine when an action has the same or a different object as another, one need only look at its content. This becomes somewhat difficult when one wishes to know if a thing asked for has been implicitly included in another thing that has been asked for and denied. In this regard, as a general rule, the principle that the part is included in the whole should be applied, so that if in a first sentence a decision has been pronounced on the entire thing, and then, in a subsequent trial a part of the thing is suited, the objection of res judicata would be proper, since it can be considered that during the first trial the litigant had the opportunity to plead, try and allege for the whole, and implicitly for each part of which it is composed, and it could only be considered that the objection of res judicata would not apply if the first sentence resolved only in regard to a part, which is different from the whole being suited in a second trial, which would be for objects or rights totally different from each other, in such a manner that the object of one action could be conceived of as different from the object of the other.

In regard to the identical nature of the persons, res judicata is only applicable in general terms, in relation to the parties that have taken part in the trial because they were legitimized in the case with the same capacity. Therefore, when speaking of the identical nature of subjects, it is understood to refer to their position in the process. That is, the subject against or for whom the action is being exercised.

Finally, in regard to the cause, Giuseppe Chiovenda sustains that the cause is composed of an act or a combination of acts that produces legal effects; that when a right is suited, the petitioner must affirm and prove the acts that produce the right.

The cause referred to by the law is constituted by the juridical act or acts that serve as the foundation for the right that is suited, not simply from the motives but from the generating cause. The claim does not originate from the applicable precept but from the act that generated it.

Based on the foregoing, in order to allege res judicata, the identical nature of the persons who participated in the two trials is necessary, the identical nature of the things that were suited in those trials, and the identical nature of the causes on which the two suits were based.

As for the objection of reflective res judicata, this is valid under extraordinary circumstances when, despite the identical nature of the object of a contract, as well as of the parties in the two trials, it is not possible to object on grounds of res judicata because the actions in the two trials are not identical, and when, despite this situation, the sentence in a prior dispute reflects upon another subsequent dispute. That is, the first case serves as a support for the resolution of the second, with a view towards avoiding contradictory sentences, creating effects in the next trial, whether positively or negatively, but always in a reflective manner

To support the objections being studied, the debtors produced as evidence certified copies of proceedings from the file 112/95, processed before the First Bankruptcy Judge of the Federal District, to which juridical efficacy is conceded under the provisions of Article 1294 of the Code of Commerce, suppletorily applied to the pertinent law, because they are procedural acts, in which the proceedings for the suspension of payments regarding the company named Promotora Hinsa, S.A. de C.V. can be found, and in which W. Steve Smith, in his capacity as trustee for the bankruptcies of Felipe, Jacobo and Jose Maria, all surnamed Xacur Eljure, appeared before that Judge exhibiting the letters rogatory issued by the Bankruptcy Court of the Southern District of Texas, Houston Division, United States of America in the jointly administered case No. 96-48538-H5-7, requesting that he be recognized as the trustee for the bankruptcies of Jacobo, Felipe, and Jose Mara, all surnamed Xacur Eljure, that the said judge acknowledge the notification on the declaration of bankruptcy, and that he accredit same.

It is also observed that the said petition, after being heard by the Public Ministry Agent attached to the said jurisdictional entity, as well as the report by the Secretaryship of Foreign Relations, was finally denied by a decree pronounced on April 27 of 1999, essentially because the First Bankruptcy Judge of this city determined that the letters rogatory submitted for his consideration was not provided for in the stipulations established in the numeral 2 (a) or (b) (sic), and that in the case of execution of a foreign sentence regarding bankruptcies or other analogous proceedings, the execution thereof was contrary to law, by virtue of the express prohibition in Article 6 of the "Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences," (sic), ordering the devolution of the letters rogatory through the Trustee's agents.

Likewise, the codefendants submitted as supervening evidence, besides the proofs mentioned in the preceding paragraphs, a certified copy of the resolution of November 26 of 2001 pronounced by the First District Civil Judge in the Federal District, as well as the certified copy of the writ of June 14 of 2002, whereby Manuel Huacuja y Zamacona and Manuel Huacuja Martinez, the trustee's agents, filed an appeal for revision against the sentence pronounced by the Federal Judge.

This resolution has juridical effect, in accordance with the provisions of Article 1294 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, from which it

can be seen that the First District Civil Judge of the Federal District decided to deny the relief and protection of the Federal Justice System against the acts of the First Bankruptcy Judge of the Federal District to the plaintiff, W. Steve Smith, because the said justice determined that the resolution of June 29 of 2001 denying the appeal for reversal against the sentence of April 27 of 1999 (said sentence having ruled against the execution of the foreign sentence in first instance by means of the letters rogatory) did not violate Constitutional Articles 14 and 16 to the petitioner's prejudice.

This opinion by the Federal Judge consisted in considering the resolution by the aforesaid First Bankruptcy Judge of the Federal District to be in accordance with the law. denying the petition for the execution of the foreign bankruptcy proceeding of Felipe, Jacobo and Jose Maria Xacur Eljure, exhibited through the letters rogatory issued by the Bankruptcy Court of the Southern District of Texas, Houston Division, United States of America, considering that the "Inter-American Convention on Letters Requisitorial and Letters Rogatory" was not applicable, because of the reservations that the United States had at this convention. Moreover, in the act the plaintiffs (referring to Manuel Huacuja y Zamacona and Manuel Huacuja Martinez, in their capacities as attorneys-in-fact appointed by the trustee, W. Steve Smith) exceeded the scope of the "Inter-American Convention on Letters Requisitorial and Letters Rogatory" when they petitioned the presiding judge to acknowledge the foreign bankruptcy proceeding of Jacobo, Felipe and Jose Maria, all surnamed Xacur Eljure in the name of international cooperation through the use of a letters rogatory of that nature, since the object of the said convention is the realization of procedural acts, and the petitions addressed to that authority could not be considered as procedural, because they requested the execution of a foreign sentence. The opinion also pointed out that at the "Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences" it was determined, in its Article 6, paragraph c), that the said convention was not applicable in, among other matters, bankruptcies, suspension of payments, concordats, or other analogous proceedings. And that moreover, Article 14 of the Bankruptcies and Suspension of Payments Law stipulates that bankruptcy sentences pronounced in a foreign country can be executed once the formal requirements established in the legislation of the country in which the sentence was pronounced have been accredited, and that the conditions established in Mexican legislation for a declaration of bankruptcy have been met therein. However, the petitioners have at no time homologated this proceeding, but rather they have, through a simple letters rogatory, requested that full acknowledgment be made of the bankruptcy of Jacobo, Felipe and Jose Maria Xacur Eljure, whereas, in accordance with the "Inter-American Convention on Letters Requisitorial and Letters Rogatory," which took place in Panama City, Panama, on January 30 of 1975, letters rogatory from a foreign country were not given such effect, much less in the case of bankruptcy. Therefore, the federal judge denied the relief of federal justice, considering the opinion of the First Bankruptcy Judge of this city to be legally founded.

In regard to the writ of June 14 of 2002, filing an appeal for revision against the decision of the federal judge – although it is a procedural document, it is denied by virtue of the diverse documentation submitted by the plaintiff as supervening evidence, consisting of certified copies of acts before the Fourteenth Civil Trials Court of the First Circuit. Although objections have been filed against this documentation, it has been given full probatory value, under the terms of Articles 1237 and 1294 of the Code of Commerce, suppletory to the pertinent law, because they are procedural documents, in which it can be seen that by means of procedures carried out on July 15 of 2002 Manuel Huacuja y Zamacona and Manuel Huacuja Martinez, in their capacities

as agents for the trustee W. Steve Smith, ratified each and every one of the points of the writ of abdication against their client in the appeal for revision against the sentence pronounced on November 26 of 2001 by the First District Civil Trials Judge in the Federal District, the said acts having been addressed in the resolution of August 8 of 2002, whereby the Fourteenth Civil Trials Court of the First Circuit ruled that the agents were in abandonment of the appeal for revision, to the prejudice of their client, thereby declaring firm the resolution pronounced by the federal judge mentioned in the trial for indirect relief No. 536/2001-VI.

However, the declarations alleged by the appellants are not supported with the preceding proofs, because with those proofs only the contents thereof are shown, which do not in any way support the claim of res judicata. Because we reiterate, for res judicata to be acknowledged, the following is required: identical things, identical persons, and identical causes in the two proceedings; and for reflective res judicata, a special circumstance must be present in the first trial that reflects upon the second.

It's true that in both proceedings the generating cause is the foreign proceeding of the bankruptcy of Jacobo, Felipe and Jose Maria, all surnamed Xacur Eljure. But res judicata does not apply, because besides the identical nature of the cause, the identical nature of persons and things that would affect the sentence in the second trial is also required, elements which are absent in the first trial.

In effect, the identical nature of things is determined by the object, when in the first sentence the resolution has been in regard to the whole, and not only on a part thereof.

In the present case, we see that in the trial 112/95 related to the suspension of payments of the firm Grupo Xacur, S.A. de C.V., the presiding judge determined that the letters rogatory were not included in the provisions of Article 2 (a) or (b) because of the reservation made, and that since acts of execution in Mexico were involved, that they exceeded the scope of the Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences (sic), and that for this reason no executory effect was acknowledged, ordering that the letter be returned to its place of origin.

This opinion was also sustained in the resolution of November 26 of 2001 by the First District Civil Trials Judge of this city, who ruled that the procedure requested was not possible by means of the letters rogatory, because it exceeded the scope thereof, in conformance with the stipulation in Article 2, paragraph a) and b) of the "Inter-American Convention on Letters Requisitorial and Letters Rogatory" in relation to Article 6 of the "Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences."

From the foregoing, it is seen that both judges limit their opinion to the determination that by means of the official communication denominated "letters rogatory: it is not possible to pronounce acts of execution without the prior homologation of the foreign sentence, once the requirements suited by Mexican legislation have been met. Thus was it determined by the federal judge in the resolution of November 26 of 2001, when she established that under the terms of Article 14 of the Bankruptcy and Suspension of Payments Law, the bankruptcy sentences pronounced abroad may be executed, once it has been accredited that the formal requirements established in the legislation of the country in which the sentence was pronounced have been complied with, and that the conditions established in Mexican legislation for a declaration of bankruptcy have been met therein, in order to homologate the sentence, and so that it can be legally executed in this country.

This implies that in the said suspension of payments proceeding only a part of the whole was considered, when it was sustained that the letters rogatory was not the proper manner to

request the execution of the foreign bankruptcy sentence, because the petition exceeded the faculties of the conventions, when the correct procedure would have been through homologation, and when this was not done the petition based on the letters rogatory was contrary to law.

But the object of the present proceeding is to determine if under the Commercial Bankruptcy Law, Chapter 12, the acknowledgment of the foreign proceeding is in accordance with the law, in order to grant the international procedural cooperation.

In regard to the identical capacity of the persons, this element also is not satisfied. First, because two different trials are involved. While a suspension of payments proceeding is being tried in the First Bankruptcy Court of the Federal District in regard to the company Grupo Xacur, S.A. de C.V., in this Court the acknowledgment of the foreign proceeding and sentence in the bankruptcy of Felipe, Jacobo and Jose Maria, surnamed Xacur Eljure was requested. And second, because they are two separate processes, the parties are different. In that court, the parties are the firm denominated Grupo Xacur, S.A. de C.V. and its possible creditors; in this Court, it is the trustee for the bankruptcy assets, in representation of the creditors, as well as the debtors Felipe, Jose Maria and Jacobo, surnamed Xacur Eljure. Therefore, the parties in both trials are not identical.

The objection based on reflective res judicata is also not accepted, since the documentation submitted as evidence, as previously analyzed, does not prove the existence of a special fact or circumstance in the first trial that reflects upon the second, since the ruling by the federal judge, far from benefiting the debtors rather is to their prejudice, because the said resolution makes clear that the foreign sentence *can* be executed in our country through the proper venue, which is the homologation of the sentence and not by means of a simple letters rogatory.

Therefore, the objections by the codefendants based on res judicata and reflective res judicata are denied and declared contrary to law.

The objections filed by the codefendants based on the lack of international reciprocity, the absence of the homologation requirements established by the Constitution, the inapplicability of Chapter XII of the Commercial Bankruptcy Law because it is contrary to the International Treaties, and the extraterritorial inapplicability according to Article 280 of the Commercial Bankruptcy Law in relation to the "Inter-American Convention on International Competence" are also hereby declared contrary to law.

In synthesis, the codefendants maintain that the said objections are in accordance with the law, because to request to acknowledge the foreign proceeding and sentence by incidental means would be contrary to the international treaties, since the said petition for acknowledgment and execution of a foreign sentence does not comply with the requirements for homologation established in Articles 549 , 550 and 551 of the Federal Code of Civil Procedures, suppletory to the Commercial Bankruptcy Code, which stipulate the manner by which international cooperation can be requested and granted in regard to sentences pronounced by a foreign court, which is through the official communication called letters rogatory or requisitorial, in accordance with the terms of the Hague Convention, and not by the means utilized by the plaintiffs' trustee, that is, simply by the exhibition of certified copies of the proceeding, without the use of the said official communication. Moreover, the Federal Political Constitution, the Commercial Bankruptcy Law, the Code of Commerce, and the Federal Code of Civil Procedures stipulate that for the homologation of the foreign proceeding and sentence to be legal, the central issue of the said resolution must not be contrary to public order, since this would violate national sovereignty and the standards of public order that govern in national law.

The codefendants further maintain that Chapter 12 of the Commercial Bankruptcy Law is not applicable to this matter because Article 280 of that law prohibits such execution when there is no international reciprocity. And that an international treaty exists that prohibits the execution of a foreign sentence involving bankruptcy or suspension of payments, because it is thus established in Article 6 of the "Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Sentences," held in La Paz, Bolivia on May 24 of 1984.

And that for this reason, the said international treaty should not be ignored, because of the hierarchy that places it above the federal laws and in a second place in regard to the Political Constitution of the United Mexican States.

These arguments are unfounded and the objections must therefore be declared contrary to law, because in the present case it is not the homologation of a sentence that is being requested, under the terms of the Federal Code of Civil Procedures, but rather the petition is in regard to the acknowledgment of the foreign proceeding and sentence under the Commercial Bankruptcy Law, said proceedings being regulated under two laws of a different content and nature.

The foregoing is evident, because the homologation is intended to give juridical efficacy to a sentence, so that the act may be executed through the national court, since this country is the only place where the sentence is to be complied with.

On the other hand, the acknowledgment of a foreign sentence, under the terms of the Commercial Bankruptcy Law, seeks to promote a more efficacious cooperation between the countries in those cases in which an insolvent debtor has assets in more than one country, so that those assets cannot be subtracted from the actions exercised by the creditors. The purpose of the acknowledgment is only to collaborate with the foreign court.

For this reason, the rules contained in Articles 549, 550 and 551 of the Federal Code of Civil Procedures (which refer to letters requisitorial, their formalities, and the manner of transmitting the said letters requisitorial and rogatory, official communications which must adhere to the said rules) are not applicable, except for the provisions in the treaties and conventions to which Mexico is a signatory.

In keeping with the above, in the case of letters requisitorial or rogatory coming from a foreign state, they must adhere to the provisions in the "Inter-American Convention on Letters Requisitorial and Rogatory" subscribed by the governments of the member nations of the Organization of American States, which took place in Panama City, Panama, on January 30 of 1975, and which was signed by Mexico and ratified by the Senate of the Republic on December 28 of 1977, in which it was determined in Article 2 that the said Convention would be applied to letters requisitorial and rogatory issued in civil or commercial acts and processes by the jurisdictional entities of any of the States that were a party to the Convention, and whose object is:

a) The execution of acts of a purely procedural nature, such as notifications, citations or summons in a foreign country.
b) The reception and gathering of evidence and reports in a foreign country.

In the same manner, Article 3 expressly established that the Convention will not be applied to any letters requisitorial or rogatory related to procedural acts different from those mentioned in Article 2, and especially not to acts that imply compulsory execution.

Therefore, the allegation that the trustee's agent did not comply with the requirements established in the International Treaties in relation to Articles 549, 550 and 551 of the Federal Code of Civil Procedures is unfounded, since the appellant's contention that the "Inter-American Convention on Letters Requisitorial and Rogatory" should be complied with would render the

petition nugatory, because the object of the said convention is not the acknowledgment of the bankruptcy proceeding of Felipe, Jacobo and Jose Maria, surnamed Xacur Eljure, since none of the hypotheses of Article 2 of the said convention are present.

The foregoing is supported by the decision of the First District Civil Trials Judge on November 26 of 2001 to the effect that in the case of acknowledgment of a foreign proceeding, this cannot be done by means of a simple letters rogatory, since this petition is not the object of the aforementioned Article 2, paragraphs a) and b) of the "Inter-American Convention on Letters Requisitorial and Rogatory."

In regard to the contention that Chapter 12 of the Commercial Bankruptcy Law is not applicable because this is contrary to an existing international treaty, since it is so mentioned in Article 280 of the Commercial Bankruptcy Law, this allegation is unfounded.

The appellant bases his objection basically on the fact that Article 6 of the Inter-American Convention on International Competence for the Extraterritorial Efficacy of Foreign Decisions and Sentences excludes insolvency, bankruptcies or other analogous matters, and that the Commercial Bankruptcy Law should therefore not be applied, because otherwise this would be contrary to the very law that prohibits the application of the Chapter when there is a treaty for that purpose.

The said articles, No. 6 of the Convention and 280 of the Commercial Bankruptcy Law, stipulate:

"Article 6. The Convention does not apply in the following matters:

a) Civil status and capacity of persons.
b) Divorce, annulment of marriage, and the economic regimen of a marriage.
c) Alimony.
d) Testate or intestate proceedings.
e) Insolvency proceedings, bankruptcy, concordats, or other analogous proceedings.
f) Liquidation of companies
g) Labor disputes.
h) Social Security.
i) Arbitrage.
j) Damages of a noncontractual nature.
k) Maritime and aviation matters.

"Article 280. (Commercial Bankruptcy Law). The provisions of this Title shall be applied when no other means is available in the international treaties to which Mexico is a party, unless there is no international reciprocity."

Now, from the interpretation that is made of this last numeral, the following is assumed:

1. That an international treaty on commercial insolvency must exist.
2. That Chapter 12 will be applied only when the existing treaty on insolvency does not provide another way, and,
3. That international reciprocity must exist due to this treaty.

The foregoing, interpreted to the contrary sense, determines that if there is no international treaty on insolvency proceedings, Chapter 12 of the Commercial Bankruptcy Law is applied, when cooperation in international proceedings is involved.

Now, it's true that an international treaty exists called "Inter-American Convention on International Competency for the Extraterritorial Efficacy of Foreign Decisions and Sentences," subscribed in La Paz, Bolivia on May 24 of 1984, which indicates that the convention does not rule in matters of insolvency, bankruptcy, concordats or other analogous matters. But it is equally true that the restriction does not impede the acknowledgment of foreign proceedings and sentences in matters of insolvency.

We affirm this because the convention alluded to by the appellant was held for the principal purpose of regulating only the competency of the American Nations that form a part of the diverse "Inter-American Convention on the Extraterritorial Efficacy of Foreign Decisions and Sentences." That is to say, the creation and application of the first convention indicated is for the effect of providing viability and efficacy to the last named, although Mexico declared in the ratification that it could apply the convention in an independent manner.

The foregoing is deduced from the convention itself, when it is indicated that its purpose is to ensure a better administration of justice by means of greater judicial cooperation between the American States, and to provide the efficacy required for the application of Article 2, paragraph 2d of the "Inter-American Convention on the Extraterritorial Efficacy of Foreign Decisions and Sentences," subscribed in Montevideo on May 8 of 1979, which demands provisions that will avoid conflicts of competency between the participating States.

Added to the above, even though the Inter-American Convention on Competency for the Extraterritorial Efficacy of Foreign Decisions and Sentences" may satisfy the requirements suited by Mexico in order to become a party thereto, since it has been ratified and approved by the Mexican Senate, the said treaty, we reiterate, is not applicable to the case under consideration, because it was created for the efficacy of a different convention to which the United States of America was not a party, nor does any indication exist to indicate that it has adhered to it. And since it is not a party to the convention, the international procedural cooperation relationship between Mexico and the United States of America in regard to matters of insolvency is not ruled by the said conventions.

Therefore, under the terms of Article 280 of the Commercial Bankruptcy Law, Chapter 12 is legally applicable to this case. First, because the "Inter-American Convention on Competency for the Extraterritorial Efficacy of Foreign Decisions and Sentences" was created to provide viability to a different convention, to which the United States of America is not a party. And second, because there is no international treaty between Mexico and the United States regarding insolvency or bankruptcy, an affirmation that is supported by the official document CJA 3921, File CH/350/I of July 24 of 2002, signed by Juan Manuel Gomez Robledo, Juridical Consultant of the Secretaryship of Foreign Relations, exhibited by the codefendant Felipe Xacur Eljure, a document that, far from benefiting him is to his prejudice, providing full proof against him under the terms of Article 1298 of the Code of Commerce, suppletory to the pertinent law, in which it can be seen that Mexico and the United States have not subscribed any treaty in regard to the homologation of foreign proceedings and the execution of sentences in national territory in mercantile, civil, or – specifically – in bankruptcies. Therefore, since the said event does not exist, the Chapter being studied is applicable, by the express provision of Article 280 of the Commercial Bankruptcy Law, and consequently the objections in question are declared contrary to law.

The Court shall not fail to note the concrete allegation that the international treaties are in the forefront in respect to the federal laws and hierarchically below the political constitution of the United Mexican States, and that therefore the opinion sustained in the Ninth Period of the

Plenum, Weekly Judicial Journal of the Federation and its Gazette, Volume X, November of 1999, Thesis P. LXXVII/99, page 46 under the heading, "INTERNATIONAL TREATIES. THEY ARE HIERARCHICALLY ABOVE THE FEDERAL LAWS AND IN SECOND PLACE IN RESPECT TO THE FEDERAL CONSTITUTION," should be applied. However, it must be said that this opinion, considered proper for the integration of jurisprudence, is not applicable to this specific case, because, as has been mentioned, there is no international treaty on insolvency or bankruptcy to which Mexico and the United States are parties, obligating them to adhere thereto. Therefore, Chapter 12 of the Commercial Bankruptcy Law is applicable. Because, we reiterate, the convention on which the appellants base their objection was created to make a separate convention viable, in order to avoid jurisdictional disputes between the participating States. And since the United States is not a party to the said conventions, it is clear that the "Inter-American Convention on International Competency for the Extraterritorial Efficacy of Foreign Decisions and Sentences" does not internationally obligate a court to consider it in order to deny the acknowledgment being requested.

The objections raised regarding the inapplicability of the Commercial Bankruptcy Law and the improper procedure because the capacity of merchant has not been proved, are hereby overruled.

The defendants allege that they are not merchants, and that the acts realized whereby they were declared bankrupt are isolated acts; that even though they may be acts of commerce, this does not give them the capacity of merchants; that the fact of ventilating a controversy in a commercial matter does not give them the capacity of merchant when a civil act is carried out.

That the fact that a person may extend a guarantee, or incorporate a mercantile company, or utilize the services of a bank does not convert that person into a merchant.

That the foreign court did not give or declare the capacity of merchant in the sentence to be acknowledged, since under United States law any person can be declared in bankruptcy, whether he is a merchant or not, and that therefore the Court cannot bestow the capacity of merchant on the defendants, because the foreign bankruptcy sentence must be acknowledged in the form and terms in which it was pronounced, without modification, correction or alteration, turning someone who was not given that capacity into a merchant.

That Chapter 12 of the Commercial Bankruptcy Law is only applicable to persons who are merchants, that the said capacity is an obligatory and not a facultative condition for the application of the said law.

That a distinction must be made between the legal concept of merchant and the capacity to realize occasional acts of commerce, which can be effected by any person with civil capacity.

That the declaration of commercial insolvency in Mexico cannot be applied to physical persons who do not meet the legal definition to be considered as merchants, as occurs in the United States of America, and that the sentence referred to by the plaintiff is therefore not executable in this country, because it was based on provisions that are contrary to the principles of law that rule in the Mexican Republic.

The codefendant Jose Maria Xacur Eljure, to accredit his allegation, submitted the testimony of Oscar Alonso Moreno and Aquilino Valle Melendez.

Jacobo Xacur Eljure submitted certified copies of the procedural acts of the foreign court and the contents of Article 303 of the United States Bankruptcy Law.

Both codefendants submitted the response to interrogatories by the Trustee, W. Steve Smith.

On his part, the plaintiff's trustee claimed that the debtors had the capacity of merchants, since, in regard to Jacobo Xacur Eljure, the sentence whose acknowledgment is being petitioned for sustained that he carried out business for the Xacur firms located in Mexico from his condominium in Houston, and this was confirmed by the Appellate Court that ruled on the second appeal, in the sense that the said person carries out business in the United States of America. That the debtor carried out, among other businesses, purchase/sales, was a grain broker, including imports and exports. That, during the years from 1992 to 1995, he constantly and customarily carried out commercial acts; that he extended guarantees, both as sole administrator as well as personally; that the endorsement of a guarantee is an act of commerce, because it is so determined in Article 1 of the General Law of Titles and Credit Operations. That Jacobo Xacur Eljure is registered in the Population Registration Office of the Municipal Tax Assessor of the City of Merida under the occupation or profession of industrialist. That he is the sole administrator of more than 15 companies, and that because of all this, he is a merchant, since the acts that he realized are regulated by the General Law of Mercantile Companies, and subject to the jurisdiction of the Code of Commerce.

In respect to the codefendants Felipe and Jose Maria Xacur Eljure, the plaintiff indicated that they also have the capacity of merchants, because during the years of 1994 and 1995 they constantly and customarily carried out commercial acts in which they issued IOU's, which are credit titles; that besides issuing them personally they also issued them in their capacities as members of the administrative board of the mercantile companies by which they were guaranteed.

That the debtors incurred in the cessation of payments, and in a general manner defaulted in the payment of the IOU's which they had guaranteed. That the generalized noncompliance and cessation of payments by the debtors in the foreign proceeding was specifically in respect to their exchange obligations expired under their guarantee, which constitute obligations of a strictly commercial nature.

That the capacity of the debtors as merchants, businessmen and industrialists is a well-known fact. That the debtors are registered in the Federal Tax Rolls as importers, lessors, and company shareholders, and that this accredits their capacity as merchants.

That they have customarily carried out multiple operations, acts, agreements and banking and financial contracts in which they have transmitted and extinguished rights and obligations in their capacity as merchants with banks, under the terms of Fractions XXI and XXIV of Article 75 of the Code of Commerce.

That they are businessmen and administrators of mercantile companies, incorporating companies in order to organize and develop their own businesses. That they are owners of stock. In short, that commerce has been and is their normal occupation

To accredit the foregoing, the agent for the trustee submitted as evidence the response to interrogatories by the debtors; the testimony of Raul Lopez Castilla, Mariano Peraza Padilla, Fernando Gomez de Parada Miranda, and Roberto Cuaron.

The report from the credit institutions Banco Nacional del Ejercito y Fuerza Aerea; Banca Mifel, S.A.; Banco Industrial, S.A.; Banco del Sureste; Banco Bilbao Vizcaya Argentina Bancomer, S.A.; Banco Nacional de Mexico, S.A.; Banco Nueva Scotia Inverlat, S.A.; Banco Santander Mexicano Serfin, S.A.; Bank of America, S.A.; City Bank, S.A.; and ABN Amro Bank.

The certified copy of the documentation issued by the Honorable City Hall of Merida, the Municipal Tax Rolls of March 14 of 1995. Certified copies of the notarial instruments Nos.

10626; 10632; 10631; 10630; 10629; 10628; 10635; 10627; 10633; 10634; 248339; 241285; 3223; 206; 183; 35. Certified copies of several IOU's. Certified copy of Invoice No. 078 dated March 14, 1996. A list of several mercantile companies in which the debtors function as sole administrators or legal representatives. A list of the stock ownership or shareholder participation of each of the mercantile companies in which the debtors are shareholders.

The Court, in order to study the objections and reject the allegations of the objectors, bases its study on the stipulations of Article 296, in relation to Article 279, both from the Commercial Bankruptcy Law, because these articles establish when and how a foreign proceeding should be acknowledged, and also on the foreign sentence of August 22 of 1997.

First of all, it is determined that the petition for acknowledgment of a foreign proceeding is ruled by Fraction I of Article 296, granting the acknowledgment when the foreign proceeding is a proceeding in the sense of Fraction I of Article 279.

Fraction I of this last-named article stipulates:

"For the purposes of this Chapter:

1. Foreign proceeding shall be understood to be the collective proceeding, whether judicial or administrative, including those of a provisional nature, being pursued in a foreign nation under a law related to the commercial insolvency or bankruptcy of the Merchant, and by virtue of which the assets and businesses of the Merchant will be subject to the control or supervision of the Foreign Court, for purposes of reorganization or liquidation."

From Fraction I of Article 279 of the Commercial Bankruptcy Law, it is gathered that when the person was declared in bankruptcy or insolvency in a foreign State it was necessarily in conformance with a law related to these matters, and with the capacity of merchant in the place in which the trial took place. In other words, the condition mentioned in Article 296, Fraction I, of the Commercial Bankruptcy Law springs from the supposition that the bankruptcy or insolvency trial has already taken place, as well as the corresponding definitive resolutions, from which it is inferred that the capacity of merchant has already been defined and proved in the foreign court, in conformance with its rules, and the judge granting the acknowledgment need only determine if the minimum necessary formalities have been complied with in order to apply the title of cooperation in the international proceedings.

The foregoing is affirmed because the creation of the new Commercial Bankruptcy Law, approved by the Congress of the United Mexican States and published in the First Section of *Diario Oficial de la Federación* on May 12 of 2000, was created on the basis of principles and models universally accepted by the international community, with the intention of creating a model law that will allow the adoption of a legal standard that will allow the various countries to cooperate with each other more efficiently in regard to debtors who have assets in more than one country, to thereby address the claims of the creditors, and to prevent the insolvent debtors, as far as possible, from evading, deserting, hiding, or selling their assets, or transferring them from one country to another, including countries in which they only preserve their assets, without actually residing or exercising any profession or occupation there, with the sole purpose of evading the actions of the creditors seeking to exercise their rights against an insolvent debtor. That is, the purpose is an efficient collaboration with the courts in regard to the insolvent patrimonies, independently of the country in which the debtors may be found who are attempting to evade the

compliance with a sentence pronounced against them under the parameters of bankruptcy legislation

The foregoing has relevance because it was determined thus in the discussion of the motives of the Commercial Bankruptcy Law, when the lawmaker established the need to incorporate into the Mexican mercantile system juridical ordinances to regulate the commercial and financial activity of our country in respect to other countries, incorporating a chapter of international cooperation with foreign proceedings to thereby modernize the juridical framework in bankruptcy cases in response to the challenges of globalization.

Thus, it was determined that during the last two decades the national economy has been characterized by its increased involvement in the international flow of commerce and capital. That both the Mexican enterprises as well as the foreign have benefited from the financial sources that have enabled them to expand their commercial operations and invest in the international markets; that it should not be surprising that within this context of globalization the economic and financial difficulties that an enterprise or person might be experiencing should affect not only others who share its geographical location but others located in other parts of the world.

In the exposition of motives it is emphasized that the differences in insolvency proceedings between nations have an important effect on the firms and persons who have assets and liabilities in various countries. From a practical perspective, this diversity causes a greater uncertainty, as much for the businessman in crisis as for his creditors, and it therefore operates to the detriment of an effective application of bankruptcy legislation, where it is increasingly seen that a firm's operations transcend the national borders.

In response to those tendencies, the international community developed, within the Commission for Legislation on International Commerce of the United Nations, a Model Law, which seeks to establish coherency in the procedures related to bankruptcy proceedings among all nations. One of the most important characteristics of the Model Law is that its objective is to propitiate an effective and defined cooperation between the bankruptcy proceedings of all countries by means of ordinances comparable with all the legal systems and which therefore make it easily adaptable to the juridical framework of each nation. Specifically, it facilitates cooperation between the legal proceedings carried out in one nation and those carried out in another. In this manner, the country that adopts the Model Law, besides recognizing the importance of its transactions abroad, facilitates the acknowledgment of a foreign proceeding and the cooperation and coordination between the courts and bankruptcy courts in other countries.

From all the foregoing, this Court concludes that due to these transnational commercial and financial relations, Title Twelve of the Commercial Bankruptcy Law was created, which seeks to establish coherency in the bankruptcy proceedings that are processed in other countries, in order to contribute to the effective application of the pertinent legislation. It is for this reason that Fraction I of Article 279 of the aforementioned law has determined that the person declared bankrupt or insolvent shall be a merchant, because the debtor has incurred insolvency in the exercise of that commercial activity, and the legislation of the foreign court has acknowledged the [debtor's] capacity of merchant in that country, seeking from our courts only cooperation to prevent the debtor from avoiding the efficient application of the bankruptcy legislation when the debtor has assets in more than one country and intends to incur contempt of court in regard to the decisions of the foreign court.

Therefore, if the defendants in this Court base their objections on the circumstance that the capacity of merchant was not determined either in the foreign proceedings or in the sentence, and that for this reason Chapter 12 of the Commercial Bankruptcy Law is not applicable, this objection is unfounded.

In effect, the said Title was created for that purpose, which makes it possible to accept a law consecrated in a definitive foreign sentence by means of procedures accepted by the international community, which pursued a solution to commercial problems of persons transcending national borders by designating to them the capacity of merchant, precisely by reason of those commercial or financial relationships, so that the foreign court can make a decision in conformance with its own laws related to bankruptcy or insolvency

Moreover, in the text of the sentence it can be observed, contrary to the arguments submitted by the appellants, that the foreign court resolved that the defendants did have the capacity of merchants, by reason of the stipulations in sections 109 and 303 of the Bankruptcy Law of the United States of America

So, from the decision it is found that the debtors were declared in bankruptcy, pursuant to 11 USC, Section 109, of the Bankruptcy Law of the United States of America, and the petitioning creditors further accredited that the debtors were bankrupt in conformance with 11 USC, Section 303.

The said sections 109 and 303 establish:

Section 109. Who may be a debtor:

(a) Notwithstanding any other provision of this section, only a person who resides or has a domicile, place of business or a property in the United States, or in a municipality can be a debtor under this title.

(b) A person can be a debtor in conformance with Chapter 7 of this Title only if the said person is not:

(1) A railroad company.

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) [1] of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

Sec. 303. - Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title -

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least $10,000

(FNI) more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,000 (FNI) of such claims;
(3) if such person is a partnership -
(A) by fewer than all of the general partners in such partnership; or
(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or
(4) by a foreign representative of the estate in a foreign proceeding concerning such person.
(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the
petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.
(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.
(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.
(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.
(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.
h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if –
(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute; or
(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less

than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.
(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment -
(1) against the petitioners and in favor of the debtor for -
(A) costs; or
(B) a reasonable attorney's fee; or
(2) against any petitioner that filed the petition in bad faith, for -
(A) any damages proximately caused by such filing; or
(B) punitive damages.
(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section -
(1) on the motion of a petitioner;
(2) on consent of all petitioners and the debtor; or
(3) for want of prosecution.
k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.

According to the foregoing, the United States Bankruptcy Law contemplates cases of forced bankruptcy, which can only be initiated under Chapters 7 or 11 of the said law, against any person, with the exception of farmers, a farming family, a nonprofit business or commercial organization, or a person who can be a debtor under a different chapter of the bankruptcy law.

The forced bankruptcy proceeding begins with the petition by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least $10,000 (FNI) /sic/ more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

Now, from a systematic interpretation of Section 303 in a contrary sense, it is inferred that any person who carries on an activity whereby he obtains a profit or earnings is subject to being declared bankrupt for having failed to comply, in a generalized manner, with his payment obligations. This is corroborated when we find in Section 109 the condition, among others, that the debtor must have a business and not be a company that because of its nature obtains no profits and whose services are for the collective benefit of the public.

Therefore, although it’s true that the sentence alluded to does not establish in an express manner that Jacobo, Jose Maria and Felipe Xacur Eljure are merchants, and that they are being declared bankrupt in that capacity, it is no less true that under the provisions of Sections 109 and 303 of the Bankruptcy Law of the United States of America the legal presumption exists that they were in effect declared bankrupt in that capacity, and not for civil debts, since those numerals indicate that any person who reports a gain or profit from his activity may be declared bankrupt under Sections 109 and 303.

The foregoing does nothing more than to establish the presumption that the debtors, because of their customary occupation, are in effect considered as merchants under the foreign

laws. Therefore, the allegation that in the United States any person may be declared bankrupt, regardless of their capacity, is not accepted. Because, we reiterate, the foreign court determined the capacity under which they were declared bankrupt when it cited the said sections, which allow the presumption, by exclusion, that the debtors have the capacity of merchants, because their customary activity produces or generates gains or profits.

And the objection that not having the capacity of merchants makes Title 12 of the Commercial Bankruptcy Law inapplicable, is not valid, first, because as has been noted, the sentence of August 22 of 1997 determined the capacity, by exclusion, under which each of the debtors was declared bankrupt, when the conditions stipulated in Sections 109 and 303 of the United States Bankruptcy Code were cited, and the capacity of merchants was accredited with the aforesaid sentence. And second, because this Court only has the
faculty to determine if the foreign proceeding covers the requirements established in Articles 278, 279 Fraction I, 292 and 296 of the Commercial Bankruptcy Law, formal requirements that must be met by the petitioner, considering that this court acts as an auxilliary or cooperative entity, to provide the foreign representative with the means to reorganize or liquidate the assets the debtors have in this nation.

Under the rules of the foreign juridical system -- which are not opposed to the Mexican mercantile judicial system --, since the debtors were declared bankrupt with the capacity of merchants, which can be inferred from the foreign sentence itself, it must be concluded that Title 12 of the Commercial Bankruptcy Law is validly applicable.

SIXTH. In addition to the foregoing, and pursuant to the provisions of Articles 1077 of the Code of Commerce and Article 349 of the Federal Code of Civil Procedures, both laws being of suppletory application to the pertinent law and that obligate the Court to study all the litigious points introduced into the case and to analyze all the evidence submitted, we find that independently of the fact that the foreign court determined the commercial capacity of the defendants under United States Law, the objections are also found without merit when they declare that the defendants are not merchants under the
terms of Article 3 of the Code of Commerce. Because, contrary to the said objections, the debtors do have the capacity of merchants under Mexican mercantile legislation.

We affirm the foregoing because the Commercial Bankruptcy Law stipulates in Article 1 that the object of the said legislation is to regulate the commercial bankruptcy proceedings of persons who, according to our laws, have the capacity of merchants. And in Article 4 of the same law, it is indicated that for purposes of the law “merchant” is understood to be any physical or juridical person who has that capacity in conformance with the Code of Commerce.

The Code of Commerce defines “merchant” as follows:

“Article 3. The law defines merchants as –

I. Persons who, having the legal capacity to engage in commerce, make it their usual occupation.

II. Companies organized in accordance with the mercantile laws.

III. Foreign companies, or their agencies and branches, that engage in commercial acts in national territory”

And Article 4 of the Code of Commerce indicates that:

“The persons who, with or without a fixed establishment, may accidentally carry out a commercial operation, even though they are not legally merchants, will nevertheless

thereby be subject to the mercantile laws. Therefore, the farmers and manufacturers in general who do not have an establishment or store in any place for the sale of their crops, or for the manufactured products of their industry or labor, without altering them when they are sold, shall be considered as merchants inasmuch as their establishments or stores are concerned."

From the foregoing, merchants as well as persons who accidentally engage in acts of commerce are subject to the mercantile laws, by express provision of the law. However, the importance of determining if a person can be defined as a merchant or one
who occasionally engages in acts of commerce resides in the circumstance that the Commercial Bankruptcy Law refers exclusively to merchants as subject to its application.

To distinguish between a person who is a merchant and one who is not, although he may engage in occasional acts of commerce, the person's usual occupation must necessarily be considered. That is, the work by which the person satisfies his economic needs must be identified, except in those cases in which the law expressly establishes who may be considered as a merchant, as it does in the case of companies organized in accordance with the mercantile laws, in the purchase/sale of real estate when it is done for purposes of commercial speculation, the public and private works construction companies, etc.

There is no doubt that in society all able persons carry out acts of commerce, but not all of them make their living from commerce. The school teacher's daily activity, for example, consists in holding classes for his students, transmitting his knowledge, a service for which he receives compensation in money, with which he satisfies his economic needs. The lawyer offers his services to the general public, for the proper assessment of the legal problems persons may have in their personal and social life, a service for which he receives payment with which he satisfies his economic needs. The public official provides his services to the State, in exchange for which he receives a salary with which he pays for his economic needs. This group of persons, although they do not carry on a commercial activity as their usual occupation, may occasionally carry out a commercial act to satisfy, in a personal and domestic manner, an express and immediate need, such as the purchase of a vehicle, a home, a computer, or even the daily perishable consumption products, in which case they may often make use of credit granted for that purpose, inclusively signing credit instruments, or utilizing the services of a bank to finance their operation. But these activities are not speculative. That is, the purchases are not made for the intention of later selling, and obtaining a profit from the operation.

On the other hand, although the merchant may also realize this type of operation for personal satisfaction in a direct and immediate fashion for himself or for his family, his usual occupation to obtain his economic resources is a speculative activity, because he habitually realizes acquisitions, sales, transfers, leases, or any other activity of that or a similar nature, always seeking to obtain a licit gain in each of the operations he effects, in such a manner that their way of life identifies them as merchants, by making these activities their usual occupation, regardless of the fact that they may engage in other activities, such as performing services for an employer, engaging in an occupation or profession, since the occupation of merchant can be compatible with any activity that is not commercial. As for example, the purchase of a house, not for the purpose of living in it, but with the intention of selling it to a third party at a profit; the purchase of an automobile, not for the purpose of using it to satisfy a direct need, but to sell it as soon as possible to obtain a licit gain. Or the person who acquires raw material, not for direct

consumption, or for his own or his family's satisfaction, but to transform and transfer it with the purpose of financial gain.

From all of the above, it can be concluded that a *merchant* is a person who customarily carries out diverse juridical acts whose essential characteristic is speculation for the purpose of profit, and when these elements are present in one of the activities engaged in by an individual, we have before us a merchant, independently of the fact that he may have the faculty to realize another type of activity which would not identify him as a merchant. Because, it has already been stated that both the person who is not a merchant as well as the person who is, carry out acts of both natures, from which we may deduce that the application of the type of standard will depend on the class of act or acts by which the individual is judged.

In support of the above, there is the opinion found in the Fifth Period, Third Chamber, *Semanario Judicial de la Federación,* Volume LXII, page 1736, which reads: "**MERCHANT, CAPACITY OF**. *The law does not require specific proofs in order to accredit the capacity of merchant, which can be demonstrated with any of the means of proof accredited by the juridical elements that determine capacity, which consist, in accordance with the law, in a declaration of the willful intention to engage in the operations of the said activity, and in the habit of such practices."*

Among the evidence that both parties submitted, there is the response to interrogatories by the trustee, submitted by the debtors, containing:

The interrogatory submitted by Felipe Xacur Eljure did not contribute any elements for judgment, since the questions contained therein were disqualified.

From the sheet formulated by Jacobo Xacur Eljure, it is gathered that the trustee accepts having commenced the bankruptcy proceedings before the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on the 18th of September of 1996. He also accepts that his Trusteeship is being represented at this trial by his general agent, Dario Ulises Oscos Coria. He denies that on March 17 of 1999, through his general agent Manuel Huacuja y Zamacona, he filed a writ before the First Bankruptcy Judge of Mexico in the suspension of payments of Hidrogenadora Nacional, S.A. de C.V.; Hidrogenadora Yucateca, S.A. de C.V.; Oleoproteinas del Sureste, S.A. de C.V.; Aceitera del Golfo, S.A. de C.V.; Licuo Envases, S.A. de C.V.; Harinas del Sureste, S.A. de C.V.; Promotora Hinsa, S.A. de C.V.; and Proteinas y Aceites del Bajio, S.A. de C.V., or that he suited the execution of the bankruptcy sentence pronounced in the foreign country [against] Jacobo Xacur Eljure. He also denies that the present combined trial against Jacobo, Felipe and Jose Maria Xacur Eljure was commenced at the initiative of the trusteeship he represents by a writ of January 22 of 2001, and clarifies that he does not know the exact date, or whether it was a single case or three cases.

From the questions to the trustee formulated by Jose Maria Xacur Eljure, the deponent answered that he abstained from requested the acknowledgment of the trial processed before the United States Bankruptcy Court for the Southern District of Texas, Houston Division by the diplomatic route; that he does represent the interests of the creditors of Felipe Xacur Eljure in the foreign trial in case No. 96-48540-H5-7; that he abstained from accrediting the capacity of merchant of Felipe Xacur Eljure in the said proceeding, clarifying that he was not a party in the determination of the bankruptcy adjudication. He accepts that he is the representative of the bankruptcy estate decreed against Jacobo, Felipe and Jose Maria Xacur Eljure by the foreign bankruptcy court, clarifying that there is a bankruptcy estate for each of the defendants. He denies having been designated as the trustee to administer the bankruptcy estates of the debtors,

since there is a bankruptcy estate for each one of them, and they are administered independently. He denies having applied before the Mexican Government for the legalization of the foreign proceeding against Felipe Xacur Eljure. Finally, he accepts having designated Dario Ulises Oscos Coria as his general agent in this trial, and having submitted this incident on January 26 of 2001.

As for the documentary evidence submitted by the codefendant Jose Maria Xacur Eljure to Oscar Alonso Moreno and Aquilino Valle Melendez, it is gathered that the first-named declared that he has known the said codefendant for twenty years, by virtue of having provided his professional services in one of the companies in which the codefendant exercised administrative positions; that [the codefendant] has practiced this last-named occupation for the past fifteen years, providing his professional services to the juridical entity known as Hidrogenadora Nacional, S.A. de C.V.; that he is not aware that he has any other activity.

Aquilino Valle Melendez testified that he has known the codefendant Jose Maria Xacur Eljure since 1986 from the meetings of the Board of Directors of Grupo Hidrogenadora, that he knows he is an employee from having provided his professional services to Hidrogenadora Nacional, S.A. de C.V., and does not remember how long [the codefendant] has engaged in that activity; that he is not aware that he has any other activity.

In the documentation relative to the certified copy of Section 303 of the United States Bankruptcy Law submitted by Jacobo Xacur Eljure, it is shown that involuntary cases of bankruptcy can be commenced only under Chapters 7 and 11 of the United States Bankruptcy Law, against any person, that is not a farmer, a family farmer, a nonprofit business or commercial corporation, or that may be a debtor under a different chapter of the same law **/sic/.**

From an analysis of the evidence submitted by the petitioner, it is found in the interrogatories that, with the exception of Jacobo Xacur Eljure, who was declared to be in implicit acknowledgment of that fact, Felipe and Jose Maria Xacur denied being merchants or industrialists, or of having engaged in acts of commerce in a habitual manner, or being present shareholders in the firms pertaining to the Xacur Group, and that they are only employees, obtaining their economic resources from their work and not from commercial activities. Jose Maria Xacur accepts that he is a shareholder in Detergentes y Jabones Sasil, S.A. de C.V.; Promotora Hinsa, S.A. de C.V.; Proteinas y Aceites del Bajio, S.A. de C.V., and Ibiza, S.A. And Felipe Xacur Eljure accepts that he is a shareholder in Detergentes y Jabones Sasil, S.A. de C.V. They also declared that they have been shareholders in various companies, but no longer are.

In regard to the documents exhibited by the petitioner, identified as Attachments 6, 10, 11, 12, 13, 14, 15, 16 and 17 for the purpose of accrediting the debtors' capacities as merchants, the following is observed:

In Attachment No. 6, consisting of a certified copy of 352 pages of the Act No. 4661 of the Public Agency No. 35 of the Federal District, the instrument No. 10626 is observed, whereby the General and Special Shareholders' Meeting of "Detergentes y Jabones Sasil, S.A. de C.V. was protocolized. The said meeting was held on June 28 of 1995, chaired by the President of the Board of Directors, Felipe Xacur Eljure, with Jose Maria Xacur Eljure functioning as the Secretary.

Instrument No. 10627 shows the protocolization of the General and Special Shareholders' Meeting of "Aceitera del Golfo," S.A. de C.V., which was held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10628 records the protocolization of the General and Special Shareholders' Meeting of "Harinas del Sureste," S.A. de C.V., held on June 28 of 1995, presided over by the Administrator, Jacobo Xacur Eljure.

Instrument 10629 records the protocolization of the General and Special Shareholders' Meeting of "Licuo Envases," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10630 records the protocolization of the General and Special Shareholders' Meeting of "Oleoproteinas del Sureste," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10631 records the protocolization of the General and Special Shareholders' Meeting of "Hidrogenadora Yucateca," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10632 records the protocolization of the General and Special Shareholders' Meeting of "Grupo Xacur," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10633 records the protocolization of the General and Special Shareholders' Meeting of "Hidrogenadora Nacional," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10634 records the protocolization of the General and Special Shareholders' Meeting of "Proteinas y Aceites del Bajio," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

Instrument 10635 records the protocolization of the General and Special Shareholders' Meeting of "Promotora Hinsa," S.A. de C.V., held on June 28 of 1995, presided over by the Sole Administrator, Jacobo Xacur Eljure.

From the said instruments it is gathered that the agenda dealt with in the protocolized minutes of the meetings was to discuss and approve the resolutions relative to the progress of each of the companies up to May 31 of 1995, including any special agreement to address the financial situation of the company and to designate delegates to execute the accords adopted by the shareholders.

In regard to Attachments 10 and 12, consisting of certified copies of the copies of the documents found in the archives of the Public Agency No. 35 of the Federal District, recorded in Act No. 4,661, a series of IOU's can be observed, signed on various dates by the companies mentioned as well as by the debtors, in their capacity as guarantors.

Attachment 11 is a private document which includes a list of the IOU's signed by Jose Maria and Felipe Xacur Eljure up to September 18 of 1996.

Attachment 13 is a certified copy of the Taxpayer Roll No. 416/95, issued on March 14 of 1995, showing that Jacobo Xacur Eljure, 49 years of age, married, industrialist by profession or occupation, of Mexican nationality, appears inscribed in the census registry kept by the office of the Permanent Municipal Taxpayer Rolls, as a resident of that city, in lot number 235, 5th Street, Block No. 132, Section 14, Subdivision of Campestre, 1994-1996.

Attachment 14 is a certified copy of invoice No. 078 of March 14 of 1996, issued by Jacobo Xacur Eljure to Humberto Aguilar Gongora Aguilar, recording the value of a purchase of heifers.

Attachment 15 is the certified copy in 168 pages of the copy of the documents found in the archives of the Public Agency No. 35 of the Federal District, entered into Act No. 4,661, showing that by means of notarial instrument No. 248,399, the merger of the companies

Detergentes y Jabones Sasil, S.A. de C.V. and Corporacion de Empaques Industriales, S.A. de C.V. was protocolized, as well as the increase of capital of the first-named of the said companies.
Instrument 241,285 records the protocolization of the minutes of the Shareholders' Meeting of Proteinas y Aceites del Bajio, S.A. de C.V., held on March 30 of 1986, presided over by Felipe Xacur Eljure, in his capacity as Chairman of the Board of Directors, the order of the day being the modification of Fraction IV of Article 11 of the company bylaws of the company indicated, and General Matters.
Instrument 3,223 records the organization of the company Proteinas y Aceites del Bajio, S.A. de C.V.

Another notarial instrument, dated February 25 of 1995, records the general power for judicial matters granted by Jacobo Xacur Eljure to Ernesto Herrera Novelo and Orlando Perez Escalante.

Notarial Act No. 206 records the protocolization of the Minutes of the Special Shareholders' Meeting of Proteinas y Aceites del Bajio, S.A. de C.V., held on December 2 of 1994.

Notarial Act No. 183 records the protocolization of the Minutes of the General Special Shareholders' Meeting of Hidrogenadora Yucateca, S.A. de C.V., held on November 19 of 1970, in which it was agreed to appoint the new sole administrator of the company.

Notarial Act No. 35 records the protocolization of the Minutes of the General Special Shareholders' Meeting of Hidrogenadora Nacional, S.A. de C.V., held on December 3 of 1994, in which agreements were adopted for the donation and sale of shares, the resignation of the President, Secretary and Treasurer, of the Board of Directors and of the Commissioner; and a change in the administration of the company, to be administered by a Sole Administrator, modifying the clauses in the related bylaws.

Finally, Attachments 16 and 17 refer to private documents which contain a list of the companies owned by the Xacur brothers, the number and percentage of shares, as well as the administrative entity.

In the interrogatories answered by Raul Lopez Castilla, Mariano Peraza Padilla, Fernando Gomez de Parada Miranda and Roberto Cuaron, their testimony shows that they knew the parties and who they were, and that because of the activities that they carried out within the credit institution in which they were employees, they knew of the commercial activities that the Xacur Eljure brothers had within the companies of which they were the owners; that they know they are merchants, industrialists and businessmen, because they are well known as such; that they know they have realized commercial acts and operations, invested in mercantile firms and companies and in financial institutions, and that they have granted their guarantees in credit operations.

In regard to the reports provided by the various credit institutions, we find that Banca Mifel, S.A.; Banco Industrial, S.A.; Bank of America, S.A. and ABN Amro Bank, responded in a negative manner, indicating that the debtors have not had relationships of any kind with the said credit institutions.

Banco Nacional del Ejercito, Fuerza Aerea y Armada, S.N.C., indicated that Felipe and Jose Mari,a Xacur Eljure have investment accounts registered in their names. In regard to the first-named of the debtors, it is presently cancelled. The second-named has a balance of zero pesos. Jacobo Xacur Eljure has a checking account with a balance of 47,894.00 pesos, national currency.

Banco del Sureste, S.A., indicated that it found in its records three accounts in the name of Jacobo Xacur Eljure, and one in the name of Jose Maria Xacur Eljure, all of which were closed in 1998.

BBVA Bancomer, S.A., a multiple banking institution of the BBVA Bancomer Financial Group, reported, in respect to Jacobo Xacur Eljure, that it had no record of a credit card or of any type of credit, but that he has outstanding credit in the capacity of guarantor in respect to the accredited Aceitera del Golfo, S.A. de C.V.; Harinas del Sureste, S.A. de C.V.; Hidrogenadora Yucateca, S.A. de C.V.; Licuo Envases, S.A. de C.V.; and Oleoproteinas del Sureste, S.A. de C.V., for contracts of a diverse nature subscribed by the companies, and that he has contracts for the opening of accounts. In respect to Felipe Xacur Eljure, it reported that it had no credit card records, or credit records of any kind, but that he had outstanding credit in the capacity of guarantor for the accredited Proteinas y Aceites del Bajio, S.A. de C.V.; that the noninterest-bearing Progressive account No. 182254050 was found, cancelled on April 13 of 1999. And finally, in respect to Jose Maria Xacur Eljure, that it had no record of a credit card or credit of any type, but that he has outstanding credit in his capacity as guarantor for the accredited Proteinas y Aceites del Bajio, S.A. de C.V.

Banco Nacional de Mexico, S.A., informed that Jacobo Xacur Eljure has two trust contracts registered in his name, the first, No. 160162-6, with a balance of $28,396.149.25 (sic) on October 1 of 2001, and No. 160163-4, which was cancelled on August 21 of 1994; an investment contract cancelled on March 24 of 2001; and a master account, also cancelled, but that he has credits that he guaranteed for the firm Aceitera del Golfo, S.A. de C.V. and Hidrogenadora Yucateca, S.A. de C.V. over several dates from 1992 to 1995. Felipe Xacur Eljure has a credit card recorded, which was cancelled on December 11 of 1997, but he has credits that guarantee the contracts subscribed by the accredited company Hidrogenadora Nacional, S.A. de C.V., whose IOU's he guaranteed during 1994 and 1995, and by the company Proteinas y Aceites del Bajio, S.A. de C.V., whose IOU's he guaranteed during the year of 1994. Jose Maria has a master account contract, which was closed on September 7 of 1998, but he has credits that guarantee the contracts subscribed by the company Hidrogenadora Nacional, S.A. de C.V. during 1994 and 1995.

Scotiabank Inverlat, S.A., indicated that Jacobo Xacur Eljure, with Client's No. 0662-9, reported an accounting risk derived from a letter of credit opened on December 1 of 1994; and that Felipe and Jose Maria Xacur Eljure do not have reported risks in the portfolio system.

Finally, the credit institution Banca Serfin, S.A., a multibank institution of Grupo Financiero Santander Serfin, reported that Jacobo Xacur Eljure guaranteed the credit extended to the firms Aceitera del Golfo, S.A. de C.V. and Harinas del Sureste, S.A. de C.V. during the period from 1991 to 1994; that he has a Serfin Maxi-account, cancelled on October 25 of 2001, and a personal account that was cancelled on August 27 of 1998. It reported that it had no relationship with Jose Maria and Felipe Xacur Eljure.

It is important to point out that the debtors argue that Chapter 12 of the Commercial Bankruptcy Law is not applicable to their case because in the acknowledgment proceeding their capacity as merchants, as referred to in Article 3 of the Code of Commerce, was not accredited.

However, even though this circumstance may be an important litigation point, it is irrelevant, towards the effect of the acknowledgment of the foreign proceeding, whether the defendants have the capacity of merchants referred to in Article 3 of the Code of Commerce,

because the said capacity is a question that must be established by the foreign court that is requesting international procedural cooperation.

The above is determined because, as was established in the Fifth section of the Findings, *in fine,* that this Court has the faculty to verify that the formalities stipulated in Articles 278, 279 Fraction I, 293 and 296 of the pertinent law are complied with, without studying the considerations that preceded and served as the foundation for the declaration of bankruptcy of the defendants by the foreign court, since this Court is acting in cooperation, not revision. Therefore, the capacity of merchant must be studied from the point of view of the foreign proceeding, and not under Mexican commercial legislation. Because we reiterate: Chapter 12 of the Commercial Bankruptcy Law was created so that different countries can cooperate more efficiently with each other in those cases in which debtors may have assets in more than one country, to prevent them from evading compliance with a sentence pronounced against them under the parameters of bankruptcy legislation by hiding or transferring their assets.

Therefore, if the capacity of merchant must be considered by the petitioning foreign court, this element is fully satisfied with the direct proof, which is the foreign sentence itself, pronounced on August 22 of 1997, from which it is determined that the foreign court took care to establish under which capacity the debtors were being declared bankrupt when it cited sections 109 and 303 of the United States Bankruptcy Law, from which it may be presumed, by exclusion, that the defendants have the capacity of merchants.

Moreover, contrary to the arguments by the defendants based on Mexican commercial legislation, the debtors are considered as merchants under the terms of Article 3 of the Code of Commerce by virtue of the evaluation of the evidence submitted to the Court, following the pertinent procedural rules, according to the nature of the proceedings and the analysis of the matter being debated, which prove that the defendants are merchants because they repeatedly realize juridical acts of a commercial nature, and with a speculative intent, wholly independent of the fact that they may realize other activities.

This is so, because the reply to interrogatories by the trustee W. Steve Smith, submitted by each of the defendants, although they were answered as stipulated by Article 1287 of the Code of Commerce, that is, by a legally enabled person, with full knowledge, without duress or violence, on facts concerning the deponent in regard to the matter, and in conformance with the interrogatory rules, lacks any juridical value, since his statements do not show that he accepts that the defendants do not have the capacity of merchants, even though he accepts that in the foreign proceeding the court abstained from accrediting the capacity of merchant of Felipe Xacur Eljure, an affirmation that does not benefit the questioner, first, because he attempts, with a single position, to accredit a circumstance that is not a subject of the litigation regarding acknowledgment, since the capacity of merchant had to be accredited or denied in the foreign court, besides the fact that public documents exist against his position, consisting of the foreign sentence of August 22 of 1997, which determines his capacity of merchant by exclusion. And secondly, because the trustee clarifies that this element plays no part in declaring a person bank rupt (sic), added to the fact that the valuation of interrogatory testimony cannot be made in an isolated form, since this implies the improper division of the testimony, using only the part that damages the deponent and not what benefits him, when the proper procedure is to valuate it in its entirety.

In regard to the interrogatories submitted by Jose Maria Xacur Eljure to Oscar Alonso Moreno and Aquilino Valle Melendez: They have no probatory value, although the statements by the witnesses were of a uniform nature when they declare that they know the defendant, by virtue

of having associated with him for a reasonable period of time, and that he exercised administrative posts, something that could also be perceived by the senses and by the facts themselves, without the observations by third parties. However, the said testimony does not belie the capacity of merchant, because the fact of knowing that the codefendant is an employee of Hidrogenadora Nacional, S.A. de C.V., because he holds administrative posts in the company, does not relieve him of the capacity of merchant, since this activity is not opposed to the exercise of a profession or occupation by which he may be considered as employed, because against this isolated testimony there are many proofs by which it can be determined that the principal activity of Jose Maria Xacur Eljure is commerce, and that it was in that capacity that he was declared bankrupt by the foreign court.

In support of the above, there is the opinion sustained by the Eighth Civil Court of the First Circuit, Ninth Period, published in the *Semanario Judicial de la Federación* y su Gaceta, Volume IX, April of 1999, Thesis I.8o.C.26 K, page 591, which reads:

"INTERROGATORY TESTIMONY. ITS VALUATION. Although the value of interrogatory testimony depends on the prudent opinion of the court, the fundamental rules on evidence must not be violated, since it cannot be accepted that because the witnesses were consistent in their statements in regard to a fact, that their statements should be given full probatory value, since the evidence must be evaluated in its entirety, such as that the witnesses agree both in the essential and in the incidental facts; that they have personal knowledge of the facts, and not by induction or reference by third parties; that they express by what means they learned of the facts on which they were deposed, even if they were challenged by the questioner; that they justify the credibility of the reason for their presence at the place of the facts; that they provide good cause for their statements, and that their testimony coincide with the narration of the facts in the litigation."

Also, the opinion VI. 2o. J/145 of the Eighth Period, of the Second Court of the Sixth Circuit, published in *Semanario Judicial de la Federación,* Volume VIII, August of 1991, page 141, which reads as follows: "INTERROGATORY, VALUATION OF THE EVIDENCE. The valuation of interrogatory evidence always implies two investigations: The first is in regard to the veracity of the testimony, in which the subjective credibility of the witness is investigated. The second investigation is in regard to the objective credibility of the testimony, both in regard to the source from which the witness affirms having received the perception and in relation to the content and form of the statement."

In respect to the evidence submitted by Jacobo Xacur Eljure, consisting of the judicial procedures of the foreign proceeding, as well as the applicable provisions of the foreign article No. 303, these documents, far from benefiting the defendant, are to his prejudice, because the said documents prove, contrary to the defendant's allegations, his capacity of merchant before the foreign court.

Added to the above against the defendant's objection, is the evidence submitted by the petitioner, which, even though some of it is rejected, when it is all evaluated proves that the defendants have the capacity of merchants in the Mexican Republic, under the terms of Article 3 of the Code of Commerce.

First, the evidence of the interrogatories submitted by the petitioner to Raul Lopez Castilla, Mariano Peraza Padilla, Fernando Gomez de Parada Miranda and Roberto Cuaron is rejected, because of its lack of probatory efficacy, since the questions answered were inductive, containing the material facts of the evidence, with the deponents limited to reaffirming the questions asked, which illustrated the circumstances of the fundamental facts in the manner, time

and place that the party in interest wished to prove, without indications in the statements that they declared the facts in their own right, whereas it should be remembered that ordinarily a witness will appear at a trial to declare in his own words the facts known to him that have a direct relationship to the litigation, and that are of importance in elucidating the controversy. When it is not the witnesses who bring up the facts, their statements are rendered inefficacious.

The above finds support in the jurisprudence of the Ninth Period, Second Civil Court of the Sixth Circuit, in the *Semanario Judicial de la Federación* y su Gaceta, Volume XI, January of 2000, Thesis VI.2o.C. J/179, page 934, which reads as follows:

"INTERROGATORY EVIDENCE. CASES IN WHICH IT IS NOT WITHOUT VALUE EVEN WHEN THE QUESTION IS INDUCTIVE. Although, as a general rule, interrogatory testimony has no value when the questions have been inductive because they implicitly contain their answer, and the witnesses have limited themselves to answering in the affirmative, this criterion should be applicable only when the witness has answered with a simple isolated "yes," but not when besides giving an affirmative answer the witness states a series of facts to support his statement."

Nevertheless, with the interrogatories answered by the debters and with the documents identified as Attachments 6, 10, 11, 12, 13, 14, 15, 16 and 17, as well as with the information provided by the various credit institutions, evidence that besides being examined in an individual manner was subsequently examined in a combined manner by collation and comparison, the conclusion is reached that the petitioner has, pursuant to the provisions in Article 1194 of the Code of Commerce, accredited that the defendants are merchants, in accordance with Mexican commercial legislation.

In effect, from the evaluation made of the evidence in a combined form, it is seen that the debters do have the capacity of merchants. Because, although in the interrogatory they deny being merchants or industrialists, or that they customarily realize commercial acts, whereas they accept being employees and shareholders, in terms of the provisions of Articles 1211, 1212 and 1287 of the Code of Commerce, suppletorily applied to the pertinent law, the said interrogatory has full probatory value, since the admission that they are shareholders proves the contrary, even though the correct procedure would be to evaluate the said evidence in its entirety, and not only the part that damages the deponent. However, the value given to the testimony is based on the existence of various proofs that support the statement that Jose Maria Xacur Eljure is a shareholder in the firms Detergentes y Jabones Sasil, S.A. de C.V.; Promotora Hinsa, S.A. de C.V.; Proteinas y Aceites del Bajio, S.A. de C.V., and Ibiza, S.A., and that Felipe Xacur Eljure is a shareholder in Detergentes y Jabones Sasil, S.A. de C.V.

Regarding Jacobo Xacur Eljure, it must be mentioned that besides having implicitly accepted the positions qualified as legal, which has an indicative value when combined with the other elements of proof, his capacity of merchant is accredited because he is a shareholder of the firms Hidrogenadora Yucateca, S.A. de C.V.; Licuo Envases, S.A. de C.V.; Oleoproteinas del Sureste, S.A. de C.V.; Promotora Hinsa, S.A. de C.V.; and Proteinas y Aceites del Bajio, S.A. de C.V.

The above can be concluded from the public documents related to the certified copies of Act No. four thousand six hundred sixty-one of the Public Agency No. 35 of the Federal District identified as Attachments 6, 10, 12 and 15, since, although they are certifications that prove Acts such as the protocolization of the minutes of General and Special Shareholders' Meetings to adopt decisions on the affairs of each of the companies indicated in the preceding paragraphs, presided over by the codefendants, because besides being shareholders they are sitting members

of the Board of Directors thereof, adopting decisions in regard to mergers, increase of capital, modification of the bylaws, organizing companies, donating and selling shares, signing credit documents in a customary manner to obtain financial resources for the operation of the companies, inclusively showing the type and value of the shares owned, among other information, full juridical value is thereby conceded to the combined documents, under the terms of Articles 1237 and 1292 of the Code of Commerce, said value being conceded not because of the declarations contained therein, but because of the commercial act contained in each of them, which accredits the habitual and customary exercise of commerce for the purpose of obtaining a profit. That is, they show a willful wish to exercise the operations implicit in that activity, and in the custom of such practices.

And though it may be true that this circumstance alone cannot be held as the necessary condition for a person to be defined as a merchant, it does constitute a sufficient element of corroboration to support the declaration of the inclination contained at the time the question was answered, since the shareholder of a company, dedicated to buying, transforming and selling for the purpose of lucre, besides the fixed salary received as an employee, is considered to be a merchant, because, we reiterate, a merchant's activity does not preclude the exercise of any other activity of a different nature.

Moreover, the person who administers and benefits from the patrimony of the company, carrying on an economic-commercial activity, habitually exercised, and for which he receives an economically individualized remuneration, technically denominated gain or lucre, is also considered to be a merchant.

Added to the above, in relation to Jacobo Xacur Eljure, we find the evidence marked as Attachments 13 and 14, showing that the said person admits being an industrialist in his Taxpayer Registration certificate No. 416/95, issuing invoices in his name containing his Federal Taxpayer Registration. And though this circumstance does not necessarily signify that it should be held as true based simply on the declarations contained in the said documents, it is no less true that added to the various other probatory elements, his condition of merchant is accredited as a consequence of the habitual manner in which he engages in juridical acts of commerce.

Also to be considered are the reports provided by the credit institutions, BBVA Bancomer, S.A.; Banco Nacional de Mexico, S.A., and Banca Serafin, S.A., where it is also shown that the defendants repeatedly carried out acts of commerce.

Therefore, from all of the above, the capacity of merchant in the Mexican Republic of the debtors Felipe, Jacobo and Jose Maria Xacur Eljure is considered to be accredited. Consequently, the objection based on the allegation that they are not merchants, and that Chapter 12 of the Commercial Bankruptcy Law is not applicable to their case, is overruled, for the reasons found in the Fifth point of the Findings as well as in this one.

SEVENTH. Since the objections filed by the defendants were overruled, the Court will now proceed to an analysis of the central issue of this case.

The litigation centers on the decision of whether in conformance with Chapter 12 of the Commercial Bankruptcy Law the foreign proceeding and its sentence can be acknowledged because it meets any of the conditions of Article 278 of the said Chapter and Code.

For this purpose the petitioner W. Steve Smith, through his Agent Dario Ulises Oscos Coria, has petitioned, under the terms of Chapter 12 of the Commercial Bankruptcy Law, for the acknowledgment of the foreign bankruptcy proceedings against Felipe, Jose Maria and Jacobo, all surnamed Xacur Eljure, identified as Cases Nos. 96-48540 mdl, 96-48541 rfw, and 9648538

kkb, respectively, which was tried before C. Karen K. Brown, Judge of the United States Bankruptcy Court for the Southern District of Texas, Houston Division. He has also requested international cooperation and coordination in respect to the said proceedings for the execution of the foreign sentence of August 22 of 1997, in respect to the assets that the defendants have in this country.

With his petition, the said foreign representative, in compliance with the provisions of Article 292 of the Commercial Bankruptcy Law, has exhibited duly annotated certified copies of the documents, with their translation into Spanish, showing the existence of the foreign proceeding; the appointment of the foreign representative; the resolution of August 22 of 1999, which declares the bankruptcy of Jacobo, Felipe and Jose Maria, all surnamed Xacur Eljure; the summons of the debtors; and the various resolutions pronounced by superior courts in regard to the appeals filed against the declaration of bankruptcy sentence.

Documents to which full probatory value is conceded, under the terms of the provisions of Article 1237 of the Code of Commerce in relation to Article 295, second paragraph of the said Code, which gives this Court the faculty to presume that the documents accompanying the acknowledgment petition are authentic, whether they are notarized or not.

Support for the above is found in the jurisprudence XIX.1o. J/7, of the Ninth Period, First Court of the Nineteenth Circuit, published in the *Semanario Judicial de la Federación* and its Gazette, Volume IX, April, 1999, found on page 342, which reads as follows: "FOREIGN PUBLIC DOCUMENTS, LEGALIZATION OF. Pursuant to the provisions of Articles 2, 3, 4 and 5 of the Convention for the Elimination of the Requirement of Legalization of Foreign Public Documents, subscribed by the Mexican government and approved in the National Senate, by means of a decree published in *Diario Oficial de la Federación* on January 17 of 1994, promulgated and published in the same publication on August 14, 1995, by the President of the Republic for its due observance, the only formality that is required for the probatory efficacy of the said instruments is that they bear the corresponding "apostille," affixed by the competent authority of the State from which the instrument originates. Therefore, if an instrument of that nature does not comply with that formality, it cannot be accorded any probatory value whatever and cannot be used for the purpose intended.

From these documents, it is concluded that in a suit filed on September 18 of 1996 by Banco Nacional de Mexico, S.A., a member of the Financial Group Banamex-Accival; Bancomer, S.A., a multi-bank institution; Banco Mexicano, S.A., a multi-bank institution of the Financial Group Invermexico; Banca Serafin, S.A., a multi-bank institution of Grupo Financiero Serfin; Banco Bilbao Vizcaya-Mexico, S.A. of the multi-bank financial institution Bilbao-Vizcaya-Probursa; Confia, S.A., a multi-bank institution of Abaco Grupo Financiero; Banco Inverlat, S.A., a multi-bank institution of Grupo Financiero Inverlat; and California Commerce Bank, a petition was filed before the United States Bankruptcy Court for the Southern District of Texas, Houston Division, for a declaration of involuntary bankruptcy under Chapter 7, submitted under Section 11, against the debtors Felipe, Jose Maria and Jacobo Xacur Eljure, for generalized noncompliance with their exchange bill liabilities, from the expiration of the IOU's for which they had extended their guarantee.

It is also seen therein that the debtors were summoned to trial, that they appeared to exercise their rights, and they also petitioned the foreign court to dismiss the case, and countersued the plaintiffs for usury. The bankruptcy judge Karen K. Brown determined that the creditors had complied with proving their case, pursuant to 11 USC, Section 303, and finally, in a sentence of August 22 of 1997, determined that the debtors were subject to the provisions of

Chapter 7, Section 11, of the Bankruptcy Law of the United States, Article 109, and separately issued the bankruptcy order requested.

The debtors exercised the recourses established in the foreign law. On October 22 of 1998, the United States District Judge David Hittner confirmed the decision of the Bankruptcy Court of granting the petition for involuntary bankruptcy, and the order by which the bankruptcy pronounced on August 22 of 1997 was decreed. In a resolution on March 8 of 2000, the Fifth Circuit Appellate Court of the United States determined that the sentences by the district and bankruptcy courts were confirmed. Finally, in a decree of October 2 of 2000, the United States Supreme Court, denied the petition for revision of the sentence of the United States Fifth Circuit Appellate Court.

The sentence of August 22, 1997, deciding to declare the debtors bankrupt, pronounced by the United States Bankruptcy Judge, and confirmed by the higher courts, reads as follows:

ORDER
(BANKRUPTCY SENTENCE)

This is an involuntary bankruptcy, pursuant to Chapter 7, filed under Section 11 USC 303, in which the petitioning creditors, seven Mexican banks and a bank in California that is owned by an affiliated Mexican bank, have petitioned for a declaration of bankruptcy against three Mexican citizens, Jacobo Xacur, Felipe Xacur and Jose Maria Xacur. In addition to the jurisdictional decisions, the supposed debtors have petitioned this Court to abstain from this case because of the litigation pending in Mexico between the same parties. Alternatively, the defendants have filed counter suits, alleging usury, seeking to nullify the bank claims. A hearing was held regarding the involuntary bankruptcy petition and the motion by the debtors of dismissal of the suit and abstention. After considering the evidence and the law, the court concluded that it will not abstain, and that it will issue a declaration of bankruptcy for the three debtors.

I – Facts

The petitioning creditors are: (1) Banco Nacional de Mexico, S.A., a member of the Financial Group Banamex-Accival ("Banamex, S.A.); (2) Bancomer, S.A., a multi-bank institution of Grupo Financiero (Bancomer, S.A.); (3) Banco Mexicano, S.A., a multi-bank institution of Grupo Financiero Invermexico (Banco Mexicano, S.A.); (4) Banca Serfin, S.A., a multi-bank institution of Grupo Financiero Serfin; (5) Banco Bilbao Vizcaya-Mexico, S.A. of the multi-bank financial institution Bilbao-Vizcaya-Probursa, previously known as Institucion de Banca Multiple Grupo Financiero Probursa (Banco Bilbao-Vizcaya Mexico, S.A.); (6) Confia, S.A., a multi-bank institution of Abaco Grupo Financiero (Confia, S.A.); (7) Banco Inverlat, S.A., a multi-bank institution of Grupo Financiero Inverlat; and (8) California Commerce Bank (The Petitioners).

From 1992 to 1994, the petitioners loaned approximately $240,000,000 to the Xacur companies, known as: (1) Hidrogenadora Yucateca, S.A. de C.V.; (2) Oleoproteinas del Sureste, S.A. de C.V.; (3) Aceitera del Golfo, S.A. de C.V.; (4) Harinas del Sureste, S.A. de C.V.; (5) Grupo Xacur, S.A. de C.V.; (6) Detergentes y Jabones Sasil, S.A. de C.V.; (7) Hidrogenadora Nacional, S.A. de C.V.; (8) Licuo Envases, S.A. de C.V.; (9) Promotora Hinsa, S.A. de C.V.; and (10) Proteinas y Aceites del Bajio, S.A. de C.V. (See appendix A.) All the IOU's were to be paid in

United States dollars. Many of the IOU's are guaranteed by the assets of the Xacur companies, located in various states of Mexico.

Some of the Xacur companies were founded in 1943 and others in 1953. While two of the Xacur companies produce soap and plastic containers, the majority is in the business of grains, and the processing, marketing, and the retail and wholesale distribution of cooking oils throughout Mexico. They have plants located in Merida, Guanajuato, Mexicali, and in Nuevo Laredo.

In all Mexico, the companies directly employ 2,000 workers, and indirectly through their subsidiaries, 3,000 workers.

Besides the corporate guarantee extended by the companies, each of the Xacur brothers extends his "aval." Under Mexican law an aval is a form of financial obligation, similar to that of a guarantor or cosigner under United States law. The person who extends an "aval" by the signature of a document, known as an "IOU," and one who extends his aval [guarantee] by the subscription of an IOU, is known as an "avalista."

Loans by Banamex.
On the 21st and 25th of September of 1995, Banamex, S.A. sued Jacobo Xacur in the courts of Merida, Yucatan for the guarantees in two cases, suiting sums owed amounting to $4.9 million and $53 million US dollars. Many of the IOU's omit the interest rate. Other IOU's in question list a specific interest rate. Whether the interest is established or omitted, many of the IOU's require the interest, plus the interest of the default penalty. Specifically, the Banmex IOU's require the interest plus the penalty interest ("moratorium") on any amount of the principal owed, payable at a variable rate known as the Libor Rate, calculated from the date of the default multiplied by 4(1).

(1) The Libor Rate is defined as the annual interest rate equal to the arithmetic average of the rate at which deposits of Euros are offered in the Inter Bank Market of London between various specific banks on the two banking days before the date of issue of the IOU, as is shown on the Libor page of the Reuters Screen.

The majority of IOU's have been issued in English and in Spanish. Additionally, many of the Banamex IOU's have a clause that transcribes in English the agreement between the parties, which says:

Any legal action or procedure that may arise from or in reference to this IOU may be filed in the Courts of the State of New York, United States of America, or in the Courts of the United States, suppletory to the State of New York, or of the Federal District of Mexico, at the option of the holder of same, and the jurisdiction of any other court is thereby waived.

This IOU will be ruled by, and interpreted in conformance with, the laws of the State of New York, United States of America, with the understanding, however, that if – and only if – any legal action or proceeding is filed by the holder in respect to this IOU in the courts of Mexico, this IOU shall be considered as an instrument made in conformance with the laws of Mexico, and interpreted in accordance with the laws of Mexico, with the further understanding that the

obligation of the "Undersigned" to pay this IOU, together with the interest accrued by same and all sums payable by same, shall be relieved only by the payment of dollars in New York, N.Y., United States of America.

(Probatory element 38 of the Alleged Debtors – Banamex, note to page 4).

B. Bancomer, S.A.
Some of Bancomer's IOU's have a blank space for the interest rate. Others have an interest rate that reaches 12.02%. The penalty rate in some of the IOUs is 15%. The IOU's do not establish a choice of law or jurisdiction.

C. Banco Mexicano, S.A.
The IOU's of Banco Mexicano have interest rates that do not exceed 12.25%. The IOU's do not establish the chosen law or jurisdiction.

D. Banca Serfin, S.A.
The Banca Serfin IOU's establish interest rates that do not exceed 10%, plus the penalty rate of 50%. The Banca Serfin IOU's stipulate that:
For everything related to the interpretation, compliance or judicial petition for the payment of the obligations assumed, the subscriber expressly submits to the jurisdiction of the competent courts of Mexico City, Federal District, United Mexican States, or in the _____, at the Holder's choice, and he therefore expressly waives the jurisdiction of any other domicile. In the event of a trial to recover the principal amount of same and the accrued interest, if any, the subscriber agrees to pay the additional sum of the costs and attorneys' fees that the court may deem reasonable.

E. Banco Bilbao-Vizcaya Mexico, S.A.
The IOU's owed to the Bilbao Vizcaya Bank establish interest rates that do not exceed 9.5%, with penalty rates that reach 19%.

F. Confia, S.A.
The Confia IOU's establish interest rates that do not exceed 16%, plus a default rate of 50%. The Confia IOU's stipulate:

The SUBSCRIBER and the GUARANTOR hereby submit irrevocable to the jurisdiction of any court in the State of New York, or of any United States Court based in New York City, New York, United States, or of any competent court in Mexico City, or of the city of MEXICO, D.F., Mexico, in any action or proceeding that may arise from or in relation to this IOU, as the plaintiff in the said action or proceeding may choose, and the SUBSCRIBER and the GUARANTOR hereby irrevocably agree that all claims in respect to said action or proceeding may be substantiated and resolved in any of the said courts. The SUBSCRIBER and the GUARANTOR irrevocably waive, as far as the law allows, any objection, now or in the future, arising from any trial, action or litigation in respect to this IOU filed in any of the aforementioned courts, and the SUBSCRIBER and the GUARANTOR also irrevocably waive any claim that said trial, action or litigation presented in any court that may be presented based on an inconvenient forum (sic). The

SUBSCRIBER and the GUARANTOR hereby expressly waive any other jurisdiction, which (sic) right to claim they may now or latter have due to current or future domiciles.

G. Banco Inverlat, S.A.
The Inverlat IOU's show interest rates that reach 9.9%.

The IOU's stipulate:
The subscriber and the guarantor, or guarantors, as the case may be, agree that they may be judicially required to pay this IOU in Mexico City, D.F., Mexico, if the Subscriber fails to pay this IOU when it becomes due. The Subscriber and the Guarantor(s), if any, expressly submit to the courts of Mexico City, D.F., Mexico, or of the United States of America for the State of _____, or for the State of _____, or for the state selected by the Holder of this IOU, waiving the jurisdiction of any other domicile they may have in the future.

H. California Commerce Bank.
The IOU owed to California Commerce Bank establishes the prime interest rate plus 2%, and a penalty rate of 6%. This IOU stipulates:

The subscriber(s) accept(s) and agree(s) that the holder of same may file any suit, action or proceeding in respect to this IOU in either the United States of America or in the United Mexican States, at the said holder's choice. In the United States of America, for
everything related to the interpretation of, compliance with, or judicial suit for the payment of the obligations assumed in same, the subscriber hereby irrevocably and expressly submits to the jurisdiction of the competent courts located in the city of Los Angeles, California, expressly waiving the jurisdiction of any other domicile to which he might have a right now or in the future. In the United Mexican States, for everything related to the interpretation of, compliance with, or judicial suit for the payment of the obligations assumed in same, the subscriber hereby irrevocably and expressly submits to the jurisdiction of the competent courts located in Mexico City, Federal District, United Mexican States, expressly waiving the jurisdiction of any other domicile to which he might have a right now or in the future. In the event there should be a suit for the payment of this IOU, the subscriber agrees to the initial rate of 11. 57% annually, divided by .951, and to pay for all the costs and attorney fees incurred by the bank in such lawsuit.

This IOU shall be ruled and interpreted in accordance with the laws of the State of California, United States of America, with the understanding, however, that in the event any legal action or proceeding is initiated by the holder of same in the courts of the United Mexican States (as distinguished from a lawsuit filed in Mexico for the execution of a sentence obtained outside the United Mexican States), or any political subdivision of same, this IOU would be ruled and interpreted in accordance with the laws applicable in Mexico City, Federal District, United Mexican States.

The majority of the loans were made to fund the operation of the Xacur companies, including the financing of grain shipments from the United States to Mexico. Additionally, the Xacur brothers obtained substantial bank loans to finance the construction of a large plant for the processing and extraction of soy bean oil, to be built in Merida. The Xacur brothers allege that once it was built, the plant's processing system proved defective, and that they were unable to repay these specific

loans for that reason. This soy bean plant is subject to pending litigation in Case No. C-3-93-278 in the United States District Court for the Southern District of Ohio (Western Division), between Oleoproteinas del Sureste, S.A., et al, and The French Oil Mill Machinery Co., et al, an Ohio firm (the manufacturer).

From 1990 to 1994, the Xacur brothers paid approximately $28 million US dollars on the IOU's. Later, in October of 1994, there was an instance of noncompliance in some of the loans from Banamex. Additionally, the Mexican government devalued the peso from 3.1070 to the dollar in 1993, to 4.9400 in December of 1994, increasing the principal owed by approximately 53% in one blow. The Xacur brothers and their firms no longer made any payments on these IOU's. However, some of the banks have taken 148,000,000 pesos from their personal and corporate accounts to compensate for this, as involuntary payment for the debts. The Xacur brothers maintain that these compensations violate Mexican law.

Between February of 1995 and February of 1996, the banks filed at least 27 suits against the Xacur companies and individually against the Xacur brothers to collect against the IOU's and the guarantees. (See Appendix B) These lawsuits were filed in various civil courts in different regions of Mexico. No sentences have been handed down to this date.

On June 28 of 1995, ten of the Xacur companies filed what is known as a "suspension of payments," or SDP. This is a form of reorganization process, in conformance with Mexican law, which allows the entity filing the said SDP to accumulate the pending related suits in order to obtain the suspension of payments in the SDP court. On July 3 of 1995, a Mexican judge authorized the ten Xacur companies to continue the suspension of payments in a single process. Several banks appealed this resolution, attempting to convert the case into a liquidation process. To this date, those appeals have not been successful and/or the banks have agreed to delay the appeal and to negotiate with the Xacur brothers.

The SDP is being processed in Mexico (2), and only one of the civil cases filed by the banks regarding the Xacur brothers individually as guarantors has been "accumulated" into the SDP. That decision has been accumulated for consideration by the SDP judge. The Xacur group of companies is trying to have all the cases accumulated into the SDP proceeding. The banks have opposed the said accumulation, denying that such accumulation is required under Mexican law. However, all the banks have filed claims in the SPO process against the Xacur companies in regard to the IOU's. To date, all the other civil cases against the Xacur brothers as individuals, alleging noncompliance with their guarantees, are still pending before various civil courts of Mexico.

In response to each action filed by the banks in the Mexican civil trials, the Xacur brothers have retained a lawyer, and have contested each legal action in the Mexican courts. The Xacur companies continue to operate in Mexico.

The Xacur brothers maintain that they have changed their residences in Mexico after the banks attempted to file criminal charges against them as a result of the nonpayment of these IOU's. There are presently no criminal proceedings against them in Mexico. The banks claim that the

change of residence of the Xacur brothers has presented obstacles to the possibility of the banks to process their cases individually against the Xacur brothers in Mexico.

The banks continued to negotiate with the Xacur brothers in 1995 and 1996. On September 18 of 1996, the Banks filed this involuntary bankruptcy petition against the brothers.

_____

(2) Criminal charges were filed against the judge who granted the SDP, Jacobo Xacur and Jacobo Xacur's lawyer, but these charges were dismissed on appeal. It appears that the irregularities alleged in the case included the improper accumulation of all the bankruptcy cases and of the unlisted assets and liabilities. These penal proceedings have now been dismissed, and there is no pending penal proceeding against the Xacur brothers or against the Xacur companies. (3)

II.- Suits Filed

The petitioners claim that: (1) each of the supposed debtors owes, to three or more of the petitioners, an amount that exceeds $10,000.00; (2) this debt is liquid and noncontingent, and is not subject to a bona fide dispute; (3) the supposed debtors did not pay their debts when they became due; (4) they are qualified as debtors under the Bankruptcy Code; (5) This Court has jurisdiction to hear a bankruptcy case commenced against each of the said debtors; and, (6) this Court should not abstain from substantiating these cases.

The supposed debtors, Jacobo Xacur, Jose Maria Xacur, and Felipe Xacur, claim that the Court should abstain from hearing this case, based on the fact that: (1) the abstention would be to the best interests of the petitioners and the supposed debtors; (2) the abstention would prevent the continuance of a confusing case of involuntary bankruptcy; (3) the traditional proof of part 5 for the abstention from the involuntary bankruptcy proceeding is satisfied by the facts of this case; and, (4) the abstention would be in the interest of international courtesy.

Additionally, the supposed debtors propose that, at least for some of the banks, the IOU's include a clause on the choice of jurisdiction which precludes the processing of this involuntary bankruptcy case in the Southern District of Texas. However, the Court finds that while in the loans from Banamex the option of the choice of jurisdiction could be discussed, there is nothing in their IOU's to prevent the other banks from commencing these involuntary bankruptcy cases in the Southern District of Texas.

More importantly, the supposed debtors propose that the petitioners are subject to the usury laws of Texas when they file their bankruptcy petition in the Southern District of Texas. The supposed debtors maintain that as a matter of public order this Court should not grant the execution of the IOU's in question, because many of the IOU's are nominally usurious, thereby violating the public order and the laws of the State of Texas. If the Court grants the execution, the supposed debtors will file counter suits of usury under the laws of Texas to nullify the claims by the banks.

Additionally, the supposed debtor Jacobo Xacur filed a motion for dismissal, pursuant to 28 USC, Section 12(b) (2), alleging that this Court has no jurisdiction over him, personally, because he is a Mexican citizen, is not domiciled in Texas, and because he does not have sufficient contacts in Texas to fall under that jurisdiction. (4)

(3) The case of Nicolas Xacur, Case No. 96-48539-115-7, has not been prosecuted jointly with the cases of the other Xacur brothers.
(4) Jacobo Xacur had previously affirmed that he was never notified of the involuntary petition. However, he now waives that claim.

III.- Jurisdiction

Does this Court have jurisdiction over Jacobo Xacur? (5) The banks affirm that [in regard to satisfying] the proof of minimum contacts, it is not necessary to do so if the debtor meets the requirements of 11. USC Section 109, which stipulates: "(a) Notwithstanding any other provision in this section, only a person who resides, or has a domicile, place of business or property in the United States . . . may be a debtor under this Title."

A foreign debtor may file a petition for voluntary bankruptcy in the United States under 11 USC Section 30 1, as long as the debtor is a person and not an exempt entity. In a similar manner, an involuntary case may be filed against a qualified foreign person in conformance with Section 109. (As in the case Axona International Credit & Commerce, 88 B.R. 597, 606 (Bankr. S.D.N.Y. 1989)

Jacobo Xacur is a Mexican citizen who affirms that he does not have a minimum contact with the United States. However, the petitioning creditors declare that Jacobo Xacur left Mexico in 1995 and has lived in the United States, both in Miami and in Houston, indistinctly, since then. The Court finds that the El Khoura Corporation, a firm in which Jacobo Xacur is president and a shareholder, has a condominium in Houston (6), from whose telephone numerous calls are made to the Xacur businesses in Mexico. Additionally, the property appears as the residence at which Jacobo Xacur receives correspondence, and his son attended school in Houston from 1995 to 1996. This Court concludes that Jacobo Xacur is realizing business from his condominium in Houston.

Jacobo Xacur failed to appear to testify before this court. The Court finds that Jacobo Xacur resides in Houston and has property here. The Court finds that he is eligible to be a debtor pursuant to Section 109, Bankruptcy of Flics and Ireland, and the problems of Multi-Jurisdictional Workouts /sic/, 553 PLI/Comm 175, 195 (1990).
In addition to the requirement of property in Section 109, the Court finds that the minimum contacts have been established. "When a federal court attempts to exercise personal jurisdiction over a defendant in a trial based on a federal law that provides for his summons throughout the nation, the relevant question is if the defendant has had minimum contacts in the United States." Busch vs. Buchman & O'Brien, 11 F.3d 1255, 1258 (S. Cir. 1994).

(5) Jose Maria and Felipe Xacur do not contest the personal jurisdiction.
(6) Jacobo Xacur's ownership interest in the condominium was assigned to the El Khoura Corporation. The loans for the purchase of the condominium were applied for by Jacobo Xacur. Jacobo Xacur is recorded as the owner in the Home Owners Association.

The Court finds that the proof of minimum contacts is satisfied, in view of the evidence of home ownership of Jacobo Xacur and of his property in Houston. The traditional notions of fair play and substantial justice are not violated by this Court's exercise of jurisdiction over the supposed debtor, Jacobo Xacur, and due process has been complied with.

IV. Section 303 – Requirements

To prove an involuntary case, the plaintiffs must show, by a preponderance of the evidence, that there are three or more creditors with claims that are "not contingent as to liability or the subject of a bona fide dispute . . ." 11 USC Section 303(b) (1). If the voluntary bankruptcy petition is contested, as in this case, the court must, after hearing the case, declare the bankruptcy if it finds that the debtor has not paid his debts when they became due, unless the said debts are the subject of a bona fide dispute. 11 USC Section 303(h). In respect to the requirements of Sections 303(b) and (h), the Xacur brothers only contest whether the guarantees are contingent debts under Mexican law, and whether a bona fide dispute exists derived from their defense based on usury.

This Court finds that in conformance with Mexican law the banks may proceed individually against the Xacur brothers as guarantors, without accumulating their cases in the SDP. (See Article 1097 of the Mexican Code of Commerce) This Court gives credence to the testimony of the expert witness for the petitioning creditors, Lic. Sanchez-Mejorada-Velasco, that in conformance with Mexican law these petitioning banks are not required to wait for the resolution of their claims or cases against corporate guarantors for IOU's before executing the guarantees pledged by the individual guarantors.

V. Usury

The Xacur brothers maintain that the debts owed to the petitioning creditors are the subject of a bona fide dispute, alleging that the IOU's in question are usurious. The Court finds that some of the loans by Banamex and other banks may exceed the interest rate authorized by Texas Law (7), that the IOU's are not usurious under Mexican Law, and that not enough of the IOU's are usurious under Texas Law to satisfy the requirements of Section 303. Specifically, the Court concludes that where the interest rate of the IOU's has been left blank, Mexican Law establishes the legal interest rate of 6%; a penalty rate could not be applied. In conformance with Texas Law, the omitted rate is by law the rate in judgment omitted the rate provided for in the 6% rate in relation to the IOU's in question in this case /sic/. Tex. Rev. Stat. Ann. Art. 5069-1.03: Tex. Bus. & Comm. Code 3.112. Even when any debts to which usurious rates can be attributed are excluded, the Court finds that the debts owed to the petitioning creditors satisfy the requirements of 11 USC Section 303.

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(7) Because no proof was provided by the parties in regard to the exact Libor rate on any date, there is no specific determination of this question.

VI. Abstention

The Xacur brothers allege abstention is required under 11 USC Section 305.

Section 305 of 11 USC provides:

(a) After the notification and a hearing, the Court may dismiss a case under this Title, or it may suspend all the proceeding at any time in a case under this Title, if,

(1) the interests of the creditors and the debtor would be better served by such dismissal or suspension, or -

(2) (A) a foreign proceeding is pending, and -

(B) the factors specified in section 304(c) of this Title establish such dismissal or suspension.

Section 304(c) of 11 USC provides:

(c) When determining if the petition under the subsection of this section is to be granted,

(b) the court shall be guided by what would best guarantee an economic and expeditious administration of these assets, according to –

(1) a just treatment of all the claimants against, or the interests of, the said assets.

(2) the protection of the claimants in the United States versus the inconvenience in the claims process in the said foreign proceeding.

(3) the prevention of preferential or fraudulent disposal of the said assets.

(4) the distribution of the products of said assets in substantial accordance with the order prescribed by this Title [11 USC Sections 101 and thereafter].

(5) courtesy, and –

(6) If possible, to provide the opportunity for a new start to the individual involved in the said foreign proceeding.

The Court is not convinced that the interests of the creditors and of the supposed debtors would be best served by a dismissal or abstention. Although if this court were to abstain, the advantages for the supposed debtors could be increased thereby, this outcome is not a balanced outcome, in conformance with 11 USC Section 305(a) (1). This Court would have to find that the creditors would also be better served by the abstention, and this has not been shown. See Eastman, 188 B.R. 621, 624 (9th Cir. BAP 1995).

("The courts that have interpreted Section 305(a) (1) are generally in agreement that this would be an extraordinary remedy in a properly filed bankruptcy case, and that dismissal is appropriate under Section 305(a) (1) only in a situation in which the court finds that the creditors and the debtor would be better served by the said dismissal"). By changing their residence in Mexico, the

Xacur brothers have created an obstacle for any additional activity in the individual civil process against the Xacur brothers pending in Mexico in respect to their personal guarantees.

The petitioning creditors argue that the abstention is inappropriate in conformance with Section 305(a) (2) (a), because there is no pending proceeding against the supposed debtors. They allege that this Court cannot and/or should not abstain in favor of the multiple individual civil proceedings pending in Mexico.

A foreign proceeding, according to the Bankruptcy Code, is a "process, judicial or administrative, whether under the bankruptcy law or not, in a foreign country in which the domicile, residence, principal offices, or activities of the debtor were located at the commencement of the said proceeding, for the purpose of liquidating assets or restructuring the debts by means of settlement, prorogation, quittance, or by carrying out a reorganization." 11 USC Section 101(23). The suspension of payments of the Xacur companies presently pending in Mexico can qualify as a foreign proceeding, but not for these individual supposed debtors. This proceeding will not affect the reorganization or the liquidation of assets and the debts of these supposed debtors. Since a foreign proceeding does not exist, in conformance with 11 USC Section 305, the factors referred to in 11 USC Section 304 are irrelevant.

Even when the suspension of payments proceeding of the Xacur companies qualifies as a foreign proceeding for these supposed debtors, the Court finds that an economical and expeditious administration of the supposed debtors' assets will not benefit from this Court's deferral to that foreign proceeding. The only statutory factor alleged by the supposed debtors to support an abstention in conformance with Section 304(c) is the courtesy. The Court finds that the interests of courtesy do not justify an abstention in this case. "International courtesy is exercised when a real conflict exists between United States Law and that of a foreign jurisdiction." In the case of Maxwell Communication Corp., 93 F.3d 1036, 1049 (2nd Cir. 1996). No conflict has been demonstrated in this case. (8) There is no inconsistency in maintaining both the corporate and the individual bankruptcy proceedings against the Xacur brothers and their companies. No Mexican court has ordered the accumulation of the bankruptcy or collection proceedings against these supposed debtors. The litigation presently pending against these supposed debtors in Mexico is not of the same nature as a reorganization or liquidation process.

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(8) The supposed debtors maintain that Articles 605 and 606 of the Civil Code for the Federal District of Mexico indicate that the Mexican courts could abstain from acknowledging the final decisions of this Court because of the pending proceeding.

Based on the above, the Court finds that abstention is not appropriate in these involuntary processes. The Court finds that the supposed debtors may be debtors pursuant to 11 USC Section 109. The Court finds that the petitioning creditors have met the burden of proof pursuant to 11 USC Section 303. A bankruptcy order has been separately issued.

Signed in Houston, Texas, on this day of August 22 of 1997."

NOTE: The numbers found under a line, from (1) to (8), are the page numbers containing the sentence.

The Bankruptcy Order separately issued on August 22 of 1997 by the same Bankruptcy Judge, reads as follows:

> "DECLARATION OF BANKRUPTCY SENTENCE UNDER CHAPTER 7
> In consideration of the petition filed on September 18 of 1996 against the debtor previously mentioned, the declaration of bankruptcy under Chapter 7 (Title 11 of the United States Bankruptcy Code) is hereby granted."

Now, it has been established that the litigation centers on whether the foreign proceeding and the sentence derived therefrom should be acknowledged under the provisions of Title 12 of the Commercial Bankruptcy Law, towards the effect of granting international procedural cooperation and executing the sentence in regard to the assets that the debtors have in this country.

To approach this question, it becomes necessary to determine if the acknowledgment of a foreign proceeding differs essentially from the homologation of a foreign sentence.

In the homologation, the corresponding jurisdictional entity of this country has the obligation of determining if the foreign sentence in question satisfies the legal requirements for its execution in national territory. That is, the court must give juridical efficacy to the said sentence, so that the act can be executed by the national court, because this country is the only place in which the sentence must be complied with.

On the other hand, the acknowledgment of a foreign sentence, a new juridical concept in the Mexican legal system when it was introduced into the Commercial Bankruptcy Law, seeks for principles whereby the sentences of another juridical system, of whatever social, political or economic reality, can be applied to our own legal system. The purpose of the acknowledgment is to promote the adoption of a modern and equitable legal standard for those cases in which an insolvent debtor has assets in more than one country, in order to promote a more efficient cooperation between the countries in addressing the creditors' claims, thereby preventing insolvent debtors from avoiding the execution of a bankruptcy sentence by selling, hiding or transferring their assets to various places, impeding the compliance with the firm resolution pronounced against them. The foreign sentence seeks international cooperation so that the foreign court, through the foreign representative, will have access to the national courts for the liquidation, reorganization or administration of the assets owned by the debtor in our country.

The execution of a foreign proceeding and sentence acquires efficiency in this country by means of its judicial acknowledgment or execution, accepting a right consecrated in the sentence, but it does not examine the legitimacy of the sentence. The requirements for acknowledging a foreign proceeding and executing the sentence derived therefrom, generally consist of verifying that the minimum guarantees established by the law for the protection of the defendant have been respected. That is, that the defendant, duly summoned, has either appeared or has been legally declared in contempt, and that the sentence is not contrary to public order. The sentence being acknowledged and executed must always be definitive, and pronounced by a competent judge.

The judge acknowledging the foreign proceeding and sentence must examine the due process, and the foreign sentence must not be contrary to public order, which is nothing more than the combined principles comprising the court's sense of fairness. In this concept is found

the requirement that the sentence be valid and firm in the State in which it was pronounced by the competent judicial authority in the matter, and that the defendant was summoned and heard.

With these requirements satisfied, the Commercial Bankruptcy Law establishes how, when and why a foreign proceeding should be acknowledged, and grant the procedural cooperation requested.

Thus, Articles 278, 292, and 296 of the said law establish that:

"Article 278. The provisions of this Title shall be applicable to cases in which:
I. A foreign court or a foreign representative requests assistance in the Mexican Republic in relation to a foreign proceeding.
II. Assistance is requested in a foreign country in relation to a proceeding that is being processed in accordance with this law.
III. A foreign proceeding and a proceeding in the Mexican Republic are being processed simultaneously in respect to the same merchant in conformance with this law, or -
IV. The creditors or other persons in interest in a foreign country wish to request the commencement of a proceeding, or to participate in a proceeding that is being prepared in conformance with this law."

"Article 292. The foreign representative may petition the judge for the acknowledgment of the foreign proceeding in which he has been appointed. Every acknowledgment petition filed must be accompanied by:
I. A certified copy of the resolution by the foreign court declaring the foreign proceedings open and in which the foreign representative is appointed.
II. A certificate issued by the foreign court accrediting the existence of the foreign proceeding and the appointment of the foreign representative, or -
III. In the absence of the proofs mentioned in I and II above, any other proof admissible by the Court, showing the existence of the foreign proceeding and the appointment of the foreign representative.

Every petition for acknowledgment filed must be accompanied by a statement indicating the data on all the foreign proceedings in progress in respect to the merchant of which the foreign representative is aware. The Judge must demand that every document filed in a foreign language supporting the petition for acknowledgment be accompanied by its translation into Spanish. The merchant's address must also be included, so that he may be summoned in accordance with the petition. The proceeding will be processed as an incident between the foreign representative and the merchant, with the intervention, as the case may be, of the Public Agent, the conciliator, or the Trustee."

"Article 296. Except for the provisions in Article 281 of this Law, acknowledgment of a foreign proceeding will be granted when –
I. The foreign proceeding is a proceeding in the sense of Fraction I of the preceding Article 279.
II. The foreign representative requesting the acknowledgment is a person or entity in the sense of Fraction IV of the said Article 279.
III. The petition meets the requirements of Articles 292, 293, and 294 of this Law, as the case may be, and -
IV. The petition has been filed in a competent court.

The foreign proceeding will be acknowledged –
I. As a Principal Foreign Proceeding, if it is being processed in the State in which the merchant has the center of his principal interests, or -
II. As a nonprincipal foreign proceeding, if the merchant has an establishment -- in the sense of Fraction VI of the said Article 279 -- in the territory of the foreign state with jurisdiction."

The first Article mentioned (278) establishes when Title 12 of the Commercial Bankruptcy Law is applicable. The second (292) establishes what the formal requirements are for requesting the acknowledgment of a foreign proceeding; and Article 296 determines when and how the foreign proceeding should be acknowledged.

On that basis, under the provisions of Article 1194 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, the person who makes an asseveration has the burden of proving such asseveration. It can be said that in the evidentiary material submitted to the Court, the petitioner has accredited the elements of his acknowledgment action, and thereby the formal elements as well as the essential elements for the acknowledgment of the foreign proceeding and the procedural cooperation requested for the execution of the sentence on the debtors' assets in this country have been proved.

In effect, under the terms of Article 292 of the Commercial Bankruptcy Law, the foreign representative complied with the formal requirements for the legality of the acknowledgment petition by attaching to it the certificate issued by the foreign court, with the annotations accrediting the foreign proceeding, as well as the certification accrediting the appointment of the foreign representative, accompanied by the translation into Spanish, which were all considered in order to commence the proceeding now being resolved.

The foreign proceeding from which the acknowledgment petition derives falls within Fraction I of Article 278 of the Commercial Bankruptcy Law, since it is the foreign representative, that is, the Trustee W. Steve Smith, who requests assistance in the Mexican Republic in relation to a foreign proceeding, and this is accredited with the documents exhibited as Attachment Two of the petitionary writ. Principally, the sentence of August 22 of 1997; the order declaring bankruptcy, of the same date; the summons of the debtors to the trial; as well as the resolutions of the appeals filed by the debtors against the resolution ordering the declaration of bankruptcy, documents that have been evaluated and described elsewhere in this decision.

Further, for the acknowledgment of the foreign proceeding, the hypotheses established in the four fractions, previously transcribed, of Article 296 of the Commercial Bankruptcy Law must occur.

In regard to Fraction I of the said Article in relation to Article 279 of the pertinent law, we find that in this case the hypothesis established therein is present, since the foreign proceeding is a judicial proceeding by virtue of being a jurisdictional entity with the faculty to declare the law and to decide, once they had been heard and defeated in court, that the debtors could be declared bankrupt by reason of having defaulted, in a generalized manner, with their debt obligations.

In regard to the Bankruptcy Court of the United States of America, it should be mentioned that it is a special court with the sole and exclusive faculty of hearing cases filed under Chapter 7 and 11 of the Bankruptcy Code of the said nation. A bankruptcy filed under Chapter 7 has as its object the liquidation of the insolvent debtor's assets, so that the proceeds

obtained can be utilized to meet the demands of the creditors. The debtors in this case were declared bankrupt under Chapter 7.

With the sentence of August 22 of 1997 and with the separate order of bankruptcy of the same date, as well as with the various articles of the United States Bankruptcy Law, it was also accredited that the foreign proceeding processed in that country was under a law related to the commercial bankruptcy or insolvency of the merchant.

In effect, in the text of that sentence it is observed that the foreign judge has acted in accordance with the Bankruptcy Code of the United States, citing the articles applicable to the specific case, something that was never contested by the debtors, thereby complying with the requirement that the commercial bankruptcy of the debtors be declared in accordance with a pertinent law, since we should not lose sight of the fact that the resolution pronounced by the foreign jurisdictional authority, as well as the resolutions pronounced by the Mexican courts, can be legally presumed to have been issued in conformance with the law applicable to the case.

This is so, because the resolution concludes the proceeding of involuntary bankruptcy under Chapter 7, filed under Section 11 USC 303, which determines that the debtors are persons who may be declared bankrupt under Chapter 11, Section 109, of the United States Bankruptcy Code, and that the petitioning creditors met the burden of proof, pursuant to Chapter 11, Section 303, of the same Law.

Additionally, the said findings are considered to have been accredited also by the certified copy of the standards applied to the case, exhibited by the petitioner in the present case, to which full probatory value was conceded under the terms of Article 1237 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, in relation to Article 295, Second Paragraph of the last-named law, which gives this Court the faculty to presume that the documents accompanying the acknowledgment petition are authentic, whether they are legalized or not.

From the said document, it can be observed in Article 303 that an involuntary bankruptcy proceeding can be commenced only pursuant to Chapters 7 and 11 of the United States Bankruptcy Code, against any person, with the exception of a farmer, a family farmer, or a corporation that is not a moneyed, business, or commercial corporation, or that may be a debtor under a different Chapter of the same law /sic/.

The forced bankruptcy proceeding begins with the petition by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Section 109 indicates who may be a debtor, establishing that only a person who resides or has a residence, place of business, or a property in the United States may be a debtor. And a debtor may not be:

a) A railroad company.

b) a insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, or -

c) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

From the above, it is inferred that the juridical system that regulates the act being acknowledged coincides with the Commercial Bankruptcy Law, since in the case of acknowledgment of a foreign proceeding, under the provisions of Article 296, Fraction I, in relation to Article 279, Fraction I of the Commercial Bankruptcy Law, the said foreign proceeding will be acknowledged when it has been processed in the foreign country in accordance with a law related to the commercial bankruptcy or insolvency of the merchant. Therefore, if the requirement that the debtors were declared bankrupt in accordance with a law in these matters has been observed, and that moreover the said resolution has determined their capacity as merchants by exclusion, the requirement established in the said articles has been met.

In effect, the capacity of merchant was the subject of the last part of the Fifth Point of the Findings in this decision, in which the reasons whereby the debtors are considered to be merchants were thoroughly discussed, and in which it was determined that the foreign sentence has implicitly acknowledged that the bankruptcy of the debtors was declared in their capacity as merchants under the legislation of that country.

Finally, with the same documents described, it is accredited that the assets and businesses of the merchant will be subject to the control or supervision of the foreign court, for their reorganization or liquidation.

In relation to Fraction II of the said Article 296 of the Commercial Bankruptcy Law, which provides that the foreign proceeding will be acknowledged if the foreign representative requesting it is a person or entity in the sense of Fraction IV of Article 279 of the same law, this condition is also met, and is accredited from the public documents exhibited, particularly the appointment of the trustee and the stipulation of the bond, on August 25 of 1997, documents to which full probatory value is conceded under the provisions of Article 1237 of the Code of Commerce, suppletorily applied to the Commercial Bankruptcy Law, in relation to Article 295, Second Paragraph, of this last-named law, which gives this Court the faculty to presume that the documents accompanying the acknowledgment petition are authentic, whether they were legalized or not.

From the said documents it is observed that the petitioning trustee was designated as the foreign representative authorized to act in a foreign proceeding to administer the reorganization or liquidation of the merchants' assets and businesses, or to act as the representative of the foreign proceeding. This appointment was never contested by the debtors. Rather, they tacitly acknowledged the petitioner's capacity as trustee for the bankruptcy assets, jointly administered in Case No. 96-48538-H5-7.

In respect to Fraction III of Article 296 of the pertinent law, to the effect that the petition must meet the requirements of Articles 292, 293, and 294, whichever may apply, of the law: the present case, in fact, is one that is contemplated in Article 292, being a petition for the acknowledgment of a foreign proceeding, in which the formal requirements established in that article have been complied with, as was established in the preceding paragraphs, thereby satisfying the condition being analyzed.

Finally, Fraction IV of the aforesaid Article 296 of the Commercial Bankruptcy Law indicates that in order for the foreign proceeding to be acknowledged, the petition must be filed in the appropriate court.

In this respect, we can say that the competence, in regard to the application of the Commercial Bankruptcy Law, derives, first of all, from the Political Constitution of Mexico, in Section 104, Fraction I, which establishes that the federal courts shall be competent to hear, among other matters, all controversies of a civil or criminal order that may arise regarding the compliance with and application of the federal laws.

This faculty is also reiterated in the Organic Law of the Judicial Power of the Federation, in Article 53, Fraction I, which establishes that the controversies of a civil order that arise in regard to the compliance with and application of the federal laws or international treaties subscribed by Mexico correspond to the Federal Courts.

In both laws, the said competency derives, in a general manner, in favor of the District Courts, because the Commercial Bankruptcy Law is a federal law. However, the last-named law establishes the competency of its application particularly in favor of the federal jurisdictional entities when it provides, in Article 17, that the District Judge with jurisdiction in the place in which the merchant has his domicile is competent to hear that merchant's commercial bankruptcy case.

On this basis, Fraction IV of Article 296 of the pertinent law is complied with, since the competency is inclined in favor of this Court. First, because the petitioner, at the time of filing his petition, indicated that the debtors' domiciles were located in this city, in which this Court exercises its territorial competence, and second, because although the debtors were summoned by means of published edicts, and although they contested this action, with the exception of the codefendant Felipe Xacur Eljure, the First Civil and Administrative Court of the First Circuit, by means of its resolution of March 4 of 2002 dismissed the objections based on incompetency filed by Jose Maria and Jacobo, both surnamed Xacur Eljure, declaring this Court legally competent to hear and resolve this litigation.

From the foregoing, therefore, it can be concluded that the petition for acknowledgment of a foreign proceeding and the request for procedural cooperation was filed before a competent court.

With the foregoing, it is accredited that the petition for the acknowledgment of the foreign proceeding complies with the provisions of Article 296 of the Commercial Bankruptcy Law, and that it should therefore be acknowledged. Moreover, in the foreign proceeding the minimum guarantees established in Articles 14 and 16 of the Political Constitution of the United Mexican States were observed, when the debtors were given a hearing and due process, and with their case tried in a previously established court, which complied with the essential formalities of the proceeding (with a suit, summons, response, trial, submission of evidence, and a sentence), thereby observing the guarantees of juridical security and legality, which are protected by the Mexican juridical system. Therefore, it is proper to ACKNOWLEDGE THE FOREIGN BANKRUPTCY PROCEEDING, in conformance with Chapter 7 (seven) under Section 11 (eleven) of the United States Bankruptcy Code, Article 303 (three hundred and three). The SENTENCE OF AUGUST 22 OF 1997 declaring the bankruptcy of Felipe, Jose Maria and Jacobo, all surnamed Xacur Eljure, IS ALSO ACKNOWLEDGED in each and all of its terms, in the Cases Nos. 96-48540 mdl, 96-48541 rfw, and 96-48538 kkb, respectively, administered in a joint manner in the Case No. 96-48538-H5-7, pronounced by Karen K. Brown, Judge of the United States Bankruptcy Court of the Southern District of Texas, Houston Division, thereby constituting res judicata under United States of America Law. Therefore, international

cooperation shall be provided from this jurisdictional entity, to collaborate as far as possible with the foreign court and its representative.

EIGHTH. Since this case does not incur in any of the conditions established in Article 1084 of the suppletory Code of Commerce, there is no sentence of costs.

From all of the foregoing, it is hereby –

RESOLVED

FIRST. The incidental processing in respect to the cooperation in the international proceedings under Title 12 of the Commercial Bankruptcy Law was based on the law; in which the petitioning Trustee proved the applicability of the said Title to the debtors Jacobo, Felipe and Jose Maria Xacur Eljure, who did not substantiate their objections. Consequently –

SECOND. The Court hereby ACKNOWLEDGES the foreign bankruptcy proceeding pursuant to Chapter 7 (seven), Section 11 (eleven) of the United States Bankruptcy Code, Article 303 (three hundred three) of Cases Nos. 96-48540 mdl, 96-48541 rfw, and 96-48538 kkb, related to the debtors Felipe, Jose Maria and Jacobo Xacur Eljure, administered in a joint form in Case No. 96-48538-H5-7, processed before Judge Karen K. Brown, of the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

THIRD. The sentence of August 22 of 1997, declaring the bankruptcy of Felipe, Jose Maria and Jacobo Xacur Eljure, pronounced by Judge Karen K. Brown, of the United States Bankruptcy Court for the Southern District of Texas, Houston Division, is hereby ACKNOWLEDGED, in each and all of its terms, thereby constituting res judicata under the terms of the law of the United States of America.

FOURTH. This jurisdictional entity may legally provide international cooperation to collaborate as far as is possible with the foreign courts and representative, for the purpose of executing the sentence of August 22 of 1997

FIFTH. There is no special sentence of costs.

NOTIFY THE PARTIES PERSONALLY.

Thus was it resolved and signed by the licentiate Alejandro Villagomez Gordillo, Fourth District Civil Court Judge in the Federal District, acting with his Clerk, who bears witness thereto.