



The Texas Two Step

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

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The Texas Two Step What is it?



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

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Statutory Origins



- Originally enacted in Texas in 1989 in section 5 of TBCA.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

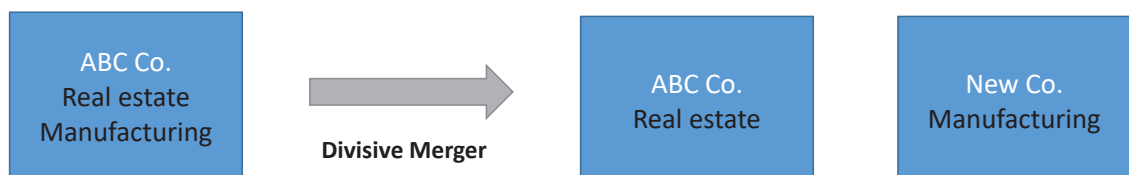
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How does it work?



Original Divisive merger concept:



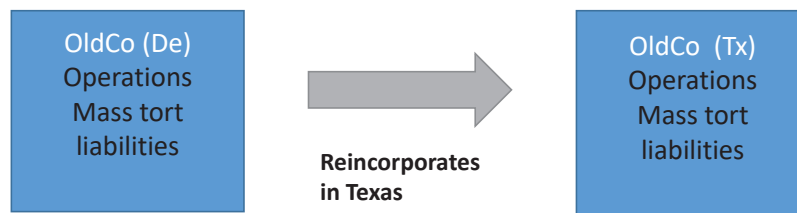
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How does it work?



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



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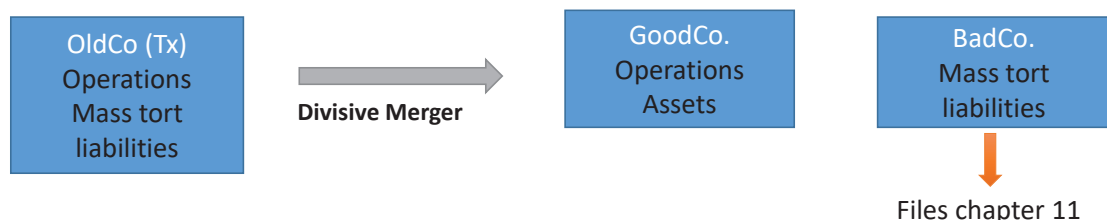
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How does it work?



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

Step 2: BadCo files bankruptcy



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

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