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The Responsibility of the Administrators in the Processes Falencias and in the Preventive Bankruptcy

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Abstract: The faulty responsibility together with the institutes of the extension of the bankruptcy (art. 160 to 171, LCQ) and the inefficiency bankruptcy (arts. 118 and 119, LCQ), make up the triad of patrimonial integration of the Argentine food law. However, the responsibility of the administrators for their actions in a company whose preventive bankruptcy was opened is an issue not contemplated in national legislation. In view of this problem, the present work addresses the different institutes of both bankruptcy law and general civil liability in order to project possible solutions in an integrating vision of law. For this, a "dialogue of sources" is generated, putting into debate the bankruptcy law, the corporate law and the civil and commercial code. In order to achieve a complete study of the issue, the theory of Corporate Social Responsibility is delved into, analyzing whether in case of violation of the principles that govern it, the administrators may also be held responsible. This investigation concludes that the damage caused by any person must be repaired if it was caused unfairly, and that is a maxim of our societies. To think that this does not apply to the Insolvency and Bankruptcy Law is to classify oneself in a watertight microsystem disconnected from the rest of the system, an issue that doctrine and even legislation have been overcoming for several years. It has been shown that the foundations of the responsibility of corporate administrators in bankruptcy proceedings do not arise from the letter of the food law but from the entire legal system that, in a harmonious interpretation, allow us to attribute responsibility to the one who has caused damage. That he should not do it, that is to say unfairly.

Keywords: Liability, Bankruptcy, Liquidation, Administrators, Companies

1. Introduction

Two issues will be analyzed in this paper, the responsibility of the administrators in bankruptcy proceedings and the responsibility that would fall to them in the processes of preventive contests, always within the framework of commercial companies.

The Argentine insolvency law expressly establishes the responsibility of the administrators (in addition to that of partners and third parties, although in the present I will focus on the analysis of the former only) but nothing is said regarding the responsibility that could fall on the these subjects in bankruptcy proceedings *stricto sensu*[1].

Due to various issues that will be developed, the responsibilities that the Bankruptcy and Bankruptcy Law (LCQ) addresses from article 173 to 176 inclusive, regulate only issues related to bankruptcy, for which the possibility of extrapolating this institute to bankruptcy is excluded. preventive. But is it possible to hold an administrator responsible who, due to his conduct, led to, contributed to or aggravated the economic/financial situation of a company so that he enters into default and chooses the path of bankruptcy to try to solve his problems? Is this attitude enough for responsibility to operate? What is the damage that must be observed in order to advance in this sense? What regulatory body structures and supports this action?

These issues were addressed by some authors who have reached contradictory conclusions. Thus, for example, Richard sustains the responsibility of corporate administrators and, in cases of partners, for not facing the crisis through the proper channels granted by the legal system [27, 28]; while others - clinging to an exegetical

1 In the present, the word "insolvency" or "preventive insolvency" will be used indistinctly to refer to the insolvency processes of debt restructuring, and differentiating them from "bankruptcy" or "failure process" that will be used for the liquidation processes of the heritage.

interpretation of Argentine bankruptcy law - maintain that such liability does not exist in the national legal system, opening the possibility that liability arises only in a subsequent bankruptcy [34].

In the present work, the question of responsibility will be evaluated through a dialogue of sources between the laws of insolvency and bankruptcy, companies and the Civil and Commercial Code of the Nation.

2. Responsibility of the Administrators in Bankruptcy

In article 173, LCQ, the law regulates the liability of representatives and third parties who have fraudulently contributed, facilitated, allowed or aggravated the debtor's financial situation or his insolvency, imposing on them the duty to compensate the damages caused. This institute is called almost unanimously by the doctrine as "bankruptcy liability", but in order not to confuse it with the analysis that in point 3 of this document is made on the liability of administrators in bankruptcy proceedings, I will call it "liability falencial".

The default liability institute, together with the bankruptcy extension (art. 160 to 171, LCQ) and bankruptcy ineffectiveness (arts. 118 and 119, LCQ), make up the triad of patrimonial integration of the food law, whose immediate purpose is to rebuild the assets of the failed company so that its creditors can take over its credits.

As a consequence, for this institute to operate, certain requirements must be met, which will be seen below.

2.1. Equity Insufficiency - Damage

Having as an immediate purpose the recomposition of the patrimony, it is an indispensable requirement that it be insufficient to cover all the debts; that is: that the equity realized and liquidated is not enough to satisfy all the creditors and -therefore- verified credits remain uncollected, either in whole or in part.

This patrimonial insufficiency produces the damage that the law claims as an objective requirement for the application of the institute that is studied here, because if the creditors manage to collect all of their credits, there is no damage produced that must be compensated and therefore it is not possible the application of faulty liability. No damage, no liability.

The damage that is mentioned here may be produced during the bankruptcy process or before it, since article 173, LCQ, establishes that everyone who has produced, facilitated, allowed or aggravated the patrimonial situation of the debtor or his insolvency, this being possible at any stage including pre-bankruptcy [2]or during bankruptcy proceedings.

Chiavassa and Ojeda, correctly, have argued that the action cannot prosper if the analyzed act did not cause damage at the time of its execution or if, despite having originally caused it, there is no insufficiency of assets at the time of its execution. when deciding on the liability action because the liquidated defaulting asset is greater than the liability to be satisfied, or because the creditors have been disinterested, by means of some non-liquidating conclusion of the default such as settlement or full payment [9].

Understood in this way, a higher level is determined in terms of the amounts to be compensated for the disgraceful action of the administrators, the damage caused that cannot be greater than the debt that the company had with its creditors, since this mechanism of patrimonial recomposition does not it can become a means of enrichment for creditors.[3]

In this regard, Rivera teaches that it is not appropriate to attribute responsibility beyond the damage actually caused by the agent of the wrongful act and that compensation cannot become a factor of enrichment [28].

2.2. Fraud as a Factor for Attributing Responsibility

Article 173, LCQ, determines that the damage must be caused intentionally, [4] settling an old doctrinal dispute regarding the interpretation of the factors of attribution of responsibility of this institute originated in the 1984 bankruptcy law.

Without prejudice to this clarification and determination by the current regulations, the doctrine has harshly criticized this establishment by arguing that it limits the actions of interested third parties due to the difficulty that it represents - in evidentiary terms- to demonstrate the interest of damaging by the administrator. in his work; Likewise, this provision is more restrictive than the liability action provided by the General Law of Companies, which only requires fault as an attribution factor and that, in honor of the concept of "good businessman" with which they must carry out their activities, the requirement of intent is an absolutely inconvenient imposition.[5]

I understand that the criticisms that this wording deserves are adjusted since the fraud is configured by the deliberate non-execution of the benefit; consisting of not wanting to comply

2 Article 174, LCQ determines that the acts for which responsibility can be attributed can be carried out up to one year before the date of cessation of payments.

3 Chiviassa and Ojeda maintain: "the compensation ceiling will be the unsatisfied asset" [9], although they would add the expenses of the bankruptcy process, which must also be covered.

4 Art. 173, LCQ: "...that have fraudulently produced, facilitated, permitted or aggravated the debtor's patrimonial situation or his insolvency, must compensate the damages caused...". In the old wording of Law 19,551, it referred to "who with intent or in violation of non-derogable regulations of the law."

5 Abdala shows, on the one hand, the enormous difficulties involved in proving intent and, on the other hand, why this limitation has an unwanted effect: it ends up neutralizing the use of this action, making it practically useless, since it is It is very difficult for someone to take the risk of filing it if they can, without having to prove intent, reach the same result through a corporate action that only requires proof of negligent action [1]. For their part, Junyent Bas and Ferrero have argued that in response to a restrictive interpretation of civil law and advocating its automatic application to liability bankruptcy action, those who produce, facilitate or aggravate their insolvency by acting should go unpunished. with full representation of the possible result of his action and underestimating the damage he will cause with his conduct, which does not seem adjusted to any reparation principle, nor to the legal system if it is considered in its entirety [18].

while being able to do so, with no interest in the non-execution persecuting the creditor's detriment. For its configuration, the mere awareness of non-compliance is not enough, but the deliberate non-execution, that is, it can be fulfilled but it is not wanted, a serious problem is presented in the demonstration of this deviant behavior of the administrator towards his performance in the position that occupies in the society in crisis, because it is not enough to show the mess caused by the decisions taken (or not taken) but it is necessary to show that these had in view to produce damage to the creditor.

Likewise, the faulty liability action finds its counterpart in the corporate liability action which, in principle, presents two major differences. Firstly, the action studied here can be filed by the trustee or – failing that – by any of the bankruptcy creditors, while the second can be filed by the shareholders of the company –first interested in the fact that the administrator of the company of which they own responsibility for the damage caused- or by the liquidator, [6]since in one the damage caused to the creditors is sanctioned while in the second the only damaged subject that matters is the company.[7]

Another of the great differences is the attribution factor, because in the faulty action -as seen- it is the fraud while in the social action it is the fault, small difference when it comes to producing the necessary evidence to demonstrate before the judge the responsibility that is attributed.

In the doctrine there are no serious discussions about the possibility of presenting both actions jointly, [8]although it is recognized that the result will be the same: reestablish -even if only in part- the assets of the bankrupt to satisfy the debts of the creditors.. Here a difference should be noted in the quantification of the damage that will be claimed, because in the first of the actions, the damage can be computed as the difference between the default asset and liability and therefore claim for the unsatisfied credits and the bankruptcy expenses, while in the second of the actions only the damages caused to the company will be claimed.

3. Responsibility of Administrators in Preventive Bankruptcy

This title analyzes the possibility of attributing responsibility to the administrators of commercial companies that enter into preventive bankruptcy, for the damages caused to creditors by their actions, in the event that it has produced, aggravated or contributed to generate the cessation of payment, a necessary condition for the opening of bankruptcy.

As explained above, the Insolvency and Bankruptcy Law only regulates their liability in the event of bankruptcy [9]and this institute cannot be extrapolated to the insolvency institute.

But, in the case described above and having produced real damage (which in the case of insolvency proceedings will not be the insufficiency of the assets to face the liabilities, since there is a preventive agreement), it is reasonable to think about the possibility that whoever acted with disloyalty should face the due consequences.

When analyzing the effectiveness of the norms, Alexy [5] teaches that the problem of execution arises because the mere awareness of the correctness of a norm [10]does not guarantee its observance. And if some can violate a norm without running any risk, no one else can be required to comply with it. This makes necessary the connection between law and coercion, since the latter is a decisive element of social efficacy. The philosopher will maintain that the law has to be organized through the Law. Thus, the dual nature thesis leads first to ideality, in the form of correctness and discourse, and then to facticity, in the form of legality and efficacy.

Well, it is a contra -right [11]and nonsense that someone who has acted disloyally benefits from that attitude by relying on a restrictive and petty interpretation of the law. [12]Thus -for example- the mismanagement of the business of the companies and the concealment of this information from their creditors lead to submitting to a bankruptcy process and then "agreeing" disproportionate reductions and unusual waits, benefiting from such management without being affected. disclaim any responsibility. Although the bankruptcy law does not expressly sanction such conduct, it will be seen that the correction arises both from the Civil and Commercial Code (CCC) and from the specific General Law of Companies (LGS).

Based on this, it is a mistake to want to solve all the problems that arise around the company in crisis from bankruptcy and bankruptcy law, because in the necessary dialogue of sources that prevails in our legal system, we must resort to the tools that offers the entire legal structure to, in a

6Article 178, General Law of Companies, determines that in the event that the liquidator does not initiate the pertinent actions, the creditor may do so individually.

7 "These actions (social responsibility action) do not give rise to compensation for the damages caused to the creditors but, being regulated by the corporate regime, the compensable damage will be that which has occurred to the company, which is not necessarily related to with bankruptcy liability. Cam. I was born Com. Room E, 08/10/2009 in "Lopez, Mabel c/ Hapes, Farid and another", Lexis 70056153 and RDPC 2010-1, p. 622-23 [32].

8Achares Di Orio understands that both actions have full conceptual autonomy, making it possible to exercise them independently, simultaneously or jointly, within the framework of the bankruptcy process [2].

9 López Rodriguez argued "we are not referring in this part to Argentine Law, because the LCA (Law 24,522) lacks any regulation regarding the liability of the administrators for the bankruptcy deficit." [20]

10The aforementioned philosopher maintained that the correctness of a norm implies justifiability. Then, the correctness claim includes a claim of justifiability. A third element is the expectation that everyone who takes the point of view of the corresponding legal system and is reasonable will accept the legal act as correct. Alexy [6].

11 If we understand - as Hervada teaches - that "law" is the res iusta or fair thing, then to think of something contrary to law is to think of something that is contrary to what is fair, therefore, unfair. "To say or determine the ius is to say or determine the iustum, what is just. In this, then, consists the art of the jurist: to say or determine what is just. It is therefore necessary to return to another elementary question: what is fair? Question that is exactly equivalent to asking what is the ius or law. Hervada [16].

12 In the North American leading case, the New York court concluded that "nobody can benefit from his own crime", thus establishing a principle of interpretation of the law. Riggs v. Palmer, 115 NY 506 (1889) [33].

harmonious understanding, arrive at the fair solution. All Law is structured and organized in an interrelated manner, but each law that is applied is one. However, that only law applied is based on the entire structure of law. It would be like a sphere, that when it sits on a surface (the law applied to a specific case), a single point of the sphere is in contact, however, that point is only one point in a huge set that makes up the sphere. sphere. This is how the law behaves and should be interpreted.

In this hermeneutics, we will resort to the General Theory of Responsibility to begin to pose the question. Then, article 150 of the Civil and Commercial Code will lead us to study the General Law of Companies to finish with the analysis of the Bankruptcy Law.

3.1. General Theory of Responsibility

Seen as the duty to repair the damage, civil liability is the necessary and immediate response that the legal system gives to those who must bear an unfair damage that originates in an unlawful conduct, for which purpose it is granted to the affected party -victim, creditor- a legal action to obtain the corresponding compensation from the debtor, and that finds reception in article 730, inc. 3, of the Civil and Commercial Code.

It is not the purpose of this document to carry out an exegetical development of the theory of liability, so it will be assumed that for the liability being analyzed to operate, the damage, the causal link and the illegality must be noted (and shown).

3.1.1. The Damage

It has been analyzed in previous paragraphs that the bankruptcy law interprets the damage as the dissatisfaction of the credit of the creditors. When we try to analyze the damage within bankruptcy proceedings, the concept must change because in debt restructuring processes the creditor (usually) collects less than the debt that was recognized as a consequence of the deductions or waiting without interest, to which which you submit voluntarily. In other words, it is admitted that the creditor does not fully satisfy his credits, but this does not mean that no damage has occurred.

For many years the doctrine has debated the concept - broad and ambiguous- of compensable damage due to the absence of a definition in the Velezian code, agreeing that it was a loss, an impairment, a pain or discomfort and for this to be compensable, these issues should be legally transcendent. [13]The Civil and Commercial Code accepts the debates of the authors and defines the compensable damage as the injury of a right or an interest not disapproved by the legal system, which has as its object the person, the patrimony, or a right of collective incidence.[14]

That is, the legal damage consists of the injury of a lawful, patrimonial or extra-patrimonial interest (legal damage *lato sensu*), which produces consequences in the spirit or in the patrimony (legal damage *stricto sensu*). The commentators on the code Herrera, Caramelo and Picasso point out that the damage in a legal sense —not factual— is the injury to an interest not disapproved by the legal system. Interest is the relative value that a given good has for a subject. In this way, the damage must be understood from the angle of the individual, in such a way that if there are several victims, there may be different interests for each one of them [15].

In response to this, the duty not to harm, enshrined in the general theory of liability, prevails throughout the legal system, not only the *corpus civile,* thus also reaching the General Laws of Companies and Insolvency and Bankruptcy studied here.

If we understand that the removals and hopes that the creditor must bear on certain occasions (added to the non-recognition of interest) do not constitute a damage to their assets [15], since it is the result of the application of a tool provided by the legal system to the debtor, we must pay special attention to the harmful consequences caused by the debtor's cessation of payments on the creditor's assets, an issue on which we will return.

3.1.2. The Causal Link

In this hermeneutics, it is observed that the Civil and Commercial Code makes responsible for the damages caused to those who have acted illegally and those who have not acted should or could. The passive attitude of the subject, with whose behavior damage is produced in another, is contemplated by the new regulations. Article 1726, CCC, definitively incorporated, under an express legal text regarding the relationship or causal link, the criterion of adequate causality that must exist and, therefore, be proven between the event that produced the damage and the damage itself, thus providing a certain legal source for this fundamental institute when it comes to attributing responsibility to a person in a specific case with justice and equity.

3.1.3. Illegality

Illegality, which is characterized by its atypicality and is currently defined by the generation of unjustified damage mentioned above, burdens the debtor to whom said responsibility can be imputed or attributed. As Marcos maintains, it is the duty to account to another for the damage that has been caused [21]. That is, for liability to operate, the damage must have been caused in contravention of the provisions of the positive order, the damage must have an illicit origin. Otherwise, the illegality is not configured and the damage would be justified, for which it would not generate the obligation to repair it.

Thus, for example, article 142, LCQ, determines that bankruptcy does not entitle third parties to compensation for

13 "Damage then, understood as a legal fact, is still a physical phenomenon, but for it to acquire relevance in the world of law, it must transcend legally". Calvo Costa [8].

14 Article 1737, Civil and Commercial Code.

15 I must point out that a certain doctrine, to which I adhere, considers that the haircuts are contrary to unavailable regulations of the LGS. Richard and Cocco express "we refer to the legality of the removal proposals in company bankruptcy, which the practice accepts without question, despite the fact that we have referred to it as customs against law in the processes. company bankruptcy" [26].

damages by application of the aforementioned law, that is, there is no illegality here.

It should be added that the Civil and Commercial Code accepts -in addition to the concept of compensatory *function* that obliges all subject to compensate the damage caused to another illegitimately- "the *preventive function* that expands the scope of enforceability, by charging people with a generic duty to avoid, mitigate and not aggravate the damage" [7]. This institute finds antecedents in specific laws such as Law 19,587 on Safety and Hygiene at Work, Law 17,418 on Insurance and Law 24,557 on Occupational Risks and was regulated in article 1710 of the Civil and Commercial Code.

The preventive function that is discussed here must be observed by every person insofar as they have the duty to avoid, mitigate or not aggravate the damage, and refers to the adoption of "reasonable measures" to prevent the occurrence of damage or reduce its magnitude, all based on the principle of good faith (art. 1717, sub. b, CCC). In particular, the mention of this last standard connects the issue with the theory of abuse of the right, since this is configured —among other cases— when the limits imposed by good faith are exceeded (art. 10 CCC).

Combining all these guidelines, it can be said that, in the terms of art. 1710 CCC, there is a duty to act to avoid damage when abstention may configure an abuse of the right not to act, and such a situation arises, as a rule, when a person, without risk of suffering damage or loss, can with his actions avoid damage to a third party. In this sense, in the Foundations of the Draft Code it is said that this duty of prevention weighs on every person, as long as it depends on him, that is to say that the possibility of prevention must be found in his sphere of control, because otherwise it can be become an excessive burden that affects freedom.

3.1.4. Good Faith

Good faith is the first of the principles set forth by the Civil and Commercial Code from which the parties cannot depart or limit. It is both a principle of interpretation of the law and a maxim of behavior aimed at both judges and citizens. The prominent jurist Mosset Iturraspe has argued that in the search for a fairer solution for the specific case, from the framework of the legal texts, when there are any, and beyond said framework, in the face of the absurd or the notorious injustice, but always fulfilling the role of integrating the norm, we find the good faith of the solidarist conception [...] The modern judge has an increasingly complicated task, since he must start from a 'careful evaluation of the values and interests antagonists that are at stake', and for this he must clearly perceive the problems of contemporary society [24].

Good faith is incorporated in article 9 of the Civil and Commercial Code [16] and with it begins Chapter 3 of the Preliminary Title dedicated to the "Exercise of rights", where the mandate not to abuse the right (article 10), the of not abusing their dominant position (article 11), the obligation to observe the law (article 12), being impossible to renounce it (article 13), recognizing both individual rights and collective incidence (article 14).

Herrera and Caramelo explain that, from a systemic point of view, it can be asserted that these principles in the exercise of subjective rights are, at the same time, sources of law and skilful interpretation guidelines to determine the reasonableness of a judicial decision and the coherence with the entire legal system, in this way the interaction-interrelation that the Preliminary Title shows is quickly noticed [15].

3.1.5. The Abuse of the Right

The rights are granted with a purpose in mind, so the rights lose their character when the owner diverts them from that purpose that justifies their existence. That is, a right is abused when, remaining within its limits, an end different from the one the legislator has had in view is sought; "The law deviates from the normal destination for which it has been created." [29].

Incorporated into our positive law through Law 17,711 and accepted in the current article 10 of the Civil and Commercial Code, the encoders explain in their foundations that the abuse of the right is the result of the exercise of a plurality of rights that, considered in isolation, could not be qualified as such. Abusive legal situations are then created, whose description and effects have been developed by the Argentine doctrine.

And in this understanding, the legal system prohibits protecting the abusive exercise of rights, considering as such those that go against the purposes of the legal system or those that exceed the limits imposed by good faith, morality and good customs.

In order not to get lost in the intricate analyzes that are being developed, I propose to carry out a partial closure of what has been sustained up to here. We have analyzed the general theory of liability based on the principles of good faith and abuse of law. Of these -contemplated in articles 9 and 10 of the Civil and Commercial Code- it emerges with crystal clarity that if an administrator -in the case that concerns us- does not behave like a 'good businessman' (a concept on which), that is: he mismanages the company he is in charge of, hides information from his creditors, shows balances and numbers that distort the true and real situation that the company is going through, he is acting in bad faith.

If these events produce, in turn, a profit to the detriment of the creditors, there will be an abuse of the right, which is prohibited by the current positive legislation, as has just been shown.

Upon reaching this position, for the administrator to be held liable for his improper action, there must have been damage, there must be an attribution factor, be it objective or

16In the "Fundamentals" of the preliminary draft of the Civil and Commercial Code, the encoders state that "as a general clause it was introduced in the Civil Code through the reform of Law 17,711 and its results have been satisfactory and widely praised by the doctrine [...]" and when explaining its location in the Preliminary Part of the Code, they maintain that "it is proposed that good faith be regulated as a general principle applicable to the exercise of rights, which is later complemented with specific rules applicable to different areas."

subjective, by the administrator in the production of that damage, and -in addition- the possibility of being able to establish a causal link, being able to connect that damage and that attribution factor with our investigated subject.

3.2. General Companies Law

Article 150 of the Civil and Commercial Code determines the order of application of the rules intended to regulate the operation of private legal entities. It regulates that, firstly, the imperative norms of the special law are applicable (in the case of companies, the General Law of Companies) or, failing that, the imperatives of the Civil and Commercial Code itself (here are the aforementioned principles of good faith and abuse of rights). More then it determines that in the second order, they are governed by the norms of the constitutive act, that is, it establishes the principle of autonomy of the regulatory will of the statute, and only in third place is the application of the supplementary norms of special laws. For the assumption that we are analyzing – the responsibility of the company administrators against the creditors of the preventive contests – in the third paragraph is the Bankruptcy and Bankruptcy Law.[17]

And within the special regulations, the General Law of Companies determines the obligation of directors to act as a good businessman (article 59), understanding this as the duty to carry out their activities diligently, with knowledge of the businesses that develops and with sufficient capacity to fulfill the corporate purposes, that is, to produce income for its partners and the growth of the company. For the performance of the position, the law requires a capable and prepared person, since the incapacity is sanctioned making him responsible for the damages that his improper action causes.

All liability, whether contractual or non-contractual, public or private, civil or administrative, breaches some type of mandate, obligation or duty that has been legally imposed by the rules of law.[18]

The most traditional doctrine understands that the aforementioned article 59, LGS, is applicable for the benefit of companies when the actions of an administrator have caused damage. Vitolo points out that administrators must be loyal to the person who entrusts them with the function of managing their interests and will act with the diligence of a good businessman [31]. And he goes on to explain that when they do not do so, they will be responsible for the damages caused to society.

I understand that, because it is located in the general part of the law, it does not make any distinction in terms of its scope and in view of the fact that it is a rule that seeks to establish parameters of action for administrators, this responsibility is not exhausted in regulated companies - as understood by the cited author- but it extends to any person, be it a third party, company or partner who, due to the improper action of the former, may have caused damage.

This interpretation arises in harmony with the provisions of article 274, LGS, and to a certain extent it is also assumed by the aforementioned author, recognizing that "the administrator's responsibility is, essentially, a responsibility in relation to the company, although in some situations the action can be deducted by social creditors" [31].

It is that article 274, LGS, although anchored within the provisions corresponding to Public Limited Companies, is applicable to all types of companies and completes the rule of article 59, by making the directors jointly and unlimitedly liable to the company, shareholders and third parties for poor performance of their duties, according to the criteria of article 59, as well as for the violation of the law, statute or regulation and for any other damage caused by intent, abuse of powers or gross negligence.

Vitolo, citing Fargosi, maintains:

No doubt that Law 19,550 has not modified, in essence, the responsibility of the directors with respect to that provided for in the 1889 Commercial Code, and that the comments of the national authors to article 337 of that normative body, compared With what articles 274 and following of Law 19,550 say, they reveal that the reception of said principles and the doctrinal and jurisprudential interpretation have operated. The creation of a kind of phantasmagorical vision -adds the author- due to the reference made in article 274 of the law to article 59, in the loyalty and diligence of a good businessman, should not be considered a novelty, given that it can be related or be closely linked to liability for intent, fault or negligence, recklessness in the performance put by the agents, and the interpretation that the jurisprudence has made reference to the application of article 238 of the Commercial Code that makes (made) explicit allusion to that the commission agent - analogously, the president - must act as if he were doing it on his own business, to conclude that it is nothing more than a set of objective evaluation of conduct under the Civil and Commercial Code to establish liability. [31].

From where it arises that the responsibility that is being exposed here is not strange in the doctrine, much less in the law, existing antecedents as old as the Argentine Code of Commerce of the 19th Century.

Article 59 establishes two action parameters for administrators that must be taken into account and, therefore, will be the barometer for measuring and judging their performance: loyalty and diligence.

The first of them refers to the need for all their efforts to be focused on the society they represent, being prevented from carrying out private business or for the benefit of others that affect the legal person. The doctrine rightly says that when there is a conflict of interests, those of the individual must yield to those of society. Loyalty, which can be interpreted as fidelity, is the framework of understanding

17 This is also how Richard and Cocco understand it, expressing "in third place the special laws, among which we place the LCQ." [26]

18Professor Richard argues that the lack of application of the mandatory rules of corporate law in bankruptcy situations makes us think of a kind of counterlaw. He then adds that the traditional removals can constitute a dispossession when they affect the property right, that is, when they are dispossessing the right of the creditors, indirectly benefiting the partners in any country in the world, but also a *contra legem custom against* mandatory norms such as the that exist in the Argentine Republic. [25]

between the administrator and the administered that, contrary to sensu, does not imply a submission of the second towards the first, but rather the duty to respond as a faithful person to his or her managed.

The second parameter of action is diligence, which the law determines as "the duty to act with the diligence of a good businessman." Diligence, in its definition, is related to three Latin roots: (lat. Dilligentiam) care, effort and efficiency in the execution of something. (lat. Dillectum) Dear, beloved with dilection. (lat. Dilligentem) Careful, exact and active; in addition to soon, quickly and quickly.

Simply put, diligence is directly related to love. His learning and his experience implies that the human being is taught to do things with love, [19]with affection, with attention and promptness, which exactly defines this virtue. Being able to do things diligently will inevitably lead to achieving excellence in the work that is performed or in the trade that is exercised.

In this hermeneutics, the requirement to act diligently implies a dedication to the activities of the administration that are assigned to it. To distinguish the different types of diligence, the law determines a parameter: the good businessman, distinguishing him from the "good father of a family", more typical of civil law and marking a lower level in the quality of his work. The administrator must be absolutely committed to carrying out his work as an expert on the subject would do.

As a consequence of this, they must have a vast knowledge in the field of negotiations, they must understand the way and the way in which the market behaves, notice the interference of the public powers that could exist and that influence the economy and finances; understand also that the real nature of their organizations is that of a community of human beings. [20]And the action is required to the point that the omission of acting and acting under the standard of a good businessman is also instituted as a cause of responsibility.

The question about whether bankruptcy creditors can claim this due behavior is resolved in article 274, LGS, which -as stated at the beginning of this title- is complementary to the already analyzed article 59. This responsibility is of an individual nature and cannot talk about the responsibility of the board of directors as a body; The directors are in charge of carrying out the administration and representation of the company and, due to the duties of diligence and loyalty, the consequent responsibility falls on each one of them.

This implies that the claim will be made on each one of the members of the board of directors and not as a body, which does not imply a demarcation of responsibilities of any of them, with the exception of those who had assigned a specific function in the statute, the regulation or by assembly decision.

As Nissen recalls, [21]Law 19,550 completes the panorama of administrators' liability in a dispersed manner, through article 157, third paragraph, dedicated to managers of limited liability companies, and articles 274 and following, referring to directors of corporations, rules that complement each other and that can be systematized as follows:

a) if the management is in charge of a single administrator, which is a common assumption in the matter of companies of interest, the latter will be liable in an unlimited manner for the damages suffered by the company (and third parties, I add) for the violation to the guidelines of conduct provided for in article 59.

b) if the administration is plural, but not collegiate, the provisions of article 157, fourth paragraph, shall apply, pursuant to which managers are individually or jointly and severally liable, according to the organization of the management and regulation of its operation established by the contract.

c) if the administration is collegial, the provisions for any company, by article 274 of the LGS (art. 157, in fine), shall apply, according to which the directors are jointly and severally liable for the poor performance of their duties, but the imputation of responsibility will be made based on individual action, when functions have been assigned personally in the statute, social contract or by decision of partners or shareholders, and if this decision had been registered in the Public Registry.

This liability system is of public order, for which "its rules are non-derogable by the partners or by rules incorporated into the contract or statute" [31], which should be observed by the registrar at the time of registration. your registration.

The analyzed article 59, LGS proposes the responsibility of the administrators in three different cases, when there is poor performance in the functions, when there is a violation of the law, the statute or the regulation or when there has been damage due to intent, abuse of powers or gross negligence. The doctrine debates in these assumptions what is the attribution factor that fits.

The assumption of "bad performance of their duties" is framed within article 59 of the same legal body, this is when they do not act with loyalty or with the diligence of a good businessman. When you do not meet these parameters, you incur liability for the damage caused (remember that you cannot speak of liability without damage). Here the objective budget is the "bad performance of the position" but the attribution factor is subjective, [22]it is the performance of the administrator that is compared with a pre-established standard such as the loyal performance and the diligence of a good businessman.

It is worth asking ourselves if guilt is enough or if the existence of fraud is required in this disloyal or non-diligent act. Article 1724 of the Civil and Commercial Code defines fault as the omission of due diligence according to the nature of the obligation and the circumstances of the persons, time

19 This association is used by Rivera Restrepo [27] who makes an association between feeling and the ability to do something while feeling comfortable with it.

20 The incorporation of the community of human beings corresponds to De Geus, Arie [10].

21 Cited by Vitolo [31].

22 In the same sense, Vitolo [31]; Richard [25]; Halperin [14].

and place. It stipulates that this includes recklessness, negligence and inexperience in the art or profession.

Thus, I understand that, since the General Law of Companies requires a person to be skilled in the businesses to which he is going to dedicate himself, both lack of skill, recklessness or negligence are demonstrations that the person did not comply with the minimum standards required, and must answer for the damages it causes. It suffices, then, to prove guilt.

The assumption of liability for "violation of the law, statute or regulation" turns out to be totally objective. It does not matter here if the administrator has acted with intent or negligence, since the mere violation of the norm implies a responsibility that must be assumed. This assumption is in harmony with the provisions of article 144 of the Civil and Commercial Code, which imputes responsibility to those who, as direct or indirect partners, associates, members or controllers, have used the legal person to violate the law, public order, good faith or to frustrate the rights of any person; what it is about is the "rejection, disregard or unenforceability of the legal personality as an institute of exception to the criterion of separation or differentiation between the entity and its members" [23].

The last assumption is that of "damage caused by fraud, abuse of powers or gross negligence"; here the attribution factor is subjective, and as the law expressly states, it can be fraud or gross negligence. The concept of abuse of powers implies excesses on the part of the administrator, who knowingly and deliberately acts on behalf of the company -or disposes of its assets- to carry out illicit acts. Although added between two assumptions of subjective attribution (fraud and gross negligence), the abuse of powers is not a factor of attribution, but a way of exercising an act that entails responsibility when it is done with intent.

Serious negligence, unlike guilt, requires more than just negligence in its actions, it is a concept that could be defined as non-deliberate behavior but attributable to its deployment without attending to the most elementary care, according to the nature of the act in question and the particular circumstances of the case.[23]

In the development that I have just carried out, it was possible to observe how the fault, negligence, inexperience and fraud in the actions of the administrators that produces damage, generates responsibility that can be claimed by the bankruptcy creditor, since the law does not establish limits on the individual, expanding the list of active subjects to any third party who has suffered damage.

Contrary to what I have been maintaining, Villanueva argues that article 278, LGS, limits liability only to bankruptcy cases and that the preventive contest does not go through, like that one, through a liquidation of assets that requires prior equity recomposition, but by an agreement that, if reached, avoids all that, that is, both the bankruptcy and the recomposition actions are born with it [30]. It understands that, if this possibility were accepted by a creditor, not only would the regime resulting from the aforementioned article 278 be avoided, but the foundations on which the organization of the company rests would also be undermined, since third parties would be empowered to intervene in its internal life, contrary to the law insofar as it only grants such a right -which sometimes even holds back- to those who integrate it.

I do not share the opinion, because it is not a question here of recomposing the social capital, but of a civil sanction to a person who has caused an illicit, an administrator who with the poor performance of his functions (which the law requires expertise) causes a economic damage to a creditor.

4. Corporate Social Responsibility

Up to this point, the link between the actions of the administrators and the responsibility that falls within the framework of a bankruptcy process has been demonstrated, which is not only limited to the provisions of the Bankruptcy and Insolvency Law but, through the dialogues of sources (article 2 of the Civil and Commercial Code) has been analyzed through the general theory of responsibility and the General Law of Companies to conclude that these legal bodies contemplate the possibility of the creditor who -through a preventive contest- results damaged by the poor performance of the administrator in his position.

However, I understand that the responsibility is not exhausted in the cases studied, we can also venture into the theory of Corporate Social Responsibility to analyze whether, in case of violation of the principles that govern it, it can also be held responsible.

From the origin of the company as a business unit, the sole and indisputable purpose was the pursuit of economic returns and the maximization of profits. In certain periods of history, companies have carried out this task without regard to the obstacles or inconveniences they had to face, and -above all- without measuring the social, political and economic consequences that this caused.

A few years ago, States began to be concerned about the negative consequences they caused, which was supported by various studies that demonstrated the intimate relationship between certain serious socio-environmental problems and business performance. [24] Global social problems such as extreme poverty, hunger and malnutrition, health epidemics, or "natural" catastrophes favored by human actions have an intimate relationship with the capitalist development model, centered on exploitation, accumulation, waste and the discard.[25]

The gradual incorporation of theories, conceptualizations and analyzes related to these impacts and also to the economic benefits that good business practices bring to the

23 The conceptual approach corresponds to Vitolo [31].

[24] "During the global economic crisis of 2008, when there was a dramatic increase in poverty and a serious food crisis, certain economic sectors benefited from financial speculation regarding grains and other essential raw materials for food." [3]

[25] Gudynas [13].

company towards its environment, [26]have contributed so that, in a collaborative way, companies - starting with the largest and most powerful - turn their eyes and their interest in the context of the development of their businesses.

The financial power of these, the amount of employment generated and the businesses that arise through their intertwining, form an economic-productive network that is highly relevant for the communities. The generation of wealth as the driving force and development of corporations also turns out to be the driving force and development of communities, directly and indirectly. This power in the hands of private persons entails a responsibility that was warned by the United Nations a few years ago, [27]from where a change in the way of understanding the relationships of companies with their context began to be visualized.

Dominguez Martín argues that the globalization of opportunities for companies cannot be done without the corresponding globalization of their social responsibilities, since CSR is not a management model but a way of conceiving the business and its strategy without abandoning the achievement of the benefits, considering that its economic development must be linked to improvements for society, and is inseparable from the relationships of trust of the stakeholders and their requirements [11].

Understood in this way, companies and therefore their administrators have a community responsibility that far exceeds the limits imposed by the corporate purpose, since their local or regional enclave positions them as actors (often indispensable) of economic, labor and cultural changes. of a community. Rightly distinguished doctrine will say that "the legal treatment of insolvency cannot be a mere process of redirecting resources to the market" [4]. The ways of dealing with the difficulties of the companies entail human costs that are generally more important than the lack of financial resources.[28]

In this hermeneutics it has been argued that "one of the principles on which the crisis law must be based is the protection of the social interest by understanding the company or production unit as an essential and preponderant factor in the development of the communities" [22]. An economic embezzlement causes serious consequences both in the person of the debtor and in the personal finances of each one of the creditors, but the States also suffer great and manageable consequences (especially the municipal ones that, because they are small government units, the fall of one of their their companies causes risks in their municipal coffers and in the spirit of their population), tax collection and the socio-political projection around the investments that were projected to be made with industries or companies in operation. The rupture of the payment chain generates that the conflict between directly interested parties expands towards other actors, also affected by the crisis.

Notwithstanding this, and coinciding with the need for the corporate governance must abide by the fulfillment of the purposes proposed in the Guiding Principles on Business and Human Rights, [29]where its author has concluded that the main function of a company must be to create, ensure and generate benefits for itself and for its own, but it must also contribute to the welfare of society.[30]

But these issues not contemplated in the positive legislation in force in the country do not produce any legal sanction in the event of non-compliance, for which - and without prejudice to the fact that this is part of good business practices and in certain areas brings social, financial and economic benefits - Responsibility from this area cannot be attributed to administrators who do not have Corporate Social Responsibility in mind in the performance of their duties, in relation to the damage caused to the creditor.

5. The Procedural Issue

Finalized the analysis on the possibility of attributing responsibility to the administrators for the damages caused to the creditor, but ruled out that this right can be exercised due to the breach of the guiding principles of Corporate Social Responsibility, I will focus on the analysis of the procedural issue of the claim, that is, it will seek to answer the questions of who and at what time can pose the responsibility studied here.

5.1. Active Legitimation

According to what has been developing, in order for liability to arise, it is necessary for damage to be caused to the claimant. We have seen that liability for bankruptcy gives rise to liability only when the liquidated asset is insufficient to satisfy all the creditors, that is, only after all the assets have been realized will it be possible to determine whether or not it is sufficient.

In preventive contests, since there is no liquidation of the asset and from the perspective that we have been analyzing,

[26]"Definitely, the value of CSR is related to the benefits that it represents not only for the organization, but also for the stakeholders. Additionally, it is about measuring the impact of the activities of an organization not only from the economic point of view but also from the intangible benefits of CSR. On the other hand, traditionally pointed out as benefits of CSR, the improvement of the corporate image and business reputation, the reduction of operating costs, the strengthening of the capacity of organizations to recruit and retain better employees, strengthening of the relationship with the community, strengthening consumer loyalty, improving quality and productivity, and increasing profitability, among many others". [12].

27 Through the report "Guiding Principles on Business and Human Rights: Implementation of the United Nations Framework to 'Protect, Respect and Remedy'" three fundamental pillars have been established on which the responsibilities of States and companies are based: the state duty to protect human rights against abuses by third parties, including companies through appropriate policies, regulation and adjudication; the corporate responsibility to respect human rights, which means acting with due diligence in order to avoid violating the rights of others; and greater access for victims to effective judicial and non-judicial remedies.

28Jeantin and Le Cannu [17].

29 https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf

30 Guiding Principles on Business and Human Rights: Putting the United Nations Protect, Respect and Remedy Framework into Practice. Report of the special representative of the Secretary General for human rights issues and transnational corporations and other companies, 04/11/2011.

the damage must be studied in a different way, since we are talking about an individual claim and therefore an individual damage different from the damage to the creditor mass., as interpreted by the falencial law.

The lack of diligence in the performance of the functions of the administrator, or the use of the company he represents to carry out acts unrelated to corporate purposes and in violation of the law that have caused damage to a creditor, and that as a consequence of this series sustained over time led the company to a state of default that ended with the opening of bankruptcy, it is noted that the claimed damage occurs before starting the debt restructuring process; It occurs when you stop honoring your debts and cause a break in the chain of payments.

This fact may be the cause of the damage if it has caused the creditor damage that may be of different kinds, naturally tied to the quality of his credit.

Now, when the damage occurs has been analyzed, but from when does the creditor acquire the right to claim? In the law of damages, the existence of a damage is not enough, it is also necessary that the claimant has legitimacy to do so. This will be acquired when the creditor is recognized as such.

The bankruptcy law regulates in detail the *iter* that must be followed so that the bankruptcy judge admits a subject as a creditor of the bankrupt and only from that moment grants him legitimacy to act within the due process. The principle of universality that governs the process obliges all the alleged creditors to appear before the judge to request to be recognized as such, which occurs through the sentence of article 36, LCQ.

Outstanding doctrine maintains that "this resolution has two effects, one intra -bankruptcy and the other extra - bankruptcy" [19]. Among the first, it grants the creditor the quality of concurrent to the universal process and as such legitimacy to participate in the agreement stage, form the basis for the majority of conformity (art. 45, paragraph 1, LCQ), integrate the agreement (art. 56, paragraph 1, LCQ), and collect your credit in the agreed manner (art. 58, paragraph 1 and 59, LCQ); You can even denounce its breach with the pertinent legal consequences in order to declare indirect bankruptcy (art. 63, LCQ).

extra -bankruptcy effects, they also arise from the authority of the material res judicata that invests the verification sentence, which exceeds the terms of conclusion of the insolvency or bankruptcy, without the rights of the creditors recognized in it being able to be discussed. The verification resolution is a sentence issued in a knowledge process, and therefore the declaration of the existence of the credit is not only enforceable (in the strict sense) against the debtor, but also (in the broad sense) against the creditors, whether or not they have participated. of the bankruptcy process.

For this reason, he will only acquire legal standing to request the responsibility studied here if the bankruptcy judge recognizes him as a creditor within the framework of the sentence of article 36, LCQ, or obtaining a favorable sentence in the respective review incident (art. 37, LCQ) or late verification (art. 56, sixth paragraph, LCQ).

It would be incoherent if this were not the case, because if a creditor who has been damaged by the action of the administrator attends to request the responsibility of the same without his credit being verified, two things can happen: that the creditor finally does not have a valid credit for having been rejected his request by the insolvency judge, in which case the knowledge process initiated to attribute the claimed responsibility to him would be found without a subject with legitimacy to do so; or that once the credit was recognized, the latter accepted the proposal made by the debtor, which leads us to analyze the second point of legitimation.

Then, the admission or recognition as a creditor within the bankruptcy process would turn out to be the first requirement to be fulfilled to obtain the legitimacy to act in the permitting liability action.

5.2. Non-Adherence to the Preventive Agreement Proposal

A second requirement to be met is non-adherence to the preventive agreement proposal formulated by the debtor. This is so because this stage, regulated in articles 43 and 52 of the LCQ, establishes the possibility for the bankrupt to agree with the creditors on how to satisfy their debts and achieve a harmonious exit from their cessation of payments, by carrying out different proposals that interested parties may or may not adhere to.

As it appears from paragraphs 2 and 6 of the aforementioned article 43, its content is broad and the various alternatives cited by the normative statement are merely exemplary, even when in most cases they consist of remove and wait.

In this regard, Master Richard has been constant in arguing that the traditional haircuts can constitute dispossession when they affect property rights, that is, when they dispossess the right of creditors, indirectly benefiting the partners in any country in the world, but also a custom *contra legem* against imperative norms such as those that exist in the Argentine Republic, [31]especially when the genesis of the General Law of Companies determines that its partners will participate in the benefits but also that they will bear the losses that this causes. Thus, it is interpreted that haircuts are a mechanism for transferring these social losses that, due to various legal provisions, should be borne by the partners, in order to avoid the mandatory rules on the matter.

But, even finding a proposal that establishes discounts, waits, does not recognize interest, it is made available to verified creditors so that they can freely choose to accompany it or not.

In order for the proposal to be approved, the law does not require unanimity in its adherence, but a complex system of double majority, both of people and of capital, whose conformity must be presented in the file until the day of expiration of the exclusivity period.

31This is how Richard [25] will hold it, who adds: “our old postulate on a 'crisis corporate law' that conditioned bankruptcy practices with mandatory rules, has received clear normative support with the sanction of the Civil and Commercial Code effective from August 1, 2015.

Without prejudice to the provisions referring to hostile creditors or the exclusion of some of them, determined by the regulations, in what is of interest here we must analyze what happens to those creditors who have not accompanied or adhered to the proposal made.

Once the corresponding majorities have been obtained and if deemed appropriate (art. 52, subsection 4, LCQ), the judge will approve the agreement and it will be mandatory for all unsecured creditors, even for those who have not participated in the process (art. 56, LCQ).. This effect is one of the axes of the insolvency proceeding, since it provides that the approved agreement produces a shock wave that reaches all unsecured creditors with cause or title prior to the filing of the insolvency proceeding.

This consequence also causes the novation of all obligations originating in cause or title prior to the process. In other words, the proposal that the debtor made to his creditors implies accepting the planned form of payment and agreeing that the obligations born previously disappear.

Its purpose is the definitive consolidation of the debt, and the birth of a new obligation between debtor and creditor arising from the approved agreement.

The aforementioned Richard understands that there is an assumption that the approved agreement extinguishes or prevents the birth of liability actions, in the idea that the bankruptcy legislation replaces the regime of the Civil and Commercial Code and the General Law of Companies, and that in the bankruptcy it is not authorized no liability action, to conclude by saying "of course this does not silence the possibility of individual liability actions". [25]

For my part, I understand that this novation occurs with the bankrupt and not with its administrators, therefore it can hardly be thought that this legal novation implies an extinction in the obligation arising between the administrator and the creditor for the damages caused by the former to the latter, which is still subsisting.

Notwithstanding the foregoing, I understand that it is a sine qua non requirement that the creditor who intends to act for liability against the administrator does not adhere to the concordat proposal, since it implies an accompaniment to the proposal and therefore abandons the disagreement of the damages that it has caused. the company, including its manager.

5.3. The Statement of Demand

As the process is of knowledge, where the damage caused, the causal link and the active legitimation of the claimant, the passive legitimation of the claimed and the value of the damage caused must be shown and demonstrated, it is clearly consistent to maintain that the longer route and therefore with greater margin for evidence offered by local procedural regulations.

Thus, it cannot be initiated before the resolution of article 36, LCQ, since the plaintiff could not demonstrate his capacity as a creditor of the company managed by the defendant nor before the approval of the preventive agreement, since it is necessary that the claimant can demonstrate that it has not adhered to the proposal made.

If for some reason it is necessary to think why the claim of an administrator is tied to the fate of proving that the creditor is such and that he has not accompanied the proposal, it is important to remember that the damage that is going to be claimed was caused by the action of the administrator within a company, which was later declared bankrupt and that the legal support on which the claim is based arises from the General Law of Companies. Therefore, it is very important to understand that the fate of the claim for damages will be directly related to its relationship with the society in crisis.

Likewise, it should also be borne in mind that in view of the fact that the requirements for filing the lawsuit are fulfilled only after the end of the exclusivity period, the limitation periods for the action also begin to compute from this moment and not from the production of the damage..

6. Conclusions

Bankruptcy problems cannot be solved within the bankruptcy legislation, and the problem of repairing creditors must be addressed by integrating the analysis with the rules on general liability contained in the Civil and Commercial Code and the specific ones of the General Companies Law, [32] which is an obligation imposed with the Argentine corpus civile in its first articles.

The damage caused by any person must be repaired if it was caused unfairly, and that is a maxim of our societies. To think that this does not apply to the Insolvency and Bankruptcy Law is to classify oneself in a watertight microsystem disconnected from the rest of the system, an issue that the doctrine and even the legislation have been overcoming for several years.

It has been shown that the foundations of the liability of corporate administrators in bankruptcy proceedings do not arise from the letter of the food law but from the entire legal system that, in a harmonious interpretation, allow us to attribute liability to the one who has caused damage. that he should not do it, that is to say unfairly.

Several years ago, the distinguished Alegría [4], citing Matsakos, has argued that "it is convenient to favor the human aspect in commercial courts, establishing less ceremonial and that things unfold in the simplest and most humane way., privileging its effectiveness", and in this conception it is worth embarking also for the interpretation of the norms, consistent with the spirit of justice that, ultimately and as a last instance, is what the normative regulation of each country seeks.

It is worth remembering in this instance that the legislation is considered general, and therefore it is extremely important to analyze each particular case brought to the courts. I join the current that promotes the humanization of processes and the need for a structural reform of our food law, whose guiding objective is the resolution of conflicts that arise around

32Richard [26].

corporate financial problems, which in many cases exceed the mere insolvency or bankruptcy responsibilities, and not like the current law, which seeks to end the particular case through stiff mechanisms designed for the generality, but which leaves little room for creation to the judge or the parties.

Notwithstanding this, what was analyzed here is that, whoever has caused damage in the context of a preventive bankruptcy, is not covered by the protective umbrella of the bankruptcy law, but is responsible for the damage caused, based on bases as solid as the Civil and Commercial Code and the General Law of Companies.

References

[1] Abdala, M. (2012). The insolvency action of liability in Argentine law. Legal Opinion Magazine, vol. 11, p. 105-115.

[2] Achares Di Orio, F. (2012). The bankruptcy action of responsibility and the social action of responsibility of the administrators of the commercial companies. RDCO, No. 254, p. 809.

[3] Acuna Rodarte, O. and Meza Castillo, M. (2010). Mirrors of the world economic crisis: the food crisis and the alternatives of basic grain producers in Mexico. Arguments, No. 23, Vol. 63, pgs. 189-209. Retrieved from https://bit.ly/2OgQtrj. Last revision 03/02/2021.

[4] Alegría, H. (2009). Entrepreneurship and non-patrimonial human aspects in insolvency. Santa Fe: Rubinzal Culzoni.

[5] Alexy, R. (2008). On the Concept and Nature of Law. Ratio Juris, No. 21, p. 292-293.

[6] Alexy, R. (2009). The main elements of my philosophy of law. Notebooks of Philosophy of Law, No. 32, p. 67 – 84.

[7] Alterini, J. (2017). Functions of civil responsibility. Buenos Aires: The Law.

[8] Calvo Costa, C. (2015). Compensable damage. Its conception in light of the Civil and Commercial Code. RCyS, 2015-IV, p. 81.

[9] Chiviassa, A. & Ojeda, J. (2020). The incidence of third parties in bankruptcy. Business Law Magazine, Vol. 21, pp. 459-485.

[10] DeGeus, A. (1998). The living company Castilian translation of Jorge Gorín. Buenos Aires: Garnica.

[11] Dominguez Martin, R. (2011). Corporate global social responsibility (RSGE): the private sector and the fight against poverty. Magazine of the Ministry of Labor and Immigration, No. 76.

[12] Gómez Nieto, B. and Martínez Domínguez, R. (2016). Ethical values in corporate social responsibility. Anagrams. University of Medellin, No. 14, Vol. 28, pgs. 39.

[13] Gudynas, E. (2016). The political ecology of the global crisis and the limits of benevolent capitalism. icons. Journal of Social Sciences, No. 23, p. 60.

[14] Halperin, I. (1974). Anonymous Societies. Critical examination of the disc. Law 19550. Buenos Aires: Depalma.

[15] Herrera, M.; Caramelo, G. and Picasso, S. (2015). Annotated Civil and Commercial Code. Volume I and IV. Buenos Aires: Infojus.

[16] Hervada, J. (1988). Notes for an exhibition of classical legal realism. University of Navarra, p. 281-282.

[17] Jeantin, M. & Le Cannu, P. (2007). right Commercial, Entreprises en difficulté. Paris: Dallos.

[18] Junyent Bas, F. & Ferrero, L. (2014). The accumulation and budgets of origin of the social and bankruptcy actions of responsibility of the administrators, DCCyE, 2014, pp. 1-11.

[19] Junyent Bas, F. and Molina Sandoval, C. (2019). Annotated Bankruptcy and Bankruptcy Law. Volume II. Buenos Aires: The Law.

[20] López Rodriguez, C. (2016). Insolvency liability of corporate administrators. De facto administration and bankruptcy deficit. Comparative study with Spanish and Argentine legislation. Montevideo: The Uruguay Law.

[21] Marcos, F. (2019). Bankruptcy liability actions. In Alegría, H. (ed.), Insolvency II, Journal of Private and Community Law (pp. 431-482). Santa Fe: Rubinzal Culzoni.

[22] Marega, A. (2020). The crisis of crisis law: analysis of the need to reform Argentine bankruptcy law. the DC2D17 Dial.

[23] Marega, A.; Maggio, R. & Echeverria Block, T. (2021). Legal Entities, first part. Santa Fe: Editorial Catholic University of Santa Fe, Santa Fe.

[24] Mosset Iturraspe, J. (2013). The exercise of rights: good faith, abuse of rights and abuse of dominant position. Private and Community Magazine 2012-2, pp. 70.

[25] Richard, E. (2018). Corporate crisis and liability of administrators, at least in Argentine law. Journal of business law, Commercial School of Córdoba and its projections, V. 17, pp. 5-46.

[26] Richard, E. & Cocco, M. (2021). Planning and responsibility. That is not talked about (about corporate crisis law). RDCO, 306, p. 105.

[27] Rivera Restrepo, J. (2016). Diligence as an element of the right of option of the creditor. Law Review, No. 20, pgs. 3-10.

[28] Rivera, J. (1997). Bankruptcy law institutions. Volume II. Santa Fe: Rubinzal Culzoni.

[29] Rivera, J. & Crovi, L. (2018). Civil Law General Part. Second edition. Buenos Aires: Abeledo Perrot.

[30] Villanueva, J. (2019). The responsibility of directors in the event of company insolvency. Law 2019-D, pgs. 1033.

[31] Vitolo, D. (2007). Commercial Companies, law 19,550 commented. Volume I and IV. Santa Fe: Rubinzal Culzoni.

[32] National Commercial Chamber, Room E: Lopez, Mabel c/ Hapes, Farid and another, 08/10/2009. Lexis 70056153 and RDPC 2010-1, pgs. 622-23.

[33] Riggs v. Palmer, 115 NY 506 (1889). Tab.

[34] Gerbaudo, G. (2020). The prevention of insolvency, the duties of corporate administrators in avoiding damage and their bankruptcy responsibility for the lack of a timely presentation in preventive bankruptcy. Doctrina Societaria y Concursal ERREPAR (DSCE). Febrero.