

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: FLO-BACK EQUIPMENT INC., Debtor in a Foreign Proceeding.	§ § § § § § §	Chapter 15 Case Case No. 24-90059 (MI)
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**VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN PROCEEDING,
(II) RECOGNITION OF FOREIGN REPRESENTATIVE, AND
(III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

FTI Consulting Canada Inc. (“FTI”), solely in its capacity as court-appointed receiver and manager (“Receiver” or “Foreign Representative”) of Flo-Back Equipment Inc. (“FBE” or “Debtor”) pursuant to the *Consent Receivership Order* dated December 8, 2023 (the “Receivership Order”) ¹ entered by the Court of King’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2301-16371 (the “Canadian Court” and the “Canadian Proceeding”), pending under Canada’s *Bankruptcy and Insolvency Act* (“BIA”), and as authorized foreign representative of the Debtor, respectfully submits this chapter 15 verified petition (the “Verified Petition”; and together with the official form petition filed concurrently herewith, the “Petition”) for recognition of the Canadian Proceeding pursuant to section 1517 of title 11 of the United States Code (the “Bankruptcy Code”) and respectfully requests (a) recognition of the Canadian Proceeding as a foreign main proceeding or, in the alternative, as a foreign nonmain proceeding; (b) recognition of the Receiver as the foreign representative of the Debtor; and (c) relief pursuant to sections 1520 and 1521 of the Bankruptcy Code.

¹ A true and correct copy of the Receivership Order is attached to the Official Form 401 Petition and can also be downloaded free of charge at FTI’s website: <http://cfcanada.fticonsulting.com/wolverine/default.htm> and is incorporated herein for all purposes.

In support of the Petition, the Receiver has filed contemporaneously herewith the (a) *Declaration of Dustin Olver in Support of Receiver’s (A) Verified Petition for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code, and (B) Emergency Application for Relief Pursuant to Sections 105(A) and 1519 of the Bankruptcy Code* (the “Olver Declaration”) and (b) *Declaration of Foreign Counsel* (the “Kashuba Declaration”; and together with the Olver Declaration, the “Supporting Declarations”), which are incorporated herein by reference.

I. PRELIMINARY STATEMENT

1. The Debtor provides full-service well testing, flow-back, and rental services in support of oil and gas producers throughout North America. The Debtor is one of seven companies under a common parent company, Wolverine Energy and Infrastructure Inc. (“WEI” and together with its subsidiaries, the “Wolverine Group”), which collectively comprise a diversified energy and infrastructure services provider in Western Canada and the United States.

2. On December 8, 2023, the Receiver was appointed pursuant to the Receivership Order entered by the Canadian Court to administer the estates of the Wolverine Group, including the Debtor. The Receivership Order provides similar rights, powers, and duties to the Receiver as those afforded to a chapter 7 trustee under title 11 of the United States Code (the “Bankruptcy Code”), including control over the Debtor’s assets and affairs, a stay of all actions against the Debtor, and authority to seek recognition with respect to the Receivership Order in foreign jurisdictions, including the United States.

3. The Receiver has commenced a sale and investment solicitation process for the Wolverine Group and a separate sale process for certain surplus assets. Because the Debtor has assets and operations in the United States, the Receiver files this Petition and seeks the protections afforded by chapter 15 of the Bankruptcy Code to facilitate the ongoing administration of the

Canadian Proceeding, specifically with respect to the Debtor's assets located in the United States, and to assist the Receiver in carrying out its duties set forth in the Receivership Order. For the reasons set forth herein, the Supporting Declarations, and related filings, the Receiver submits that this chapter 15 case, and the relief requested herein, serves an important function in supporting the Receiver's full and fair administration of the Debtor's estate for the benefit of all creditors in accordance with the BIA and operative Canadian law.

II. RELIEF REQUESTED

4. The Receiver requests entry of an order, substantially in the form attached hereto (the "Proposed Order"), (a) granting the Petition and recognizing the Canadian Proceeding as a foreign main proceeding or, in the alternative, as a foreign nonmain proceeding, and granting all of the relief afforded to such proceedings, pursuant to sections 1517(a) and (b) and 1520 of the Bankruptcy Code; (b) recognizing the Receiver as the foreign representative of the Debtor; (c) granting additional relief pursuant to section 1521 of the Bankruptcy Code; and (d) granting such other relief as the Court deems just and proper.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P). The Debtor, by and through the Receiver, confirms its consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court on this Petition.

6. This chapter 15 case has been commenced pursuant to section 1504 of the Bankruptcy Code by filing the Petition pursuant to section 1515 of the Bankruptcy Code.

7. Venue is proper pursuant to 28 U.S.C. § 1410. The Debtor has property and other interests throughout the United States.

8. The basis for the relief requested herein is sections 105(a), 362, 363, 1504, 1507, 1510, 1515, 1517, 1520, and 1521 of the Bankruptcy Code.

IV. RELEVANT BACKGROUND

A. The Debtor's Business

9. The Debtor provides full-service well testing, flow-back, and testing equipment rental services in support of oil and gas producers throughout North America. The Debtor is one of four operating units of the Wolverine Group, a set of eight companies that make up a diversified energy and infrastructure service provider in Western Canada and the United States. Each of the other companies in the Wolverine Group is organized under the laws of Canada.

10. The Wolverine Group's business is cyclical in nature. Normally, the Wolverine Group would weather slow seasons through management of its capital structure, monitoring and reviewing actual and forecasted cash flows, and maintaining credit facilities to ensure there are available cash resources to meet its liquidity needs. However, among other factors, knock-on effects of pre-Covid expansion, rising interest rates, ongoing legal disputes, and slowing economic conditions – in combination with the Wolverine Group's slow season – have resulted in the Wolverine Group being unable to meet their obligations as they fall due.

11. The Debtor's management and executives are located in Calgary, Alberta. The Debtor's cash management and accounting functions were also managed in Alberta prior to Receivership. The Debtor has assets supporting its business in Texas, Wyoming, Pennsylvania, North Dakota, and Grand Prairie, Alberta. The Debtor's assets include flow iron and supporting joints, test separators, storage vessels, support equipment, flare stacks, manifolds, portable office units, and line heaters. The Receiver has retained the Debtor's approximately thirty-three (33) employees to continue operations and assist with the Receivership proceedings and sale process,

described further below. The Wolverine Group, including the Debtor, is currently operating and is being marketed as a going concern business.

12. If not currently rented to customers, the Debtor's assets are held, generally, at leased storage areas or yards in the Canadian Province of Alberta and Wyoming, Texas, and Pennsylvania. In addition, certain of the Debtor's assets are currently held for refurbishment and repair with a vendor in Monahans, Texas.

13. The Receiver estimates that the value of the Debtor's assets, combined with that of the rest of the Wolverine Group, is insufficient to pay secured creditors, further described below.

B. The Debtor's Creditors

14. WEI is the borrower under a set of credit facilities with Canadian Western Bank. The Debtor executed the Full Liability Guaranty and the General Security Agreement, both dated October 3, 2018, in favor of Canadian Western Bank. Following a default under the Credit Facilities, on or around October 2, 2023, Canadian Western Bank demanded payment on the Credit Facilities from the Wolverine Group, and the indebtedness remains outstanding in the amount of \$16,787,345 plus any and all accruing interest, fees, and expenses related thereto.

15. The Debtor has approximately ninety (90) unsecured creditors, which generally include suppliers, utility providers, governmental and taxing authorities, and other vendors. The Debtor also owes approximately \$260,000 to Starion Bank pursuant to a U.S. Small Business Administration-backed Paycheck Protection Program loan. Debtor's unsecured creditors are collectively owed approximately CAD \$1,750,000 (USD \$1,300,000). The Debtor has several creditors in Houston, Texas and throughout the Southern District of Texas.

C. The Receiver

16. FTI Consulting Canada Inc. is a corporation formed under the laws of Canada pursuant to the Canada Business Corporations Act. FTI consented to act as Receiver for the Wolverine Group on December 8, 2023.

D. Debtor's U.S. Bank Account and Intercompany Transactions

17. Outside Canada, Debtor maintains bank account number ending in 8777 at Starion Bank (the "Debtor Account") in the United States. Receiver has, and needs to retain, access to the Debtor Account. In the ordinary course of business, the Debtor engages in intercompany transactions with other members of the Wolverine Group and the Debtor's sources and uses of cash are directly or indirectly dependent upon the operations of the Wolverine Group.

E. The Canadian Receivership Proceeding

18. On December 8, 2023, Justice J.T. Neilson for the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA. The Receivership Order was entered with the consent of the Wolverine Group following the termination of the stay in a competing application for relief filed by the Wolverine Group under the *Companies' Creditors Arrangement Act* (Canada).

19. The Receivership Order appointed the Receiver over the estate of the Debtor. (Receivership Order ¶ 2). The Receivership Order specifically authorizes the Receiver to act "as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada." (Receivership Order ¶ 31). It empowers and authorizes the Receiver to take various steps involving the property of the Debtor subject to the Canadian Proceeding. (Receivership Order ¶ 3). The Receivership Order grants the Receiver access to, *inter alia*, all of the Debtor's books, records, contracts, securities, and information. (Receivership Order ¶¶ 4-6). Additionally, the Receivership Order imposes a stay of initiation or

continuation of proceedings against the Receiver, and the Debtor and its estate. (Receivership Order ¶¶ 7-11).

20. The Receivership Order also grants the Receiver a charge (the “Receiver’s Charge”) on all of the Debtor’s current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the “Property”) to secure payment of the reasonable fees and expenses of the Receiver and its counsel. (Receivership Order ¶ 18). The Receiver’s Charge has the priority set forth in paragraph 18 of the Receivership Order.

21. The Receivership Order further authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$3,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms authorized therein. (Receivership Order ¶ 21).

22. The Receivership Order includes a request by the Canadian Court for “aid and recognition of any court . . . having jurisdiction in Canada or in any foreign jurisdiction to give effect to [the Receivership Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership Order].” (Receivership Order ¶ 30).

23. The Receiver shall continue to operate the Debtor’s business, including collection of all outstanding receivables and preservation of estate assets, for the benefit of the creditors pending sale of the assets or some other disposition of the Canadian Proceeding.

F. Sale and Investment Process and Surplus Asset Sale

24. With the approval of Canadian Western Bank, Fiera Private Debt Fund V LP, and Fiera Private Debt Fund VI LP² (collectively, the “Secured Lenders”), the Receiver developed and has proposed to conduct a sale and investment solicitation process for certain assets of the Wolverine Group, including substantially all of the assets of the Debtor (the “SISP”). The SISP was formally launched on January 4, 2024, with the commencement of certain marketing activities. Generally, the SISP contemplates five weeks for the submission of non-binding bids and an additional four weeks for a definitive purchase agreement to be obtained with an overall nine-week process contemplated. The Receiver anticipates selecting a winning bid and seeking approval of the transaction in late March/April 2024. The Receiver believes that such a timeline is sufficient to fully market the assets and/or operations of the Wolverine Group, including the Debtor.

25. In addition to the SISP, the Receiver has undertaken a process to sell surplus assets of the Debtor and other members of the Wolverine Group. Under the Receivership Order, the Receiver is authorized to sell, transfer, convey, lease or assign property out of the ordinary course of business without further approval in the Canadian Proceeding as long as the transaction individually does not exceed \$250,000 and, in the aggregate, the consideration of all such transactions does not exceed \$1.5 million. In addition to these guidelines, the Receiver, with approval of the Secured Lenders, is seeking authority in the Canadian Proceeding to market and sell surplus assets, including Debtor assets, if the offer received is in excess of a minimum price based on an estimate of orderly liquidation value. The combination of approaches will maximize value for the Debtor and Wolverine Group’s stakeholders.

² The Fiera Funds are not creditors of the Debtor, but are creditors of other members of the Wolverine Group.

V. **BASIS FOR RECOGNITION UNDER BANKRUPTCY CODE**

26. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts and to protect and maximize the value of a debtor's assets. Consistent with these principles, the Receiver, as proposed foreign representative, commenced this ancillary proceeding for the Debtor under chapter 15 of the Bankruptcy Code to obtain recognition of the Canadian Proceeding, specifically including the Receivership Order, and certain relief consistent with Canadian law and protections afforded by the Bankruptcy Code. The Receiver believes that this chapter 15 case will complement the Debtor's primary proceeding in Canada to ensure the effective and economic administration of the Debtor's estates and prevent parties from taking action in the United States that would jeopardize these efforts.

A. **The Debtor is Eligible for Chapter 15 Relief**

27. The Debtor is eligible to be a debtor in a chapter 15 proceeding. Bankruptcy Code section 109(a) provides that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." 11 U.S.C. § 109(a). Bankruptcy Code section 103(a)(1) makes section 109 applicable in chapter 15 cases, and courts have applied Bankruptcy Code section 109(a) to determine chapter 15 eligibility. 11 U.S.C. § 103(a)(1); *see, e.g., Drawbridge Special Opportunities Fund LP v. Barnett (In re Barnett)*, 737 F.3d 238, 247 (2d Cir. 2013).

28. The Debtor satisfies Bankruptcy Code section 109(a) because it has assets throughout the United States, including in Texas, Wyoming, North Dakota, and Pennsylvania. In addition, the Debtor has offices in Minot, North Dakota.

29. Accordingly, the Debtor's assets throughout the U.S. provide the basis for chapter 15 eligibility by satisfying the requirements under Bankruptcy Code section 109(a).

B. Canadian Proceeding Qualifies for Recognition Under Chapter 15

30. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter an order recognizing a foreign proceeding as a foreign main (or nonmain) proceeding if (1) such foreign proceeding is a foreign main (or nonmain) proceeding within the meaning of section 1502 of the Bankruptcy Code; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a). As explained in more detail below, the Canadian Proceeding, the Foreign Representative, and the Petition satisfy each of the foregoing requirements.

(1) **Canadian Proceeding is a Pending Foreign Main or, in the alternative, Nonmain Proceeding**

a. Canadian Proceeding is a Foreign Proceeding

31. Section 101(23) of the Bankruptcy Code defines “foreign proceeding” as:

A collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

32. The Canadian Proceeding satisfies the definition of “foreign proceeding.” Here, the affairs of the Debtor are “under a law relating to insolvency” through the BIA, and “subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation” through the appointment of the court-appointed Receiver and through the SISP and surplus asset sale program.

33. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.³ The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

34. The BIA also authorizes the appointment of a court-appointed receiver upon a secured creditor's application. BIA at § 243(1). Such court-appointed receivers are given a mandate and specific powers as set out in the order appointing the receiver. These duties typically include: (a) taking possession and control of the property and assets of the debtor; (b) marketing and selling such property and assets in a commercially reasonable manner (whether as a going concern, en-bloc, or otherwise) and under the supervision and approval of the appointing court; and (c) distributing the proceeds of such sales to the stakeholders in accordance with the legal entitlement. The appointing court has broad discretion to authorize the receiver to "take any other action that the court considers advisable." *Id.* at § 243(1)(c).

35. Under the BIA, a court-appointed receiver is a "national" receiver, with the ability to administer assets in each of Canada's ten (10) provinces and three (3) territories, typically without further order of provincial courts. The BIA and its related legislation the CCAA are federal legislation. Provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters, similar to the interplay between state and federal law in the United States. Nonetheless, the BIA provides a statutory framework for a court-appointed receiver to carry out its mandate on a national basis without reliance on the various provincial statutes or courts for its authority.

³ The second federal legislation in Canada concerning insolvencies is the *Companies' Creditors Arrangement Act* ("CCAA"), which affords financially troubled corporations the opportunity to restructure their financial affairs through a "Plan of Arrangement." *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Can.). The CCAA process is akin to chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure operations rather than liquidate. See *In re Fracmaster, Ltd.*, 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).

36. United States courts have historically recognized cases filed under Canada’s federal bankruptcy and insolvency statutes. *See, e.g., Tradewell, Inc. v. American Sensors Elecs., Inc.*, No. 96 CIV. 2474(DAB), 1997 WL 423075, at *1, n. 1 (S.D.N.Y. July 29, 1997) (noting that the “CCAA is a broad statute, the purpose of which is to provide insolvent debtor with the opportunity to restructure their financial affairs with their creditors.”) (internal quotations omitted). Moreover, since the passage of chapter 15, cases filed under Canada’s insolvency schemes have consistently been recognized as “foreign proceedings.” *See In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Technicolor S.A.*, No. 20-33113, ECF No. 59 (Bankr. S.D. Tex. July 31, 2020); *In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020); *In re Calmena Energy Servs. Inc.*, No 15-30786, ECF No. 17 (Bankr. S.D. Tex. March 5, 2015) (recognizing Canadian BIA receivership proceeding as foreign proceeding).

37. Accordingly, the Canadian Proceeding is a “foreign proceeding.”

b. Canadian Proceeding is a Foreign Main Proceeding

38. A foreign proceeding shall be recognized as a “foreign main proceeding” if it is pending in the country where the *center of main interest* (“COMI”) exists. 11 U.S.C. § 1517(b). Courts have developed five non-exhaustive factors in the determining a debtor’s COMI: (1) the location of those who actually manage the debtor; (2) the location of the debtor’s headquarters; (3) the location of the debtor’s primary assets; (4) the location of the majority of the debtor’s creditors or the majority of creditors affected by the case; and (5) the jurisdiction whose law would apply to most disputes. *See Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1023 (5th Cir. 2010) (citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007)).

39. The first factor is commonly referred to as the “nerve center” or “principal place of business” test. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80–81 (2010) (nerve center is where the corporation’s high level officers direct, control, and coordinate the corporation’s activities).

40. Canada is the Debtor’s nerve center because the Debtor’s management resides in Canada and, currently, the Debtor is controlled by the Receiver (located in Canada). *In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169, 222 (Bankr. S.D.N.Y. 2017) (activities of foreign liquidators and administrators can be relevant to a COMI analysis); *see also In re Betcorp Ltd.*, 400 B.R. 266, 292 (Bankr. D. Nev. 2009) (in making COMI determination, the location of those that manage the debtor – the liquidators that had displaced management – found to be an important factor); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (“[T]he court may consider the location of the debtor’s ‘nerve center,’ including from where the debtor’s activities are directed and controlled, in determining a debtor’s COMI.”). As set forth in the Receivership Order, the Receiver is authorized and empowered “to manage, operate and carry on the business of the [Debtor].” (Receivership Order ¶ 3(c)). The Receiver submits that the first factor establishes Canada as the Debtor’s COMI.

41. The remaining factors also, on balance, support a finding that Canada is the Debtor’s COMI. The Debtor’s secured debt obligations—representing the vast majority of the Debtor’s outstanding obligations—are owed to Canadian Western Bank, guaranteed by Canadian guarantors, and are governed by Canadian law. The Debtor’s parent and each other member of the Wolverine Group are Canadian companies. Moreover, a large portion of the assets of the Debtor is located in Alberta, Canada.

42. Accordingly, the Receiver respectfully contends that the facts support a finding that the Canadian Proceeding is a foreign main proceeding with respect to the Debtor. *See In re Ernst*

& *Young, Inc.*, 383 B.R. 773, 781 (Bankr. D. Colo. 2008) (finding COMI in Canada notwithstanding the fact that two standards – the location of the debtor’s creditors and applicable law – yielded inconclusive results); *In re Gandi Innovations Holdings, LLC, et. al.*, 2009 WL 2916908, at *2 (Bankr. W.D. Tex. 2009) (finding COMI for Texas incorporated entity was in Canada because “nerve center” for Canadian debtor group was in Canada).

c. Alternatively, Canadian Proceeding is a Foreign Nonmain Proceeding

43. In the alternative, if this Court concludes that the Canadian Proceeding is not a foreign main proceeding, the Canadian Proceeding should be recognized as a foreign nonmain proceeding pursuant to section 1502(5) of the Bankruptcy Code.

44. A “foreign nonmain proceeding” is defined as “a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment.” *See* 11 U.S.C. § 1502(5); *see also* 11 U.S.C. § 1517(b)(2) (providing that an order of recognition as a “foreign nonmain proceeding” shall be entered “if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending”). An establishment is “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(2). “Nontransitory economic activity” is not defined in the Bankruptcy Code, but has been referred to as ‘a local place of business.’” *See In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y 2016) (holding that in order to have an establishment in a country a debtor must “conduct business in that country”); *see also In re Ran*, 607 F.3d 1017, 1027 (5th Cir. 2010) (holding that the definition of establishment requires “a place from which economic activities are exercised on the market (i.e. externally), whether the said activities are commercial, industrial or professional”); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 131 (Bankr. S.D.N.Y 2007) (holding that the

requirements of a “place of operations” from which “economic activity” is conducted require a seat for local business activity that has a local effect on the markets).

45. When it is apparent that an entity conducts operations in the country where a foreign proceeding is pending, courts will recognize the proceeding as a foreign nonmain proceeding if foreign main proceeding recognition is denied. *See, e.g., In re SPhinX*, 351 B.R. at 122.

46. Based upon the facts set forth above, including that the Receiver and Debtor management and corporate functions are in Canada, the Debtor has an undeniable “establishment” in Canada, and, therefore, the Receiver submits that recognition as a foreign nonmain proceeding is, at least, warranted.

(2) **Receiver is a “Foreign Representative”**

47. Section 1517 of the Bankruptcy Code requires that a qualifying “foreign representative” apply for recognition of the foreign proceeding. Section 101(24) of the Bankruptcy Code defines “foreign representative” as follows:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

48. The Receiver may serve as the “foreign representative” because it constitutes a “person or body.” “Person” is defined under section 101(41) of the Bankruptcy Code to include an individual, partnership or corporation. 11 U.S.C. § 101(41). Because the Receiver is an incorporated entity – a Canadian corporation – it thus qualifies as a “person” and can accordingly serve as a “foreign representative.” The Receiver has been specifically authorized in the Canadian Proceeding to act as the Debtor’s foreign representative. (Receivership Order ¶ 31). Additionally, the Receivership Order specifically states, “[t]he Receiver shall be at liberty and is hereby

authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order” (Receivership Order ¶ 31).

49. Therefore, the Receiver is a foreign representative and the Court may presume as such. *See* 11 U.S.C. § 1516(b). Additionally, courts have previously considered a receiver appointed pursuant to section 243(1) of the BIA to be a duly authorized “foreign representative.” *See, e.g., In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Baronet U.S.A. Inc.*, No. 07-13821, ECF No. 15 (Bankr. S.D.N.Y. Jan. 1, 2008).

(3) **The Receivership Order Satisfies Section 1515**

50. A petition for recognition shall be accompanied by any of the following:

- (1) A certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (2) A certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
- (3) In the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

51. In compliance with section 1515(b) of the Bankruptcy Code, a true and correct copy of the Receivership Order from the Canadian Proceeding, which may be presumed authentic, is appended to and filed with the Petition. 11 U.S.C. § 1516(b).

52. For these reasons, (a) the Canadian Proceeding is a foreign main or, in the alternative, nonmain proceeding; (b) the Receiver is a foreign representative; and (c) the Petition meets the requirements of section 1515 of the Bankruptcy Code. Accordingly, the requirements for recognition of the Canadian Proceeding are satisfied.

VI. BASIS FOR RELIEF UPON RECOGNITION

53. To support the Receiver's efforts to efficiently maximize value for creditors through the SISP and surplus assets sales, the Receiver requests an order confirming the automatic relief granted upon recognition of a foreign proceeding and additional, discretionary relief under section 1521 of the Bankruptcy Code.

A. Automatic Relief Afforded in a Foreign Main Proceeding

54. The Bankruptcy Code provides as a matter of right, upon recognition of a foreign proceeding as a "foreign main proceeding" the following:

- (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
- (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- (3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- (4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

11 U.S.C. § 1520(a).

55. Accordingly, pursuant to section 1520(a) of the Bankruptcy Code, the Receiver seeks entry of an order confirming applications of the delineated provisions of the Bankruptcy Code, including but not limited to the automatic stay provision of Bankruptcy Code at section 362.

B. Automatic Relief Afforded Whether or Not a Foreign Proceeding is Main

56. Certain additional relief is automatic upon recognition of a foreign proceeding, whether main or nonmain. Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party. 11 U.S.C. § 1524. Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this

title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724 (a) of the Bankruptcy Code. 11 U.S.C. § 1523(a). Accordingly, for reasons set forth herein, the Receiver seeks relief to the fullest extent available pursuant to sections 1523(a) and 1524 of the Bankruptcy Code.

C. Discretionary Relief Whether or Not a Foreign Proceeding is Main

57. Certain discretionary relief is also available upon recognition of a foreign proceeding under section 1521 of the Bankruptcy Code. The court may grant relief under section 1521 of the Bankruptcy Code “only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). The Receiver contends that the discretionary relief requested, as described below, is necessary (to the extent not already granted by section 1520(a) of the Bankruptcy Code) for the benefit and protection of the Debtor, creditors, and parties-in-interest.

58. “Any appropriate” discretionary relief is available upon recognition of a foreign proceeding, whether or not a foreign proceeding is main. 11 U.S.C. § 1521(a) (“Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief”). In granting relief under section 1521 of the Bankruptcy Code to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding. 11 U.S.C. § 1521(c). That relief includes:

- (1) Staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) Staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);

- (3) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a).

59. In addition, under section 1521(b) of the Bankruptcy Code, upon recognition of a foreign proceeding, whether main or nonmain, the court may entrust the distribution of all or part of the Debtor's assets located in the United States to the Foreign Representative, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected. The Receiver seeks all relief available pursuant to section 1521(a) of the Bankruptcy Code in order to carry out its responsibilities described in the Receivership Order.

D. To the Extent Applicable, the Receiver's Requests Qualify for Injunctive Relief

60. Pursuant to section 1521(e) of the Bankruptcy Code, for relief granted pursuant to Bankruptcy Code sections 1521(a)(1) (concerning staying of proceedings); (a)(2) (concerning staying execution against the debtor's assets); (a)(3) (concerning suspending the right to transfer, encumber or otherwise dispose of any assets); and 1521(a)(6) (concerning extending relief granted under section 1519(a)), the "standards, procedures, and limitations applicable to an injunction shall apply."

61. As an initial matter, the Receiver contends that the injunctive standards need not be satisfied because equivalent relief should be granted as a matter of right pursuant to section 1520(a) of the Bankruptcy Code. However, to the extent relevant, the standards are satisfied.

62. The factors for injunctive relief as stated in *Vitro, S.A.B. de C.V. v. ACP Master, Ltd. et al. (In re Vitro S.A.B. de C.V.)*, 455 B. R. 571, 580 (Bankr. N.D. Tex. 2011) are discussed below.

(1) **A substantial likelihood of success on the merits**

63. In the event the Canadian Proceeding is recognized as a foreign nonmain proceeding, the Receiver also submits that there is a substantial likelihood that the Court will determine that the relief requested in the Proposed Order is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Debtor or the interests of the Debtor's creditors pursuant to section 1521(a) of the Bankruptcy Code.

64. Discretionary relief under section 1521 of the Bankruptcy Code is routinely granted upon recognition of a foreign proceeding. For instance, courts commonly approve stays,⁴ approve debtor-in-possession financing,⁵ and apply section 365 of the Bankruptcy Code.⁶ Furthermore, a grant of discretionary relief under section 1521 of the Bankruptcy Code would promote uniformity in the administration and disposition of the Debtor's assets and would be consistent with the policies underlying the Bankruptcy Code. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d

⁴ See, e.g., *In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Technicolor S.A.*, No. 20-33113, ECF No. 59 (Bankr. S.D. Tex. July 31, 2020); *In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020). See also *In re Calmena Energy Svcs. Inc.*, No. 15-30786 (Bankr. S.D. Tex. Mar. 5, 2015), ECF No. 17.

⁵ See, e.g., *In re Essar Steel Algoma Inc.*, No. 15-12271 (Bankr. D. Del. Dec. 2, 2015), ECF No. 100; *In re Crystallex Int'l Corp.*, No. 11-14074 (Bankr. D. Del. Apr. 26, 2012), ECF No. 111; *In re Bilrite Rubber (1984) Inc.*, No. 09-31423 (Bankr. N.D. Ohio Apr. 2, 2009), ECF No. 58; *In re Rock Well Petroleum Inc.*, No. 08-20802 (Bankr. D. Wy. Feb. 9, 2009), ECF No. 70.

⁶ See, e.g., *Essar Steel Algoma*, No. 15-12271 (Bankr. D. Del. Dec. 2, 2015), ECF No. 100; *In re Newsat Ltd.*, No. 15-10810 (Bankr. D. Del. May 29, 2015), ECF No. 113; *In re Qimonda AG*, No. 09-14766 (Bankr. E.D. Va. Nov. 19, 2009), ECF No. 180.

992, 999 (5th Cir. 1985) (stating that “promoting uniformity in bankruptcy administration” is a goal of bankruptcy adjudication, in the context of a motion to withdraw the reference); *see also In re Vitro S.A.*, 701 F.3d 1031, 1044 (5th Cir. 2012) (stating that “one of Chapter 15’s goals [is] the furtherance of cooperation between domestic and foreign courts in cross-border insolvency cases.”). Accordingly, the Receiver submits that the requested discretionary relief under section 1521 of the Bankruptcy Code has a substantial likelihood of being granted. *See, e.g., In re Rede Energia S.A.*, 515 B.R. 69, 91-92 (Bankr. S.D.N.Y. 2014) (“Chapter 15 thus provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity.”).

(2) **A substantial threat of irreparable injury if protections are not ordered**

65. To the extent necessary to effectuate and complete its duties set forth in the Receivership Order, the Receiver continues to operate the Debtor and/or oversee operations of the Debtor. Without injunctive relief recognizing the Receiver’s authority in the United States per the Receivership Order, including the staying of potential actions, the Receiver may be frustrated from fully performing its duties, and the value of the Debtor’s assets could be jeopardized (*i.e.*, general unsecured creditors may elevate their claims in contravention of applicable Canadian (and corollary U.S.) law). *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (“It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury.”); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”).

66. To permit the Receiver to fulfill its obligations to the Debtor’s estate, the Receivership Order provides for substantially similar powers and protections pursuant to Canadian law as those afforded to a chapter 7 trustee under the Bankruptcy Code. Among others, the stay

of all collection activities akin to Bankruptcy Code section 362, and the grant of specific authority for the Receiver to seek international recognition of the Receivership Order provide the Receiver with vital powers to maximize value for all rightful creditors.

67. Without recognition and enforcement of the Receivership Order to the fullest extent permitted by chapter 15 of the Bankruptcy Code, the Receiver will be unable to fully discharge its duties to all creditors.

(3) **The threatened injury to the movant outweighs any damage the injunction might cause to the opponent**

68. Any threatened injury to the Debtor outweighs any damage the injunction might cause to opponents. The requested Bankruptcy Code section 1521 relief, if granted, would benefit the Debtor's creditors, as a whole, by ensuring an orderly liquidation and distribution of assets by and through the Canadian Proceeding, including the contemplated sales. *See, e.g., In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y. 2007), Dkt. No. 5 (stating that failing to issue a restraining order against creditors could, *inter alia*, "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors"). Moreover, the Debtor's creditors and interested parties will receive proper notice and have the ability to participate in the Canadian Proceeding—or, as applicable, this proceeding—to protect any rights they may have with respect to the Debtor.

(4) **Section 1521 relief will not disserve the public interest**

71. Finally, the requested relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it sets to facilitate a cross-border process that will provide a benefit to all rightful creditors of the Debtor. *See, e.g., Cunard S.S. Co. Ltd. v. Salen Reefer Svcs. A.B.*, 773 F.2d 452, 458 (2d Cir. 1985) ("The granting of comity to a foreign

bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.”).

72. For the above stated reasons, the relief sought is necessary and appropriate, in the interest of the public and international comity, consistent with United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief. In the event that the Court finds that the Canadian Proceeding is a foreign nonmain proceedings, the relief requested herein is still appropriate because the relief may be, and should be, granted in the discretion of the Court.⁷

73. Accordingly, to the extent necessary, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtor’s estates consistent with the Receivership Order. Without such relief, the Debtor will be exposed to the risk and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order, in contravention of the Receiver fulfilling its duties under applicable Canadian law, and thus threatens the Receiver’s efforts to maximize value for the benefit of creditors.

E. Additional Relief Under Section 1521(a)(7) is Appropriate

69. Section 1521(a)(7) provides that, with certain exceptions, the Court may grant any additional relief that may be available to a trustee. 11 U.S.C. § 1521(a)(7). This provision does not require the application of injunction standards. 11 U.S.C. § 1521(e). The Debtors are parties to numerous executory contracts and unexpired leases, some of which may contain bankruptcy or insolvency ipso facto clauses. If counterparties to these agreements can unilaterally terminate or

⁷ Courts have found that it is not required that an adversary proceeding be filed and served on all parties in interest in order to obtain injunctive relief available under chapter 15. *See, e.g., In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006) (adversary proceeding not required for chapter 15 injunctive relief).

modify those agreements, the Debtor's ability to administer this proceeding could be severely jeopardized. Pursuant to § 1521(a)(7), the Receiver requests that this Court order that subsection 365(e) of the Bankruptcy Code shall apply with respect to the termination or modification of any executory contracts or unexpired leases of the Debtors. Such relief is necessary to effectuate the purpose of Chapter 15 and to protect the assets of the Debtors or the interests of the creditors. See 11 U.S.C. § 1521(a).

70. In addition, the Debtor requires the continued use of the Debtor Account to facilitate the Canadian Proceedings. Accordingly, the Debtor requests an order authorizing Starion Bank to continue to deliver service and administer the Debtor Account in the ordinary course at the direction of the Receiver.

VII. WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 65(C)

74. Bankruptcy Rule 7065 expressly provides that "a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c)." To the extent rule 65 of the Federal Rules of Civil Procedure applies, the Receiver believes that the security requirements imposed by rule 65(c) are unwarranted under the circumstances and requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

VIII. CONCLUSION

75. For the reasons stated herein, and as set forth in the Supporting Declarations, the Receiver respectfully requests that this Court recognize the Canadian Proceeding as a foreign main proceeding, and grant the relief requested herein, or, in the alternative, requests recognition as a foreign nonmain proceeding, and that the Court grant the relief requested herein.

Dated: February 20, 2024.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

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***Counsel for FTI Consulting Canada
Inc., solely in its capacity as court-
appointed receiver and manager of the
Debtor***

VERIFICATION OF PETITION

I, Dustin Olver, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:


I am the authorized foreign representative for FTI Consulting Canada Inc., the court-appointed receiver and manager (the "Receiver") for the Debtor. As such, I have full authority to verify the foregoing Petition on behalf of the Receiver for the Debtor.

I have read the foregoing Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 20, 2024.

FTI Consulting Canada, Inc., solely in its capacity as court-appointed receiver and manager of the Debtor

By: 
Dustin Olver
Senior Managing Director

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 15 Case
	§	
FLO-BACK EQUIPMENT INC.,	§	
	§	Case No. 24-90059 (MI)
Debtor in a Foreign Proceeding.	§	
	§	

ORDER GRANTING PETITION FOR (I) RECOGNITION OF A FOREIGN PROCEEDING, (II) RECOGNITION OF THE FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Proceeding, (II) Recognition of the Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (together with the form petition filed concurrently therewith, the “Petition”),¹ filed by the Foreign Representative as a “foreign representative” of the above-captioned debtor (the “Debtor”); and upon the hearing on the Petition and this Court’s review and consideration of the Petition, and the Supporting Declarations, IT IS HEREBY FOUND AND DETERMINED THAT:²

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. Venue is proper before this Court pursuant to 28 U.S.C. § 1410. This Court may enter a final order consistent with Article III of the United States Constitution.
- C. Good, sufficient, appropriate and timely notice of the filing of the Petition and the hearing on the Petition has been given by the Foreign Representative, pursuant to Bankruptcy Rule

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition.

² The findings and conclusions set forth herein and in the record of the hearing on the Petition constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such.

2002(q), via email and/or first class mail to: (a) the Office of the United States Trustee; (b) the United States Attorney for the Southern District of Texas; (c) all persons or bodies authorized to administer the Canadian Proceeding; (d) all parties to litigation pending in the United States in which the Debtor is a party as of the date hereof, if any; (e) all known vendors of the Debtor; (f) all known equity holders of the Debtor; (g) all parties against whom the Debtor is seeking relief pursuant to Bankruptcy Code section 1519; and (h) such other parties in interest that have requested notice pursuant to Bankruptcy Rule 2002.

D. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

E. This chapter 15 case was properly commenced pursuant to Bankruptcy Code sections 1504, 1509 and 1515.

F. The Foreign Representative is the duly appointed “foreign representative” of the Debtor as such term is defined in Bankruptcy Code section 101(24). The Foreign Representative has satisfied the requirements of Bankruptcy Code section 1515 and Bankruptcy Rule 1007(a)(4).

G. The Canadian Proceeding is entitled to recognition by this Court pursuant to Bankruptcy Code section 1517.

H. The Canadian Proceeding is pending in Canada, where the Debtor has its “center of its main interests” as referred to in Bankruptcy Code section 1517(b)(1). Accordingly, the Canadian Proceeding is a “foreign main proceeding” pursuant to Bankruptcy Code section 1502(4) and is entitled to recognition as a foreign main proceeding pursuant to Bankruptcy Code section 1517(b)(1).

I. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtor and its interests.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petition is granted.

2. The Canadian Proceeding is recognized as a foreign main proceeding pursuant to Bankruptcy Code section 1517, and all the effects of recognition as set forth in Bankruptcy Code section 1520 shall apply.

3. Upon entry of this order (this "Order"), the Canadian Proceeding and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States.

1. The Foreign Representative is granted all of the relief afforded under section 1520 of the Bankruptcy Code, including the following:

- A. sections 361 and 362 apply with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States;
- B. sections 363, 549, and 552 apply to a transfer of an interest of the Debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- C. unless the court orders otherwise, the Foreign Representative, as foreign representative, may operate the Debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- D. section 552 applies to property of the Debtor that is within the territorial jurisdiction of the United States.

2. Pursuant to section 1524 of the Bankruptcy Code, the Foreign Representative may intervene in any proceeding in a State or Federal court in the United States in which the Debtor is a party.

3. Pursuant to section 1523(a) of the Bankruptcy Code, the Foreign Representative has standing in a case concerning the Debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a) of the Bankruptcy Code.

4. The following additional relief is granted pursuant to section 1521 of the Bankruptcy Code:

- A. The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtor, including any action or proceeding against FTI in its capacity as Foreign Representative, to the extent not stayed under section 1520(a) of the Bankruptcy Code, is hereby stayed;
- B. Execution against the assets of the Debtor to the extent not stayed under section 1520(a) of the Bankruptcy Code is hereby stayed;
- C. The administration or realization of all or part of the assets of the Debtor within the territorial jurisdiction of the United States is hereby entrusted to the Foreign Representative, and the terms of the Foreign Representativeship Order shall apply to the Debtor, its creditors, the Foreign Representative, and any other parties-in-interest, and the Foreign Representative is authorized to implement the Foreign Representativeship Order;
- D. The right of any person or entity, other than the Foreign Representative, to transfer or otherwise dispose of any assets of the Debtor to the extent not suspended under section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Foreign Representative or by Order of this Court;
- E. The banks and financial institutions with which the Debtor maintains bank accounts or on which checks are drawn or electronic payment requests made in payment of obligations are authorized and directed to continue to service and administer the Debtor's bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the date of this Order and drawn on the Debtor's bank accounts by respective holders and makers thereof and at the direction of the Foreign Representative or the Debtor, as the case may be;
- F. Section 365(e) of the Bankruptcy Code shall apply with respect to the Debtors' executory contracts and unexpired leases such that, notwithstanding any provision in any such contract or lease or under applicable law, no executory contract or unexpired lease with any of the Debtors may be terminated, cancelled, or modified (and any rights or obligations in such leases or contracts cannot be terminated or modified) solely because of a provision in any contract or lease of the kind described in sections 365(e)(1)(A), (B), or (C) of the Bankruptcy Code, and all contract and lease counterparties located within the United States shall be prohibited from taking any steps to terminate, modify, or cancel any contracts or leases with the Debtors arising from or relating in any way to any so-called "ipso facto" or similar clauses;

- G. The Foreign Representative may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor; and
- H. Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.

5. All prior relief granted in the *Order Granting Foreign Representative's Request for Provisional Relief Pursuant to 11 U.S.C. § 1519* [Dkt. No. _____] is hereby extended on a final basis, to the extent not inconsistent with the relief granted under this Order.

6. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 proceeding, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

4. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in these cases and is, therefore, waived.

5. The Foreign Representative is hereby established as the representative of the Debtor with full authority to administer the Debtor's assets and affairs in the United States.

6. The Foreign Representative and the Debtor and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the Bankruptcy Local Bankruptcy Rules of this Court.

7. No action taken by the Foreign Representative or the Debtor or their respective successors, agents, representatives, advisors or counsel in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Canadian Proceeding,

this Order, this chapter 15 case or any adversary proceeding herein, or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded the Foreign Representative, including, without limitation, pursuant to Bankruptcy Code section 1510.

8. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through this chapter 15 case, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

11. This Order applies to all parties in interest in this chapter 15 case and all of their agents, employees and representatives, and all those who act in concert with them who receive notice of this Order.

Signed: _____

UNITED STATES BANKRUPTCY JUDGE