

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

<p>In re:</p> <p>FLO-BACK EQUIPMENT INC.,</p> <p style="padding-left: 40px;">Debtor in a Foreign Proceeding.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 15 Case</p> <p>Case No. 24-90059 (MI)</p>
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**DECLARATION OF FOREIGN COUNSEL
UNDER PENALTY OF PERJURY**

I, Kyle Kashuba, declare as follows:

1. I am over the age of 18, and I am authorized to submit this declaration (the “Declaration”) on behalf of my law firm and its client, the Receiver (as defined below).

2. I am a Partner at Torys LLP (“Torys”). My office is located at 525 - 8th Avenue S.W., 46th Floor, Eighth Avenue Place East, Calgary, AB T2P 1G1 Canada. I graduated with an L.L.B. from the University of Alberta in 2005 and was called to the bar of Alberta in 2006.

3. Torys represents 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”), 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”).

I serve as lead counsel in the representation of the Receiver in the Canadian Proceeding.

4. I submit this Declaration in support of the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”).¹

5. On December 8, 2023, the Honorable Justice J.T. Neilson for the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA.²

6. 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 all property of the Debtor, which is subject to the Canadian Proceeding. (Receivership Order ¶ 3). The Receivership Order grants the Receiver access to 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 respective estate. (Receivership Order ¶¶ 7-11).

7. 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.

¹ Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Verified Petition.

² A true and correct copy of the Receivership Order is attached as Exhibit A 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.

8. 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).

9. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that “[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*” (the “Receiver’s Protections”). (Receivership Order ¶ 14).³

10. 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).

11. In light of the above, I have been asked by the Receiver to opine (pursuant to my knowledge of relevant Canadian law only) on whether the Canadian Proceeding, specifically including the Receivership Order, satisfies the definition of “foreign proceeding” set forth in the Bankruptcy Code, which defines a “foreign proceeding” as:

³ Section 14.06(1.2) of the BIA provides:

Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor’s employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and
(b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

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).

12. In the Canadian Proceeding, I believe that 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 by the Canadian Court.

13. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.⁴ The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

14. 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. As is typical, pursuant to the Receivership Order granted in this case, these duties 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

⁴ 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).

broad discretion to authorize the receiver to “take any other action that the court considers advisable.” *Id.* § 243(1)(c).

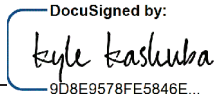
15. Under the BIA, a court-appointed receiver is a “national” receiver, with the ability to administer assets in each of Canada’s ten (10) provinces and three (3) territories, typically without further order of provincial courts. The BIA is federal legislation. Provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters. 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.

16. Accordingly, the Receivership Order, other pleadings entered of record in the Canadian Proceeding, and upon my review of section 101(23) of the Bankruptcy Code, it is my professional opinion based only on my knowledge of relevant Canadian law that the Canadian Proceeding satisfies the elements of a “foreign proceeding” as that term is defined in the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted this 20th day of February, 2024.

TORYS LLP

By:  _____
DocuSigned by:
Kyle Kashuba
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Kyle Kashuba