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ATTORNEYS FOR CANADIAN RECEIVER

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 WICHITA FALLS DIVISION**

In re:	§	
	§	Case No. 19-33868-15
EAGLE ENERGY INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		
In re:	§	
	§	Case No. 19-33869-15
EAGLE ENERGY TRUST	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
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In re:	§	
	§	Case No. 19-33870-15
EAGLE ENERGY HOLDINGS INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		
In re:	§	
	§	Case No. 19-70333-15
EAGLE HYDROCARBONS INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
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**EXPEDITED PETITION FOR RECOGNITION AS FOREIGN MAIN PROCEEDINGS,
OR ALTERNATIVELY AS FOREIGN NONMAIN PROCEEDINGS, PURSUANT TO
SECTIONS 1515 AND 1517 OF THE UNITED STATES
BANKRUPTCY CODE AND RELATED RELIEF**

FTI Consulting Canada Inc. (“**FTI**”) solely in its capacity as court-appointed receiver (the “**Receiver**”) of (1) Eagle Energy Inc. (“**Eagle Energy**”), (2) Eagle Energy Trust (“**Eagle Trust**”), (3) Eagle Energy Holdings Inc. (“**Eagle Holdings**”), and (4) Eagle Hydrocarbons Inc. (“**Eagle US**”) (collectively, “**Eagle**” or “**Debtors**”) based upon the Receivership Order dated November 19, 2019, entered by the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada, Court File No. 1901-16293 (the “**Canadian Court**” and the “**Canadian Proceedings**”), and as authorized foreign representative of the above-captioned Debtors, by and through its undersigned counsel, respectfully files the official form petition and this petition (together, the “**Petition**”) pursuant to section 1515 of title 11 of the United States Code (the “**Bankruptcy Code**”) for entry of an order recognizing the Canadian Proceedings as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code, thereby granting related relief pursuant to section 1520 of the Bankruptcy Code and additional relief pursuant to section 1521 of the Bankruptcy Code. In the alternative, should the Court not recognize the Canadian Proceedings as foreign main proceedings (either in whole or in part), the Receiver seeks recognition of the Canadian Proceedings as foreign nonmain proceedings, as defined in section 1502(5) of the Bankruptcy Code, and seeks additional relief available under section 1521 of the Bankruptcy Code.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 11 U.S.C. § 1501 of the Bankruptcy Code. Venue is proper in this district pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

2. This Court has jurisdiction over these chapter 15 cases (the “**Chapter 15 Cases**”). Each of the Debtors is eligible to be a debtor under 11 U.S.C. § 109(a) because each Debtor “resides or has a domicile, a place of business, or property in the United States....” 11 U.S.C. §109(a). Among other property located in the United States, each of the Debtors is party to, either as a borrower or a guarantor, the Loan and Security Agreement (as hereinafter defined), which is governed by Texas law and has a Texas forum selection clause. EX R-8-000110; EX R-8-000111; EX R-8-000152; EX R-8-000162; EX R-8-000180; EX R-8-000187; EX R-8-000196; EX R-8-000203; *see also In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017), appeal dismissed, 585 B.R. 31 (S.D.N.Y. 2018), *aff’d*, 764 Fed. Appx. 46 (2d Cir. 2019) (holding that the presence of a New York choice of law and forum selection clauses in a debt indenture satisfies the 109(a) “property in the United States” eligibility requirement); *see In re U.S. Steel Canada Inc.*, Case No. 7-11519 (MG), 571 B.R. 600, 609-11, 2017 WL 3225914 at *7-8 (Bankr. S.D.N.Y. July 31, 2017) (same).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1410. A Chapter 15 case may be commenced in the district court of the United States for the district in which the debtor has its principal place of business or principal assets in the United States. 28 U.S.C. § 1410(1). With respect to Eagle US, its principal assets are in Hardeman and Palo Pinto Counties. *See* EX R-6-000001-2. A Chapter 15 case may also be commenced in the district court of the United States where the venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative. 28 U.S.C. §1410(3). The Canadian Debtors have few assets in the US, so it is consistent with the interest of justice and convenience that the Canadian Debtors’ cases be filed in the same venue as the US subsidiary.

II. INTRODUCTION

4. The Debtors are a group of primarily Canadian-based companies in the oil and gas business. The Debtors' structure consists of (1) Eagle Energy, a Canadian publicly traded parent company that also is the operating company for the production and reserves in Canada, (2) Eagle Trust, a Canadian Trust wholly owned by Eagle Energy, which does not have operations, but serves as a holding company for Eagle Holdings, (3) Eagle Holdings, a Canadian company wholly owned by Eagle Trust, which does not have operations, but serves as a holding company for Eagle US and (4) Eagle US, which is wholly owned by Eagle Holdings, and which is the operating company for the production and reserves in the US.

5. Eagle Energy and Eagle US are borrowers, and Eagle Trust and Eagle Holdings are guarantors, under an indebtedness to a lender group in the amount of approximately US \$31 million, with security interests and mortgages claimed on essentially all assets of the Debtors. That facility has been, and continues to be, in default. In addition, the Directors' and Officers' liability insurance policy is set to expire on November 23, 2019, and it will not be renewed. As a result of this expiration of coverage, all of the Debtors' directors have, as of the date hereof, resigned their respective positions.

6. On November 19, 2019, the Debtors were placed into a receivership proceeding under section 243 of the Canadian Bankruptcy and Insolvency Act, RSC 1985 c B-3 (the "BIA") and section 13(2) of the Judicature Act, RSA 2000 c J-2.

7. As such, these are foreign proceedings within the meaning of 11 U.S.C. § 101(23). Petitioner is the Canadian court-appointed receiver, who is a foreign representative within the meaning of 11 U.S.C. § 101(24). As petitioner, the Receiver seeks recognition of the foreign proceedings as foreign main proceedings under 11 U.S.C. §§ 1515, 1517(b)(1) and 1520; alternatively, as foreign nonmain proceedings under 11 U.S.C. §§ 1502(5), 1517(b)(2), and 1521.

8. The Receiver also seeks certain injunctive relief pursuant to 11 U.S.C. §§ 1519 and 1521 to protect the Debtors and their assets and creditors.

9. At the hearing in the Canadian Proceedings, it was announced that the Debtors’ directors would resign as soon as the Receivership Order was entered. The director resignations have now occurred, leaving the Receiver with sole management powers over the Debtors. EX R-7-000001-9. The Receiver intends to continue to operate the Debtors for a reasonable time period and ultimately sell the Debtors’ assets as a going concern. As such, the Receiver seeks the Chapter 15 relief requested herein.

III. EXPEDITED RELIEF REQUESTED

10. The Receiver seeks expedited relief in order to obtain legal authority and control over the Debtors’ assets located in the United States so as to avoid loss and to maximize the potential return to creditors. Furthermore, “[a] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time.” 11 U.S.C. § 1517(c).

IV. SUPPORT FOR THIS PETITION

11. The Receiver attaches the following Exhibits to this Petition.

Table 1:

Exhibit	Description	Comment
A	Form of Order Granting Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief	

12. The Receiver also requests that the Court take judicial notice of its files in this case. Further, the Receiver relies upon exhibits (referenced, but not attached) and testimony to be submitted at the hearing on this Petition.

V. BACKGROUND

A. The Structure of the Debtors

13. There are four entities that are chapter 15 debtors, three of which are Canadian entities, and one of which is either a direct or indirect subsidiary of the Canadian entities. *See* Exhibit R-4 (organizational chart). The Debtors are described below.

B. Canadian Entities

14. Eagle Energy, which is the ultimate direct or indirect parent entity of the other Debtors, is a public corporation with its common shares currently listed on the TSX Venture Exchange under the symbol “EGL.” EX R-3-000003 (McKee Affidavit ¶11). Eagle Energy was amalgamated under the laws of the Province of Alberta with its registered and head office located in Calgary, Alberta. Eagle Energy is the operator and 50% working interest participant in certain oil and gas assets in the Dixonville, Montney “C” oil pool in Northern Alberta. *Id.*

15. Eagle Energy is the trustee and sole unitholder of Eagle Trust, an unincorporated open-ended limited purpose trust formed under the laws of the Province of Alberta, which does not carry on business other than to own all of the shares of Eagle Holdings. EX R-3-000003 (McKee Affidavit ¶12).

16. Eagle Holdings is a corporation incorporated pursuant to the laws of the Province of Alberta with its registered and head office located in Calgary, Alberta. EX R-3-000004 (McKee Affidavit ¶13). Eagle Holdings is a direct wholly owned subsidiary of Eagle Trust. *Id.* Eagle Holdings does not carry on business other than to own all of the shares of Eagle US. *Id.*

C. US Subsidiary

17. Eagle US is a company incorporated pursuant to the laws of the State of Delaware, United States, with an office in Houston, Texas. EX R-3-000004 (McKee Affidavit ¶15). Eagle US is a wholly owned subsidiary of Eagle Holdings. *Id.*

D. Business Operations of the Debtors

18. The Debtors are engaged in the ownership and acquisition of stable, primarily oil producing properties with development and exploitation potential in Canada and the United States. EX R-3-000004 (McKee Affidavit ¶16). Eagle Energy's registered office is in Calgary, Alberta. *Id.*

E. Events Leading to the Commencement of the Canadian Proceedings

19. The Applicant for the Receivership Order is White Oak Global Advisors, LLC (“**White Oak**”). EX R-2-000001. White Oak is the administrative agent (in such capacity, the “**Agent**”) on behalf of a group of corporate entities, including White Oak Partners, LLC and White Oak Partners 2, LLC (collectively, and in such capacity, the “**Lenders**”) pursuant to that certain *Loan and Security Agreement* dated as of March 13, 2017 between Eagle Energy and Eagle US (collectively, the “**Borrowers**”), as borrowers, Eagle Trust and Eagle Holdings (collectively, the “**Guarantors**”), as guarantors, White Oak acting as Agent, and the Lenders, as lenders (the “**Original Loan and Security Agreement**”), as subsequently amended by a first amending agreement dated April 13, 2017, but effective as of March 31, 2017, a second amending agreement dated June 29, 2017, a third amending agreement dated September 29, 2017, a fourth amending agreement dated February 8, 2018, a fifth amending agreement dated March 20, 2018, a sixth amending agreement dated August 28, 2018, a seventh amending agreement dated March 18, 2019, and an eighth amending agreement dated May 13, 2019 (collectively the “**Loan and Security Agreement**”). EX R-3-000001-2 (McKee Affidavit ¶2). The Agent alleges that, as of November 15, 2019, the total indebtedness of the Borrowers to the Agent and the Lenders under the Term Loans is (a) US\$ 31,185,540.24, consisting of (i) a principal balance of approximately US\$ 30,686,145.95 under the Term Loans, (ii) accrued and unpaid interest (including interest at the Default Rate) of approximately US\$ 190,626.56 with

interest accruing thereafter at the default rate; and (iii) repayment premium US\$ 308,767.73 plus (b) all legal and other costs and expenses incurred by the Agent (both prior to and following the date of this Application) pursuant to the terms of the Loan and Security Agreement, (collectively, the “**Outstanding Indebtedness**”). EX R-3-000004-5 (McKee Affidavit ¶19). The Agent claims that the Outstanding Indebtedness is secured by essentially all property of the Debtors. EX R-3-000005-7 (McKee Affidavit).

F. The Canadian Proceedings

20. After multiple events of default by the Debtors under the Loan and Security Agreement, on November 19, 2019, White Oak filed an Originating Application (Appointment of Receiver) in the Canadian Proceedings seeking the appointment of FTI as receiver under section 243 of the BIA and section 13(2) of the Judicature Act, RSA 2000 c J-2. EX R-2-000001.

21. The applicable Canadian laws are discussed in the Declaration of Foreign Counsel to be submitted at the hearing. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.¹ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (Can.). The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

22. The BIA also authorizes a court to appoint a receiver upon a secured creditor’s application. *Id.* § 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: (1) taking

¹ The second federal legislation in Canada concerning bankruptcies and 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).

possession and control of the property and assets of the debtor; (2) 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 (3) 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.* § 243(1)(c).

23. A court-appointed receiver under the BIA is a “national” receiver, meaning that a receiver administers assets in each of Canadian’s ten provinces and three territories, typically without further order of provincial courts. The BIA and its related legislation (the Companies’ Creditors Arrangement Act) are federal legislation. But 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 rather than relying on the various provincial statutes or courts for its authority.

24. The Judicature Act authorizes the Court to appoint a receiver where it is “just and convenient” on any terms and conditions the Court determines are just. Generally, the Judicature Act codifies broad equitable powers of the Court which allows it to provide for certain remedies where equitable, including the appointment of a receiver. The powers and duties of a receiver appointed by the Court pursuant to section 13(2) of the Judicature Act is set out in the order appointing the receiver and may be tailored to the specific circumstances. Generally such powers and/or duties will be the same or similar to a receiver appointed under the BIA as noted above.

25. On November 19, 2019, the Canadian Court, Honorable Justice R.A. Neufeld, entered the Receivership Order (the “**Receivership Order**”) pursuant to section 243 of the BIA and section 13(2) of the Judicature Act, RSA 2000 c J-2. EX R-1-000001 (Receivership Order). 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.” EX R-1-000001 (Receivership Order ¶31). It empowers and authorizes the Receiver to take numerous steps involving the property of the entities subject to the Canadian Proceeding. EX R-1-000002-5 (Receivership Order ¶3). Likewise, the Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. EX R-1-000005-6 (Receivership Order ¶¶ 4-6). Additionally, the Receivership Order imposes a stay of proceedings against the Receiver, the Debtors, or the Debtors’ property similar to the protections available under 11 U.S.C. § 362(a). EX R-1-000006-8 (Receivership Order ¶¶ 7-11).

26. 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].” EX R-1-0000013 (Receivership Order ¶30).

VI. The Chapter 15 Cases

27. On November 20, 2019, the Receiver filed Official Form No. 401 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. § 1504, 1509(a) and 1515(a).

28. Pursuant to the Receivership Order, the Receiver is a foreign representative in a foreign proceeding, and hereby seeks relief under Chapter 15 of the Bankruptcy Code.

VII. RELIEF REQUESTED

29. The Receiver hereby respectfully requests that this Court enter an order pursuant to Sections 105, 1507, 1517, 1520 and 1521 of the Bankruptcy Code, substantially in the form of the proposed order attached hereto as Exhibit A (the “**Proposed Order**”), providing the following relief:

- Recognition of the Canadian Proceedings as a foreign main proceeding as defined in Section 1502(4) of the Bankruptcy Code;
- Granting the Receiver the relief afforded under Section 1520 of the Bankruptcy Code as is provided by right upon the recognition of the Canadian Proceedings as a foreign main proceeding;
- Granting further additional relief as authorized by Section 1521 of the Bankruptcy Code including, without limitation:
 - Staying the commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtors, including any action or proceeding against FTI in its capacity as Receiver of the Debtors, to the extent not stayed under Section 1520(a) of the Bankruptcy Code;
 - Staying execution against the assets of the Debtors to the extent not stayed under Section 1520(a) of the Bankruptcy Code;
 - Suspending the right to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code by any person or entity other than the Receiver unless authorized in writing by the Receiver or by Order of this Court;
 - Providing for 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 Debtors, and finding that such information is required in the Canadian Proceedings under the law of the United States; and
 - Entrusting the administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States to the Receiver;
- Otherwise granting comity to and giving full force and effect to the Canadian Court, the Canadian Proceedings, and the Receivership Order; and

- Awarding the Receiver such other and further relief as this Court deems just and appropriate.

30. The Receiver respectfully submits that the Canadian Proceedings should be recognized as a foreign main proceeding as defined in Section 1502(4) of the Bankruptcy Code. If, however, the Court determines the Canadian Proceedings are not foreign main proceedings (either in whole or in part), the Receiver seeks recognition of the Canadian Proceedings as a foreign nonmain proceeding, as defined in Section 1502(5) of the Bankruptcy Code, and requests that the Court grant the relief requested above under the Court's discretion pursuant to Section 1521 of the Bankruptcy Code.

VIII. BASIS FOR RELIEF REQUESTED

A. Statutory Authority

31. A Chapter 15 case is commenced when a foreign representative files a petition for recognition of a foreign proceeding under 11 U.S.C. § 1515; *In re Oversight & Control Comm'n of Avanzit, S.A.*, 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008). Pursuant to Bankruptcy Section 1515(b), the petition must be accompanied by certain documentary evidence which the court may presume to be authentic. 11 U.S.C. § 1516(b). The Court must grant the request for recognition if it finds:

- (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;
- (2) the foreign representative applying for recognition is a person or body; and
- (3) the petition meets the requirements of section 1515.

11 U.S.C. § 1517(a).

32. A decision or certificate from a foreign court indicating the foreign proceeding is a "foreign proceeding," as defined in section 101(23) of the Bankruptcy Code, is presumptively correct. 11 U.S.C. § 1516(a). Similarly, a decision or certificate from a foreign court indicating

that the foreign representative is a “foreign representative,” as defined in section 101(24), is presumptively correct. *Id.*

33. As stated above, (a) the Canadian Proceedings are foreign proceedings under the definition of 11 U.S.C. § 101(23), (b) the Receiver is a foreign representative under the definition of 11 U.S.C. § 101(24) and is a person under the definition of 11 U.S.C. § 101(41), and (c) the petition meets the requirements of Section 1515, namely, the evidence of the foreign proceedings and the foreign representative has been provided.² *See* EX R-1-000001 (Receivership Order). Accordingly, the requirements for recognition of the Canadian Proceedings as foreign proceedings are met.

B. Rule Requirements for Recognition of the Canadian Proceedings

34. A petition for recognition of a foreign proceeding under Chapter 15 of the Code shall state the country where the debtor has its center of main interests. FED. R. BANKR. P. 1004.2(a). The center of main interests for each of the Debtors is Alberta, Canada. This has been provided in the Debtors’ Official Form 401 Petitions.

35. The petition for recognition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending. FED. R. BANKR. P. 1004.2(a). The Debtors are debtors in the foreign proceedings described in the Receivership Order. This information has also been provided in the Debtors’ Official Form 401 Petitions.

36. A foreign representative filing a petition for recognition under chapter 15 shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. FED. R. BANKR. P. 1007(a)(4). Such a corporate ownership statement has been filed contemporaneously herewith.

² The term “person” includes individual, partnership, and corporation. 11 U.S.C. § 101(41).

37. A foreign representative filing a petition for recognition under chapter 15 shall file with the petition (unless the court orders otherwise), a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under §1519 of the Code. FED. R. BANKR. P. 1007(a)(4). A Rule 1007(a)(4) List has been filed contemporaneously herewith.

C. Requirements for a Petition for Recognition

38. A petition for recognition shall be accompanied by any one 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).

39. Accordingly, in compliance with 11 U.S.C. § 1515(b), attached to the Notice is the Receivership Order from the Canadian Proceedings, which may be presumed authentic. 11 U.S.C. § 1516(b).

D. The Canadian Proceedings are Pending “Foreign Proceedings”

40. “Foreign proceeding” is defined in the Bankruptcy Code 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).

41. The Canadian Proceedings fall squarely within the definition of “foreign proceeding.” Prior to the passage of Chapter 15, United States courts recognized cases filed under Canada’s federal bankruptcy and insolvency statutes, the BIA and the CCAA, to be “relating to insolvency.” *See Tradewell, Inc. v. American Sensors Electronics, 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 debtors with the opportunity to restructure their financial affairs with their creditors.’”). Moreover, since the passage of Chapter 15, cases filed under Canada’s insolvency schemes have consistently been recognized as “foreign proceedings.” *See, e.g., In re Calmena Energy Services Inc.*, No. 15-30786, ECF No. 17 (Bankr. S.D. Tex. March 5, 2015) (recognizing Canadian BIA receivership proceeding as foreign proceeding); *In re Poseidon Concepts Corp.*, No. 13–15893, ECF No. 60 (Bankr. D. Colo. May 15, 2013) (same); *In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012) (stating the Court had previously entered an Order recognizing the proceeding under the CCAA was a foreign main proceeding under chapter 15 of the Bankruptcy Code); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010) (“It is clear that the Canadian Proceedings should be recognized as a foreign main proceeding.”); *In re Gandi Innovations Holdings, LLC*, 09-51782-C, 2009 WL 2916908, at *1 (Bankr. W.D. Tex. June 5, 2009) (“[T]he CCAA Proceeding is a foreign proceeding entitled to recognition under Chapter 15 of the Code.”).³

³ For numerous other examples of U.S. courts recognizing Canadian insolvency proceedings a “foreign proceedings,” see *In re ATK Oilfield Transportation Inc.*, No. 16-70042, ECF No. 44 (Bankr. W.D. Tex. Apr.19, 2016); *In re GasFrac Energy Servs., Inc.*, No. 15-50161, ECF No. 46 (Bankr. W.D. Tex. Feb. 2, 2014); *In re Angiotech Pharm., Inc.*, No. 11-10269, ECF No. 83 (Bankr. D. Del. Feb. 22, 2011) *In re Canwest Global Communications Corp., et al.*, No. 09-15994, ECF No. 30 (Bankr. S.D.N.Y. Nov. 3, 2009); *In re SemCanada Crude Co.*, No. 09-12637, ECF No. 30 (Bankr. D. Del. Aug. 27, 2009); *In re Quebecor World Inc.*, No. 08–13814,

E. The Receiver Is a “Foreign Representative”

42. Section 101(24) of the Bankruptcy Code defines “foreign representative” as “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.”

43. 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, it therefore qualifies as a “person” and can accordingly serve as a “foreign representative.” The Receiver has been specifically authorized in the Canadian Proceedings to act as the Debtors’ foreign representative. EX R-1-0000013 (Receivership Order ¶¶30-31). Additionally, the Receivership Order specifically states “The Receiver 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. . . .” EX R-1-0000013 (Receivership Order ¶31).

44. The Court is therefore entitled to presume that the Receiver is a proper “foreign representative.” *See* 11 U.S.C. § 1516(b). Additionally, Courts have previously considered a receiver appointed pursuant to BIA § 243(1) to be a duly authorized “foreign representative.” *See, e.g., In re Poseidon Concepts Corp.*, No. 13–15893, ECF No. 60 (Bankr. D. Colo. May 15, 2013) (recognizing Canadian receivership proceeding as foreign proceeding); *In re Baronet U.S.A. Inc.*, No. 07–13821, ECF No. 15 (Bankr. S.D.N.Y. Jan. 1, 2008) (same); *In re Calmena*

ECF No. 12 (Bankr. S.D.N.Y. July 1, 2009); *In re Biltrite Rubber (1984) Inc., et al.*, No. 09-31423, ECF No. 58 (Bankr. N.D. Ohio Apr. 2, 2009); *In re MAAX Corp.*, No. 08-11443, ECF No. 37 (Bankr. D. Del. Aug. 6, 2008); *In re Destinator Technologies, Inc.*, No. 08-11003, ECF No. 43 (Bankr. D. Del. June 6, 2008); *In re Innova Global Ltd.*, No. 19-10653, ECF 54 (Bankr. N.D. Okla. April 19, 2019).

Energy Services Inc., No 15-30786, ECF No. 17 (Bankr. S.D. Tex. March 5, 2015) (same); *In re ATK Oilfield Transportation Inc.*, No. 16-70042, ECF No. 44 (Bankr. W.D. Tex., April 1, 2016); *In re Innova Global Ltd.*, No. 19-10653, ECF 54 (Bankr. N.D. Okla. April 19, 2019).

F. The Canadian Proceedings Should Be Recognized As Foreign Main Proceedings Because Canada Is the Location of the Debtor’s Center of Main Interests

45. A foreign proceeding shall be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has the center of its main interests. 11 U.S.C. § 1517(b). The term “center of main interests” (“COMI”) is not defined in the Bankruptcy Code. COMI, however, has been equated with a debtor’s principal place of business. *See Bear Stearns*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007) (citing *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 633-34 (E.D. Calif. 2006)).

G. The COMI of the Debtors is Located In Canada Based Upon the Established COMI Factors

46. There are five non-exhaustive factors in 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)).

47. The first factor, and, the most important, the location of those who manage the debtor, the “nerve center,” or “principal place of business” of the Debtors, favors Canada as their COMI. In determining COMI under Chapter 15, bankruptcy courts have utilized the “nerve center” test established in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). *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); *In re Gandi*, 2009 WL 2916908, at *2 (“While the evidence regarding center of main interest is mixed, the court finds that the ‘nerve center’ for the [Debtors] is [in] Canada...the court concludes that, in these circumstances, the court should find that the center of main interests for [a Texas incorporated entity] should be Canada.”) (Unpublished disposition); *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.”); *In re British Am. Isle of Venice, Ltd.*, 441 B.R. 713, 720 (Bankr. S.D. Fla. 2010) (“[I]n analyzing COMI courts have drawn a parallel to the ‘nerve center’ analysis described in [*Hertz Corp.*]”).

48. Here, the Debtors’ ultimate parent company, Eagle Energy, is a Canadian public company with shares traded on the Toronto Stock Exchange. Eagle Energy is also an operating company that owns the Canadian assets. Eagle Trust is a Canadian trust owned 100% by Eagle Energy. Eagle Holdings, in turn, is a Canadian company owned 100% by Eagle Trust. Eagle Holdings owns 100% of Eagle US. Eagle Trust and Eagle Holdings are essentially holding companies. Eagle Energy’s head office is in Calgary, Alberta.

49. Until the recent resignations, Eagle Energy’s directors and management were: Richard Clark (Canada) (Director and Executive Chairman), Warren D. Steckley (Canada) (Lead Independent Director), Wayne McWhorter (US)(Director), John Melton (US) (Director), and Wayne Wisniewski (US) (Director, President, and CEO), Glenn Glass (Canada) (Vice President, Operations), Brenda Galonski (Canada)(Chief Financial Officer) and Jo-Anne M. Bund (Canada) (General Counsel and Corporate Secretary).

50. With the resignations of the directors, only the Receiver currently has the authority, pursuant to the Receivership Order, to operate the Debtors. In sum, the nerve center for these Debtors was and is in Canada. Accordingly, the Debtors' operations and strategy were, and now are, actively controlled and executed from Canada. *See Avalos v. Cont'l Airlines, Inc.*, No. CIV.A. H-11-711, 2011 WL 2357374, at *2 (S.D. Tex. June 10, 2011) ("Continental has presented conclusive evidence that its...main activities — including management, human relations, legal services, payroll, and employee services — are all directed from [Chicago].") (Court found nerve center was in Chicago); *McCurdy v. Hydradyne, LLC*, No. 5:13CV2741, 2013 WL 6075376, at *1 (W.D. La. Nov. 18, 2013) ("LOR makes all business decisions affecting the operations, management, and ownership of its business interests in Atlanta.") (nerve center was Atlanta); *see also Balachander v. AET Inc. Ltd.*, No. CIV.A. H-10-4805, 2011 WL 4500048, at *6 (S.D. Tex. Sept. 27, 2011) (adopting test from *Central West Virginia Energy Company v. Mountain State Carbon, LLC*, 636 F.3d 101 (4th Cir. 2011) ("[T]he principal place of business...was not where the corporation's day-to-day management activities took place, but rather where the corporation's high-level officers directed, controlled, and coordinated its activities.")).

51. The four remaining factors also indicate that the Debtors' COMI is in Canada. The Canadian Debtors' head office is in Calgary, Alberta, although the Eagle US office is in Houston. EX R-5-000001. The Debtors' books and records are held in the Calgary office. *Id.* Annual meetings for the Debtors are held in Calgary. *Id.* As to the location of the debtor's assets, this fact also favors Canada. *See* Production and Reserves values at EX R-5-000001, showing higher percentages in Canada. Excluding the Agent's claims, the majority of total creditors in dollar amounts favors Canada (76.3%).

52. The final factor, the jurisdictional law governing most disputes, is unknown. Although the Loan and Security Agreement is governed by Texas law,⁴ many of the security documents for the Debtors' assets in Canada are governed by Canadian law. See Demand Debenture at EX R-3-000080 section 16.1 ("This Debenture will be governed by and construed in accordance with the Laws of the Province of Alberta and the Laws of Canada applicable therein, without giving effect to the conflict of law principles thereof."); see also Securities Pledge Agreement at EX R-3-000121 section 26 (governed by Alberta law).

53. Accordingly, the Receiver requests that the Canadian Proceedings be recognized as a foreign main proceeding. 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 debtors' creditors and applicable law – yielded inconclusive results); *In re Gandi*, 2009 WL 2916908, at *2 (finding mixed factors for COMI, but finding that as "nerve center" for Canadian debtor group was in Canada and Texas incorporated entity was controlled through Canada that COMI for entity was in Canada).

H. Alternatively, the Canadian Proceedings Should Be Recognized As Foreign Nonmain Proceedings

54. In the event this Court does not recognize the Canadian Proceedings as foreign main proceedings, the Receiver submits that the Canadian Proceedings should be recognized as a foreign nonmain proceedings.

55. The Canadian Proceedings shall be recognized as a foreign nonmain proceeding if the Debtors have an establishment in Canada. 11 U.S.C. § 1517(b)(2). "Establishment" is defined as any place of operations where the debtor carries out a nontransitory economic activity. 11 U.S.C. § 1502(2). When it is apparent that an entity conducts operations in the country where

⁴ EX R-8-000110; EX R-8-000111; EX R-8-000152; EX R-8-000162; EX R-8-000180; EX R-8-000187; EX R-8-000196; EX R-8-000203.

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., SPhinX*, 351 B.R. at 122.

56. Based upon the facts previously set forth, the Debtors hold an “establishment” in Canada, and therefore the Receiver alternatively submits that recognition as a foreign nonmain proceeding is warranted.

IX. RELIEF REQUESTED

A. Automatic Relief When a Foreign Proceeding is Main

57. Certain relief is automatic when a foreign proceeding is recognized as main. 11 U.S.C. § 1520(a). Upon recognition of a foreign proceeding that is a foreign main proceeding—

(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).

58. Accordingly, pursuant to 11 U.S.C. § 1520(a), the Receiver seeks such relief in the Proposed Order attached hereto as Exhibit A.

B. Automatic Relief Whether or not Foreign Proceeding is Main

59. Certain 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). 11 U.S.C. § 1523(a). Accordingly, the Receiver seeks such relief in the form of Proposed Order attached hereto as Exhibit A.

C. Discretionary Relief to Protect Creditors and the Debtors

60. Certain discretionary relief is available upon recognition of a foreign proceeding under 11 U.S.C. § 1521 as discussed below. The court may grant relief under section 1521 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 is for the protection of the creditors and the Debtors.

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

61. “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 11 U.S.C. § 1521 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).

62. In addition, under 11 U.S.C. § 1521(b), 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 or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected. Accordingly, the Receiver seeks the above relief in the Proposed Order attached hereto as Exhibit A.

E. Injunction Standards

63. Certain relief under section 1521 (the "**1521 Relief**") may require the application of standards for injunctive relief. The standards, procedures, and limitations applicable to an injunction may apply to relief under the following:

11 U.S.C. §§ 1521(a)(1)(concerning staying of proceedings not already stayed by section 1520(a));

1521(a)(2)(concerning staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a)),

1521(a)(3)(concerning 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)); and

1521(a)(6)(concerning extending relief granted under section 1519(a)).

11 U.S.C. § 1521(e).

F. Factors for Injunctive Relief

64. The Receiver contends that it is not required that an adversary proceeding be filed and served on all parties in interest in order to obtain injunctive relief under chapter 15. *In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006) (adversary proceeding not required for Chapter 15 injunctive relief).

65. The factors for injunctive relief are stated in *Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1187 (5th Cir. 1979). They are discussed below.

66. **A substantial likelihood of success on the merits.** There is no difficult real issue on whether the Canadian Proceedings should be recognized, as other courts have consistently recognized BIA proceedings where the proper documentation has been submitted. The Receiver also contends that the center of main interests is in Canada because, among other reasons, the nerve center is in Canada. Accordingly, there is a substantial likelihood that the mandatory relief under Section 1520 will be ordered.

67. **A substantial threat of irreparable injury if the injunction is not issued.** It is the Receiver's intention to continue operations of the Debtors for a period of time so that the assets may ultimately be sold as a going concern. As such, the Receiver needs to stabilize operations and operate in the normal course, including paying employees and ongoing expenses. If the Receiver's authority is not honored in the US, or if creditors or parties in interest take collection actions or exercise self-help, the ordinary course operations of the Debtors and the ability of the Receiver to effectuate a sale of assets could be jeopardized. The Receivership

Order provides for a stay against seizure of assets and litigation similar to the automatic stay of 11 U.S.C. § 362(a). Accordingly, the failure to grant the 1521 Relief subjects the Debtors to a substantial threat of irreparable injury, all to the detriment of the Debtors, their estates, and their creditors.

68. **That the threatened injury to the movant outweighs any damage the injunction might cause to the opponent.** Any threatened injury to the Debtors outweighs any damage the injunction might cause to the opponents. The 1521 Relief, if granted, would actually benefit the Debtors' creditors by ensuring an orderly distribution of assets and facilitate the Canadian Proceedings, including the contemplated sale.

69. **That the injunction will not disserve the public interest.** The 1521 Relief will not disserve the public interest. To the contrary, the 1521 Relief is in the public interest because it sets to facilitate a cross-border reorganization that will provide a benefit to the estates of the Debtors. The 1521 Relief is also supported by notions of comity and will allow the Debtors to craft a productive solution for their estates.

70. In sum, the relief sought is necessary and appropriate, in the interest of the public and international comity, consistent with the 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.

G. No Bond

71. The Receiver respectfully suggests that no bond be required under Fed. R. Bankr. P. 7065 and Fed. R. Civ. P. 7065(c). 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). FED. R. BANKR. P. 7065. The Receiver, who is carrying out his duties under

the BIA and the Receivership Order, is akin to a trustee, and any bond would necessarily come from the Debtors' assets.

72. In the event that the Court finds that the Canadian Proceedings are foreign nonmain proceedings, the relief requested herein is still appropriate because the relief is discretionary. *See* 11 U.S.C. § 1521 (“Upon recognition of a foreign proceeding, whether main or nonmain . . . the court may, at the request of the foreign representative, grant any appropriate relief . . .”). The Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtors' estate. Without such relief, the Debtors will be exposed to the risk of voluminous litigation and other actions against the estate, its assets and the Receiver in the United States, which would result in a “race to the courthouse” among creditors and other parties in interest, and thus, threaten the Debtors' reorganization efforts.

H. Comity

73. If the court grants recognition, and subject to any limitations that the court may impose consistent with the policy of Chapter 15, a court in the United States shall grant comity or cooperation to the foreign representative. 11 U.S.C. § 1509(b)(3). Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee. 11 U.S.C. § 1525(a).

74. Accordingly, the Receiver seeks comity and cooperation of this Court with respect to the Canadian Court and its Receivership Order.

75. A central tenet of Chapter 15 is the importance of comity in cross-border insolvency proceedings. *Ad Hoc Group of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012).

76. The Supreme Court defined comity as follows:

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 143 (1895); see also *Vitro*, 701 F.3d at 1043-44.

77. The exceptions to comity are construed especially narrowly when the foreign jurisdiction is like Canada, a sister common law jurisdiction with procedures akin to those in the United States. *Clarkson Co. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (finding that clear and convincing evidence of fraud is required to successfully attack a foreign judgment; the court held that it would contravene the public policy of New York and the doctrine of comity not to recognize the Canadian judgment in these circumstances); see also *In re Petition of Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) (stating that “Courts in the United States uniformly grant comity to Canadian proceedings” and noting that Canada is a sister common law jurisdiction with the United States).

78. The extension of comity to Canadian orders has continued since the 2005 enactment of Chapter 15. See *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 698-99 (extending comity to Canadian CCAA order providing for a third party release and citing numerous cases where American courts have extended comity to Canadian judgments); *Raymond Chabot Inc. v. Serge Cote Family Tr. & Pub. Storage*, No. 6:14-CV-03392-MGL, 2014 WL 4198831, at *3, n.1 (D.S.C. Aug. 22, 2014) (entering temporary restraining order assisting Canadian bankruptcy receiver and noting “the widely-accepted view that Canadian judgments are entitled to recognition and enforcement here”); *Collins v. Oilsands Quest, Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012)(bankruptcy court enforced Canadian court stay from in CCAA noting “the question here is not whether this Court should grant a stay in the first instance, but whether

should accord comity and deference to the stay orders entered by the Alberta Court. The Court concludes that in light of the comity principles laid out above, the Court must defer to the procedures set forth in the Canadian Proceedings and enforce the stay.”).

X. CONCLUSION

79. The Receiver respectfully requests that this Court recognize the Canadian Proceedings as foreign main proceedings, and grant the relief requested herein. The Receiver alternatively requests recognition as a foreign nonmain proceeding, and that the Court grant the relief requested herein.

Dated: November 21, 2019
Dallas, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

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ATTORNEYS FOR CANADIAN RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that contemporaneously with the filing of the foregoing, I directed noticing agent Stretto to serve a copy of the foregoing on parties in interest in this case. The Receiver will supplement this certificate of service with proof of service and a copy of such service list.

/s/ Greg M. Wilkes
Greg M. Wilkes

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

In re:	§	
	§	Case No. 19-33868-15
EAGLE ENERGY INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		
In re:	§	
	§	Case No. 19-33869-15
EAGLE ENERGY TRUST	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		
In re:	§	
	§	Case No. 19-33870-15
EAGLE ENERGY HOLDINGS INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		
In re:	§	
	§	Case No. 19-70333-15
EAGLE HYDROCARBONS INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
<hr/>		

ORDER (I) GRANTING EXPEDITED PETITION FOR RECOGNITION AS FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS 1515 AND 1517 OF THE UNITED STATES BANKRUPTCY CODE AND RELATED RELIEF AND (II) AUTHORIZING RECEIVER'S LIMITED USE OF CASH COLLATERAL

FTI Consulting Canada Inc. (“**FTI**”) solely in its capacity as court-appointed receiver (the “**Receiver**”) of (1) Eagle Energy Inc. (“**Eagle Energy**”), (2) Eagle Energy Trust (“**Eagle Trust**”), (3) Eagle Energy Holdings Inc. (“**Eagle Holdings**”), and (4) Eagle Hydrocarbons Inc. (“**Eagle US**”) (collectively, “**Eagle**” or “**Debtors**”) filed an *Expedited Petition for Recognition as Foreign Main Proceeding, or Alternatively as Foreign Nonmain Proceeding, Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief* (“**Petition**”).

The Court finds that notice was proper and that no party in interest made any response in opposition to the Petition, or, if so, the relief requested in any such response was denied for the reasons stated on the record, and further finds that the relief requested in the Petition should be GRANTED. All terms not otherwise defined herein shall have the meanings provided in the Petition. In connection therewith and after due deliberations and consideration of (i) the Petition, (ii) the exhibits to the Petition, (iii) the Receivership Order (as defined below) entered in the Canadian Proceeding (as defined below), (iv) all other documents filed in support thereof, and (v) the exhibits introduced at the hearings conducted in these cases, testimony of witnesses, if any, and the arguments and statements of counsel, and (vi) this Court’s powers and discretion under Bankruptcy Code sections 105, 1507, 1515, 1517, 1520, 1521, 1522 and 1524, and sufficient cause appearing, this Court finds and concludes as follows:

- A. The Debtors are the following entities: (1) Eagle Energy, (2) Eagle Trust, (3) Eagle Holdings, and (4) Eagle US.
- B. On November 19, 2019, White Oak Global Advisors, LLC as the administrative agent (in such capacity, the “**Agent**”) under that certain *Loan and Security Agreement* dated as of March 13, 2017 (as amended, modified, or supplemented, the “**Loan Agreement**”), for itself and for and on behalf of a group of lenders on whose behalf White Oak Global Advisors, LLC signed (collectively, and in such capacity, the “**Lenders**”), filed an Application (Receivership Order) in the Canadian Proceedings seeking the appointment of FTI as receiver under section 243 of the Bankruptcy and Insolvency Act (the “**BIA**”), RSC 1985 c B-3 and section 13(2) of the Judicature Act, RSA 2000 c J-2 in the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary (the “**Canadian Court**”) in the proceeding styled In the Matter of the Receivership of Eagle Energy Inc. et. al, Alberta Court of Queen’s Bench File No. 1901-16293. (the “**Canadian Proceedings**”).
- C. On November 19, 2019, the Canadian Court, Honorable Justice R.A. Neufeld, granted a Receivership Order in Alberta Court of Queen’s Bench File No. Court File No. 1901-16293 (the “**Receivership Order**”) appointing FTI as the Receiver and manager of the Debtors.
- D. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and Sections 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).
- E. Venue is proper in this district pursuant to 28 U.S.C. § 1410(3).
- F. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. *See Executive Benefits Ins. Agency v. Arkinson*, 134 S. Ct. 2165 (2014).
- G. The Receiver is a “person” within the meaning of Section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtors within the meaning of Section 101(24) of the Bankruptcy Code.
- H. These cases were properly commenced pursuant to Sections 1504 and 1515 of the Bankruptcy Code.
- I. The Canadian Proceedings are “foreign proceedings” within the meaning of Section 101(23) of the Bankruptcy Code.
- J. The Canadian Proceedings are entitled to recognition by this Court pursuant to Section 1517 of the Bankruptcy Code.
- K. The Canadian Proceedings are entitled to recognition as a “foreign main proceeding” pursuant to Section 1502(4) of the Bankruptcy Code and are entitled to recognition as a foreign main proceeding pursuant to Section 1517(b)(1) of the

Bankruptcy Code with respect to each of the Debtors. The Debtors' centers of main interests are in Canada.

- L. The Receiver is entitled to the relief afforded under Section 1520 of the Bankruptcy Code.
- M. There is a substantial likelihood that, with the relief granted herein, the Receiver will be able to successfully liquidate the remaining assets of the Debtors' under the provisions of the Bankruptcy Code in the above-referenced chapter 15 bankruptcy cases and the BIA in the Canadian Proceeding, which will benefit all stakeholders.
- N. Relief is needed to protect the assets of the Debtors or the interests of the creditors pursuant to 11 U.S.C. § 1521. Therefore, the Receiver is entitled to the additional relief afforded under Section 1521 of the Bankruptcy Code (the "**1521 Relief**").
- O. There is a substantial threat of irreparable injury to the Debtors and their assets if the 1521 Relief is not issued.
- P. Any threatened injury to the Debtors and their assets outweighs any damage the injunction granted hereunder might cause to the opponents. The 1521 Relief would actually benefit the Debtors' creditors by ensuring an equitable and orderly distribution of assets and facilitate the Canadian Proceedings.
- Q. The interests of creditors and other interested entities, including the Debtors, are sufficiently protected as required by 11 U.S.C. § 1522(a) and therefore the Court may grant the 1521 Relief.
- R. The 1521 Relief will not disserve the public interest. The 1521 Relief is in the public interest. It sets to facilitate a cross-border proceeding that will provide a benefit to the estates of the Debtors. The 1521 Relief is supported by notions of comity and will allow the Receiver to maximize the value available from the Debtors' estates.
- S. As a result, the Receiver, in its role as foreign representative of the Debtors, and the Debtors, are entitled to the full protections and rights available pursuant to Section 1521 of the Bankruptcy Code.
- T. The relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the 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.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS

1. The Canadian Proceedings are hereby recognized as foreign main proceedings pursuant to Section 1517 of the Bankruptcy Code with respect to each of the Debtors.

2. The Receivership Order is consistent with the public policy of the United States and is therefore granted comity. The terms of the Receivership Order granted in the Canadian Proceedings under the BIA on November 19, 2019, are given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under Section 1520 of the Bankruptcy Code including the following:

- (a.) Sections 361 and 362 of the Bankruptcy Code apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States.
- (b.) Sections 363, 549 and 552 of the Bankruptcy Code apply to a transfer of an interest of the Debtors 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.) the Receiver may, but is not obligated to, operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by 11 U.S.C. §§ 363 and 552; and
- (d.) Section 552 of the Bankruptcy Code applies to property of the Debtors that is within the territorial jurisdiction of the United States.

4. Pursuant to Section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which a Debtor is a party.

5. Pursuant to Section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning any of the Debtors pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a).

6. 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 Debtors, including any action or proceeding against FTI in its capacity as Receiver of the Debtors, to the extent not stayed under Section 1520(a) of the Bankruptcy Code, is hereby stayed;

- (b.) Execution against the assets of the Debtors 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 Debtors within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtors, their creditors, the Receiver, and any other parties-in-interest, and the Receiver is authorized to implement the Receivership Order;
- (d.) The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court.
- (e.) The Receiver 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 Debtors.
- (f.) 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.

7. Pursuant to 11 U.S.C. § 1521(a)(6), to the extent not superseded by this Order, the findings and relief granted in that certain *Order Granting Receiver's Emergency Ex Parte Application for Temporary Restraining Order And, After Notice And a Hearing, Preliminary Injunctive Relief, Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [Docket No. ●] will continue in full force until otherwise ordered by the Court.

8. The Agent has consented to the Receiver's use of the Agent's cash collateral within the territorial jurisdiction of the United States, subject to the budget (or other agreement) agreed upon by Agent and the Receiver, in connection with these Chapter 15 cases (the "**Cash Collateral**"). The Agent is entitled to adequate protection for its interest in its Cash Collateral from any diminution in value resulting from the use, sale or lease of the Agent's Cash Collateral. Accordingly, the Agent is hereby granted valid, binding, enforceable and perfected liens and security interests (the "**Adequate Protection Liens**") in all assets of the Debtors within the

territorial jurisdiction of the United States to secure, and an allowed administrative expense claim (to the extent that section 503 may apply to these cases) against the Debtors (the “**Adequate Protection Claim**”) for the amount of their indebtedness equal to any diminution in the value of the Agent’s Cash Collateral subsequent to the date of the filing of the Petitions for Recognition resulting from the use, sale or lease of the Agent’s Cash Collateral. Nothing herein shall prejudice, impair or otherwise affect the rights of the Agent to seek any other or supplemental relief (retroactive to the petition date) in respect of their adequate protection rights.

9. This Court shall retain 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 these Chapter 15 foreign proceedings, 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.

10. 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.

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

End of Order

Submitted by:

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