UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:	Chapter 15
CLINE MINING CORPORATION, *et al.*,[1]	Case No. 14-_____ (___)
Debtors in a Foreign Proceeding.	(Joint Administration Requested)

DECLARATION OF KEN COLEMAN IN SUPPORT OF VERIFIED PETITIONS FOR RECOGNITION OF FOREIGN PROCEEDING AND EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER AND, AFTER NOTICE AND A HEARING, A PRELIMINARY INJUNCTION

KEN COLEMAN, pursuant to 28 U.S.C. §1746, hereby declares as follows:

1. I am a member of the firm of Allen & Overy LLP, counsel to FTI Consulting Canada Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Cline Mining Corporation, New Elk Coal Company LLC, and North Central Energy Company in a proceeding under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice, Commercial List.

2. I respectfully submit this declaration in support of the Monitor's *Verified Petitions for Recognition of Foreign Proceeding and Related Relief* and accompanying *Memorandum of Law* and *Ex Parte Application for Order to Show Cause With Temporary Restraining Order and, After Notice and a Hearing, a Preliminary Injunction, Pursuant to Sections 1519 and 105(A) of the Bankruptcy Code* (collectively, the "**Chapter 15 Papers**").

[1] The last four digits of the United States Tax Identification Numbers, or similar foreign identification numbers, as applicable, for the Cline Debtors follow in parentheses: Cline Mining Corporation (6094); New Elk Coal Company LLC (0615); and North Central Energy Company (N/A).

3. Attached is a true and correct copy of each of the following documents:

A. Affidavit of Matthew Goldfarb dated December 2, 2014

B. Pre-Filing Report of FTI Consulting Canada Inc.

4. Attached is a true and correct copy of each of the unpublished or foreign decisions cited in the Chapter 15 Papers:

C. *In re Angiotech Pharmaceuticals, Inc.*, No. 11-10269 (Bankr. D. Del. January 31, 2011);

D. *In re Angiotech Pharmaceuticals, Inc.,* No. 11-10269 (Bankr. D. Del. February 22, 2011);

E. *In re Arctic Glacier,* Case No. 12-10605 (Bankr. D. Del. February 23, 2012);

F. *In re Biltrite Rubber (1984) Inc., et al.,* No. 09-31423 (Bankr. N.D. Ohio April 2, 2009);

G. *In re Canwest Global Communications Corp., et al.*, No. 09-15994 (Bankr. S.D.N.Y. November 3, 2009);

H. *In re Catalyst Paper Corp.*, No. 12-10221 (Bankr. D. Del. February 1, 2012);

I. *In re Destinator Tech. Inc.*, No. 08-11003 (Bankr. D. Del. May 23, 2008);

J. *In re Destinator Technologies, Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008);

K. *In re Klytie's Developments, Inc., et al.*, Case No. 07-22719 (Bankr. D. Colo. February 8, 2008);

L. *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. August 5, 2008);

M. *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. July 15, 2008);

N. *In re Madill Equipment Canada, et al.*, No. 08-41426 (Bankr. W.D. Wa. Apr. 2, 2008);

O. *In re Metcalfe & Mansfield Alternative Investments, et al.*, No. 09-16709 (Bankr. S.D.N.Y. January 5, 2010);

P. *In re Muscletech Research and Development Inc. et al.*, Nos. 06 CIV 538 and 539 (S.D.N.Y. March 2, 2006);

Q. *In re Muscletech Research and Development Inc.*, et al, 06 CIV 538 (S.D.N.Y. March 22, 2006);

R. *In re Nortel Networks Corp. et al.*, No. 09-10164 (Bankr. D. Del. February 27. 2009);

S. *In re Nortel Networks Corporation, et al.*, No. 09-10164 (Bankr. D. Del. August 31, 2009);

T. *In re Poseidon Concepts, Corp., et al.*, Case No. 13-15893 (Bankr. D. Colo. April 26, 2013);

U. *In re Poseidon Concepts Corp., et al.*, Case No. 13-15893 (Bankr. D. Colo. May 15, 2013);

V. *In re Pro-Fit Holdings Ltd.*, No. 08-17043 (Bankr. C.D. Ca. July 11, 2008);

W. *In re Quebecor World Inc.*, No. 08-13814 (Bankr. S.D.N.Y. November 14, 2008);

X. *In re Quebecor World Inc.*, No. 08-13814 (Bankr. S.D.N.Y. July 1, 2009);

Y. *In re SemCanada Crude Company, et al.*, No. 09-12637 (Bankr. D. Del. August 27, 2009);

Z. *Oilsands Quest, Inc.*, No. 12-10476 (S.D.N.Y. March 29, 2012); and

AA. *Smith v. Dominion Bridge Corp.*, No. 96-7580, 1999 WL 111465 (E.D. Pa. March 2, 1999).

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

Dated: December 3, 2014

/s/ Ken Coleman
Ken Coleman

Counsel for FTI Consulting Canada Inc., as Monitor and Foreign Representative of the Cline Debtors

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

Applicants

AFFIDAVIT OF MATTHEW GOLDFARB

(sworn December 2, 2014)

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AFFIDAVIT OF MATTHEW GOLDFARB
(sworn December 2, 2014)

I, Matthew Goldfarb, in the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

I. INTRODUCTION

1. I am the Chief Restructuring Officer and acting Chief Executive Officer of Cline Mining Corporation ("**Cline**"). I was appointed to serve in such capacities as of December 11, 2013 and January 15, 2014, respectively. My responsibilities include, among other things, managing the business and affairs of Cline and its subsidiaries and evaluating and implementing strategic alternatives, including negotiating with various creditors and stakeholders. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This affidavit is sworn in support of an application for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the

"**CCAA**") in respect of Cline, New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**" and, together with Cline and New Elk, the "**Applicants**").

3. This Affidavit is also sworn in support of a motion by the Applicants for:

(a) an order establishing a process for the identification and determination of claims against the Applicants and their present and former directors and officers (the "**Claims Procedure Order**"); and

(b) an order authorizing the Applicants to file a plan of compromise and arrangement and to convene meetings of their affected creditors to consider and vote on the plan of compromise and arrangement (the "**Meetings Order**").

4. If this Court grants the Initial Order, the Applicants request that this Court hear the motion for the Claims Procedure Order and the Meetings Order immediately following the granting of the Initial Order.

5. The Applicants, along with Raton Basin Analytical LLC ("**Raton Basin**" and, together with the Applicants, the "**Cline Group**"), are in the business of locating, exploring and developing mineral resource properties, with a particular focus on gold and metallurgical coal (the "**Cline Business**").

6. The Cline Group is headquartered in Toronto, Ontario. Cline is incorporated under the laws of British Columbia and its shares were publicly listed on the Toronto Stock Exchange (the "**TSX**") until Cline voluntarily delisted the shares on June 21, 2013. The Cline Group has interests in resource properties in Canada, the United States and Madagascar. Most of the Cline

Group's properties remain in the development stage; however, the New Elk metallurgical coal mine in Colorado (the "**New Elk Mine**") became operational in December 2010.

7. As described in detail below, the Cline Group has experienced financial challenges that have necessitated a recapitalization of the Applicants under the CCAA. The New Elk Mine became operational at the beginning of a protracted downturn in the global metallurgical coal markets and has been unable to operate profitably due to continuing adverse market conditions that have negatively affected the entire industry. In July 2012, the Cline Group largely suspended mining operations at the New Elk Mine to reduce costs and minimize losses. This suspension of mining operations was intended to be temporary. However, the price of metallurgical coal, which is heavily influenced by the demand for and production of steel, has worsened materially, and global overcapacity has made it difficult to reduce existing inventories. Accordingly, the New Elk Mine remains on a care and maintenance program at this time.

8. Since the Cline Group's other resource investments remain at the development stage, the Cline Group's current inability to derive revenue from the New Elk Mine has rendered the Applicants unable to meet their financial obligations as they become due. Cline is in default of its 2011 series 10% senior secured notes (the "**2011 Notes**") as well as its 2013 series 10% senior secured notes (the "**2013 Notes**", and collectively with the 2011 Notes, the "**Secured Notes**"). Total obligations of $110,173,897 are owed in respect of the Secured Notes as of December 1, 2014. The Secured Notes matured on June 15, 2014 and remain unpaid. The Applicants do not have the ability to repay the Secured Notes.

9. The Secured Notes are issued by Cline and guaranteed by New Elk and North Central. The indenture trustee in respect of the Secured Notes, Computershare Trust Company of Canada

("**Computershare**" or the "**Trustee**"), holds a first-ranking security interest over substantially all of the assets, property and undertakings of Cline, New Elk and North Central and is now in a position to enforce that security.

10. In an effort to maximize value for their stakeholders, the Applicants undertook a comprehensive sale process in respect of the Cline Group in the spring and summer of 2014 (the "**Sale Process**"), as more fully explained in section III(C) of this affidavit. Based on the results of the Sale Process and the current industry-wide challenges in the metallurgical coal markets, it is apparent that the amounts owing under the Secured Notes exceed the realizable value of the Cline Business at the present time, meaning there would be no recovery for unsecured creditors if the Trustee were to enforce its security in respect of the Secured Notes. Consequently, the beneficial holders of the Secured Notes (the "**Secured Noteholders**") are the only parties with a remaining economic interest in the Cline Business and the assets of the Applicants.

11. All of the Secured Notes are held by beneficial owners whose investments are managed by Marret Asset Management Inc. ("**Marret**"). I am advised by Marret and do verily believe that Marret has the ability to exercise all powers and rights of the Secured Noteholders.

12. With the assistance of its professional advisors, Cline has engaged in discussions with representatives of Marret regarding a consensual recapitalization of the Applicants. These discussions have ultimately resulted in a proposed recapitalization transaction that is supported by Marret (on behalf of all of the Secured Noteholders) (the "**Recapitalization**"). If implemented, the Recapitalization would:

(a) maintain the Cline Group as a unified corporate enterprise;

(b) reduce the Applicants' secured indebtedness by in excess of $55 million;

(c) reduce the Applicants' annual interest expense in the near term;

(d) preserve certain tax attributes within the restructured companies;

(e) provide a limited recovery for unsecured creditors that they could not expect to receive under any other bankruptcy or debt enforcement scenario; and

(f) effectuate a reduced debt structure to enable the Cline Group to better withstand prolonged weakness in the price of metallurgical coal.

13. It is contemplated that the Recapitalization would be implemented pursuant to a plan of compromise and arrangement under the CCAA (the "**Plan**") that is recognized in the United States under Chapter 15, Title 11 of the United States Code.

14. Cline and Marret (on behalf of the Secured Noteholders) have entered into a Support Agreement dated December 2, 2014, which sets forth the principal terms of the proposed Recapitalization. Based on Marret's agreement to the Recapitalization (on behalf of the Secured Noteholders), the Applicants have achieved support from the creditors with a remaining economic interest in the Applicants, representing in excess of 95% of the total indebtedness of the Applicants.

15. The Applicants believe that the Recapitalization is the optimal value-maximizing transaction in the circumstances, and that it is preferable for the Applicants and their stakeholders to proceed with the Recapitalization on a consensual basis rather than for the Applicants to become subject to an involuntary debt and security enforcement process, which would destroy value for the Secured Noteholders and leave nothing for the Applicants' unsecured creditors.

16. The Applicants are seeking the Initial Order, the Claims Procedure Order and the Meetings Order at this time in order to stabilize their financial situation and to proceed with the Recapitalization as efficiently and expeditiously as possible.

17. Having reviewed and considered the alternatives, the Applicants and their boards of directors have determined that it is in the best interests of the Applicants to seek protection under the CCAA and to move forward with the Recapitalization in order to provide the Cline Group with a stable financial footing that will enable the Applicants to withstand the current market challenges.

II. BACKGROUND REGARDING THE CLINE GROUP

(A) Corporate Structure

18. The Cline Group is in the business of locating, exploring and developing mineral resource properties. The principal resources of interest to the Cline Group are gold, metallurgical coal and iron ore. The Cline Group's properties include mineral rights and developments in Canada, the United States and Madagascar.

19. A copy of the corporate organizational chart of the Cline Group is attached hereto as Exhibit "A".

(i) Cline Mining Corporation

20. Cline is a public company incorporated under the laws of British Columbia, with its registered head office located in Vancouver, British Columbia. Cline commenced business under the laws of Ontario in 2003 and its principal business office, which serves as the head office and nerve centre of the Cline Group, is located in Toronto, Ontario.

21. Prior to June 21, 2013, Cline's shares were publicly-listed on the TSX. After having been placed on remedial listing review by the TSX, Cline made a voluntary application for de-listing that was accepted by the TSX, and its shares were de-listed from the TSX at the close of trading on June 21, 2013.

22. Since Cline's shares were traded publicly, I am not aware of the identities of the beneficial owners of Cline's shares. I have been advised by Marret and do verily believe that Marret does not hold any equity interest in Cline at this time.

23. The current directors of Cline are Sandra Rosch, V. James Sardo and me, Matthew Goldfarb.

24. Cline owns an interest in a gold exploration property located near Wawa, Ontario (the "**Cline Lake Gold Project**"). In addition to this direct, wholly-owned interest, Cline owns minority interests in (i) Iron Ore Corporation of Madagascar SARL ("**IOCM**") (25%), (ii) Strike Minerals Inc. (12.5%[1]) and (iii) UMC Energy plc ("**UMC**") (5.02%), which is an energy resource exploration company listed on the London Stock Exchange AIM market with interests in oil and uranium. Cline also owns all of the shares of New Elk, its direct, wholly-owned subsidiary.

25. The Cline Lake Gold Project is presently in the exploration stage.

26. Until recently, Cline was also engaged in the exploration of coal mining properties in British Columbia, where it held two coal licenses and had submitted two additional applications for coal licenses issued by the Province of British Columbia. However, those licenses were

[1] The amount of this equity interest is subject to a dispute and is alleged by other parties to be less than 12.5%.

revoked and the applications were cancelled by the Province after the Province passed legislation limiting mining activities in the watershed area in which the related projects were situated. Cline subsequently filed a civil claim against the Province seeking a declaration that Cline's rights in respect of the coal mining licenses and applications had been expropriated. In April 2014, Cline and the Province entered into a settlement agreement pursuant to which Cline agreed to abandon the coal mining licenses and applications in return for a $9.8 million payment by the Province. Cline has used the settlement proceeds to fund the operations of the Cline Business during the summer and fall of 2014 and anticipates that it will be able to continue using the remaining settlement proceeds to fund its ongoing costs during these CCAA proceedings, subject to the approval of cash flow budgets by Marret. The Applicants' projected cash flows are discussed below in section IV(C) of this affidavit.

(ii) Cline Subsidiaries

27. Cline is the direct or indirect parent company of New Elk, North Central, and Raton Basin.

28. New Elk is a limited liability company incorporated pursuant to the laws of the State of Colorado. Cline is the sole shareholder of New Elk. New Elk holds mining rights in the New Elk Mine, located in southern Colorado. The lands on which the New Elk Mine is situated are owned and controlled by a number of parties, including New Elk, North Central and the State of Colorado. The rights to mine the coal at the New Elk Mine are held by New Elk pursuant to a coal mining lease with the State of Colorado (the "**DOW Lease**") and an underground coal lease with XTO Energy Inc. (the "**XTO Lease**"). New Elk is a guarantor of Cline's obligations in respect of the Secured Notes.

29. North Central is a corporation incorporated pursuant to the laws of the State of Colorado. Cline acquired 100% of the capital stock of North Central on July 12, 2010 and subsequently assigned its entire ownership interest in North Central to New Elk. New Elk is the sole shareholder of North Central. North Central holds a fee simple interest in certain coal parcels on which the New Elk Mine is situated. North Central is a guarantor of Cline's obligations in respect of the Secured Notes.

30. Raton Basin is a corporation incorporated pursuant to the laws of the State of Colorado. New Elk is the sole shareholder of Raton Basin. Raton Basin is inactive and has no material assets or liabilities.

31. New Elk and North Central are Applicants in these proceedings. Raton Basin is not an applicant in these proceedings.

(B) Overview of the Cline Business

(i) The Cline Business and its Principal Markets

32. The Cline Business is focused on locating, exploring and developing mineral resource properties, primarily with respect to gold, metallurgical coal and iron ore. The Cline Group also has an interest in oil and uranium exploration through its small minority interest in UMC.

Gold Exploration

33. Cline is engaged in gold exploration at its Cline Lake Gold Project in Wawa, Ontario.

34. The land on which the Cline Lake Gold Project is situated is leased from the Government of Ontario pursuant to a lease originally issued in 1996 and extended to August 31, 2017. The

gold mine on the property dates to the early 1930s and Cline acquired its interest in 2008. Cline has completed an extensive drilling program on the property and has identified seven significant new gold zones and the potential for future exploration work.

35. The next step for the Cline Lake Gold Project is the more advanced, underground evaluation of certain reserves, including the new gold zones identified through recent drilling. The cost of this development phase is estimated at $12.5 million and is thus dependant on a successful restructuring of the Applicants and the generation of additional working capital for the Cline Group.

Coal Production

36. The primary revenue-capable asset of the Cline Business is the New Elk Mine. The New Elk Mine was acquired by Cline on July 25, 2008. The coal mine originally opened in 1951 and was operated by a number of other owners until 1989, after which time it lay dormant until its acquisition by New Elk. The New Elk Mine is located near the town of Trinidad in southern Colorado and consists of a metallurgical coal reserve, underground mine developments, a surface coal preparation plant, mining equipment and related infrastructure. The New Elk Mine has the necessary permits to mine and produce coal and to transport the coal to a nearby rail-loading facility, as well as all required environmental permits.

37. Under New Elk ownership, miners first went underground at the New Elk Mine in April 2010. Over the next year, additional coal seams were discovered and testing of various coal deposits was undertaken. In August 2011, the first commercial delivery of coal from the New Elk Mine was made.

38. Unfortunately, as coal production at the New Elk Mine was commencing, the global market for metallurgical coal entered a protracted downturn. Metallurgical coal markets are influenced by the level of crude steel production, which in turn is largely dependent on global economic conditions. Recessionary forces in the global economy reduced global demand for metallurgical coal and resulted in a precipitous decline of nearly 65% in its price, from US$330 per metric tonne in April 2011 to US$119 in November 2014.

39. In response to these developments, mining operations at the New Elk Mine were largely suspended on July 11, 2012 in an effort to reduce costs and minimize losses during the depressed market. This suspension of mining operations was meant to be temporary, and the Cline Group intended to resume operations once existing inventories had been depleted, metallurgical coal prices had recovered and sustainable off-take arrangements had been put in place. However, it has not been possible to put economically-feasible off-take arrangements in place given that metallurgical coal prices have worsened significantly and there is significant global overcapacity. In light of these challenges, operations at the New Elk Mine remain substantially curtailed.

Iron Ore Interests

40. Cline holds a 25% interest in IOCM, a corporation incorporated pursuant to the laws of Madagascar. IOCM holds four greenfield exploration permits and one advanced stage permitted exploration project in the Bekisopa iron ore properties in south-central Madagascar (the "**Bekisopa Iron Ore Project**"). Extensive geophysical airborne and ground surveys have revealed known and expected deposits of iron ore at the Bekisopa Iron Ore Project. Iron ore is principally used in the steelmaking process and thus demand for iron ore is generally influenced by the same factors that influence demand for metallurgical coal.

41. Until recently, IOCM was a wholly-owned subsidiary of Cline. On June 19, 2014, Cline sold 75% of its equity interest in IOCM to India Pacific Resources Limited ("**India Pacific**"). India Pacific has assumed management control of IOCM and is responsible for funding all expenditures of IOCM until such time as India Pacific has made the final purchase price payment to Cline in the amount of US$175,000 and is prepared to move into the project's development phase.

(ii) Employees

42. The workforces of the Applicants are presently reduced as a result of the temporary production halt at the New Elk Mine and the Cline Group's financial inability to continue developing its other projects. At present, the Cline Group directly employs 19 people. The officers of the Cline Group are engaged as independent consultants. The Cline Group is heavily dependent on a relatively small number of key personnel. The Cline Group engages other contractors and consultants from time to time to work on specific projects and for administrative, accounting, legal and other services as required. None of the Cline Group's personnel are unionized.

(iii) Centre of Main Interests

43. The Applicants in these proceedings are Cline, New Elk and North Central.

44. Cline is incorporated pursuant to the laws of, and has its registered head office in, British Columbia. Cline commenced business in Ontario over a decade ago and its principal business office, which serves as the head office of the Cline Group, is located in Toronto, Ontario (the "**Toronto Head Office**").

45. New Elk is incorporated as a limited liability corporation under the laws of the State of Colorado and is a wholly-owned subsidiary of Cline. North Central is a Colorado corporation and is a wholly-owned subsidiary of New Elk. Both New Elk and North Central are integrated members of the Cline Group.

46. The Cline Group is managed from the Toronto Head Office as a seamless group from a corporate, strategic and management perspective.

47. The centre of main interests of the Cline Group, including all of the Applicants in this proceeding, is in Ontario, Canada, as evidenced by the following:

(a) the corporate head office and the nerve centre of the Cline Group is located in Toronto, Ontario;

(b) Cline, the parent of the Cline Group and the principal borrower/obligor under the Secured Notes, is a Canadian entity;

(c) New Elk and North Central rely nearly exclusively on Cline, their Canadian parent, to finance their operations and are liable as guarantors for Cline's obligations in respect of the Secured Notes;

(d) until June 2013, the shares of Cline were publicly-listed on the Toronto Stock Exchange, and the most recent annual general meeting of Cline was held in Toronto, Ontario;

(e) corporate-level decision making for the Cline Group, including decisions with respect to New Elk, North Central and the New Elk Mine, are undertaken by the executive management of Cline;

(f) the majority of the executive management of the Cline Group, including the management of New Elk and North Central, is shared;

(g) I serve on the boards of directors of all three of the Applicants, and the Chief Financial Officer of Cline, Paul Haber, also serves on the board of directors of North Central;

(h) the Cline Group's major contracts, including those of New Elk and North Central, were approved at the corporate level by the executive management of Cline;

(i) a substantial portion of the administrative functions in respect of the Cline Group, including information technology, general accounting, financial reporting, budgeting, and human resource functions related to the Applicants, are carried out at the Toronto Head Office;

(j) the Secured Notes are the principal source of financing for the Cline Group – representing in excess of 95% of the Cline Group's liabilities – and all of the Secured Notes are held by beneficial owners whose investments are managed by Marret, which is based in Toronto, Ontario;

(k) I am advised by representatives of Marret and verily believe that approximately 97% of the Secured Notes are beneficially held by Secured Noteholders that are domiciled in Canada;

(l) the Trustee of the Secured Notes, Computershare, is located in Toronto, Ontario;

(m) the 2011 Indenture and the 2013 Indenture (each as hereinafter defined) are governed by the laws of the Province of Ontario;

(n) New Elk is treated as a branch of Cline (and not as a separate taxable corporation) for U.S. federal income tax purposes;

(o) Cline operates a centralized cash management system from the Toronto Head Office (details of which are outlined in section II(C)(iii) of this affidavit), pursuant to which Cline, as parent company, approves the expenditures of all members of the Cline Group, advances funds for all such expenditures, controls and monitors the consolidated cash balance of the Cline Group and provides reporting on the Cline Group's cash balances to the board of directors of Cline;

(p) the Applicants all have Canadian bank accounts with the Bank of Montreal located in Toronto, Ontario;

(q) Cline prepares consolidated financial statements that incorporate the financial results and position of the entire Cline Group, including New Elk and North Central; and

(r) the consolidated financial statements are specified in the 2011 Indenture and the 2013 Indenture as the relevant financial information for determining Cline's compliance with certain financial covenants relating to the Secured Notes.

48. Based on the factors listed above and my knowledge as Acting Chief Executive Officer and Chief Restructuring Officer of Cline, I believe that the Cline Group operates as an integrated enterprise centered out of Toronto, Ontario, Canada.

(C) Financial Position of the Cline Group

(i) Financial Statements

49. Copies of the Cline Group's unaudited financial statements for the quarter ended August 31, 2014, its audited financial statements for the year ended November 30, 2013 and its unaudited financial statements for the quarters ended February 28, 2014 and May 31, 2014 are attached hereto as Exhibit "B".

(ii) Assets and Liabilities of the Cline Group

Assets

50. The Cline Group prepares its financial statements on a consolidated basis. As at August 31, 2014, which is the date of the Cline Group's most recent financial statements, the Cline Group had assets with a stated book value of approximately $156 million. This included cash of $9 million, reclamation deposits held by the State of Colorado of $6 million, and mineral properties under development with a book value for accounting purposes of $135 million (all amounts approximate).

51. For the year ended November 30, 2013, Cline recognized an impairment loss of $164 million on the New Elk Mine. Even with this write-down, it is my belief, based on the results of the Sale Process in respect of the Cline Group and the current state of the metallurgical coal market, that the actual realizable value of the Cline Group's assets is materially less than the

book value reported on the balance sheet for accounting purposes, and is in fact materially less than the amounts owing in respect of the Secured Notes.[2]

Liabilities

52. As at August 31, 2014, the Cline Group's liabilities amounted to approximately $99 million. The primary secured liabilities at that time were:

(a) 2011 Notes in the principal amount of $71,381,900, plus accrued and unpaid interest and other amounts. The 2011 Notes have an annual interest rate of 10% and matured on June 15, 2014; and

(b) 2013 Notes in the principal amount of $12,340,998, plus accrued and unpaid interest and other amounts. The 2013 Notes have an annual interest rate of 10% and matured on June 15, 2014.

53. As at December 1, 2014, the total amount owing in respect of the Secured Notes, including accrued and unpaid interest and other amounts, is $110,173,897.

54. In addition, the Cline Group has certain obligations outstanding in respect of leased equipment used at its New Elk Mine. As at August 31, 2014, the Cline Group had loans for construction equipment outstanding in the principal amount of $654,174. Under the terms of the loans, Cline is obligated to remit monthly payments of $33,850 until March 2016.

[2] The Cline Group's financial statements for the quarter ended August 31, 2014 included a going concern note indicating that the circumstances surrounding the Cline Group cast significant doubt as to its ability to continue as a going concern and ultimately the appropriateness of the use of accounting principles applicable to a going concern business.

55. Presently, the Applicants are aware of approximately $3.7 million in other unsecured claims, including accounts payable relating to ordinary course trade payables.

Contingent Claims

56. A class action lawsuit was filed against New Elk on February 1, 2013 alleging that New Elk violated the U.S. federal Worker Adjustment and Retraining Notification Act (the "**WARN Act**") by failing to provide personnel at the New Elk Mine with at least sixty days advance written notice of the significant curtailment of production at the New Elk Mine (the "**WARN Act Class Action**"). The plaintiffs (the "**WARN Act Plaintiffs**") are seeking judgment for alleged unpaid wages, salary, commissions, bonuses, and pension and other amounts, together with interest, legal fees and costs. On October 3, 2013, the WARN Act Plaintiffs filed an amended complaint that, among other things, added Cline as a defendant in the lawsuit on the basis that Cline and New Elk are an integrated "single employer" based on, among other things, Cline's control of New Elk, the common management of Cline and New Elk and New Elk's reliance on Cline for financing. New Elk and Cline dispute the allegation that there was a violation of the WARN Act and are vigorously defending themselves against the allegations. The WARN Act Class Action has not been certified as of the date hereof.

57. In addition to the WARN Act Class Action, the Cline Group is aware of a number of other contingent litigation claims that have been asserted against it. The total presently-quantifiable amount claimed by the plaintiffs in the claims other than the WARN Act Class Action is less than $1 million. To my knowledge, the plaintiffs in the WARN Act Class Action have not particularized the amounts alleged to be owing in that case.

(iii) Centralized Cash Management System

58. The Cline Group has a centralized cash management system, such that the cash resources of the entire Cline Group are managed by Cline at the Toronto Head Office. Invoices for all expenditures incurred by members of the Cline Group are reviewed at the Toronto Head Office by the accounting department. Once approved, two signatures are required before payment is issued, and all invoices and material payments are confirmed with the Acting Chief Executive Officer of Cline or, in his absence, the Chairperson of the Cline board of directors.

59. The operations of New Elk and North Central are funded by Cline, which transfers cash to the applicable subsidiary, when necessary, after Cline approves the proposed expenditure to be made by such subsidiary. New Elk and North Central, as applicable, then pay the applicable expenditure with the funds provided by Cline.

60. The Cline Group's cash balance is managed online with the Bank of Montreal from the Toronto Head Office. Cline monitors and has control over all of the cash accounts of members of the Cline Group. Cline maintains a U.S.-dollar bank account with BMO Harris Bank in Chicago, Illinois, and New Elk and North Central maintain Canadian dollar bank accounts with Bank of Montreal in Toronto, Ontario. Cline reports the cash balances of the Cline Group on a weekly basis to the board of directors of Cline.

(D) Secured Obligations of the Cline Group

(i) 2011 Notes

61. Cline is the issuer of the 2011 Notes, which are a first-ranking secured obligation. The 2011 Notes have an interest rate of 10% per annum payable semi-annually on June 15th and

December 15th of each year. The aggregate principal amount of the 2011 Notes issued by Cline was $71,381,900. The 2011 Notes matured on June 15, 2014 and remain unpaid. The obligations of Cline in respect of the 2011 Notes are guaranteed by New Elk and North Central.

62. The 2011 Notes are governed by a Trust Indenture dated December 13, 2011, as amended by a series of seven supplemental indentures (as amended, the "**2011 Indenture**"). The 2011 Notes were issued in four installments, as follows: US$25 million were issued on February 27, 2012 pursuant to the first supplemental indenture; US$25 million were issued on April 30, 2012 pursuant to the second supplemental indenture; US$13 million were issued on January 11, 2013 pursuant to the fourth supplemental indenture; and US$2.5 million were issued on April 11, 2013 pursuant to the fifth supplemental indenture. Pursuant to the seventh supplemental indenture dated May 23, 2014, all amounts payable in respect of the 2011 Secured Notes became payable in Canadian dollars using the Canadian dollar/U.S. dollar Bank of Canada exchange rate on May 22, 2014.

63. Computershare acts as trustee (in such capacity, the "**2011 Trustee**") on behalf of the beneficial holders of the 2011 Notes (the "**2011 Noteholders**"). Marret manages and exercises sole discretion and control over all of the 2011 Noteholders.

64. All amounts owing in respect of the 2011 Notes are now immediately due and payable.

(ii) 2013 Notes

65. Cline is the issuer of the 2013 Notes, which are a first-ranking secured obligation that rank *pari passu* with the 2011 Notes. The 2013 Notes have an interest rate of 10% per annum payable semi-annually on June 15th and December 15th of each year. The aggregate principal

amount of the 2013 Notes issued by Cline was $12,340,998. The 2013 Notes matured on June 15, 2014 and remain unpaid. The obligations of Cline in respect of the 2013 Notes are guaranteed by New Elk and North Central.

66. The 2013 Notes are governed by a Trust Indenture dated July 8, 2013, as amended by a series of three supplemental indentures (as amended, the "**2013 Indenture**"). The 2013 Notes were issued in three installments: 2013 Notes in the principal amount of $9,490,998 were issued on July 8, 2013 pursuant to the first supplemental indenture; 2013 Notes in the principal amount of $1,100,000 were issued on October 11, 2013 pursuant to the second supplemental indenture; and 2013 Notes in the principal amount of $1,750,000 were issued on November 14, 2013 pursuant to the third supplemental indenture. Computershare acts as trustee (in such capacity, the "**2013 Trustee**") on behalf of the beneficial holders of the 2013 Notes (the "**2013 Noteholders**").

67. Marret manages and exercises sole discretion and control over all of the 2013 Noteholders.

68. All amounts owing in respect of the 2013 Notes are now immediately due and payable.

(iii) Security in respect of the 2011 Notes and 2013 Notes

Cline Security in Favour of the Trustee

69. As security for the payment of all obligations in respect of the 2011 Notes and the 2013 Notes, Cline granted security interests in favour of the 2011 Trustee and 2013 Trustee (as applicable) over substantially all of its real and personal property, pursuant to the following documents (collectively, the "**Cline Security Documents**"):

(a) general security agreements governed by the laws of Ontario in favour of each of the 2011 Trustee and the 2013 Trustee, granting a security interest in all of Cline's personal property; and

(b) mining lease debentures governed by the laws of Ontario in favour of each of the 2011 Trustee and the 2013 Trustee, registered on title to the Cline Lake Gold Project on December 14, 2011 and July 22, 2013, respectively.

70. Pursuant to the terms of the Cline Security Documents, Cline pledged to the 2011 Trustee and the 2013 Trustee its equity interest in New Elk represented by 1,000 units, its equity interest in UMC represented by 12,272,667 ordinary shares (the "**UMC Shares**") and its equity interest in Strike Minerals Inc. represented by 2,000,000 common shares, and delivered the corresponding original share and unit certificates and irrevocable stock transfer powers. The original share and unit certificates, with the exception of the UMC Shares, are currently held by the Trustee.

71. In December 2013, at the request of Cline, the 2011 Trustee, the 2013 Trustee and Marret agreed to release their respective security interests in the UMC Shares for the purpose of enabling Cline to sell the UMC Shares to a third party. The UMC Shares have not been sold by Cline at this time.

72. The security interests of the 2011 Trustee and the 2013 Trustee created by the Cline Security Documents have been registered under the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) and the *Uniform Commercial Code* (including in the states of Colorado and Kansas). Attached as Exhibit "C" are summaries of the security registrations against the Applicants in Ontario, British Columbia, Colorado and Kansas.

73. In connection with the issuance by Cline of 2013 Notes on July 8, 2013, Bennett Jones LLP, in its capacity as Ontario counsel to Cline, prepared a title opinion dated July 22, 2013 (the "**Bennett Jones Opinion**") with respect to the lands on which the Cline Lake Gold Project is located (the "**Cline Lake Lands**"). The Bennett Jones Opinion concluded that, subject only to certain specified encumbrances, Cline had a good and marketable leasehold title to the Cline Lake Lands. Other than an encumbrance for a "caution and grant of right of way" in favour of Great Lakes Power Distribution Inc., the only encumbrances listed in the Bennett Jones Opinion are in favour of the Trustee and Marret (in respect of the security interests in favour of Marret discussed below). Based on the results of the Bennett Jones Opinion, I understand that there are no encumbrances on the Cline Lake Lands that would rank in priority to the security interests of the Trustee and Marret in the Cline Lake Lands.

Subsidiary Security in Favour of the Trustee

74. The obligations in respect of the Secured Notes are guaranteed by New Elk and North Central, both of which have executed guarantees in favour of the 2011 Trustee and the 2013 Trustee. As security for the payment of the Secured Notes, New Elk and North Central granted security interests in favour of the 2011 Trustee and 2013 Trustee (as applicable) over all of their real and personal property, pursuant to the following documents (collectively, the "**Subsidiary Security Documents**"):

(a) pledge and security agreements of New Elk and North Central in favour of each of the 2011 Trustee and the 2013 Trustee, granting a security interest in all personal property of New Elk and North Central, including a pledge of New Elk's 100% equity interest in North Central represented by 100 common shares of

North Central and New Elk's 100% membership interest in Raton Basin represented by a membership certificate. The original share and membership certificates and corresponding irrevocable transfer powers are held by the Trustee; and

(b) mortgages and assignments of production and proceeds from New Elk and North Central in favour of each of the 2011 Trustee and the 2013 Trustee, registered on title to the New Elk Mine on May 17, 2012 and July 16, 2013, respectively, granting the Trustee a security interest in, *inter alia*, the freehold and leasehold interests held by New Elk and North Central in the New Elk Mine, all coal and other minerals existing at the New Elk Mine and all operating equipment and facilities at the New Elk Mine.

75. Notice of the security interests of the 2011 Trustee and the 2013 Trustee created by the Subsidiary Security Documents have been registered under the *Uniform Commercial Code*, including in the State of Colorado.

76. In connection with the issuance by Cline of the Secured Notes, Cline engaged the Denver, Colorado office of Holland & Hart LLP to prepare the following Colorado title opinions (collectively, the "**Colorado Title Opinions**") in respect of the lands on which the New Elk Mine is located (the "**New Elk Lands**"):

(a) Opinion dated January 11, 2013 and updated July 8, 2013 with respect to the lands leased by New Elk from the State of Colorado pursuant to the DOW Lease;

(b) Opinion dated July 8, 2013 and updated July 11, 2013 with respect to the lands leased by New Elk from XTO Energy Inc. pursuant to the XTO Lease; and

(c) Opinion dated July 8, 2013 and updated July 11, 2013 with respect to the lands owned by North Central.

77. The Colorado Title Opinions conclude that the only encumbrances in respect of the New Elk Lands are a number of "Mortgage, Security Agreement, Assignment of Production and Proceeds, Financing Statement and Fixture Filing" registrations from New Elk and North Central to and for the benefit of the Trustee and Marret (in respect of the security interests in favour of Marret discussed below). Based on the results of the Colorado Title Opinions, I understand that there are no encumbrances on the New Elk Lands that would rank in priority to the security interests of the Trustee and Marret in the New Elk Lands.

(iv) Security in Favour of Marret

78. As security for any obligations owed to Marret pursuant to the 2011 Indenture and the 2013 Indenture, and the guarantee of such obligations by New Elk and North Central, Cline, New Elk and North Central granted security interests in favour of Marret over their real and personal property, pursuant to the following documents (collectively, the "**Marret Security Documents**"):

(a) general security agreements governed by the laws of Ontario in favour of Marret, granting Marret a security interest in all of Cline's personal property;

(b) mining lease debentures governed by the laws of Ontario in favour of Marret, registered on title to the Cline Lake Gold Project on July 22, 2013;

(c) pledge and security agreements of New Elk and North Central granting Marret a security interest in all personal property of New Elk and North Central, including a pledge of New Elk's 100% equity interest in North Central represented by 100 common shares of North Central and New Elk's 100% membership interest in Raton Basin represented by a membership certificate; and

(d) mortgages and assignments of production and proceeds from New Elk and North Central in favour of Marret, registered on title to the New Elk Mine on July 16, 2013, granting Marret a security interest in, *inter alia*, the freehold and leasehold interests held by New Elk and North Central in the New Elk Mine, all coal and other minerals existing at the New Elk Mine and all operating equipment and facilities at the New Elk Mine.

79. Notice of the security interests in favour of Marret created by the Marret Security Documents have been registered under the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) and the *Uniform Commercial Code* (in the United States).

80. The Applicants are not aware of any amounts presently owing directly to Marret at this time, other than the amounts owed in respect of the Secured Notes held or controlled by Marret.

(v) Intercreditor Agreement

81. The 2011 Trustee, the 2013 Trustee, Marret, Cline, New Elk and North Central are parties to an intercreditor agreement dated July 8, 2013 (the "**Intercreditor Agreement**") that governs the priority of security interests in the real and personal property of the Applicants (the

"**Collateral**") as between the 2011 Noteholders, the 2013 Noteholders and Marret. The Intercreditor Agreement provides that the security interests of the 2011 Noteholders and the 2013 Noteholders in the Collateral rank *pari passu* for all purposes. It further provides that, as between the Secured Noteholders and Marret, the Secured Noteholders have a first-ranking and senior security interest in the Collateral and Marret has a second-ranking and subordinated security interest in the Collateral.

82. In summary, the material secured interests against the Applicants consist of: (i) ranking first, the security over substantially all assets and property of the Applicants held by the Trustee (on behalf of the Secured Noteholders) in respect of the 2011 Notes and the 2013 Notes and (ii) ranking second, the security over substantially all assets and property of the Applicants held by Marret in respect of any claims of Marret against the Applicants in relation to the Secured Notes.

(vi) Other Security

83. There are also certain secured interests in specific pieces of equipment used by the Applicants. As further described below, it is proposed that the secured claims relating to specific pieces of equipment would be unaffected in the Plan, and it is contemplated that they will not be primed by any Court-ordered charges in the proposed Initial Order.

84. Bank of Montreal also has a security interest in certain accounts of Cline to secure the repayment of amounts owing on corporate credit cards issued to Cline by the Bank of Montreal (up to a maximum amount of approximately $230,000). Cline continues to use corporate credit cards in the ordinary course of business, so this secured interest would be unaffected in the Plan and will not be primed by any Court-ordered charges in the proposed Initial Order.

III. ASSESSMENT OF STRATEGIC ALTERNATIVES AND RESTRUCTURING EFFORTS TO DATE

(A) Performance of the Cline Business

85. The business of exploring and developing mining properties is subject to a number of risks, most notably the cyclicality of global resource prices. While the Cline Group holds a variety of resource interests, the New Elk metallurgical coal mine is presently the sole asset of the Cline Group with earnings-generating capability. Accordingly, the performance of the Cline Business is significantly affected by volatility in the price of metallurgical coal. Metallurgical coal markets have undergone a protracted period of low prices in recent years due to broader challenges in the global economy and a global oversupply of metallurgical coal.

86. Following the Cline Group's acquisition of the New Elk Mine in 2008, the Cline Group made significant progress towards the rehabilitation, development and ultimate operation of the mine. New coal seams had been identified, various mining permits and surface transportation approvals had been obtained, and the first commercial coal delivery at the mine occurred in August 2011. Further exploration and testing since that time identified additional coal reserves, and on July 6, 2012 the Cline Group released a technical report noting a 59% increase in the measured and indicated coal resources at the New Elk Mine.

87. However, just as production at the New Elk Mine was beginning, conditions in the broader coal industry deteriorated significantly. Metallurgical coal prices in the first two quarters of 2012 decreased sharply as a result of shrinking demand, and the industry was saddled with excess capacity. On July 11, 2012, mining operations at the New Elk Mine were largely suspended. As noted above, this curtailment of operations was originally intended to be

temporary; however, market conditions in the coal industry have continued to worsen and the suspension of full-scale mining activities is largely still in effect.

88. Management continues to identify, control and reduce operating costs across the Cline Group to historically low levels. The Cline Group has developed a new mining plan for the New Elk Mine, creating a significantly lower cost model to address market realities. The Cline Group is attempting to undertake limited mining activities at the New Elk Mine to service regional industrial demand from cement kilns in Colorado and New Mexico, though it has not yet been determined whether such limited mining activities can achieve a sustainable operating profit. The Cline Lake Gold Project remains in the exploration stage, with further development being postponed until the Cline Group is able to access sufficient capital to proceed with additional underground evaluation. In the short term, management of the Cline Group is focused on maintaining sufficient funding to meet its working capital requirements during these proceedings, keeping its mineral claims and title in good standing and completing the Recapitalization as efficiently and expeditiously as possible.

(B) Challenges with Financing Arrangements

89. The suspension in July 2012 of full-scale mining activities at the Cline Group's only earnings-capable project has made it impossible for the Cline Group to meet its financial commitments as they become due. In late 2012, when it became apparent that Cline would be unable to make a semi-annual interest payment in respect of the 2011 Notes on December 15, 2012, Cline entered into discussions with Marret (on behalf of the 2011 Noteholders) regarding a possible forbearance of the 2011 Noteholders' rights and access to additional debt financing. Those discussions culminated in a forbearance agreement dated December 24, 2012, pursuant to

which the 2011 Trustee (at Marret's direction) agreed to temporarily forbear from demanding repayment of the 2011 Notes outstanding at that time in exchange for, among other things, a forbearance and restructuring fee in the amount of US$2,500,000 and the execution of a commitment letter (the "**Commitment Letter**") between Cline and Marret, as agent for the 2011 Noteholders, providing for a financial restructuring of the Cline Group.

90. Pursuant to the Commitment Letter dated December 24, 2012, Marret committed to purchase a total of US$9.5 million principal amount of additional 2011 Notes, consisting of US$7.0 million of 2011 Notes to be purchased by January 11, 2013 and US$2.5 million of 2011 Notes to be purchased on a later date to be determined by the parties.

91. The parties also agreed pursuant to the Commitment Letter to proceed with a Marret-sponsored recapitalization plan (the "**Marret Plan**") unless, by April 30, 2013, Cline was able to implement a different recapitalization transaction that satisfied certain conditions (the "**Cline Transaction**").

92. Pursuant to the fourth supplemental indenture, also dated December 24, 2012, Cline issued additional 2011 Notes in the principal amount of US$13 million, US$2.5 million of the proceeds of which was used to satisfy the December 2012 interest payment. Following the issuance of the 2011 Notes under the fourth supplemental indenture, 2011 Notes with a total principal amount of US$63 million were outstanding.

93. On April 1, 2013, Cline announced that it had entered into a subscription agreement with Portpool Investments Ltd. for an equity recapitalization of the Cline Group, the terms of which would constitute a "Cline Transaction" for the purposes of the Commitment Letter. Cline vigorously pursued that transaction; however, Cline did not receive the $2.5 million non-

refundable deposit from Portpool Investments Ltd. by April 10, 2013 as required by the subscription agreement, and as a result the equity recapitalization did not proceed.

94. On April 11, 2013, Cline issued additional 2011 Notes in the principal amount of US$2.5 million pursuant to the fifth supplemental indenture. Since the "Cline Transaction" was not implemented by the deadline in the Commitment Letter, Cline took the initial steps to proceed with the Marret Transaction by negotiating a recapitalization of the Cline Group. On April 25, 2013, Cline and Marret entered into an agreement (the "**Recapitalization Agreement**") setting out the terms of the proposed transaction. Cline filed a preliminary short form prospectus dated April 25, 2013 with respect to the transactions contemplated by the Recapitalization Agreement. However, the transactions contemplated in the Recapitalization Agreement did not proceed, and the preliminary short form prospectus was ultimately withdrawn on June 3, 2013.

95. Cline was unable to make a required semi-annual interest payment in respect of the 2011 Notes in the approximate amount of US$3.3 million due June 17, 2013. On June 17, 2013, the 2011 Trustee (at the direction of the Secured Noteholders) entered into a second forbearance agreement with Cline, New Elk and North Central pursuant to which the 2011 Trustee agreed to forbear from taking any action to enforce certain of its rights under the 2011 Indenture until June 30, 2013 (subsequently extended until July 12, 2013), provided that Cline continued to discuss alternate financing with Marret on behalf of the 2011 Noteholders.

96. On July 8, 2013, an alternate financing with Marret was achieved when Cline issued 2013 Notes pursuant to the 2013 Indenture in the principal amount of $9,490,998, $3,300,998 of which was used to pay the June 2013 interest payment in respect of the 2011 Notes. Cline

secured additional needed funding by issuing 2013 Notes in the principal amounts of $1.1 million on October 11, 2013 and $1.75 million on November 14, 2013.

97. On December 16, 2013, Cline was unable to make a semi-annual interest payment in the amount of approximately US$3.3 million in respect of the 2011 Notes and a semi-annual interest payment in the amount of approximately $552,000 in respect of the 2013 Notes. Upon the instructions of Marret, the Trustee entered into new forbearance agreements with Cline, New Elk and North Central (collectively, the "**Forbearance Agreements**") in respect of certain events of default, including the failure to make the December 2013 interest payments in respect of the Secured Notes. Pursuant to the Forbearance Agreements, the Trustee (at the direction of the Secured Noteholders) agreed to forbear from demanding repayment of the amounts owing under the 2011 Indenture and the 2013 Indenture and from enforcing the security held by each of them until January 16, 2014 or such later date as Marret may agree in writing.

98. The Secured Notes matured on June 15, 2014 and remain unpaid. Through a series of amendments and extensions, the Forbearance Agreements were extended to November 28, 2014 and it was agreed that the Forbearance Agreements would also apply to the Applicants' failure to make the required June 15, 2014 interest payments and to repay the Secured Notes on maturity.

99. The Forbearance Agreements expired on November 28, 2014. On December 2, 2014, Marret confirmed that the Secured Noteholders had given instructions to the Trustee to accelerate the Secured Notes. The Secured Notes are now immediately due and payable and, subject to instructions from Marret and the Support Agreement described below, the Trustee is now in a position to enforce its rights and remedies against Cline, New Elk and North Central.

100. Over the past several months, the Cline Group and its advisors have engaged in discussions with Marret and its advisors regarding a restructuring or sale of the Cline Group that would be acceptable to Marret. These discussions resulted in the Sale Process (described below) and, ultimately, following the inability to generate interest in the Cline Group through the Sale Process, a Support Agreement between Cline and Marret pursuant to which Cline has agreed to initiate these CCAA proceedings and pursue the Recapitalization with the support of Marret.

101. Despite the Applicants' significant efforts to resolve their financial difficulties, the Applicants can no longer continue without restructuring their affairs under the CCAA.

(C) Sale Process

102. In April 2014, as part of its pursuit and assessment of solutions to its financial challenges, Cline engaged Moelis & Company LLC ("**Moelis**") to act as Cline's investment banking advisor for the purpose of pursuing a Sale Process in respect of the Cline Business. The objective of the Sale Process was to identify and pursue a sale or merger transaction as a means to generate sufficient proceeds to satisfy the obligations owing in respect of the Secured Notes and the Cline Group's other financial obligations. It was contemplated that a sale of the Cline Business could be completed either as part of a restructuring or as an alternative to a restructuring of the Cline Group.

103. Cline selected Moelis to conduct the Sale Process due to, among other things, its excellent market reputation and expertise in the metals and mining industries. Moelis is an independent investment bank with extensive experience in recapitalization and restructuring sales and transactions. I understand from representatives of Moelis that since 2008, Moelis has advised on over US$425 billion of restructuring transactions, in which it has advised on over 180

assignments throughout Canada, the United States, Europe, the Middle East and Asia Pacific. Moelis has consistently been ranked as a top-tier financial restructuring advisor in the United States, and it has extensive expertise advising on strategic transactions in resource-based industries.

104. Prior to the formal commencement of the Sale Process, Moelis worked with management of the Applicants to gain an understanding of the Applicants' business, assets, operations and marketplace. Moelis identified potential purchasers of the Cline Business and reviewed recent completed and attempted sales of similar businesses to assess the market for such businesses and the comparative advantages and challenges of the Cline Business.

105. After this review of the Cline Business and the market, Moelis worked with the Cline Group's management to develop a confidential information memorandum (the "**CIM**") for prospective purchasers to review upon execution of a confidentiality agreement. Moelis also prepared a teaser document to be sent to potential purchasers on a confidential basis to generate further interest in the Cline Business.

106. Moelis contacted a broad range of potential purchasers, including 29 strategic and financial players, to assess their initial interest in purchasing the Cline Business. In response to these initial discussions, Moelis sent teaser documents to 23 of the potential purchasers.

107. Ultimately, 15 potential purchasers entered into confidentiality agreements and nine were provided with the CIM. I understand from representatives of Moelis that Moelis has had further discussions with these nine potential purchasers to highlight the acquisition opportunity and to respond to questions posed by the potential purchasers with respect to the Cline Business. There was no minimum amount required for bidding in the Sale Process.

108. The potential purchasers have now had several weeks to review the CIM, seek further information from the Applicants and Moelis and to decide whether they were interested in pursuing further discussion with respect to a potential purchase of or investment in the Cline Business. Unfortunately, the Cline Group has not received any indications of interest from prospective purchasers.

109. Six of the nine potential purchasers have expressly declined to pursue a purchase of the Cline Business and I believe it is unlikely that the other three parties that received the CIM are interested in pursuing a purchase of the Cline Group at this time given that they have not expressed any such interest in the preceding several weeks.

110. I understand from representatives of Moelis that, in the course of the Sale Process, Moelis obtained feedback with respect to the current market realities facing the Cline Group. The global hard coking coal benchmark price reached highs of US$330 per metric tonne shortly after the New Elk Mine commenced operations in December 2010; however, over the past four years, prices have fallen by nearly 65%, to under US$120 per metric tonne. I understand from representatives of Moelis that the potential purchasers indicated that they viewed it as unlikely that the New Elk Mine could be operated profitably at this time given the presently depressed price of metallurgical coal and the challenges facing the Cline Group, and that potential financial buyers indicated that were not prepared to operate the New Elk Mine on a cash flow negative basis for an indeterminate period of time.

111. These industry-wide challenges have led to diminished interest among purchasers for coal-related assets. Additionally, the market glut of coal-related assets for sale – including assets owned by Cliffs Natural Resources, Patriot Coal Corporation, SunCoke Energy Inc., Mechel

OAO, Walter Energy Inc. and James River Coal Company – makes it difficult to obtain a favourable price for the Cline Business. Until metallurgical coal prices improve and the New Elk Mine can produce coal at a positive cash margin, market interest in the New Elk Mine is unlikely to increase. Since the New Elk Mine is the only asset of the Cline Group with the potential to generate revenue in the near term, weakness in the value of the mine translates into weakness in the overall value of the Cline Business.

112. Based on the results of the Sale Process and my discussions with Moelis, and having regard to the historically low prices for metallurgical coal and the broader industry-wide challenges in the global metallurgical coal markets, there is no realistic prospect of the Cline Group achieving a sale of the Cline Business at the present time at values that would enable the Cline Group to satisfy its obligations in respect of the Secured Notes.

113. The amount of the obligations in respect of the Secured Notes exceeds the realizable value of the Cline Group at the present time. I understand that the practical implications of this are that (i) the Secured Noteholders would suffer a significant shortfall in the amounts owed to them if they were to enforce their security; (ii) there would be no residual value left over to pay the Cline Group's unsecured creditors or the WARN Act Plaintiffs if the Cline Group's secured creditors were to enforce their security; and (iii) the existing equity interests in Cline have no economic value.

IV. CCAA PROCEEDINGS

(A) Cline Group is Insolvent

114. Despite its extensive efforts to date, the Cline Group has been unable resolve its financial difficulties.

115. The Applicants are facing an impending liquidity crisis, with no reasonable prospect of generating operating earnings in the near term. Cline is immediately required to pay $110,173,897 in respect of the Secured Notes. The Cline Group does not have the ability to pay these amounts. Consequently, without a CCAA stay of proceedings and Marret's support for the Recapitalization, the Trustee (at the direction of the Secured Noteholders) would be in a position to enforce its security over the assets and property of Cline, New Elk and North Central.

116. The aggregate value of the Applicants' assets, property and undertaking, taken at fair value, is not sufficient to enable the Applicants to pay their obligations, due and accruing due. The Applicants are therefore insolvent.

117. The Applicants and their boards of directors have thoroughly considered the circumstances and the alternatives available to the Applicants. In exercise of their business judgement, they have determined that the filing by the Applicants for protection under the CCAA is necessary at this time and the pursuit of the Recapitalization is in the best interests of the Applicants.

(B) Stay of Proceedings under the CCAA

118. At this time, I believe that, without the benefit of CCAA protection, there could be a significant erosion of the value of the Cline Group to the detriment of all stakeholders. In

particular, a debt enforcement against the Applicants could result in the loss of tax attributes and the need to transfer or re-apply for various exploration, mining and environmental permits that are currently held by the Cline Group. This would impair value that can be preserved in a CCAA restructuring and would lead to a lower recovery for both Secured Noteholders and unsecured creditors of the Applicants, who would be expected to receive no recovery in a debt-enforcement or bankruptcy scenario.

119. The Applicants are seeking CCAA protection to permit them to pursue a restructuring of the Cline Business with a view to maximizing its value for the benefit of their stakeholders. The stay of proceedings is necessary to maintain the stability and value of the Cline Business while the Applicants undertake the Recapitalization.

(C) Funding of the Cline Group

120. The Cline Group's principal use of cash during this period will consist of the costs associated with ongoing payments made in the ordinary course, including employee, independent contractor and officer compensation, rent, utility services, and general and administrative expenses. The Cline Group must also make periodic payments in order to keep its mining and exploration licenses in good standing. The Cline Group is obligated to remit annual land lease, railroad lease, and royalty payments of US$520,877 and annual water lease payments of US$105,000 in respect of the New Elk Mine. The costs associated with the New Elk Mine reflect that the mine is largely non-operational and is being maintained under a care and maintenance program.

121. In addition to the regular course expenditures listed above, the Cline Group will also incur professional fees and disbursements in connection with these proceedings and the

Recapitalization. The Applicants are seeking to complete the Recapitalization as quickly and efficiently as reasonably possible in order to minimize restructuring and transactional costs during the CCAA proceedings. The Applicants anticipate that their existing cash levels will provide the Cline Group with sufficient liquidity during the CCAA proceedings.

122. The Applicants' 13-week cash flow projections are attached hereto as Exhibit "D".

(D) Recapitalization of the Cline Group

123. The Cline Group, together with its advisors, has engaged in discussions with Marret (on behalf of the Secured Noteholders) regarding a consensual recapitalization of the Cline Group. Ultimately, these discussions resulted in the proposed Recapitalization. Cline and Marret have entered into the Support Agreement, pursuant to which Marret (on behalf of the Secured Noteholders) has agreed to support the Recapitalization and the Plan. A copy of the Support Agreement is attached hereto as Exhibit "E".

124. The terms of the Recapitalization are set out in the Plan, a copy of which is attached hereto as Exhibit "F". The material terms of the Recapitalization include the following:

(a) the Plan is filed on a consolidated basis in respect of the Applicants;

(b) the Plan provides for three separate classes of creditors, namely the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class (each as defined below);

(c) the Plan apportions the aggregate Secured Noteholders' claim between the portion of that claim that is secured (the "**Secured Noteholders Allowed Secured Claim**") and the portion of that claim that represents an unsecured deficiency

claim (the "**Secured Noteholders Allowed Unsecured Claim**"), and, for purposes of the Plan, the Secured Noteholders Allowed Secured Claim is $92,673,897 and the Secured Noteholders Allowed Unsecured Claim is $17,500,000;

(d) the Secured Noteholders Allowed Secured Claim will be compromised, released and discharged in exchange for new Cline common shares representing 100% of the equity in Cline, and new indebtedness in favour of the Secured Noteholders evidenced by a credit agreement with a term of seven years in the principal amount of $55,000,000, bearing interest at 0.01% per annum plus an additional variable interest payable only once the Applicants have achieved certain operating revenue targets;

(e) the claims of affected unsecured creditors (the "**Affected Unsecured Creditors**"), which exclude the WARN Act Plaintiffs but include the Secured Noteholders Allowed Unsecured Claim, will be compromised, released and discharged in exchange for each such Affected Unsecured Creditor's *pro rata* share of an unsecured, subordinated, non-interest bearing entitlement to receive $225,000 from Cline on the date that is eight years from the date the Plan is implemented (the "**Unsecured Plan Entitlement**");

(f) notwithstanding the Secured Noteholders Allowed Unsecured Claim, the Secured Noteholders will waive their entitlement to the proceeds of the Unsecured Plan Entitlement, and all such proceeds will be available for distribution to the other

Affected Unsecured Creditors with valid claims who are entitled to the Unsecured Plan Entitlement, allocated on a *pro rata* basis;

(g) all Affected Unsecured Creditors with valid claims of up to $10,000 will, instead of receiving their *pro rata* share of the Unsecured Plan Entitlement, be paid in cash for the full value of their claim and will be deemed to vote in favour of the Plan unless they indicate otherwise, provided that this cash payment will not apply to any Secured Noteholder with respect to its Secured Noteholders Allowed Unsecured Claim;

(h) all WARN Act Claims will be compromised, released and discharged in exchange for an unsecured, subordinated, non-interest bearing entitlement to receive $100,000 from Cline on the date that is eight years from the date the Plan is implemented (the "**WARN Act Plan Entitlement**");

(i) certain claims against the Applicants, including claims covered by insurance, certain prior-ranking secured claims of equipment providers and the secured claim of Bank of Montreal in respect of corporate credit card payables, will remain unaffected by the Plan;

(j) existing equity interests in Cline will be cancelled for no consideration; and

(k) the shares of New Elk and North Central will not be affected by the Recapitalization and will remain owned by Cline and New Elk, respectively.

125. The Plan provides that if it is not approved by the required majorities of both the Unsecured Creditors Class and the WARN Act Plaintiffs Class, or the Applicants determine that

such approvals are not forthcoming, the Applicants are permitted to withdraw the Plan and file an amended and restated plan (the "**Alternate Plan**") without further order of the Court. The Alternate Plan would provide, *inter alia*, that all unsecured claims and all WARN Act Claims against the Applicants are treated as unaffected claims, the only voting class under the Alternate Plan is the Secured Noteholders Class, and all assets of the Applicants will be transferred to an entity designated by the Secured Noteholders in exchange for a release of the Secured Noteholders Allowed Secured Claim.

126. If implemented, the Recapitalization would result in a reduction of over $55 million in interest-bearing debt and would reduce the Applicants' annual interest expense in the near term.

127. I understand from the Cline Group's professional advisors that secured creditors frequently pursue an asset transfer transaction under a debt enforcement process in circumstances where the secured debts of the debtor company exceed the realizable value of the business. In reviewing its alternatives, the Applicants ultimately determined that they and their stakeholders would be best served by attempting to complete the Recapitalization under the CCAA with ancillary recognition under Chapter 15, in order to preserve certain tax attributes and exploration, mining and environmental permits owned or held by the Cline Group. Accordingly, the Applicants are of the view that pursuing the Recapitalization pursuant to a CCAA plan of arrangement, which would preserve and maintain all assets within the existing Cline Group corporate entities, is in the best interests of the Applicants and their stakeholders.

128. In addition, I believe that the Recapitalization is preferable to other alternatives because it provides a limited recovery for the Applicants' unsecured creditors and the WARN Act Plaintiffs, who would otherwise receive no recovery in a security enforcement or asset sale

scenario (since the amounts owed in respect of the Secured Notes exceed the value of the Applicants' property).

(E) Payments for Goods and Services

129. The Applicants have identified certain business relationships with independent contractors and agents, experts, accountants, advisors and counsel (the "**Assistants**") as critical to the successful operation of the Cline Business and the successful implementation of the Recapitalization. The continued service of the Applicants' employees is also critical. These parties may discontinue ongoing services if the Applicants cease to pay them in the ordinary course. In addition, the Cline Group must also make periodic payments in order to keep its mining and exploration development permits in good standing. Accordingly, to avoid any disruption that would impair the successful restructuring of the Cline Business, the Applicants are seeking authorization in the Initial Order to continue to make ongoing payments in respect of these obligations, regardless of whether such obligations arose before or after the commencement of these CCAA proceedings.

130. In addition, the Applicants are seeking authority in the Initial Order to continue to pay during the CCAA proceedings all reasonable expenses and capital expenditures necessary for the preservation of the Cline Business or the property of the Applicants and to make payment for goods and services supplied to the Cline Group, including pre-CCAA obligations if, in the opinion of the Applicants and with the consent of the Monitor, the supplier of goods or services is critical to the Cline Business.

(F) Monitor

131. The Applicants are seeking the appointment of FTI Consulting Canada Inc. as the proposed CCAA monitor in these proceedings (the "**Monitor**"). FTI is a recognized leader in the financial restructuring industry and has consented to act as the Monitor. A copy of its consent is attached at Tab "5" of the Application Record.

132. In connection with its appointment, it is contemplated that a Court-ordered charge over the assets, property and undertaking of the Applicants (the "**Administration Charge**") would be granted in favour of the Monitor, its legal counsel, counsel to the Applicants, the Chief Restructuring Officer of the Applicants and counsel to Marret in respect of their fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel and advisors, over the assets, property and undertaking of the Applicants. The proposed Administration Charge is in an aggregate amount of $350,000.

133. All of the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the recapitalization of the Applicants. The Applicants have sought to ensure that there is no unwarranted duplication of roles so as to minimize the professional fees associated with the Recapitalization.

(G) Directors' and Officers' Charge

134. The directors and officers of the Applicants have been actively involved in the attempts to address the Applicants' current financial circumstances and difficulties, including through the exploration of alternatives, communicating with Marret and other stakeholders and participating in the negotiation of the proposed Recapitalization.

135. The directors and officers have been mindful of their duties with respect to the supervision and guidance of the Applicants in advance of these CCAA proceedings. Nevertheless, it is my understanding, based on advice from counsel, that in certain circumstances, directors and officers can be held personally liable for certain corporate obligations, including in connection with payroll remittances, harmonized sales taxes, goods and services taxes, workers compensation remittances, etc. Furthermore, I understand it may be possible for directors and officers of a corporation to be held personally liable for certain unpaid employment-related obligations.

136. Cline maintains an insurance policy with AIG Insurance Company of Canada in respect of the potential liability of directors and officers of the Applicants (the "**D&O Insurance Policy**"). Cline has also deposited approximately $45,000 with AIG Insurance Company of Canada as a pre-payment for a run-off directors and officers insurance policy that is expected to be purchased at a later date. The D&O Insurance Policy insures the directors and officers of the Applicants for certain claims that may arise against them in their capacity as directors and/or officers of the Applicants; however, the D&O Insurance Policy contains several exclusions and limitations to the coverage provided, and there is a potential for there to be insufficient coverage in respect of the potential director and officer liabilities.

137. The directors and officers of the Applicants have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities. In order to continue to carry on business during the CCAA proceedings and in order to conduct the Recapitalization most effectively, the Applicants require the active and committed involvement of the members of their boards of directors and senior officers.

138. The Applicants request a Court-ordered charge (the "**Directors' Charge**") in the amount of $500,000 over the assets, property and undertaking of the Applicants to indemnify their directors and officers in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers. The amount of the Directors' Charge has been calculated based on the estimated exposure of the directors and officers of the Applicants and has been reviewed with the prospective Monitor. The proposed Directors' Charge would apply only to the extent that the directors and officers do not have coverage under the D&O Insurance Policy.

(H) Priorities of Charges

139. It is contemplated that the priorities of the various charges set out herein will be as follows:

(a) First – the Administration Charge; and

(b) Second – the Directors' Charge.

140. The Initial Order sought by the Applicants provides for the Administration Charge and the Directors' Charge (collectively, the "**Charges**") to rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest listed on Schedule "A" to the proposed Initial Order. The secured creditors that are affected by the Charges, namely the Trustee and Marret, have been given notice of these CCAA proceedings and the relief being requested in the Initial Order.

141. The Applicants believe the amount of the Charges is fair and reasonable in the circumstances.

(I) Chapter 15 Proceedings

142. The Applicants believe that the Recapitalization of the Cline Group ought to be dealt with primarily in a single forum. Since, as outlined in section II(B)(iii) of this Affidavit, the Cline Group operates as an integrated enterprise with its interests centred in Toronto, Canada, I am of the view that it is appropriate for CCAA proceedings in Toronto, Canada to be the primary court-supervised proceedings in respect of the Cline Group. However, the Applicants and the proposed Monitor are of the view that the Recapitalization of the Cline Group is likely to require judicial approval in the United States to address the assets and obligations of the Cline Group in the United States.

143. Accordingly, the Applicants, with the assistance of the Monitor as foreign representative, intend to commence proceedings in respect of the Applicants pursuant to Chapter 15, Title 11 of the United States Code ("**Chapter 15 Proceedings**"). The proposed Initial Order authorizes the Monitor to act as the foreign representative in respect of the CCAA proceedings and, if deemed advisable by the Monitor and the Applicants, to apply for recognition of the CCAA proceedings in Chapter 15 Proceedings in the United States.

(J) Postponement of Annual General Meeting

144. I am advised by counsel that Cline is presently required under the *Business Corporations Act* (British Columbia) to hold an annual general meeting of its shareholders. The previous annual general meeting of Cline was held on August 15, 2013, and Cline was therefore

statutorily required to hold an annual meeting on or before November 15, 2014. I believe that it would serve no purpose for Cline to hold an annual general meeting of shareholders in the present circumstances because the shareholders do not have an economic interest in Cline as a result of its insolvency, and preparing for and holding an annual general meeting of shareholders would result in unnecessary costs and divert the attention of senior management away from implementing the proposed Recapitalization. Accordingly, Cline is seeking relief in the Initial Order to be relieved of any obligation to call and hold an annual general meeting of its shareholders until the completion of these proceedings or further Order of the Court.

(K) Marret and the Trustee

145. As noted above, Marret exercises sole discretion and control over the Secured Noteholders. Accordingly, to simplify and expedite dealings between the Cline Group and the Secured Noteholders during these proceedings, Marret has confirmed that the Secured Noteholders have directed the Trustee to stand down from its obligations in respect of the Secured Notes and to allow Marret to exercise all powers and authorities ordinary exercised by the Trustee in respect of the Secured Notes. To that end, the Applicants, with the support of Marret, are seeking a paragraph in the Initial Order to authorize and give effect to those arrangements.

(L) Claims Procedure Order and Meetings Order

146. The Applicants will be bringing a motion, seeking to proceed immediately, for a Claims Procedure Order authorizing and directing the Applicants to undertake a process (the "**Claims Procedure**") to identify and determine all affected claims against the Applicants and their

present and former directors and officers for voting and distribution purposes with respect to the Plan.

147. Also, the Applicants will be bringing a motion, seeking to proceed immediately, for a Meetings Order authorizing and directing the Applicants to file the Plan with the Court and to convene meetings of their affected creditors to vote on a resolution to approve the Plan and any amendments thereto.

148. The Applicants are seeking the Claims Procedure Order and the Meetings Order at this stage because they wish to effectuate the Recapitalization as efficiently as possible. Completing the Recapitalization in a timely manner is in the best interests of all stakeholders of the Applicants and will ensure that the Cline Group has a reduced debt structure to enable the Cline Group to better withstand prolonged weakness in the market for its resources.

149. Each of the proposed Claims Procedure Order and Meetings Order contains a "Comeback Clause" allowing interested parties who wish to amend or vary the applicable Order to appear before the Court or bring a motion before the Court on a date to be set by the Court.

(ii) Claims Procedure Order

150. In this section, defined terms not defined herein will be as defined in the Claims Procedure Order.

151. The draft Claims Procedure Order provides a process for identifying and determining claims against the Applicants and their directors and officers, including, *inter alia*, the following:

(a) Cline and Marret, shall determine the aggregate of all amounts owing by the Applicants under the 2011 Indenture and the 2013 Indenture in respect of the

Secured Notes up to the Filing Date, such amounts being collectively the Secured Noteholders Allowed Claim;

(b) the Secured Noteholders Allowed Claim will be apportioned between the Secured Noteholders Allowed Secured Claim and the Secured Noteholders Allowed Unsecured Claim (being the amount of the Secured Noteholders Allowed Claim that is designated as unsecured having regard to the value of the security held by the 2011 Trustee and 2013 Trustee), as set out in the Claims Procedure Order, and as described below;

(c) the Monitor will send a Claims Package to all Known Creditors, which Claims Package shall include a Notice of Claim specifying the Known Creditor's Claim against the Applicants for voting and distribution purposes, and specifying whether the Known Creditor's claim is secured or unsecured;

(d) the Claims Procedure Order contains provisions allowing a Known Creditor to dispute its Claim as determined in the applicable Notice of Claim for either voting or distribution purposes or with respect to whether such Claim is secured or unsecured, and sets out a procedure for resolving such disputes;

(e) the Monitor will publish a notice to creditors in The Globe and Mail (National Edition), the Denver Post and the Pueblo Chieftain to solicit Claims against the Applicants by potential claimants who are as yet unknown to the Applicants;

(f) the Monitor will deliver a Claims Package to any Unknown Creditor who makes a request therefor prior to the Claims Bar Date containing a Proof of Claim to be

completed by such Unknown Creditor and filed with the Monitor prior to the Claims Bar Date;

(g) the proposed Claims Bar Date for Proofs of Claim for Unknown Creditors and for Notices of Dispute in the case of Known Creditors is January 13, 2015 (which is 42 days following the date of the Claims Procedure Order, assuming that Order is granted at this time);

(h) the Claims Procedure Order contains provisions allowing the Applicants to dispute a Proof of Claim as against an Unknown Creditor and provides a procedure for resolving such disputes for either voting or distribution purposes or with respect to whether such claim is secured or unsecured;

(i) the Claims Procedure Order allows the Applicants to allow a Claim for purposes of voting on the Plan without prejudice to whether that Claim has been accepted for purposes of receiving distributions under the Plan;

(j) where the Applicants or the Monitor send a notice of disclaimer or resiliation to any Creditor after the Filing Date, such notice shall be accompanied by a Claims Package allowing such Creditor to make a claim against the Applicants in respect of a Restructuring Period Claim;

(k) the Restructuring Period Claims Bar Date, in respect of claims arising as on or after the Applicants' date of CCAA filing shall be seven (7) days after the day such a Restructuring Period Claim arises;

(l) for purposes of the matters set out in the Claims Procedure Order in respect of any WARN Act Claims: (i) the WARN Act Plaintiffs will be treated as Unknown Creditors since the Applicants are not aware of (and have not quantified) any bona fide claims of the WARN Act Plaintiffs; and (ii) Class Action Counsel shall be entitled to file Proofs of Claim, Notices of Dispute of Revision and Disallowance, receive service and notice of materials and to otherwise deal with the Applicants and the Monitor on behalf of the WARN Act Plaintiffs, provided that Class Action Counsel shall require an executed proxy in order to cast votes on behalf of any WARN Act Plaintiffs at the WARN Act Plaintiffs' Meeting;

(m) Creditors may file a Proof of Claim with respect to a Director/Officer Claim; and

(n) interested parties who wish to amend or vary the Claims Procedure Order may appear before the Court or bring a motion before the Court on a date to be set by the Court.

152. The Claims Procedure Order is designed to identify the Claims of all possible Creditors in a manner that preserves the rights of such Creditors while allowing the Applicants to proceed expeditiously.

(iii) Meetings Order

153. The draft Meetings Order provides that the Applicants are authorized to file the Plan and to convene meetings of their affected creditors to consider and vote on the Plan as follows:

(a) a meeting of the Secured Noteholders (the "**Secured Noteholders Class**");

(b) a meeting of affected unsecured creditors other than claimants with WARN Act Claims (the "**Affected Unsecured Creditors Class**"); and

(c) a meeting of any claimants in respect of WARN Act Claims (the "**WARN Act Plaintiffs Class**").

154. The Secured Noteholders Class will consist of the Secured Noteholders in respect of the portion of their claims against the Applicants that is to be treated as secured. Each Secured Noteholder will be entitled to vote its *pro rata* portion of that amount in the Secured Noteholders Class.

155. The Affected Unsecured Creditors Class consists of all of the unsecured creditors of the Applicants who are to be affected by the Plan, including the Secured Noteholders in respect of the remaining unsecured balance of their claims (i.e. the portion of their claims that is to be treated as unsecured), but excluding any WARN Act Plaintiff in respect of a WARN Act Claim. Each Secured Noteholder will be entitled to vote its *pro rata* portion of the Secured Noteholders Allowed Unsecured Claim in the Affected Unsecured Creditors Class. The Affected Unsecured Creditors Class also includes the second-ranking secured claims of Marret (in its individual capacity), if any. The claims of Marret would be treated as unsecured because they rank below the Secured Notes, which will already suffer a deficiency in the value of their available security.

156. The Affected Unsecured Creditors Class will include a convenience class of unsecured creditors with Affected Unsecured Claims of up to $10,000 who will be paid in cash in full of their Affected Unsecured Claims and who will be deemed to vote in favour of the Plan, as members of the Affected Unsecured Creditors Class, unless they indicate otherwise.

157. The WARN Act Plaintiffs Class consists of all WARN Act Plaintiffs in the WARN Act Class Action who may assert WARN Act Claims against the Applicants.

158. I believe that this classification of creditors is fair having regard to the creditors' legal interests, the remedies available to them, and the extent to which they would recover their claims by exercising those remedies. In addition, all of the creditors in the Affected Unsecured Creditors Class have no security enforcement remedy in respect of the claims to be voted in that class, either because they have no security interest in the Applicants at all or because the value of the Applicants' assets is insufficient to satisfy the secured claims against them. All of the claims in the Affected Unsecured Creditors Class are similar in that they would remain unpaid in the event of a security enforcement or liquidation scenario.

159. The WARN Act Plaintiffs Class consists of contingent litigation creditors who assert (or who may assert) claims against Cline and New Elk in an uncertified class action proceeding. The WARN Act Claims have not been proven and are contested by the Applicants.

160. It is proposed that the Meetings will be held at Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario on January 21, 2015 at 10:00 a.m. for the WARN Act Plaintiffs Class, 11:00 a.m. for the Affected Unsecured Creditors Class, and 12:00 p.m. for the Secured Noteholders Class.

161. The draft Meetings Order provides for, *inter alia*, the following in respect of the governance of the Meetings (defined terms not otherwise defined herein shall have the meaning given to those terms in the Plan):

(a) an officer of the Monitor shall preside as the chair of the Meetings;

(b) the only parties entitled to notice of, attend or speak at the Meetings are the Eligible Voting Creditors (or their respective duly appointed proxyholders), representatives of the Monitor, the Applicants, Marret, all such parties' financial and legal advisors, the Chair, the Secretary, the Scrutineers, and such other parties as may be admitted to a Meeting only by invitation of the Applicants or the Chair;

(c) only Creditors with Voting Claims or their duly appointed proxyholders are entitled to vote at the Meetings; provided that, in the event a Creditor holds a Claim that is a Disputed Voting Claim as at the date of a Meeting, such Disputed Voting Claim may be voted at the applicable Meeting (by the applicable Creditor or its proxyholder) but shall be tabulated separately and shall not be counted for any purpose unless, until, and only to the extent that such Claim is ultimately determined to be a Voting Claim;

(d) each WARN Act Plaintiff or its proxyholder shall be entitled to cast an individual vote on the Plan as part of the WARN Act Plaintiffs Class and Class Action Counsel shall be permitted to cast votes on behalf of those WARN Act Plaintiffs who have duly appointed Class Action Counsel as their proxy pursuant to the terms of the Meetings Order;

(e) the quorum for each Meeting is one Creditor with a Voting Claim, provided that if there are no WARN Act Plaintiffs voting in the WARN Act Plaintiffs Class, the Applicants will have the right to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class and proceed without a vote of the WARN

Act Plaintiffs Class, in which case there shall be no WARN Act Plan Entitlement under the Plan;

(f) the Monitor shall keep separate tabulations of votes in respect of:

(i) Voting Claims; and

(ii) Disputed Voting Claims, if any;

(g) the Scrutineers shall tabulate the vote(s) taken at each Meeting and determine whether the Plan has been accepted by the required majorities of the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class;

(h) if the approval or non-approval of the Plan may be affected by the votes cast in respect of the Disputed Voting Claims, if any, as determined by the Monitor, the Applicants and the Monitor may seek directions from this Court; and

(i) the results of the vote conducted at the Meetings shall be binding on each creditor of the Applicants whether or not such creditor is present in person or by proxy or voting at a Meeting.

162. The Applicants may elect to proceed with the Meetings notwithstanding that the resolution of Claims in accordance with the Claims Procedure may not be complete. As noted above, the Meetings Order, if approved, authorizes and directs the Monitor to tabulate votes in respect of Voting Claims separately from votes in respect of Disputed Voting Claims, if any. If the approval or non-approval of the Plan may be affected by the votes cast in respect of Disputed Voting Claims, if any, then only if the Disputed Voting Claims are ultimately determined to be

Voting Claims, in whole or in part, will such Claims, in whole or in part, as applicable, be counted for purposes of determining whether the requisite majorities of the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class have voted to approve the Plan. This way, the Meetings can proceed concurrently with the conclusion of the Claims Procedure.

163. By proceeding with the Meetings concurrently with the conclusion of the Claims Procedure, the Applicants hope to move more expeditiously towards the implementation of the Recapitalization and the conclusion of the Recapitalization.

164. The Meetings Order includes a comeback provision providing interested parties who wish to amend or vary the Meetings Order with the ability to appear before the Court or bring a motion before the Court on a date to be set by the Court.

165. Marret has confirmed that it supports the Recapitalization and the Plan on behalf of the Secured Noteholders and it has entered into the Support Agreement to that effect.

166. The class of unsecured creditors of the Applicants is relatively small, and most of the Applicants' known unsecured creditors are knowledgeable about the operations of the Applicants. As a result, I believe the counterparties would not be prejudiced by the timeframes being proposed in the requested Claims Procedure Order and Meetings Order.

(iv) Fairness of Plan and the Recapitalization

167. The Applicants have considered a number of factors in deciding to move forward with the Recapitalization, the Plan and the relief sought under the CCAA, including:

(a) the industry-wide challenges facing the metallurgical coal market, including historically low prices for metallurgical coal;

(b) the results of the Sale Process, including the fact that no offers or expressions of interest for the Cline Group were received in the Sale Process;

(c) the Secured Notes are now past due, Marret has advised that the Secured Noteholders have directed the Trustee to accelerate the Secured Notes and the Trustee (at the direction of the Secured Noteholders) is in a position to enforce its security;

(d) the fact that Marret (on behalf of the Secured Noteholders) has forbeared on its rights for an extended period of time to allow the Applicants to consider and pursue alternatives and has allowed the Cline Group to use its cash collateral to fund the Cline Group during that time; however, Marret is not prepared to forbear and support the Cline Group any longer in the absence of the Recapitalization;

(e) the Applicants have achieved the support of Marret, which represents the Applicants' largest creditor group and the creditors with the remaining economic interest in the Cline Group;

(f) the Plan would provide for limited recoveries for Affected Unsecured Creditors and WARN Act Plaintiffs, who would otherwise expect to receive nothing in a debt enforcement or liquidation scenario; and

(g) the Applicants do not presently have any other viable alternative for continuing the Cline Business other than the Recapitalization.

168. In light of these considerations, the Applicants have concluded that the terms of the Recapitalization and the Plan are fair and reasonable in the circumstances.

V. CONCLUSION

169. The Applicants are currently in an unsustainable financial position. The Cline Group has a number of valuable interests in mineral properties but currently lacks the financial capacity to develop and operate them. The depressed global market for metallurgical coal and the ongoing suspension of full-scale coal mining activities at the New Elk Mine has led to the inability of the Applicants to satisfy their obligations in respect of the Secured Notes and has rendered the Applicants insolvent. In order to avoid a debt enforcement scenario and the accompanying loss of value, the Cline Group has negotiated the Recapitalization and achieved the support of Marret (on behalf of the Secured Noteholders). The Applicants have determined that it is in the best interests of the Applicants and their stakeholders to seek protection under the CCAA and to move forward with the Recapitalization as efficiently and expeditiously as possible. Accordingly, I swear this Affidavit in support of the relief sought by the Applicants.

SWORN before me in the City of Toronto, in the Province of Ontario, on December 2, 2014.

A Commissioner for taking affidavits
Name:

MATTHEW GOLDFARB

Court File No. _____

CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

PRE-FILING REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA INC., IN ITS CAPACITY AS PROPOSED MONITOR

December 2, 2014

FTI™ CONSULTING

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

PRE-FILING REPORT OF FTI CONSULTING CANADA INC., in its capacity as proposed Monitor of the Applicants

December 2, 2014

INTRODUCTION

1. FTI Consulting Canada Inc. ("**FTI**" or the "**Proposed Monitor**") understands that Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**") (collectively, the "**Applicants**") intend to make an application seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for:

   A. an initial order (the "**Initial Order**") granting, *inter alia*, a stay of proceedings until December 31, 2014, and appointing FTI as Monitor (the "**Monitor**");

B. an order (the "**Claims Procedure Order**") establishing a process for the identification and determination of claims against the Applicants and their present and former directors and officers; and

C. an order (the "**Meeting Order**") authorizing the Applicants to file a plan of compromise and arrangement (the "**Plan**") and to convene a meeting of their affected creditors to consider and vote on the Plan.

2. The proceedings to be commenced by the Applicants under the CCAA are referred to herein as the "**CCAA Proceedings**".

PURPOSE

3. The purpose of this report (the "**Pre-filing Report**") of the Proposed Monitor is to provide this Honourable Court with the following:

A. FTI's qualifications to act as Monitor (if appointed);

B. an overview of the Applicants and their current situation;

C. information regarding the proposed stay of proceedings;

D. a summary of the activities that FTI has been involved in to date with respect to the business and affairs of the Applicants;

E. FTI's comments regarding the proposed Administration Charge and Directors' Charge;

F. information regarding the Support Agreement (as defined herein) between Cline and Marret Asset Management Inc. ("**Marret**");

G. FTI's comments regarding the proposed Claims Procedure Order and the proposed Meeting Order;

H. information regarding the intended application for recognition of the CCAA Proceedings as "Foreign Main Proceedings" under Chapter 15 of the United States *Bankruptcy Code* ("**Chapter 15**");

I. FTI's comments on the Applicants' cash management system;

J. FTI's comments regarding the proposed payment of certain pre-filing amounts;

K. FTI's comments regarding the Applicants' consolidated 13 week cash flow projections of their receipts and disbursements to March 1, 2015 (the "**Cash Flow Forecast**") and the reasonableness thereof, in accordance with section 23(1)(b) of the CCAA; and

L. the Proposed Monitor's conclusions and recommendations.

TERMS OF REFERENCE

4. In preparing this report, FTI has relied upon audited and unaudited financial information of the Applicants, the Applicants' books and records (where appropriate), certain financial information prepared by the Applicants and discussions with various parties, including the Applicants' management and counsel to the Applicants (collectively, the "**Information**").

5. Except as described in this Report:

A. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and

B. FTI has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

6. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

7. FTI has prepared this Pre-filing Report in connection with the motion described in the Applicants' Notice of Application returnable December 3, 2014. This Pre-Filing Report should not be relied on for other purposes.

8. Unless otherwise stated, all monetary amounts contained in this Pre-Filing Report are expressed in Canadian dollars. Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the affidavit of Matthew Goldfarb (the "**Goldfarb Affidavit**") sworn December 2, 2014 and filed in support of the Applicants' application for certain relief under the CCAA. This Pre-Filing Report should be read in conjunction with the Goldfarb Affidavit as certain information contained in the Goldfarb Affidavit has not been included herein in order to avoid unnecessary duplication.

A. FTI'S QUALIFICATIONS TO ACT AS MONITOR

9. Paul Bishop, the individual within FTI who will have primary carriage of this matter, is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

10. Neither FTI, nor any of its representatives, has been, at any time in the two preceding years:

A. a director, officer or employee of any Applicant;

B. related to any Applicant or to any director or officer of any Applicant; or

C. the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any Applicants.

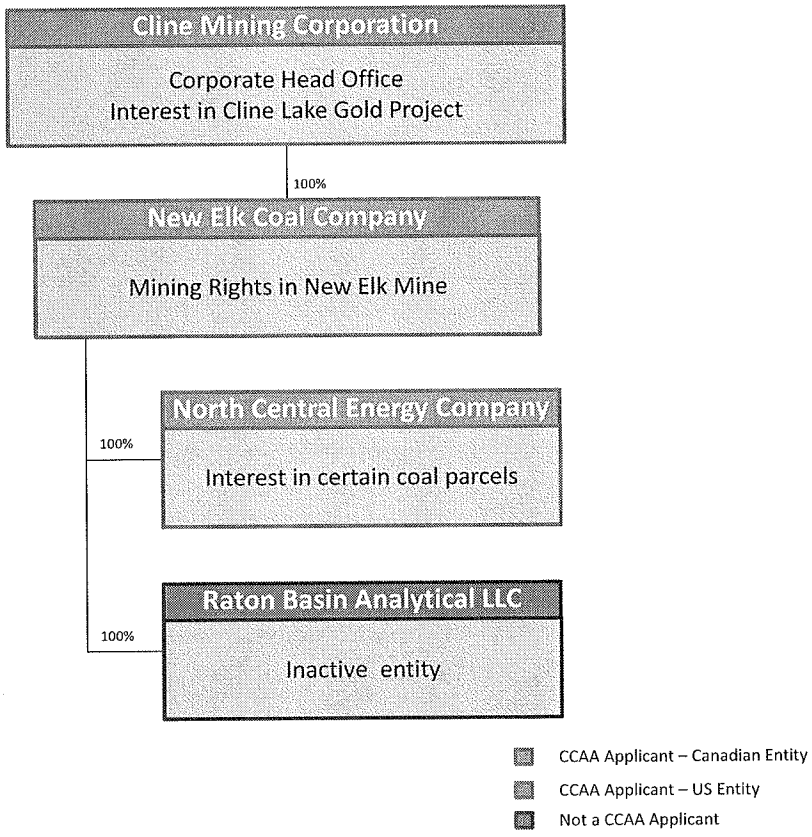
11. FTI has consented to act as Monitor should this Honourable Court grant the Applicants' request to commence the CCAA Proceedings. A copy of FTI's consent to act as Monitor is attached hereto as Appendix "A".

B. OVERVIEW OF THE APPLICANTS AND THEIR CURRENT SITUATION

12. This overview of select background information relating to the Applicants is presented to provide context for, and to facilitate an understanding of, the issues addressed in this Pre-filing Report. This overview is based on FTI's review of the Information, discussions with management and information contained in the Goldfarb Affidavit. Please refer to the Goldfarb Affidavit for more detailed background information relating to the Applicants.

The Applicants

13. The Applicants, together with Raton Basin Analytical LLC ("**Raton Basin**" and together with the Applicants, the "**Cline Group**") are in the business of locating, exploring and developing mineral resource properties, with a particular focus on gold and metallurgical coal. A simplified corporate structure of the Cline Group is presented in the chart below:



14. Cline is incorporated in British Columbia and its head office is located in Toronto, Ontario. Cline's shares were previously listed on the Toronto Stock Exchange until Cline voluntarily delisted its shares on June 21, 2013.

15. The Cline Group has interests in resource properties in Canada, the United States and Madagascar, most of which remain in the developmental stage. However, the New Elk metallurgical coal mine, located in Colorado (the "**New Elk Mine**"), became operational in December 2010. As of the date of this Pre-Filing Report, and for reasons more particularly described in the Goldfarb affidavit, the New Elk Mine is currently on a care and maintenance program.

16. Cline owns an interest in a gold exploration property located near Wawa, Ontario, known as the Cline Lake Gold Project, which is currently in the exploration stage. As more particularly described in the Goldfarb Affidavit, Cline also owns minority interests in other properties and entities.

17. New Elk is a wholly owned subsidiary of Cline and is a limited liability company incorporated pursuant to the laws of the State of Colorado. New Elk holds mining rights in the New Elk Mine. The lands on which the New Elk Mine is situated are owned and controlled by a number of parties.

18. North Central is a wholly owned subsidiary of New Elk and is incorporated pursuant to the laws of the State of Colorado. North Central holds a fee simple interest in certain coal parcels on which the New Elk Mine is situated.

19. Raton Basin, a wholly owned subsidiary of New Elk that is incorporated pursuant to the laws of the State of Colorado, is not an Applicant in these proceedings. The Proposed Monitor is advised by the Applicants' Chief Restructuring Officer and Chief Executive Officer, Matthew Goldarb (the "**CRO**"), that Raton Basin is inactive and has no material assets or liabilities.

Employees

20. The Monitor understands that the Cline Group currently directly employs 19 people. The officers of the Cline Group are engaged as independent consultants. None of the Cline Group's personnel are unionized.

21. The workforces are presently reduced as a result of the temporary production halt at the New Elk Mine. Contractors and consultants are also hired from time to time to work on specific properties for administrative, accounting, legal and other services as required.

Events Leading up to the Applicants' Current Situation

22. The Proposed Monitor is advised by the CRO that certain events and occurrences have led to the Applicants' current situation, including, *inter alia*:

A. the New Elk Mine, which is the Cline Group's only revenue-capable asset at the present time, became operational at the beginning of a protracted downturn in the global metallurgical coal markets and has been unable to operate profitably due to continuing adverse market conditions that have negatively affected the entire industry;

B. in July 2012, the Cline Group largely suspended mining operations at the New Elk Mine to reduce costs and minimize losses;

C. since the Cline Group's other resource investments remain at the development stage, the Cline Group's current inability to derive revenue from the New Elk Mine has rendered the Applicants unable to meet their financial obligations as they become due;

D. the Applicants undertook a comprehensive sale process (the "**Sale Process**"), with the assistance of Moelis & Company LLC ("**Moelis**"), in respect of the Cline Group in the spring and summer of 2014.

Despite their efforts, neither the Applicants nor Moelis received any indications of interest;

E. Cline is currently in default of its 2011 series 10% senior secured notes (the "**2011 Notes**") as well as its 2013 series 10% senior secured notes (the "**2013 Notes**", and collectively with the 2011 Notes, the "**Secured Notes**"), each of which are guaranteed by both New Elk and North Central;

F. total obligations of $110,173,897 (the "**Debt**"), including principal and interest, are owed in respect of the Secured Notes as of December 1, 2014;

G. Computershare (the "**Trustee**") acts as trustee for both the 2011 Notes and 2013 Notes;

H. the Secured Notes matured on June 15, 2014. In connection therewith, several forbearance agreements were entered into between the Trustee and Cline, New Elk and North Central. Such forbearance agreements expired on November 28, 2014 and have not been extended;

I. on December 2, 2014, Marret confirmed that the Secured Noteholders had given instructions to the Trustee to accelerate the Secured Notes.

Accordingly, the Trustee will be in a position to enforce on the security over the 2011 Notes and the 2013 Notes in the near term;

J. Marret manages and exercises sole discretion and control on behalf of all noteholders (the "**Secured Noteholders**") relating to the Secured Notes and all of the Secured Notes are held by beneficial owners whose investments are managed by Marret; and

K. Marret supports a proposed recapitalization of the Applicants (the "**Recapitalization**"), which would be implemented pursuant to a plan of compromise and arrangement under the CCAA that is recognized in the U.S. under Chapter 15.

23. The Monitor is advised by counsel to Marret that the Secured Noteholders are in the process of executing a unanimous resolution whereby the Trustee will be relieved of any obligation to take any further actions in these CCAA Proceedings in respect of the Secured Notes and the indentures governing the Secured Notes, and Marret will be authorized and empowered to take all such actions in these CCAA Proceedings. Paragraph 38 of the proposed form of Initial Order includes a provision giving effect to this. The Monitor is advised by counsel to Marret that Marret is willing and able to assume and perform all such obligations. In addition, the Monitor understands that the Trustee is aware of the contemplated

unanimous resolution of the Secured Noteholders and has been served with the application materials associated with these CCAA Proceedings.

24. The Applicants are facing an impending liquidity crisis as Cline is immediately required to repay $110,173,897 in respect of the Secured Notes and does not have the ability to repay such amounts.

25. The Applicants' business, affairs, financial performance and position, as well as the causes of their insolvency, are more particularly described in the Goldfarb Affidavit and are therefore not repeated herein.

C. STAY OF PROCEEDINGS

26. The Applicants' stated objectives for the CCAA Proceedings and the stay of proceedings are to permit them to pursue the Recapitalization with a view to maximizing value for the benefit of stakeholders. The Applicants believe that without the benefit of CCAA protection there could be significant erosion in the value of the Cline Group that could result in the loss of tax attributes and various exploration, mining and environmental permits. On this basis, the Proposed Monitor supports the Applicants' request for a stay of proceedings.

D. ACTIVITIES OF THE PROPOSED MONITOR

27. Cline retained FTI as a financial advisor on April 9, 2014. FTI was retained in order to assist with the preparation of cash flow forecasts, to evaluate and assess restructuring alternatives available to the Applicants, and to assist the Applicants with their preparation for filing under the CCAA. For the purpose of this mandate, FTI has been involved in numerous activities, including, *inter alia*:

A. participating in numerous meetings and discussions with senior management of the Applicants and the Applicants' legal advisors in connection with the Applicants' business and financial affairs generally and in connection with the preparation of the Cash Flow Forecast;

B. participating in numerous meetings and discussions with the Applicants and counsel to the Applicants in connection with the proposed forms of Initial Order, Claims Procedure Order and Meeting Order;

C. engaging legal counsel, who also participated in certain of the above-noted meetings and discussions;

D. reviewing and considering various documentation in connection with the CCAA Proceedings; and

E. preparing this Pre-Filing Report.

28. If this Honourable Court approves the appointment of FTI as Monitor, FTI will comment in a future report on, *inter alia*:

A. the Secured Notes and the validity, enforceability and perfection of the security granted by the Applicants in connection therewith; and

B. the development of the Plan and the Alternate Plan (as defined herein), and the terms and conditions contained therein, which will be included in the statutory report to the Court on the Plan pursuant to the terms of the CCAA at the appropriate time.

E. COURT-ORDERED CHARGES

29. The proposed form of Initial Order provides for a charge on the Applicants' Property in an amount not to exceed $350,000 (the "**Administration Charge**") to secure the fees and disbursements incurred in connection with services rendered by counsel to the Applicants, the Monitor (if appointed), the Monitor's counsel, the Chief Restructuring Officer of the Applicants and counsel to Marret both before and after the commencement of the CCAA Proceeding.

30. The Monitor understands that Cline maintains an insurance policy in respect of the potential liability of directors and officers of the Applicants (as described in the Goldfarb Affidavit) (the "**D&O Insurance Policy**"). In addition, the proposed form of Initial Order authorizes the Applicants to have up to $50,000 deposited with AIG Insurance Company of Canada for the purpose of obtaining a directors and officers run-off insurance policy, and we are advised by counsel to Marret that Marret does not oppose such authorization. However, the Monitor understands that the D&O Insurance Policy contains several exclusions and limitations to the coverage provided by such policies, and as such, there is a potential for there to be insufficient coverage in respect of the potential directors' liabilities for which the directors and/or officers may be found to be responsible.

31. Accordingly, the proposed form of Initial Order also provides for a charge on the Applicants' Property in an amount not to exceed $500,000 (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities that they may incur as directors and officers of the Applicants after the commencement of the CCAA Proceeding, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The benefit of the Directors' Charge will only be available to the extent that an applicable liability is not covered under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient.

32. The Directors' Charge will rank subsequent to the Administration Charge. The effect of the proposed Court-ordered charges in relation to each other is the following ranking:

i. First - Administrative Charge to a maximum of $350,000; and

ii. Second – Directors' Charge to a maximum of $500,000 (collectively, the "**Charges**").

33. The proposed Initial Order provides that the Charges will rank ahead of the existing security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any Person, except for any security interests listed on Schedule "A" to the Initial Order.

34. FTI has worked with the Applicants to determine the proposed quantum of the Charges. Accordingly, FTI believes that the above-noted Charges and rankings are required and reasonable in the circumstances of the CCAA Proceedings in order to preserve going concern operations of the Applicants and maintain their enterprise value. Therefore, FTI supports the granting and the proposed ranking of the Charges.

F. SUPPORT AGREEMENT

35. FTI is advised by the Applicants that Marret, acting on behalf of the beneficial owners of the Secured Notes, supports the Recapitalization pursuant to a Support Agreement (the "**Support Agreement**") dated December 2, 2014 between Cline and Marret (on behalf of the Secured Noteholders) which, *inter alia*:

A. sets forth the principal terms of the proposed Recapitalization;

B. provides that Marret will vote (or cause to be voted) all of the Secured Notes in favour of the approval, consent, ratification and adoption of the Recapitalization and the Plan; and

C. provides that Marret will not enforce or take any action or initiate any proceeding to enforce the payment of any of the Debt without the prior written consent of Cline.

36. Marret may terminate the Support Agreement in certain circumstances, including, *inter alia*:

A. if Cline has not obtained an initial CCAA order prior to December 31, 2014;

B. if the CCAA Proceedings are terminated; or

C. if a stay of proceedings under the CCAA ceases to be in effect with respect to Cline.

37. In addition, Marret and Cline are each permitted to terminate the Support Agreement at any time by providing the other party with ten days' written notice.

G. CLAIMS PROCEDURE ORDER AND MEETING ORDER

Claims Procedure Order

38. In order to complete the Recapitalization in a timely manner, the Applicants are seeking to proceed immediately with a Claims Procedure whereby the Applicants can identify and determine all affected claims against the Applicants and their current and former directors and officers.

39. The proposed Claims Procedure Order provides that the aggregate of all amounts owing by Cline under the Secured Notes and the guarantees executed by New Elk and North Central in respect of the Secured Notes (including, in each case, principal and accrued interest thereon) up to the Filing Date (the "**Secured Noteholders Allowed Claim**") shall be determined by the Applicants, with the consent of Marret. As more particularly described in the Goldfarb Affidavit, the Applicants are of the view that the amounts owing under the

Secured Notes exceed the current realizable value of the Cline Business (as defined in the Goldfarb Affidavit). For the purposes of the Claims Procedure Order, the Meetings Order and the Plan, the Secured Noteholders Allowed Claim will be allowed for both voting and distribution purposes against the Applicants as follows:

A. a portion of the Secured Noteholders Allowed Claim to be agreed to by the Applicants and Marret will be allowed as an Affected Secured Claim (as defined in the Claims Procedure Order) against the Applicants (collectively the "**Secured Noteholders Allowed Secured Claim**"); and

B. a portion of the Secured Noteholders Allowed Claim to be agreed to by the Applicants and Marret will be allowed as an Affected Unsecured Claim (as defined in the Claims Procedure Order) against the Applicants (collectively the "**Secured Noteholders Allowed Unsecured Claim**").

40. Given the presently depressed prices of metallurgical coal, the existing market for coal-related assets and the failure to receive any indications of interest for the Cline Group pursuant to the Sales Process, it appears that the amount of obligations in respect of the Secured Notes exceeds the realizable value of the

assets of the Cline Group at the present time. If this Honourable Court approves the appointment of FTI as Monitor, FTI will provide additional information in this regard in its report commenting on the Plan or any Alternate Plan, as the case may be.

41. As set forth in the Term Sheet (attached to Schedule "A" of the Support Agreement) and the Plan, the Applicants and Marret have agreed to set the Secured Noteholders Allowed Unsecured Claim at $17,500,000 and the Secured Noteholders Allowed Secured Claim at $92,673,897. FTI (if appointed as Monitor) is not required under the Claims Procedure Order to determine the quantum of the Secured Noteholders Allowed Secured Claim and the Secured Noteholders Allowed Unsecured Claim and FTI has not been involved in any discussion in respect thereof.

42. In addition to the claims process described above in respect of the Secured Noteholders, the proposed Claims Procedure Order also provides for (a) a process for the delivery by the Monitor of Notices of Claims to Known Creditors; (b) a process for Unknown Creditors to file Proofs of Claim with the Monitor; and (c) a process for the acceptance, revision or dispute, in whole or in part, by the Monitor of Claims of Known Creditors and Unknown Creditors for the purposes of voting and/or distribution under the Plan.

Meeting Order

43. The Applicants are also seeking the proposed Meeting Order authorizing and directing the Applicants to file the Plan with this Honourable Court and to convene meetings of their affected creditors to vote on a resolution to approve the Plan and any amendments thereto.

44. The proposed Meeting Order provides that the Applicants will be authorized to hold meetings of three separate classes (the "**Voting Classes**") for the purposes of considering and voting on a resolution to approve the Plan. The three Voting Classes are:

A. the "Secured Noteholder Class", being the class of Secured Noteholders in respect of the Secured Noteholders Allowed Claim;

B. the "Affected Unsecured Creditors Class", being the class of holders of Affected Unsecured Claims (as defined in the Claims Procedure Order, which includes, *inter alia*, the Secured Noteholders Allowed Unsecured Claim). The Affected Unsecured Creditors Class will include a convenience class of unsecured creditors with Affected Unsecured Claims of up to $10,000, who will be deemed to vote in favour of the Plan (unless they indicate otherwise and in fact vote against the Plan) and who will be paid in cash in full for their Affected Unsecured Claims; and

C. the "WARN Act Plaintiffs Class", being the class of plaintiffs in the class action lawsuit that was filed against Cline and New Elk alleging that they violated the U.S. federal *Worker Adjustment and Retraining Notification Act* (the "**WARN Act Class Action**"), and all others who are alleged in the WARN Act Class Action to be similarly situated and any other person who asserts a claim against one or more of the Applicants pursuant to the *Worker Adjustment and Retraining Notification Act*.

45. The Meeting Order provides that the Applicants will be authorized to hold separate meetings for each of the Voting Classes. In addition, the Meeting Order provides that if the requisite quorum is not present at the WARN Act Plaintiffs Meeting or if it is determined in accordance with the Claims Procedure Order that there are no Voting Claims in the WARN Act Plaintiffs Class, the Applicants shall be entitled, but not required, to amend the Plan without further Order of the Court to combine the WARN Act Plaintiffs Class with the Affected Unsecured Creditors Class on such terms as may be set forth in such amended Plan (including on the basis that the WARN Act Plan Entitlement shall not be payable under the Plan), in which case the Applicants shall have no further obligation to hold the WARN Act Plaintiffs Meeting or otherwise seek a vote of the WARN Act Plaintiffs Class with respect to the resolution to approve the Plan or any other matter.

46. If this Honourable Court approves the appointment of FTI as Monitor, FTI will (a) provide an update to this Honourable Court in a further report regarding the receipt of Voting Claims in the WARN Act Plaintiffs Class, if any, and any amended Plan in respect thereof and (b) report on the impact, if any, of the votes cast in respect of the Secured Noteholders Allowed Unsecured Claim on the vote of the Affected Unsecured Creditor Class.

47. As previously indicated, Marret will be assuming and performing all of the Trustee's obligations in these CCAA Proceedings. Accordingly, the Meeting Order provides that Marret will have primary responsibility for soliciting the votes of the beneficial Secured Noteholders in accordance with its usual practice of dealing with such noteholders, as opposed to the Trustee. The Monitor is advised by counsel to Marret that Marret is willing and able to assume and perform such obligations in accordance with the timeline set out in the proposed Meeting Order.

48. The Meeting Order also provides that:

A. if the Plan is not accepted by the required majority of the Affected Unsecured Creditors Class or the WARN Act Plaintiffs Class; or

B. if the Applicants determine, in their discretion, that the Plan may not be accepted by either of the Affected Unsecured Creditors Class or the

WARN Act Plaintiffs Class, or is otherwise unlikely to succeed for any reason whatsoever,

then without further order of the Court, the Applicants will be permitted to file an amended and restated plan (the "**Alternate Plan**") and to proceed with a meeting of the Secured Noteholders Class for the purpose of considering and voting on the resolution to approve the Alternate Plan, in which case the Applicants and the Monitor will have no obligation to proceed with the Unsecured Creditors Meeting or the WARN Act Plaintiffs Meeting.

49. Further details regarding the Alternate Plan are set out in the Goldfarb Affidavit. The principal effect of the Alternate Plan is that (a) all assets and property of the Applicants will be transferred to an entity designated by the Secured Noteholders and/or Marret (on behalf of the Secured Noteholders), free and clear of all claims and encumbrances, in exchange for the cancellation of the Secured Notes and a release of all obligations of the Secured Noteholders under the Secured Notes; and (b) all unsecured claims and all WARN Act Claims will receive no distributions or consideration of any kind.

50. The Meeting Order further provides that if the Alternate Plan is pursued, the Secured Noteholders Meeting and the Sanction Hearing may proceed on the originally scheduled dates set forth in the Meeting Order with the consent of the

Monitor, and that the Monitor may rely on voting information and proxies received from or on behalf of the Secured Noteholders in respect of the Plan, without the Applicants or the Monitor being required to distribute the Alternate Plan and solicit votes on the Alternate Plan to all beneficial Secured Noteholders in the manner described in the Meeting order. If the Alternate Plan is pursued, the Monitor will consider, *inter alia*, the impact of any shortened or absent service in connection with determining whether to consent to proceeding with the originally scheduled dates set forth in the Meeting Order for the Secured Noteholders Meeting and the Sanction Hearing. In this regard, the Monitor reiterates it is advised that Marret manages and exercises sole discretion and control on behalf of all Secured Noteholders relating to the Secured Notes and that all of the Secured Notes are held by beneficial owners whose investments are managed by Marret.

51. If this Honourable Court approves the appointment of FTI as Monitor, FTI will comment further on the Alternate Plan, if necessary.

Timing of the Claims Procedure Order and Meeting Order

52. If this Honourable Court grants the Initial Order, the Applicants will bring a motion immediately thereafter seeking the Claims Procedure Order and Meeting Order in order to stabilize their financial situation and proceed with the

Recapitalization as efficiently and expeditiously as possible. The Proposed Monitor is of the view that seeking such relief at this stage is reasonable in the circumstances given that:

A. each of the proposed Claims Procedure Order and Meeting Order contains a "Comeback Clause" allowing interested parties who wish to amend or vary the applicable Order to appear before the Court or bring a motion on a date to be set by the Court (FTI understands that the Applicants intend to propose December 18, 2014 for the Comeback hearing); and

B. the proposed Claims Bar Date is January 13, 2014 in order to take into account the potential impact of the holiday season, thereby providing Affected Secured Creditors and Affected Unsecured Creditors with a period of over 40 days to consider their respective claims.

H. CHAPTER 15 PROCEEDINGS

53. The Applicants and the Proposed Monitor are of the view that the Recapitalization of the Cline Group is likely to require judicial approval in the United States to address the assets and obligations of the Cline Group in the United States.

54. Accordingly, the Applicants are requesting that the proposed Initial Order provide that FTI (if appointed Monitor) be authorized, as the foreign representative of the Applicants, to, if deemed advisable by the Monitor and the Applicants, apply for recognition of the CCAA Proceedings and act as the foreign representative of the CCAA Proceedings in any proceedings in the United States pursuant to Chapter 15.

55. The Proposed Monitor is of the view that its appointment as foreign representative of the Applicants in proceedings under Chapter 15 will allow FTI to better review and report on the status of restructuring initiatives outside of Canada and to assist the Applicants in preserving value for the benefit of the Applicants and their stakeholders.

56. FTI has reviewed the circumstances of the Applicants, including the facts set out in paragraphs 43 to 48 of the Goldfarb Affidavit, and agrees with the conclusion that the centre of main interests of the Applicants is Ontario, Canada.

57. FTI is willing to act as foreign representative of the Applicants in proceedings under Chapter 15.

I. THE APPLICANTS' CASH MANAGEMENT SYSTEM

58. Cline operates a centralized cash management system (the "**Cash Management System**") pursuant to which Cline approves the expenditures of all members of the Cline Group, advances funds for all expenditures by the Cline Group, controls and monitors the consolidated cash balance of the Cline Group and provides reporting on the Cline Group's cash balances to the board of directors of Cline. The Cash Management System is further described in the Goldfarb Affidavit.

59. The Applicants have advised the Proposed Monitor that the Cash Management System is critical to the orderly management of the Applicants' business and affairs. The Applicants are seeking to continue to utilize the Cash Management System post-filing (or, if necessary, replace it with another substantially similar cash management system).

60. Establishing new bank accounts and cash management systems is time consuming and can be costly. Accordingly, the Proposed Monitor supports this request.

J. PAYMENT OF PRE-FILING AMOUNTS

61. The proposed form of Initial Order grants the Applicants the authority to pay certain specified expenses whether incurred prior to, or after, the commencement of the CCAA Proceeding with the consent of the Monitor. FTI has reviewed the Applicants' accounts payable and believes that authorizing the Applicants to pay certain pre-filing amounts in accordance with existing payment practices as specified in the proposed form of Initial Order, along with the oversight of FTI (if appointed as Monitor), is reasonable in the circumstances of the CCAA Proceeding.

K. APPLICANTS' CASH FLOW FORECAST

Cash Flow Projections

62. The Applicants, with the assistance of the Proposed Monitor, have prepared the consolidated 13-week Cash Flow Forecast. A copy of the Cash Flow Forecast and a report containing the prescribed representations of the Applicants regarding the preparation of the Cash Flow Forecast are appended to the Goldfarb Affidavit.

63. As of December 1, 2014 the Applicants had $8.8 million cash on hand. The Applicants currently do not have any revenue generating assets, as the New Elk

Mine is under a care and maintenance program. However, the Applicants forecast that cash on hand will be sufficient to fund the CCAA Proceedings for the period of December 1, 2014 through to March 1, 2015.

64. The Cash Flow Forecast, together with the Applicants' management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA, are attached as Exhibit "D" to the Goldfarb Affidavit. The Cash Flow Forecast shows a negative cash flow of approximately $3.2 million for the period from December 1, 2014 to March 5, 2015 and is summarized below:

(CAD in millions)	13-Week Total
Cash Flow from Operations	
Receipts	0.1
Operating Disbursements	(2.0)
Operating Cash Flows	**(2.0)**
Restructuring/ Non-Recurring Disbursements	(1.2)
Projected Net Cash Flow	**(3.2)**
Beginning Cash Balance	8.8
Ending Cash Balance	**5.7**

65. It is anticipated that the Applicants' projected liquidity requirements through to March 1, 2015 will be met by the Applicants' cash on hand. As Monitor, FTI would continue to monitor the Applicants' cash flow situation and report to this Honourable Court accordingly.

Proposed Monitor's Report on the Reasonableness of the Cash Flow Projections

66. Section 23(1)(b) of the CCAA states that the Monitor shall: "*review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings.*"

67. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:

A. the Cash Flow Forecast has been prepared by the management of the Applicants for the purpose described in Note 1 on the face of the Cash Flow Forecast using the Probable and Hypothetical Assumptions set out in Notes 2 to 4 of the Cash Flow Forecast;

B. the Proposed Monitor's review consisted of inquiries and discussions related to information supplied by certain of the management and employees of the Applicants. Since Hypothetical Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor has also reviewed the support provided by management of the Applicants for the Probable

Assumptions, and the preparation and presentation of the Cash Flow Forecast;

C. based on this review, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:

i. the Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Forecast;

ii. as of the date of this report, the Probable Assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the Hypothetical Assumptions; or

iii. the Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions;

D. since the Cash Flow Forecast is based on assumptions regarding future events, actual results may vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any

financial information presented in this report, or relied upon by the Proposed Monitor in preparing this report; and

E. the Cash Flow Forecast has been prepared solely for the purpose described in Note 1 on the face of the Cash Flow Forecast and readers are cautioned that it may not be appropriate for other purposes.

L. RECOMMENDATIONS AND CONCLUSIONS

68. The Applicants are insolvent, Cline is in default of the Secured Notes and the Applicants are unable to pay the amounts due thereunder.

69. The Sale Process did not result in any expressions of interest in the Applicants or their property and, accordingly, did not provide for any viable alternatives to the Recapitalization.

70. The CCAA Proceeding would provide the Applicants with the opportunity to continue as a going concern for the continued benefit of their various stakeholders.

71. Based on the foregoing, the Proposed Monitor respectfully recommends that this Honourable Court grant the following orders that are being sought by the Applicant:

A. the proposed Initial Order;

B. the proposed Claims Procedure Order; and

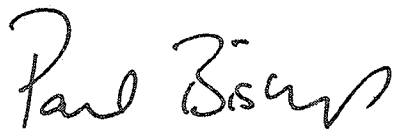
C. the proposed Meeting Order.

72. The Proposed Monitor is of the view that such relief is necessary, reasonable and justified. The Proposed Monitor is also of the view that granting the relief requested will provide the Applicants the best opportunity to undertake a restructuring under the CCAA Proceedings, thereby preserving value for the benefit of the Applicants' stakeholders.

All of which is respectfully submitted this 2nd day of December, 2014.

FTI Consulting Canada Inc.,
in its capacity as the Proposed Monitor of Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company

Per



Paul Bishop
Managing Director

APPENDIX "A"

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

MONITOR'S CONSENT

FTI Consulting Canada Inc. hereby consents to act as Court-appointed monitor of Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company in respect of these proceedings.

Dated: December 2nd, 2014

FTI Consulting Canada Inc.

Per: _____

Name: Paul Bishop
Title: Senior Managing Director

THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY (the "Applicant")

Court File No: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

PRE-FILING REPORT OF THE PROPOSED MONITOR

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Lawyers for the Proposed Monitor, FTI Consulting Canada Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 15
Angiotech Pharmaceuticals, Inc., et al.[1]	:	Case No.: 11-10269 (KG)
	:	Jointly Administered
Debtors in a Foreign Proceeding.	:	**Ref. Docket No. 7**

ORDER GRANTING PROVISIONAL RELIEF PURSUANT TO SECTIONS 105(a), 1519, 1520, AND 1521 OF THE BANKRUPTCY CODE

Upon consideration of the motion (the "**Motion**")[2] of Alvarez & Marsal Canada Inc. (the "**Monitor**"), in its capacity as the court-appointed monitor and authorized foreign representative for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**Canadian Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Supreme Court of British Columbia (the "**Canadian Court**"), pursuant to sections 105(a), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the "**Bankruptcy Code**"), seeking: (a) entry of this provisional order (this "**Provisional Relief Order**") applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases, pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code; (b) entry

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1 The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: (i) 0741693 B.C. Ltd. (1270); (ii) Afmedica, Inc. (3293); (iii) American Medical Instruments Holdings, Inc. (1114); (iv) Angiotech America, Inc. (4001); (v) Angiotech BioCoatings Corp. (8560); (vi) Angiotech Delaware, Inc. (6401); (vii) Angiotech Florida Holdings, Inc. (9389); (viii) Angiotech International Holdings, Corp. (2274); (ix) Angiotech Pharmaceuticals, Inc. (6269); (x) Angiotech Pharmaceuticals (US), Inc. (9490); (xi) B.G. Sulzle, Inc. (4551); (xii) Manan Medical Products, Inc. (3265); (xiii) Medical Device Technologies, Inc. (3996); (xiv) NeuColl, Inc. (8863); (xv) Quill Medical, Inc. (7914); (xvi) Surgical Specialties Corporation (9848); and (xvii) Surgical Specialties Puerto Rico, Inc. (3379). The Debtors' executive headquarters' addresses are 1618 Station Street, Vancouver, BC A1 V6A 1B6, Canada, and 1633 Westlake Ave N., Suite 400, Seattle, WA 98109.

2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

of a final order (the "**Recognition Order**") after notice and a hearing (i) granting the petitions in these cases and recognizing the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial Order, including any extensions or amendments thereof authorized by the Canadian Court, and (iii) granting the Debtors' postpetition lenders certain protections afforded by the Bankruptcy Code; and (c) granting such other and further relief as this Court deems just and proper; and upon the First Day Declarations and the Memorandum of Law; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Chapter 15 Cases and the Motion in this District is proper pursuant to 28 U.S.C. § 1410(1); and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be given under the circumstances; and upon the record of the hearing on the Motion; and the Court having found and determined that the relief sought in the Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

1) There is a substantial likelihood that the Monitor will be able to demonstrate that the Debtors are subject to a foreign main proceeding and that the Chapter 15 Cases were properly commenced by a properly-appointed foreign representative;

2) The commencement or continuation of any action or proceeding in the United States with respect to the Debtors or any of the Debtors' assets or proceeds thereof should be enjoined pursuant to sections 105(a), 362, and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the Debtors' assets and recapitalization in the Canadian Proceeding, and the relief requested either will not cause an undue hardship, or any hardship to parties in interest is outweighed by the benefits of the relief requested in the Motion;

3) Unless the automatic stay is applied in these Chapter 15 Cases, there is a material risk that the Debtors' assets in the United States could be subject to efforts by creditors or other parties in interest to control or possess such assets. Such acts could: (a) interfere with and cause harm to the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code; (b) interfere with and cause harm to the Debtors' efforts to administer their assets and reorganize pursuant to the Canadian Proceeding; and (c) undermine the Monitor's efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury for which they will have no adequate remedy at law and therefore it is necessary that the Court enter this Provisional Relief Order;

4) The Monitor has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts may take the position that the commencement of the Canadian Proceeding or the Chapter 15 Cases authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration will severely impair the Debtors' restructuring efforts and result in irreparable damage to the value of the Debtors' estates and substantial harm to the Debtors' creditors and other parties in interest.

5) The Monitor has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief; and

6) The interests of the public will be served by this Court's entry of this Provisional Relief Order.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.

2. Pending disposition of the petitions and the motion for a final order (the "**Recognition Date**"), pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 of the Bankruptcy Code is applicable to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States in the Chapter 15 Cases; provided, however, that nothing in this paragraph 2 shall limit, abridge, or otherwise effect: (a) the rights afforded the agent and other lenders under (i) the Draft DIP Credit Agreement, (ii) the DIP

Credit Agreement, and/or (iii) the Wells Fargo Credit Agreement (collectively, the "**Lenders**") pursuant to paragraphs 48(b) and (c) of the Initial Order, as modified on the attachment hereto; (b) the Debtors' authorization under paragraph 13(a) of the Initial Order to make all such payments as may be or may become due and owing under the Wells Fargo Credit Agreement as required pursuant to the terms of the Definitive Documents and contemplated by the Cash Flow Budget (each as defined in the Initial Order); and (c) the Debtors' authorization to make certain payments as permitted in the Initial Order and subject to the terms and conditions set forth therein.

3. Paragraphs 48(b) and (c) of the Initial Order, as modified on the attachment hereto, are incorporated herein by reference and given full force and effect in the United States through the Recognition Date.

4. Section 365(e) of the Bankruptcy Code is applicable to the Debtors in these Chapter 15 Cases. Any provision of the type described in section 365(e)(1) is unenforceable against the Debtors until such time as an order disposing of the Chapter 15 Petitions is entered.

5. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding against any party to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

6. The Monitor, in connection with its appointment as the foreign representative, is entitled to the protections and rights available pursuant to sections 1519(a)(l) and (a)(3) of the Bankruptcy Code, to the extent such relief is not inconsistent with the Initial Order.

7. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Provisional Relief Order. The security provisions of

Rule 65(c) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7065, are waived.

8. Notice of: (a) the filing of the Chapter 15 Petitions and the Motion; (b) this Court's entry of this Provisional Relief Order; (c) the deadline to object to this Court's entry of the Recognition Order; and (d) the hearing for this Court to consider the Chapter 15 Petitions and entry of the Recognition Order, shall be served in accordance with the order (the "**Notice Order**") of this Court approving the *Motion for Entry of an Order Specifying Form and Manner of Service of Notice of: (I) Filing of (A) Petitions Pursuant to Chapter 15 of the Bankruptcy Code, and (B) Motion for Provisional and Final Relief In Aid of Canadian Proceeding Pursuant to Sections 105(a), 1517, 1519, 1520 and 1521 of the Bankruptcy Code; (II) Entry of Provisional Relief Order; (III) Deadline to Object to Entry of Recognition Order; and (IV) Hearing for Court to Consider Chapter 15 Petitions and Entry of Recognition Order*. Service of the Chapter 15 Petitions, the Motion and this Provisional Relief Order (the "**Petition Documents**") in accordance with the Notice Order shall constitute due and sufficient notice of the Petition Documents and any relief of this Court associated therewith.

9. The Petition Documents shall also be made publicly available by the Monitor on its website at www.alvarezandmarsal.com/angiotech or upon request at the offices of its counsel, Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: Jonathan Cho, Esq.

10. A hearing to consider entry of the Recognition Order shall be held on FEBRUARY 22, **2011 at** 1:30 **p.m. (prevailing Eastern Time)** (the "**Recognition Hearing**"). Any responses or objections to the Chapter 15 Petitions or the entry of the Recognition Order shall (a) be made in writing, describe the basis therefore, and indicate the

nature and extent of the respondent's interests in the Debtors' cases, and (b) be filed with the Office of the Clerk of the Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon: (A) co-counsel for the Monitor: (i) Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: Ken Coleman, Esq. and Lisa Kraidin, Esq.; (ii) Buchanan Ingersoll & Rooney PC, 1105 North Market Street, Suite 1900, Wilmington, Delaware 19801, Attn: Mary Caloway, Esq. and Mona A. Parikh, Esq.; and (iii) Fasken Martineau DuMoulin LLP, 2900-550 Burrard Street, Vancouver, British Columbia, Canada, V6C 0A3, Attn: John F. Grieve (B) co-counsel for the Debtors (i) Osler, Hoskin & Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6100, P.O. Box 50, Toronto Ontario, Canada, M5X 1B8, Attn: Marc Wasserman, Esq. and Jeremy Dacks, Esq.; and (ii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York, 10019, Attn: Marc Abrams, Esq. and Shaunna D. Jones, Esq.: (C) co-counsel for the Consenting Noteholders (i) Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, California 90071, Attn: Peter M. Gilhuly, Esq.; and (ii) Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, Ontario M5H2S7, Canada, Attn: Robert Chadwick, Esq. and Celia Rhea, Esq.; and (D) co-counsel for the Lenders (i) Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn: Michael M. Mezzacappa, Esq. and Lawrence V. Gelber, Esq.; and (ii) Blake, Cassels & Graydon LLP, 595 Burrard Street, P.O. Box 49314, Suite 2600, Three Bentall Centre, Vancouver, British Columbia V7X 1L3, Canada, Attn: William C. Kaplan, Esq.; and 199 Bay Street, Suite 2800, Commerce Court West, Toronto, Ontario M5L 1A9, Canada, Attn: Milly Chow, Esq., on or before **4:00 p.m. (prevailing Eastern Time) on** FEBRUARY 15, **2011.**

11. The date and time of the Recognition Hearing, in the Monitor's sole discretion, may be adjourned to a subsequent date without further notice except for an in-court announcement on the record at the Recognition Hearing, or a filing by the Monitor on the docket of the Chapter 15 Cases, of the date and time to which the Recognition Hearing has been adjourned.

12. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Provisional Relief Order shall be effective immediately and enforceable upon its entry and shall remain effective until either (i) entry of an order recognizing the Canadian Proceeding and, pursuant to section 1521(a)(6), extending the relief granted herein, or (ii) entry of an order denying recognition to the Canadian Proceeding; (b) neither the Monitor nor the Lenders (to the extent provided in paragraph 2 above) are subject to any stay in the implementation, enforcement or realization of the relief granted in this Provisional Relief Order; and (c) the Monitor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Provisional Relief Order.

13. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Provisional Relief Order.

Dated: Wilmington, Delaware
January 31, 2011

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 15
Angiotech Pharmaceuticals, Inc., et al.[1]	:	Case No. ~~11-10629 (KG)~~ 11-10269
	:	Jointly Administered
Debtor in a Foreign Proceeding.	:	**Ref. Docket Nos. 1 and 7**

ORDER GRANTING FINAL RELIEF IN AID OF CANADIAN PROCEEDING PURSUANT TO SECTIONS 105(a), 1517, 1520, AND 1521 OF THE BANKRUPTCY CODE

Upon consideration of the Verified Petitions commencing these cases and the motion (the "**Motion**")[2] of Alvarez & Marsal Canada Inc. (the "**Monitor**"), in its capacity as the court-appointed monitor and authorized foreign representative of the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**Canadian Proceeding**") under *Canada's Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Supreme Court of British Columbia (the "**Canadian Court**"), pursuant to sections 105(a), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the "**Bankruptcy Code**"), seeking: (a) entry of a provisional order (the "**Provisional Relief Order**") applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases, pursuant to sections 1519(a)(3),

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1 The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: (i) 0741693 B.C. Ltd. (1270); (ii) Afmedica, Inc. (3293); (iii) American Medical Instruments Holdings, Inc. (1114); (iv) Angiotech America, Inc. (4001); (v) Angiotech BioCoatings Corp. (8560); (vi) Angiotech Delaware, Inc. (6401); (vii) Angiotech Florida Holdings, Inc. (9389); (viii) Angiotech International Holdings, Corp. (2274); (ix) Angiotech Pharmaceuticals, Inc. (6269); (x) Angiotech Pharmaceuticals (US), Inc. (9490); (xi) B.G. Sulzle, Inc. (4551); (xii) Manan Medical Products, Inc. (3265); (xiii) Medical Device Technologies, Inc. (3996); (xiv) NeuColl, Inc. (8863); (xv) Quill Medical, Inc. (7914); (xvi) Surgical Specialties Corporation (9848); and (xvii) Surgical Specialties Puerto Rico, Inc. (3379). The Debtors' executive headquarters' addresses are 1618 Station Street, Vancouver, BC A1 V6A 1B6, Canada, and 1633 Westlake Ave N., Suite 400, Seattle, WA 98109.

2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1521(a)(7), and 105(a) of the Bankruptcy Code; (b) entry of this final order (this "**Recognition Order**") after notice and a hearing (i) granting the petitions in these cases and recognizing the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial Order, including any extensions or amendments thereof authorized by the Canadian Court, and (iii) granting the Debtors' postpetition lenders certain protections afforded by the Bankruptcy Code; and (c) such other and further relief as this Court deems just and proper; and upon the First Day Declarations and the Memorandum of Law; and upon the Order Granting Provisional Relief Pursuant to Sections 105(a), 1519, 1520 and 1521 of the Bankruptcy Code Docket No. 26 (the "**Provisional Relief Order**") previously entered by this Court; and the Court having considered the *Limited Objection of the Affected FRN Holders to the Motion for Final Relief in Aid of Canadian Proceeding* (the "**FRN Objection**"), the *United States' Objection to the Motion to Approve Final Relief in Aid of Canadian Proceeding*, and the *Limited Objection by the United States to Motion for Provisional and Final Relief in Aid of Canadian Proceedings and Motion for Extension of Time*, and the *Response of the Monitor*, the accompanying *Declaration of John F. Grieve* in support of the *Response of the Monitor*, and the *Debtors' Response and Joinder to Response of Monitor* filed in response to the FRN Objection; and any objections to the Motion that have not been withdrawn or resolved having been overruled; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Chapter 15 Cases and the Motion in this District is proper pursuant to 28 U.S.C. § 1410(1); and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given under the circumstances; and

upon the record of the hearing on the Motion; and the Court having found and determined that the relief sought in the Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(i) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

(ii) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(iii) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(iv) The Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(v) The Canadian Proceeding pending in the Canadian Court, in the location that is the Debtors' center of main interest, constitutes a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

(vi) The Monitor as a foreign representative is entitled, to the extent not inconsistent with the Initial Order, to all of the relief provided pursuant to section 1520 on the Bankruptcy Code.

(vii) The Monitor has demonstrated that the borrowing authorized by the Initial Order is necessary to prevent a deterioration of value, which could result in significantly decreased recovery for the Debtors' creditors.

(viii) The Monitor has demonstrated that the terms of the postpetition financing (the "**DIP Facility**") and the Credit Agreement (the "**DIP Credit Agreement**") entered into by and among Debtors and the agent and lenders that are party thereto (collectively, the "**DIP Lender**"), as approved in the Initial Order (in draft form), are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lender and that the DIP Lender would not extend financing without the protection

provided by section 364(e) of the Bankruptcy Code, as made applicable by section 1521(a)(7) of the Bankruptcy Code.

(ix) The relief granted herein is necessary and appropriate, in the interest of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.

2. The Petitions are granted and the Canadian Proceeding is hereby recognized as a "foreign main proceeding" pursuant to section 1517(b)(1) of the Bankruptcy Code.

3. The Initial Order, including any extensions or amendments thereto, is hereby enforced on a final basis and given full force and effect in the United States.

4. All relief afforded a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code is hereby granted without limitation. Specifically, the automatic stay provisions of section 362, except as expressly provided otherwise in paragraphs 48(b) and (c) of the Initial Order, and the provisions of section 363 of the Bankruptcy Code apply with respect to the Debtors and any property of the Debtors that is within the territorial jurisdiction of the United States throughout the duration of these chapter 15 cases or until otherwise ordered by this Court.

5. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all other prior relief granted pursuant to the Provisional Relief Order pursuant to section 1519(a) of the Bankruptcy Code is hereby extended on a final basis.

6. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding against any party to the extent set forth in sections 362(b) or 1521(d) of the Bankruptcy Code.

7. Pursuant to the Initial Order, the Debtors are hereby authorized and empowered to enter into the DIP Credit Agreement, substantially in the form attached to the Motion as Exhibit A, and are authorized and empowered to borrow, repay, and reborrow up to $28 million from the DIP Facility under and in accordance with the terms of the DIP Credit Agreement.

8. The Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**") as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Definitive Documents, including, but not limited to, the fees and expenses of the DIP Lender's Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

9. Pursuant to section 364 of the Bankruptcy Code and subject to the priorities, terms, and conditions of the Initial Order, to secure current and future amounts outstanding under the DIP Credit Agreement, the DIP Lender is hereby granted the DIP Lender's Charge on all of the Debtors' United States assets in the maximum amount of all DIP Obligations (as defined in the Initial Order) outstanding under the DIP Facility at any given time.

10. Any obligations incurred by the Debtors as a result of entering into or performing their obligations under the DIP Credit Agreement do not and will not constitute

preferences, fraudulent conveyances or transfers, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

11. The Definitive Documents have been negotiated in good faith and at arms' length between the Debtors and the DIP Lender. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial Order and the Definitive Documents shall be deemed to have been made by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 105(a) and 1521(a)(7) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lender, and the validity of the indebtedness, and the priority of the liens authorized by the Initial Order made enforceable in the United States by this Recognition Order, shall not be affected by any reversal or modification of this Recognition Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. Notwithstanding any other provision of this Order: (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents; provided, however, that the DIP Lender's Charge shall be and hereby is deemed a fully perfected lien and security interest, effective and perfected upon entry of this Recognition Order without the necessity of execution by the Debtors of mortgages, security agreements, pledge agreements, financing agreements, financing statements, and other agreements or instruments, such that no additional steps need be taken by the DIP Lender to perfect the DIP Lender's Charge; (b) the DIP Lender may cease making advance payments to the Debtors in accordance with, and as provided in, the DIP Credit Agreement; (c) upon the occurrence of an event of default under the

DIP Credit Agreement, or the DIP Lender's Charge, the DIP Lender and/or agent and the lenders under the Wells Fargo Credit Agreement (as defined in the Initial Order), may, upon five days' notice to the Debtors and the Monitor, (i) exercise any and all of its, or their, rights and remedies against the Debtors or the Property (as defined in the Initial Order) under or pursuant to the Wells Fargo Credit Agreement, the DIP Credit Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to set-off and/or consolidate any amounts owing to the DIP Lenders and/or the agents and lenders under the Wells Fargo Credit Agreement by the Debtors against the DIP Obligations (as defined in the Initial Order), the Definitive Documents, the DIP Lender's Charge or the Obligations under the Wells Fargo Creditor Agreement, to make demand, accelerate payment and give other notices or to apply to court for the appointment of a receiver, receiver manager or interim receiver, or for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors; and (ii) the DIP Lender, the agent and lenders under the Wells Fargo Credit Agreement shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Debtors to repay amounts owing to the lenders under the Wells Fargo Credit Agreement and the DIP Lender under the DIP Facility in each case, in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 55 and 57 of the Initial Order. The foregoing rights and remedies of the DIP Lender and the agent and lenders under the Wells Fargo Credit Agreement in this paragraph 11 shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtors or the Property.

13. No action taken by the Monitor, the Debtors, or each of their 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 Recognition Order, or the Chapter 15 Cases or any adversary proceeding therein, or any further proceeding commenced thereunder, shall be deemed to constitute a waiver of the immunity afforded such person under sections 306 and 1510 of the Bankruptcy Code.

14. The Chapter 15 Petitions, the Motion, the Provisional Relief Order and this Recognition Order shall be made publicly available by the Monitor on its website at www.alvarezandmarsal.com/angiotech or upon request to its counsel, Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn. Jonathan Cho, Esq.

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Recognition Order shall be effective immediately and enforceable upon its entry; (b) neither the Monitor, nor the DIP Lender, nor the agent and lenders under the Wells Fargo Credit Agreement (to the extent provided in paragraphs 48(b) and (c) of the Initial Order), is subject to any stay in the implementation, enforcement or realization of the relief granted in this Recognition Order; and (c) the Monitor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Recognition Order.

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

Dated: Wilmington, Delaware
FEB. 22, 2011

17. See rider attached hereto.

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC., *et al.*,[1]	:	Case No. 12-10605 (KG)
	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	**Ref. Docket No. 4**

ORDER GRANTING PROVISIONAL RELIEF

Upon the motion (the "Motion")[2] of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative for the above captioned debtors (collectively, the "Debtors") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Court of Queen's Bench of Winnipeg Centre, for entry of a provisional order, pursuant to sections 105(a), 362, 364, 365, 1519 and 1521 of the Bankruptcy Code: (i) recognizing and enforcing the initial order (the "Initial Order") of the Canadian Court on an interim basis in the United States, including the Canadian Court's decision (a) to authorize the Debtors to enter into and perform

1 The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

under that certain DIP Facility,[3] and (b) to grant the DIP Charge to the DIP Lenders under the DIP Facility, and; (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by section 364(e) of the Bankruptcy Code; (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases (the "Chapter 15 Cases") on an interim basis, pursuant to sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code; (iv) applying, on an interim basis, section 108 of the Bankruptcy Code; and (v) extending, on an interim basis, pursuant to sections 1519(a)(3), 1521(a)(7) and 105(a) of the Bankruptcy Code, the application of sections 362 and 365(e) to and for the benefit of Glacier Valley Ice Company, L.P. ("Glacier L.P."), one of the Debtors' non-debtor affiliates; and the Court having reviewed the Motion, the Petition for Recognition, and the Reynolds Declaration, and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and the Court having determined that the legal and factual bases set forth in the Motion, the Petition for Recognition and the Reynolds Declaration, and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact

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[3] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Initial Order.

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Monitor has demonstrated a substantial likelihood of success on the merits that (i) the Debtors are subject to a pending "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (ii) the Monitor is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, and (iii) all statutory elements for recognition of the Canadian Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The Monitor has demonstrated that (i) the commencement of any proceeding or action against the Debtors and Glacier L.P. and their respective businesses and all of their assets, should be enjoined pursuant to sections 105(a), 1519 and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code to permit the fair and efficient administration of the Canadian Proceeding and to allow the Monitor to supervise an orderly marketing and sale process for the assets of the Debtors, pursuant to the sale and investment solicitation procedures approved in the Initial Order, for the benefit of all stakeholders; and (ii) the relief requested will not cause either an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

E. The Monitor has demonstrated that unless this Order is issued, there is a material risk that one or more parties in interest will take action against the Debtors, Glacier L.P.

or their assets, thereby interfering with the jurisdictional mandate of this court under chapter 15 of the Bankruptcy Code, interfering with and causing harm to the Monitor's effort to supervise a sale and maximize the value of the Debtors' assets pursuant to the terms of the SISP. As a result, the Debtors will suffer immediate and irreparable harm for which they will have no adequate remedy at law and therefore it is necessary that the Court grant the relief requested without prior notice to parties in interest or their counsel.

F. The Monitor has demonstrated that the incurrence of indebtedness authorized by the Initial Order is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, which will significantly impair the value of their assets.

G. The Monitor has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders, as defined in the Initial Order, and the DIP Lenders would not have extended financing without conditions precedent requiring a final recognition order by this Court and the Debtors' best efforts to obtain interim protection under section 364(e) of the Bankruptcy Code, as made applicable by sections 105(a), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, while consideration of final recognition was pending.

H. Absent the relief granted herein, the Debtors may suffer immediate and irreparable injury, loss or damage for which there is no adequate remedy at law. Further, unless this Order issues, the assets of the Debtors and Glacier L.P. located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss, or damage by, among other things, (i) interfering with the jurisdictional mandate of this Court under chapter 15 of the

Bankruptcy Code, and (ii) interfering with or undermining the success of the Canadian Proceeding and the Debtors' efforts to pursue a going-concern sale or refinancing of their business for the benefit of all their stakeholders.

I. The Monitor has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts may take the position that the commencement of the Canadian Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration, if permitted and valid, could severely disrupt the Debtors' operations and marketing efforts, result in irreparable damage to the value of the Debtors' business, and cause substantial harm to the Debtors' creditors and other parties in interest.

J. The Monitor has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

K. The interests of the public will be served by entry of this Order.

L. The Monitor and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Motion is granted.

2. The Initial Order is hereby enforced on an interim basis, including, without limitation, (a) authorizing the Debtors to obtain credit under the DIP Facility and grant the Lenders the DIP Charge, and (b) staying the commencement or continuation of any actions

against Glacier L.P. or its assets, and shall be given full force and effect in the United States until otherwise ordered by this Court.

3. While this Order is in effect, the Monitor and the Debtors shall be entitled to the full protections and rights under section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, or their former, current or future directors and officers, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or any of their property, or (d) managing or exercising control over the Debtors' assets located within the territorial jurisdiction of the United States except as expressly authorized by the Debtors in writing.

4. Pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, (a) section 108 is hereby made applicable to the Debtors in these Chapter 15 Cases, (b) section 362 of the Bankruptcy Code is hereby made applicable in the Chapter 15 Cases to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States, and (c) section 365(e) of the Bankruptcy Code is hereby made applicable to the Debtors and to Glacier L.P. in these Chapter 15 Cases.

5. While this Order is in effect, Glacier L.P. shall be entitled to protections and rights coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Glacier L.P.'s assets within the territorial

jurisdiction of the United States. Specifically, all persons and entities are hereby enjoined from (a) continuing any action or commencing any additional action involving Glacier L.P., its assets or the proceeds thereof, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against Glacier L.P. or its assets, (c) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against Glacier L.P. or any of its property, or (d) managing or exercising control over Glacier L.P.'s assets located within the territorial jurisdiction of the United States except as expressly authorized by Glacier L.P. in writing.

6. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

7. Pending disposition of the Chapter 15 Petitions, pursuant to section 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 is applicable to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States in the Chapter 15 Cases; provided, however, that nothing in this paragraph 7 shall limit, abridge, or otherwise effect: (i) the rights afforded the Agent and the DIP Lenders under the DIP Facility, Commitment Letter or the Initial Order.

8. The Debtors are authorized, on a provisional basis, to incur up to US$10 million and CAD$15 million under and in accordance with the terms of the DIP Facility and Commitment Letter, as defined in the Initial Order. In addition, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges,

security documents, guarantees and other documents (collectively, the "DIP Documents") as are contemplated by the Commitment Letter or as may be reasonably requested by the DIP Lenders, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility without any need for further approval from this Court.

9. To the extent authorized under the Initial Order, the DIP Lenders are hereby granted, on a provisional basis, the DIP Lenders' Charge, as defined in the Initial Order, on all of the Credit Parties' United States assets in the amount of US $10 million and CAD $15 million minus the amount outstanding from time to time under the DIP Facility, subject to the priorities, terms and conditions of the Initial Order, to secure current and future amounts outstanding under the Commitment Letter and the DIP Facility. The obligations under the DIP Facility shall be on a joint and several basis for all Credit Parties (as defined in the Commitment Letter). As set forth in the Initial Order, all Arctic Glacier U.S. Group entities shall provide AGIF and Arctic Glacier Canada a lien that is a super-priority, first-ranking charge, on account of any funds extended by AGIF and Arctic Glacier Canada to any Arctic Glacier U.S. Group entity after the commencement of the Canadian Proceeding (the "Intercompany Liens"). The obligations arising under the DIP Facility shall be further secured by the Intercompany Liens. The Debtors' Prepetition Secured Lenders have agreed to subordinate their prepetition liens to the Intercompany Liens.

10. To the extent provided in the Initial Order, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents as are contemplated in the Commitment Letter or by the DIP Facility or as may be reasonably required

by the DIP Lenders pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lenders under and pursuant to the Commitment Letter and the DIP Facility including, but not limited to, the fees and expenses of the DIP Lenders' Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

11. The DIP Documents and the Commitment Letter have been negotiated in good faith and at arms' length between the Debtors and the DIP Lenders. Any financial accommodations made to the Debtors by the DIP Lender pursuant to the Initial Order and the DIP Documents shall be deemed to have been made by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 105(a), 364(e), 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lenders, and the validity of the indebtedness, and the priority of the liens authorized by the Initial Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Lenders including funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders or the Prepetition Secured Lenders to a charge against the collateral pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

Upon entry of a final order, recognizing these proceedings as foreign main proceedings, the Prepetition Secured Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

13. Effective on a provisional basis upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 105, 506(c) or 552(b) of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the Commitment Letter, the First Lien Credit Agreement or the Second Lien Credit Agreement, or termination or breach under the Commitment Letter, the First Lien Credit Agreement, the Second Lien Credit Agreement, the Initial Order or this Order.

14. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding not stayed by section 362, or (b) staying the exercise of any rights that are not subject to stay arising under section 362(o).

15. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than seven (7) business days' written notice to Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York, 10019, Attn: Mary K. Warren and Alex W. Cannon, and the Court will hear such motion on a date to be scheduled by the Court.

16. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the Monitor shall not be subject to any stay in the implementation, enforcement or realization of the relief granted in

this Order; and (c) the Monitor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

17. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

18. This Court shall retain jurisdiction with respect to any and all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
February 23, 2012

KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Mary Ann Whipple
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	Chapter 15
Biltrite Rubber (1984) Inc., *et al.*,	Case No. 09-31423 (MAW)
Foreign Applicants in Foreign Proceedings.	Jointly Administered

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought before the Court by RSM Richter Inc., the court-appointed monitor (the "**Monitor**")[1] and foreign representative of Biltrite Rubber (1984) Inc. ("**Biltrite**") and Biltrite Rubber, Inc. ("**Biltrite U.S.**", and together with Biltrite, the "**Biltrite Group**") in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**"), to consider the Verified Petitions for

[1] Capitalized terms not defined herein have the meanings ascribed to them in the Initial Order (defined below).

Recognition of the Canadian Proceedings which were filed on March 12, 2009 for the Biltrite Group (collectively, the "**Chapter 15 Petitions**") commencing the above-captioned chapter 15 cases (collectively, the "**Chapter 15 Cases**") pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1507, 1520, 1521 and 105 of the Bankruptcy Code of the Initial Order of the Ontario Court dated March 12, 2009 (the "**Initial Order**"). Due and timely notice of the filing of the Chapter 15 Petitions was given in accordance with this Court's order dated March 13, 2009, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. The Court has considered and reviewed the other pleadings and exhibits submitted by the Monitor in support of the Chapter 15 Petitions including the Initial Order annexed hereto as Exhibit 1 (collectively the "**Supporting Papers**"). No objections to the Chapter 15 Petitions were filed or otherwise asserted.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code and the general order of reference in this District.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410 (1) and (3).

(D) The Monitor is a "person" within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed "foreign representative" of the Biltrite Group within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceedings are pending in Canada, which is the location of each member of the Biltrite Group's center of main interests, and as such, constitute foreign main proceedings pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

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.

2. The Initial Order (and any amendments or extensions thereof as may be granted from time to time by the Ontario Court) is hereby given full force and effect in the United States.

3. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 and the provisions of section 363 of the Bankruptcy Code throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

4. The stay under section 362 of the Bankruptcy Code shall not apply to the Biltrite Group's obligations to the Royal Bank of Canada under the Senior Secured Facility or the

DIP Financing provided on the terms and conditions set forth in the DIP Agreement approved by the Ontario Court in the Initial Order.

5. 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 Cases, 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.

6. The Chapter 15 Petitions and the Supporting Papers shall be made available by the Monitor through its website at http://www.rsmrichter.com or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Amelie Baudot, (212) 610-6300, amelie.baudot@allenovery.com.

7. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 Cases by Bankruptcy Rule 1018, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

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Exhibit 1

Court File No. CV-09-8067-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	**THURSDAY, THE 12TH**
	)	
JUSTICE MORAWETZ	)	**DAY OF MARCH, 2009**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BILTRITE RUBBER (1984) INC. AND BILTRITE RUBBER, INC.

INITIAL ORDER

THIS APPLICATION, made by Biltrite Rubber (1984) Inc. ("**Biltrite**") and Biltrite Rubber, Inc. ("**Biltrite U.S.**", and collectively with Biltrite, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of James Chung sworn March 11, 2008 (the "**Chung Affidavit**"), and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, Royal Bank of Canada (the "**DIP Lender**") and RSM Richter Inc., and on reading the consent of RSM Richter Inc. to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants or any one of them and one or more classes of their respective secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, with the prior agreement of the DIP Lender (as hereinafter defined) and the Monitor, to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the cash management system currently in place as described in the Chung Affidavit or, with the consent of the DIP Lender, replace it with another substantially similar cash management system (the "**Cash Management System**"), and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or

expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension or similar benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by any of the Applicants in respect of these proceedings, at their standard rates and charges; and

(c) all expenditures and disbursements provided for in the cash flow statements attached to the Chung Affidavit as Exhibit "C" in accordance with the cash flow statement.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein or in the DIP Agreement (as defined herein), the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, except as specifically permitted herein (which for greater clarity includes as permitted in the Definitive Documents (as defined herein)), the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such covenants as may be contained in the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $750,000 in the aggregate;

(b) subject to any applicable seniority provisions of any applicable collective bargaining agreement or as may be agreed between Biltrite and the applicable collective bargaining unit, terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants or either of them and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants or either one of them and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan, provided that, notwithstanding this paragraph 10(c), Biltrite shall not repudiate any collective agreement with the United Steelworkers;

(d) assist the Monitor to undertake and complete the Sale Process (as defined herein) in accordance with paragraphs 29 to 30 hereof;

(e) pursue all avenues of refinancing and offers for material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above); and

(f) 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 and to commence, conduct and conclude court-supervised proceedings in another jurisdiction in connection with any matters pertaining to the Applicants or either one of them, their affiliates, the Business, the Property or these CCAA Proceedings,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including April 13, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of either of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants, as applicable, and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or either one of them, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court; provided however, nothing in this Order shall effect or purport to effect a stay against the exercise by the DIP Lender of any of its rights or remedies under the Definitive Documents (as defined below).

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of either of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants, and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on; (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; (iv) prevent the registration of a claim for a lien; or (v) prevent the filing of a grievance pursuant to the *Labour Relations Act* (Ontario) or a collective agreement.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by either of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with either of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or either of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, as the case may be, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that each of the Applicants shall indemnify its respective directors and officers from all claims, costs, charges and expenses that may arise out of their involvement with the Applicants, whether prior to or after the date hereof, including, without limitation, all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of this Order, that they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants, except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $450,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) each Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that RSM Richter Inc. is hereby appointed pursuant to the CCAA as the Monitor (the "**Monitor**"), an officer of this Court, to monitor the Property and the Applicants' conduct of their Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and

shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Sale Process and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender pursuant to the Definitive Documents;

(d) assist the Applicants, to the extent required by the Applicants, in their dissemination of information and notices to their creditors, employees, suppliers, customers and other stakeholders, including, without limitation, as required by paragraph 45 hereof;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) advise and assist the Applicants, to the extent required by the Applicants, in connection with any Restructuring, including, commencing and conducting court-supervised proceedings in respect of a Restructuring, whether before this Honourable Court or in any foreign proceedings commenced in connection with a Restructuring;

(g) to administer and conduct a marketing and sale process to sell the Property and the Business or any part thereof in a manner consistent with the Sale Process Outline attached hereto as Schedule "A" (the "**Sale Process**");

(h) apply to any court in any other jurisdiction as the Monitor deems necessary or desirable for an Order recognizing these CCAA Proceedings and giving full force and effect in any such jurisdiction to this Order or any Order of this Court made in these CCAA Proceedings, and to act as a "foreign representative" of the Applicants or either one of them in any proceedings outside of Canada, including, without limitation, Chapter 15 proceedings under the U.S. Bankruptcy Code, as the Monitor deems necessary or desirable;

(i) advise the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(j) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;

(k) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(l) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

(m) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including the DIP Lender, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by either of the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable Applicant may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants from time to time, and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants,

reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time if so requested in writing by the Applicants or any stakeholder of the Applicants prior to the Monitor's discharge, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $750,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

SALE PROCESS

29. **THIS COURT ORDERS** that the Sale Process be and the same is hereby approved, and the Monitor and the Applicants, as applicable, are hereby empowered and directed to administer and conduct the Sale Process.

30. **THIS COURT ORDERS** that the Applicants and the Monitor are hereby authorized to take all steps necessary or desirable to complete and fulfill and all requirements, terms and steps contemplated by or associated with the Sale Process, including, without limitation, to engage the services of such persons as they deem necessary, if any, to assist them in implementing and carrying out the Sale Process and its respective obligations pursuant to this Order.

DIP FINANCING

31. **THIS COURT ORDERS** that, subject to paragraph 32 hereof, the Applicants are hereby authorized and empowered to continue to borrow under a certain amended and restated credit agreement dated as of October 23, 2007, as amended by: (i) letter agreements made as of December 18, 2007, and January 15, 2008, respectively; and (ii) Forbearance and Amending

Agreements made as of March 31, 2008, and October 2, 2008, respectively (together, the "**Loan Agreement**"), from the DIP Lender in order to finance the CCAA Proceedings, the Sale Process, the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed $1.5 million unless permitted by further Order of this Court.

32. **THIS COURT ORDERS** that the Loan Agreement shall be further amended on the terms and subject to the conditions set forth in the Amendment and Accommodation Agreement between the Applicants and the DIP Lender dated as of March 11, 2009 (the "**DIP Agreement**"), filed and the Applicants shall be and are hereby authorized and directed to execute and deliver the DIP Agreement.

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such further credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (which together with the Loan Agreement, the DIP Agreement, guarantees and all currently existing security in respect thereof in favour of the DIP Lender shall collectively be described as the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that in addition to any existing liens, charges and encumbrances currently in favour of the DIP Lender in respect of the obligations of the Applicants to the DIP Lender pursuant to the Loan Agreement, the DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property to secure all amounts advanced to the Applicants by the DIP Lender pursuant to the DIP Agreement from and after the date hereof. The DIP Lender's Charge shall not exceed the aggregate amount advanced by the DIP Lender under the DIP Agreement from and after the date hereof. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 3 days' notice to the Applicants and the Monitor or, such shorter time as the Court may permit, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 39 and 41 of this Order; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act of Canada* (the "**BIA**"), with respect to any advances outstanding as of the date of the Order or made under the DIP Agreement.

RETENTION PROGRAM

37. **THIS COURT ORDERS** that: (i) the retention program set out in Part IV of the Chung Affidavit (the "**Retention Program**") be and the same is hereby approved and Biltrite is authorized and directed to enter into and perform their obligations under the Retention Program; and (ii) Biltrite is authorized to execute and deliver such additional or ancillary documents as may be necessary to give effect to the Retention Program, subject to the prior approval of such documents by the DIP Lender and the Monitor, or as may be ordered by this Court.

38. **THIS COURT ORDERS** that all amounts owing to the beneficiaries of the Retention Program shall be secured by the Administration Charge.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $750,000, including in respect of the Retention Program);

Second – Directors' Charge (to the maximum amount of $450,000); and

Third – DIP Lender's Charge.

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants or either of them, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by either of the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the applicable Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Agreement, and the granting of the Charges, do not and will not constitute fraudulent

preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

44. **THIS COURT ORDERS** that any charge created by this Order over leases of real property in Canada shall only be a charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

45. **THIS COURT ORDERS** that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a notice to its known creditors, other than employees and creditors to which the Applicants owe less than $1,000, at their addresses as they appear on the Applicants' records, advising them that they may view a copy of this Order on the Monitor's website referred to below, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

46. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at http://www.rsmrichter.com/restructuring.aspx.

GENERAL

48. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that the Applicants and the Monitor shall be entitled to seek leave to vary this Order on three clear days notice to the Applicants, the Monitor, the DIP Lender and any other interested Person, and any other party affected by the relief granted in this Order shall be entitled to seek leave to vary this Order within 30 days of the date of this Order and upon giving 7 clear days notice to the Applicants, the Monitor, the DIP Lender and any other interested Person.

52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern ~~Standard~~ Daylight Savings Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 12 2009

PER / PAR:

SCHEDULE "A"

SALE PROCESS OUTLINE

(a) The assets available for sale include all of the assets, property, business and undertaking of Biltrite Rubber (1984) Inc. and Biltrite Rubber, Inc. (collectively, the "**Biltrite Group**").

(b) The Monitor will distribute to prospective purchasers a solicitation letter summarizing the acquisition opportunity. The solicitation letter will enclose a confidentiality agreement ("**CA**") that prospective purchasers are required to sign in order to gain access to confidential information and conduct due diligence on the Biltrite Group.

(c) The Monitor may advertise the acquisition opportunity in one or more news publications as and to the extent that it deems appropriate.

(d) The Monitor will prepare a confidential information memorandum ("**CIM**") that will be made available to prospective purchasers that execute a CA. The CIM will provide an overview of the Biltrite Business and the Biltrite Group's assets and financial results.

(e) Prospective purchasers that have executed a CA will have the opportunity to perform due diligence, including reviewing information in an electronic data room to be maintained by the Monitor.

(f) In order to assist prospective purchasers during the due diligence process, the Biltrite Group and the Monitor will facilitate site visits and meetings between representatives of the Biltrite Group and *bona fide* prospective purchasers as they deem appropriate.

(g) Counsel for the Monitor will prepare a draft purchase agreement (the "**Form of Purchase Agreement**") to be used as the basis for negotiations with prospective purchasers who are interested in a purchase transaction. The Form of Purchase Agreement will be circulated to prospective purchasers within approximately three weeks of the commencement of the Sale Process.

(h) Prospective purchasers will be required to submit binding offers to the Monitor by 12:00 p.m. (Toronto time) on April 17, 2009.

(i) The Monitor will decide whether to accept or reject any and all offers.

(j) The Monitor will advise prospective purchasers that the Monitor will not necessarily accept the highest offer, or any offer, and that the Biltrite Group maintains the right to consider various restructuring alternatives, including the right to file a plan of arrangement.

(k) The Monitor will have the right to terminate or amend the Sale Process as it considers appropriate.

(l) Any material transaction resulting from the Sale Process will be subject to the approval of this Honourable Court.

(m) The Biltrite Group and/or the Monitor may commence court-supervised proceedings in the United States to recognize and give effect to any transaction arising from the Sale Process or any Order of this Honourable Court approving any transaction arising from the Sale Process.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BILTRITE RUBBER (1984) INC. AND BILTRITE RUBBER, INC.

CV-09-8067-00CL
Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

INITIAL CCAA ORDER

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Solicitors for the Applicants
\5627099

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 15
CANWEST GLOBAL COMMUNICATIONS CORP., et al.	:	Case No. 09 - 15994
Debtors in a Foreign Proceeding.	:	Jointly Administered

ORDER GRANTING RECOGNITION
AND RELIEF IN AID OF FOREIGN MAIN PROCEEDINGS

Hearings having been held before this Court on October 6, 2009, October 15, 2009 and November 3, 2009 (the "Hearings") to consider (1) the Official Form B-1 Petitions (the "Chapter 15 Petitions") and the Verified Petition Pursuant To 11 U.S.C. §§ 105(a), 1504, 1507, 1515, 1517, 1519, 1520 And 1521, Commencing Chapter 15 Cases And Seeking Entry Of An Order Recognizing Foreign Main Proceedings And Granting Further Relief And Additional Assistance (together with all exhibits appended thereto, the "Verified Petition") of Canwest Global Communications Corp. ("Canwest Global"), Canwest Media Inc. ("CMI"), 4501063 Canada Inc. ("4501063"), Canwest Television GP Inc. ("Canwest Television"), and Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc. ("Canwest Broadcasting," and collectively with Canwest Global, CMI, 4501063, and Canwest Television, the "Debtors"), presented by FTI Consulting Canada Inc. as court-appointed monitor and authorized representative ("Monitor") of the Debtors, for recognition of foreign main proceedings (the "Canadian Proceedings") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) at Toronto (the "Canadian Court"), and seeking enforcement pursuant to sections 105(a), 1504, 1507, 1515, 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy

Code") of the Initial Order of the Canadian Court dated October 6, 2009 (as it may be amended or extended from time to time by the Canadian Court, the "Initial CCAA Order") in the United States and (2) the Monitor's *Ex Parte* Motion for Order to Show Cause with Temporary Restraining Order and, After Notice and a Hearing, a Preliminary Injunction (the "TRO Motion"); and upon this Court's review and consideration of the Chapter 15 Petitions, the Verified Petition, the TRO Motion, the Affidavit of John E. Maguire annexed to the Verified Petition, the Memorandum of Law in Support of the Verified Petition, the Amended Supplemental Memorandum of Law in Support of Monitor's *Ex Parte* Motion for Order to Show Cause with Temporary Restraining Order and, After Notice and a Hearing, Preliminary Injunction, the Supplemental Declaration of John E. Maguire in support of the TRO Motion, the Declaration of Ashley John Taylor, Esq. in support of the TRO Motion and all other documents filed in support of the Verified Petition and the TRO Motion on behalf of the Debtors; and this Court having concluded that appropriate and timely notice of the filing of the Chapter 15 Petitions, the Verified Petition, and the TRO Motion have been given; and the Hearings having been held; and upon the record of the statements made at the Hearings; and after due deliberation and sufficient cause appearing therefor, this Court finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

C. Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

D. These chapter 15 cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

E. The Monitor is a "foreign representative" and a person within the meaning of sections 101(24) and 1517(a)(2) of the Bankruptcy Code; and the Monitor is the duly appointed foreign representative of the Debtors, as required by section 101(24) of the Bankruptcy Code.

F. The Canadian Proceedings currently pending before the Canadian Court for the Debtors constitute "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceedings are pending in Canada, which is where the center of main interests of each of the Debtors is located, and each is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code and under section 1517(b)(1) of the Bankruptcy Code.

H. The Chapter 15 Petitions and the Verified Petition meet the requirements of section 1515 of the Bankruptcy Code.

I. The Canadian Proceedings are entitled to recognition as foreign main proceedings under section 1517 of the Bankruptcy Code.

J. **SMB 11/3/09** The Monitor is entitled to all of the relief provided under section~~s~~ 1520 ~~and 1521~~ of the Bankruptcy Code, without limitation.

K. **SMB 11/3/09** ~~It appears to~~ The Court **concludes** that the Debtors will suffer irreparable harm unless creditors and contractual counterparties are enjoined to the extent provided in this Order.

L. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520 and 1521 of the Bankruptcy Code.

M. **SMB 11/3/09** To the extent not already provided by virtue of sections 105(a), 1517, 1519, **and** 1520 ~~and 1521~~ of the Bankruptcy Code, and as may be necessary to effectuate the Initial CCAA Order in the United States, additional assistance pursuant to section 1507 of the Bankruptcy Code is consistent with the principles of comity as the Canadian Proceedings reasonably assure (1) just treatment of all holders of claims against or interests in the Debtors' property; (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceedings; (3) prevention of preferential or fraudulent dispositions of property of the Debtors; and (4) distribution of proceeds of the Debtors' property substantially in accordance with the order prescribed by title 11 of the United States Code.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceedings are recognized as foreign main proceedings under section 1517(b)(1) of the Bankruptcy Code.

2. **SMB 11/3/09** All provisions of section 1520 ~~and 1521(a)~~ of the Bankruptcy Code apply in these chapter 15 cases, including, without limitations, the stay under section 362 of the Bankruptcy Code and the provisions of section 363 of the Bankruptcy Code throughout the duration of these chapter 15 cases or until otherwise ordered by this Court.

3. **SMB 11/3/09** ~~Pursuant to sections 1520 and 1521 of the Bankruptcy Code and, as necessary, sections 105(a) and 1507 of the Bankruptcy Code, the Initial CCAA Order is hereby given full force and effect in the United States as to the Debtors so long as such Initial CCAA Order is in effect in the Canadian Proceedings.~~

4. For so long as the Initial CCAA Order is in effect in the Canadian Proceedings or otherwise ordered by this Court, the individuals, firms, corporations and other

entities listed on annexed Exhibit A hereto (all of the foregoing, collectively being "Person" and each being a "Person"), and all those acting for or on their behalf, are hereby enjoined **SMB 11/3/09** ~~and prohibited on a preliminary basis for an indefinite period~~, in the United States and its territories from, discontinuing, altering, failing to honor, interfering with, repudiating, ceasing to perform, or terminating any right, renewal right, contract agreement, license or permit with Canwest Television Limited Partnership ("Television Partnership") for the supply of goods and/or services, including without limitation all programming supply, computer software, communication and other data services to Television Partnership, on the basis of, or as a result of, the filing of the Chapter 15 cases, the Canadian Proceedings or any amounts outstanding as of the filing of the Chapter 15 cases to the same extent as set forth in the Initial CCAA Order as it exists as of this date; provided, in each case, that the contractual prices or charges for all such goods or services received after the date of the Initial CCAA Order are paid by the Debtors or Television Partnership in accordance with normal payment practices of the Debtors or Television Partnership or such other practices as may be agreed upon by the supplier or service provider, the Debtors, Television Partnership and the Monitor, or as may be ordered by the Court. Notwithstanding the foregoing, nothing contained in this Paragraph 4 is intended to nor shall it be construed as preempting, abrogating or otherwise limiting any rights of a Person under the Initial CCAA Order and the CCAA.

5. Nothing in this Order shall be construed to limit in any way any additional relief granted by this Court or any other additional injunctive relief the Court may grant from time to time.

6. **SMB 11/3/09** ~~Notwithstanding anything to the contrary in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure, all~~

~~persons and entities (other than the Monitor and its expressly authorized representatives and agents) are hereby enjoined from invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state or local law or regulation requiring the Monitor or the Debtors to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceeding, and such statute, rules or requirement will be rendered null and void for the purposes of such proceedings~~.

7. This Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any request for additional relief 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.

8. The Monitor shall provide service and notice of this Order by first class mail, postage prepaid, upon (a) all known parties against whom provisional relief is being granted in these chapter 15 cases, **SMB 11/3/09 including all parties listed on Exhibit A** (b) all parties to litigation pending in the United States in which a Debtor is a party at the time of filing of the Chapter 15 Petitions and (c) the United States Trustee, which service and notice shall constitute sufficient service and notice of this Order.

Dated: November 3, 2009
New York, New York

/s/ STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Issued: 2:22 p.m.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
CATALYST PAPER CORP., et al.,	Case No. 12-10221 (PJW)
Debtors.[1]	Jointly Administered
	Related Docket No. 38

AMENDED ORDER GRANTING PROVISIONAL RELIEF FOR RECOGNITION OF FOREIGN PROCEEDING PURSUANT TO 11 U.S.C. §§ 105(a), 1517, 1519, 1520, AND 1521

Upon consideration of the amended motion (the "Amended Motion")[2] of Catalyst Paper Corporation ("CPC"), in its capacity as the authorized foreign representative for the above-captioned debtors (collectively, the "Debtors" and, together with their non-debtor affiliates, the "Company") in a proceeding (the "CCAA Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, *Canada Business Corporations Act*, R.S.C.

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[1] The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: (i) 0606890 B.C. Ltd. (2214); (ii) Catalyst Paper Corporation (1171); (iii) Catalyst Paper Energy Holdings Inc. (3668); (iv) Catalyst Paper General Partnership (6288); (v) Catalyst Pulp and Paper Sales Inc. (2085); (vi) Catalyst Pulp Operations Ltd. (4565); (vii) Catalyst Pulp Sales Inc. (4021); (viii) Elk Falls Pulp and Paper Ltd. (9493); (ix) Pacifica Poplars Ltd. (6048).; (x) Catalyst Paper Holdings Inc. (7177); (xi) Pacifica Papers U.S. Inc. (7595); (xii) Pacifica Poplars Inc. (9597); (xiii) Pacifica Papers Sales Inc. (7594); (xiv) Catalyst Paper (USA) Inc. (6890); (xv) Catalyst Paper (Recycling) Inc. (8358); (xvii) Catalyst Paper (Snowflake) Inc. (7015); (xvii) The Apache Railway Company (0017) (0606890 B.C. Ltd., Catalyst Paper Corporation, Catalyst Paper Energy Holdings Inc., Catalyst Paper General Partnership, Catalyst Pulp and Paper Sales Inc., Catalyst Pulp Operations Ltd., Catalyst Pulp Sales Inc., Elk Falls Pulp and Paper Ltd., and Pacifica Poplars Ltd., collectively, the "Canadian Debtors") (Catalyst Paper Holdings Inc., Pacifica Papers U.S. Inc., Pacifica Poplars Inc., Pacifica Papers Sales Inc., Catalyst Paper (USA) Inc., Catalyst Paper (Recycling) Inc., Catalyst Paper (Snowflake) Inc. and The Apache Railway Company, collectively, the "U.S. Debtors"). The Debtors' executive headquarters' addresses are 2nd Floor, 3600 Lysander Lane, Richmond, BC V7B 1C3, Canada; 2101 Fourth Avenue, Suite 1950, Seattle, WA 98121; and Spur 277 N., Snowflake, AZ 85937.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1985, c. C-44, and *Business Corporations Act*, S.B.C. 2002, c.57, pending before the Supreme Court of British Columbia (the "Canadian Court"), pursuant to sections 105(a), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), seeking: (a) entry of this amended provisional order (this "Amended Provisional Order") applying sections 362 and 365(e) of the Bankruptcy Code in these Chapter 15 Cases, pursuant to sections 1519(a)(1) – (a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code; (b) entry of a final order (the "Recognition Order") after notice and a hearing (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code or, in the alternative, granting the petitions in these cases, recognizing the CCAA Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code with respect to the Canadian Debtors and recognizing the CCAA Proceeding as a foreign nonmain proceeding under section 1517 of the Bankruptcy Code with respect to the U.S. Debtors, (ii) giving full force and effect in the United States to any and all orders that have been or will be made or entered in the CCAA Proceeding, including without limitation, the Initial CCAA Order and any forthcoming final order approving the restructuring transaction to be effected through the CCAA Proceeding (collectively, the "Canadian Orders"), including any extensions or amendments thereof authorized by the Canadian Court, and (iii) granting the Debtors' postpetition lenders certain protections afforded by the Bankruptcy Code; and (c) granting such other and further relief as this Court deems just and proper; and upon the Second Baarda Declaration and the Memorandum of Law; and it appearing that this Court has jurisdiction to consider the Amended Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Amended Motion in this District is proper pursuant to 28 U.S.C. § 1410(1); and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and due and sufficient notice

of the Amended Motion having been given; and it appearing that no other or further notice need be given under the circumstances; and upon the record of the hearing on the Amended Motion; and the Court having found and determined that the relief sought in the Amended Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code and that the legal and factual bases set forth in the Amended Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. There is a substantial likelihood that CPC will be able to demonstrate that the Debtors are subject to a foreign main proceeding or, in the alternative, that the Canadian Debtors are subject to a foreign main proceeding and the U.S. Debtors are subject to a foreign nonmain proceeding, and that the Chapter 15 Cases were properly commenced by a properly-appointed foreign representative.

B. The commencement or continuation of any action or proceeding in the United States with respect to the Debtors or any of the Debtors' assets or proceeds thereof, except for with respect to obligations owing under the DIP Facility which are governed by the terms and conditions set forth below, should be enjoined pursuant to sections 105(a), 362, and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the Debtors' assets and recapitalization in the CCAA Proceeding, and the relief requested either will not cause an undue hardship, or any hardship to parties in interest is outweighed by the benefits of the relief requested in the Amended Motion.

C. Unless the automatic stay is applied in these Chapter 15 Cases, there is a material risk that the Debtors' assets in the United States could be subject to efforts by creditors

or other parties in interest to control or possess such assets. Such acts could: (a) interfere with and cause harm to the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code; (b) interfere with and cause harm to the Debtors' efforts to administer their assets and reorganize pursuant to the CCAA Proceeding; and (c) undermine CPC's efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury for which they will have no adequate remedy at law and therefore it is necessary that the Court enter this Amended Provisional Order.

D. CPC has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of the Debtors' contracts may take the position that the commencement of the CCAA Proceeding or the Chapter 15 Cases authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration will severely impair the Debtors' restructuring efforts and result in irreparable damage to the value of the Debtors' estates and substantial harm to the Debtors' creditors and other parties in interest.

E. CPC has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

F. The interests of the public will be served by this Court's entry of this Amended Provisional Order.

Based on the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED THAT:

1. The Amended Motion is GRANTED.

2. Pending disposition of the Amended Chapter 15 Petitions and the Amended Motion for a final order (the "Recognition Date"), pursuant to sections 1519(a)(1) – (a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 of the Bankruptcy Code is applicable to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States in the Chapter 15 Cases; provided, however, that nothing in this paragraph 2 shall limit, abridge, or otherwise effect the rights afforded the DIP Lender under the DIP Term Sheet and the Debtors' authorization to make certain payments as permitted by any order of the Canadian Court and subject to the terms and conditions set forth therein as further noted below. A copy of the DIP credit agreement will be filed with this Court upon execution.

3. Section 365(e) of the Bankruptcy Code is applicable to the Debtors in these Chapter 15 Cases. Any provision of the type described in section 365(e)(1) is unenforceable against the Debtors until such time as an order disposing of the Chapter 15 Petitions is entered.

4. Upon entry of this Amended Provisional Order no creditor or counterparty affected by the CCAA Proceeding (which, for greater certainty, exempts JPMorgan Chase Bank, N.A., Toronto Branch in its capacity as DIP Agent with respect to obligations owing under the DIP Facility from the operation of the stay of proceedings, subject to the terms and conditions set forth below, and includes, but is not limited to, the 2014 Noteholders and 2016 Noteholders (each as defined in the Second Baarda Declaration) or any party acting on their behalf), shall have the right to make, commence, or enforce any rights, guarantees or security documents to which the Debtors are party.

5. Upon the occurrence of and during the continuance of an Event of Default under the DIP credit agreement or any other documents relating to the DIP Facility

(collectively, the "DIP Loan Documents"), the DIP Agent and the DIP Lender are entitled to exercise rights and remedies under the DIP Loan Documents and take any other action or exercise any other right or remedy permitted to the DIP Agent or the DIP Lender under the DIP Loan Documents or by operation of law without further relief from the automatic stay pursuant to section 362(a) of the Bankruptcy Code, or further order of or application to this Court; provided, however, that the DIP Agent and DIP Lender may not exercise their rights under this paragraph with respect to any Collateral (as defined in the DIP credit agreement) located within the United States without first providing to counsel for the Debtors, counsel to certain of the 2016 Noteholders, counsel to certain of the 2014 Noteholders, counsel for the Monitor in the CCAA Proceeding, and the U.S. Trustee five (5) business days' written notice of any such Event of Default and the proposed exercise of rights and remedies. Nothing in this order or by operation of law, including section 362(a) of the Bankruptcy code, shall prejudice, impair or otherwise affect the rights of the DIP Agent and DIP Lender, as provided in the DIP Loan Documents, to suspend or terminate the making of loans or other advances under the DIP Loan Documents.

6. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding against any party to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

7. CPC, in connection with its appointment as the foreign representative, is entitled to the protections and rights available pursuant to sections 1519(a)(1), (a)(2) and (a)(3) of the Bankruptcy Code, to the extent such relief is not inconsistent with the Canadian Orders.

8. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is

required prior to entry and issuance of this Amended Provisional Order. The security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7065, are waived.

9. Notice of: (a) the filing of the Amended Chapter 15 Petitions and the Amended Motion; (b) this Court's entry of this Amended Provisional Order; (c) the deadline to object to this Court's entry of the Recognition Order; and (d) the hearing for this Court to consider the Amended Chapter 15 Petitions and entry of the Recognition Order (the "Notice"), along with a copy of this Amended Provisional Order shall be served by U.S. or Canadian mail, first-class postage prepaid or by overnight courier, within three (3) business days of the entry of this Amended Provisional Order upon the Notice Parties.[3] With respect to parties to litigation pending in the United States in which any of the Debtors is a party at the time of filing the Amended Chapter 15 Petitions in these chapter 15 cases, any parties who are represented by counsel shall be served at the address of their counsel of record. In addition, Debtors shall file a copy of the Notice and a copy of this Amended Provisional Order on the docket of such pending litigation matters. Service of the Amended Chapter 15 Petitions, the Amended Motion and this Amended Provisional Order (the "Amended Petition Documents") in accordance with

[3] Pursuant to this Court's *Order (I) Specifying Form and Manner of Service of Notice of Filing of Petitions and Other Pleadings Pursuant to Chapter 15 of the Bankruptcy Code and (II) Scheduling a Hearing on Chapter 15 Petitions for Recognition* [Docket No. 23] (the "Notice Order"), the Notice Parties include: (i) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code (excepting employees); (ii) all parties to litigation pending in the United States in which any of the Debtors are parties at the time of the filing of the Chapter 15 Petitions; (iii) the United States Trustee; (iv) the Debtors; (v) counsel to certain 2016 Noteholders (as described in the Notice Order); (vi) counsel to certain 2014 Noteholders (as described in the Notice Order); (vii) counsel to the Administrative Agent for the Debtors' postpetition credit facility, J.P. Morgan Chase Bank, N.A., Toronto; (viii) all other known parties who claim interests in or liens upon the assets owned by the Debtors in the United States; (ix) all governmental taxing authorities who have or may have claims, contingent or otherwise, against any Debtor; (x) governmental pension, environmental and Medicare entities; (xi) the Attorneys General of Delaware, California and Arizona; (xii) the Attorney General of the United States; (xiii) the Internal Revenue Service; (xiv) all relevant taxing authorities; and (xv) all parties who have requested notice.

this paragraph shall constitute due and sufficient notice of the Amended Petition Documents and any relief of this Court associated therewith.

10. The Amended Petition Documents shall also be made publicly available upon request at the offices of CPC's counsel, Skadden, Arps, Slate, Meagher & Flom LLP, 300 S. Grand Ave., Suite 3400, Los Angeles, CA 90071, Attn: Annie Li, Esq., or Skadden, Arps, Slate, Meagher & Flom LLP, One Rodney Square, P.O. Box 636, Wilmington, DE 19899, Attn: Christine Kim, Esq.

11. A hearing to consider entry of the Recognition Order shall be held on March 5, **2012 at** 9:30 a.m. **(prevailing Eastern Time)** (the "Recognition Hearing"). Any responses or objections to the Amended Chapter 15 Petitions or the entry of the Recognition Order shall (a) be made in writing, describe the basis therefore, and indicate the nature and extent of the respondent's interests in the Debtors' cases, and (b) be filed with the Office of the Clerk of the Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon: (A) counsel for CPC as foreign representative: Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071, Attn: Van C. Durrer, II, Esq.; (B) counsel for the Debtors: Blake, Cassels & Graydon LLP, 595 Burrard Street, P.O. Box 49314, Suite 2600, Three Bentall Centre, Vancouver, BC V7X 1L3, Canada, Attn: William C. Kaplan, Esq.; (C) counsel for certain 2016 Noteholders[4]: Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036-6745, Attn: Stephen Kuhn, Esq., Meredith Lahaie, Esq., Michael Stamer, Esq.; (D) counsel for certain 2014 Noteholders[5]: Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7,

[4] Representing an informal group of 2016 Noteholders.

[5] Representing an informal group of 2014 Noteholders.

Canada, Attn: Robert Chadwick, Esq., Melaney Wagner, Esq.; (E) JPMorgan Chase, as DIP Facility agent: (i) McMillan LLP, Brookfield Place, Suite 4400, 181 Bay Street, Toronto, ON M5J 2T3, Canada, Attn: R.D. Jeffrey Rogers, Esq., (ii) JPMorgan Chase Bank, N.A., Toronto Branch, c/o JPMorgan Chase Bank, N.A., 3 Park Plaza, Suite 900, Irvine, CA 92614, Attn: Annaliese Fisher, (iii) JPMorgan Chase Bank, N.A,. Toronto Branch, 200 Bay Street, South Tower, Suite 1800, Toronto, Ontario M5J 2J2, Canada, Attn: Agostino Marchetti; (F) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Buchbinder, Esq.; (G) counsel for PwC: Fasken Martineau DuMoulin LLP, 2900 – 550 Burrard Street, Vancouver, BC V6C 0A3, Canada, Attn: John Grieve, Esq., Kibben Jackson, Esq.; (H) PricewaterhouseCoopers, 250 Howe Street, Suite 700, Vancouver, British Columbia V6C 3S7 on or before **4:00 p.m. (prevailing Eastern Time) on** February 28**, 2012.**

12. The date and time of the Recognition Hearing, in CPC's sole discretion, may be adjourned to a subsequent date without further notice except for an in-court announcement on the record at the Recognition Hearing, or a filing by CPC on the docket of the Chapter 15 Cases, of the date and time to which the Recognition Hearing has been adjourned.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Amended Provisional Order shall be effective immediately and enforceable upon its entry and shall remain effective until either (i) entry of an order recognizing the CCAA Proceeding and, pursuant to section 1521(a)(6), extending the relief granted herein, or (ii) entry of an order denying recognition to the CCAA Proceeding; (b) neither CPC nor the DIP Lender (to the extent provided in paragraph 2 above) are subject to any stay in the implementation,

enforcement or realization of the relief granted in this Amended Provisional Order; and (c) CPC is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Amended Provisional Order.

14. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Amended Motion or the implementation of this Amended Provisional Order.

Dated: February 1, 2012
Wilmington, Delaware

Honorable Peter J. Walsh
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
DESTINATOR TECHNOLOGIES INC., et al.,[1]	Case No. 08-11003 (CSS)
Foreign Applicants in Foreign Proceeding.	Jointly Administered

ORDER FOR PROVISIONAL RELIEF

RSM Richter Inc. is the court-appointed monitor (the "**Monitor**") and the foreign-representative of Destinator Technologies Inc. (Canada), DESTINATOR TECHNOLOGIES INC., and Destinator Technologies Intellectual Properties Inc. (together the "**Foreign Applicants**"), in a proceeding (the "**Canadian Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**"). On May 20, 2008, the Ontario Court entered the initial order (the "**Initial Order**") attached hereto as Exhibit 1.

By its Motion for Provisional Relief (the "**Motion**") pursuant to sections 105(a) and 1519 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), the Monitor requested the entry of three orders:

(i) on an *ex parte* basis, an emergency order (the "**Emergency Order**") which (A) imposes a stay of all proceedings against the Monitor, the Foreign Applicants, their business and property, and their former, current and future directors and officers, to the extent provided in the Initial Order of the Ontario Court, and (B) authorizes the

[1] The Foreign Applicants in these proceedings are: Destinator Technologies Inc. (Canada) (Tax ID No. XX-XXX4969); DESTINATOR TECHNOLOGIES INC. (Tax ID No. XX-XXX3351); and Destinator Technologies Intellectual Properties Inc. All three Foreign Applicants are located at 95 Mural Street, 6th Floor, Richmond Hill, Ontario L4B 3G2, Canada. Destinator Technologies Inc. (Canada) was formerly known as Homeland Security Technology Corporation Canada Inc. DESTINATOR TECHNOLOGIES INC. was formerly known as Homeland Security Technology Corporation. Destinator Technologies Intellectual Properties Inc. was formerly known as PRAV Intellectual Properties Inc. and HSTC Intellectual Properties Inc.

Foreign Applicants to incur a portion of the indebtedness authorized by the Initial Order in order to avoid immediate and irreparable harm to the Foreign Applicants' estates;

(ii) after notice and a hearing, this order (the "**Provisional Order**") enforcing the Initial Order in the United States, and thereby (A) approving the procedures leading to a sale of the Foreign Applicants' assets, (B) authorizing the Foreign Applicants to borrow the remainder of the financing authorized by the Initial Order, subject to the Monitor's supervision and control and (C) extending the stay obtained by the Emergency Order to the full extent set forth in the Initial Order (the "**Provisional Relief**"); and

(iii) after entry of a recognition order under section 1517 of the Bankruptcy Code and upon conclusion of the sale process, the entry of the proposed sale order (the "**Sale Order**") approving the sale of the Foreign Applicants' assets free and clear of all liens and encumbrances pursuant to sections 1520(a)(2) or 1521(a)(7), of the Bankruptcy Code.

This Court entered the Emergency Order on May 20, 2008, and scheduled a hearing for May 23, 2008 at 2:00 p.m. to consider the Monitor's request for the relief set forth in the proposed Provisional Order. The Court has considered and reviewed the Verified Petition filed by the Monitor under chapter 15 for each of the Foreign Applicants and the Affidavit of Ken Coleman sworn to May 19, 2008 and the exhibits thereto, including the First Report of RSM Richter Inc. as the CCAA Monitor of the Foreign Applicants, the Affidavit of Brian Barry sworn to May 16, 2008, the Affidavit of John Poptsis sworn to May 20, 2008, the Memorandum of Law and the Motion (collectively the "**Supporting Papers**"). The Court has also reviewed the Initial Order. Based on the foregoing, this Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this District pursuant to 28 U.S.C. § 1410 (1) and (3).

(B) Notice of the hearing on the Motion was sufficient under the circumstances and no further notice of, or hearing on, the Motion is necessary or required.

(C) The relief sought by the Monitor is authorized under sections 1519(a)(1) and (3), and 1521(a)(7).

(D) The Monitor has demonstrated that the relief sought is justified pursuant to section 1519(e) because:

(i) the Monitor has demonstrated a reasonable probability that the Canadian Proceeding will be recognized as a foreign main proceeding;

(ii) The Monitor has demonstrated that the Foreign Applicants will be irreparably harmed in the absence of the relief requested in that:

The Stay

(a) The Monitor has demonstrated that unless the temporary restraining order is extended, there is a material risk that one or more parties in interest will take action against the Foreign Applicants or their assets, thereby interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, interfering with and causing harm to the Monitor's efforts to administer the Foreign Applicants' estates pursuant to the Canadian Proceeding, and undermining the Monitor's effort to conduct a sale and maximize the value of the Foreign Applicants' assets. As a result, the Monitor and the Foreign Applicants will suffer immediate and irreparable harm for which they will have no adequate remedy at law;

The Financing

(b) The Monitor has demonstrated that the borrowing authorized by the Initial Order is necessary to prevent irreparable harm to the Foreign Applicants because without such financing, the Foreign Applicants will be unable to continue operations which will significantly impair the value of their assets; and

(c) The Monitor has demonstrated that the terms of the financing are fair and reasonable and were entered into in good faith by ICS and the other Lenders, as defined in the Motion, and the Lenders would not extend financing without the protection provided by section 364(e) of the Bankruptcy Code as made applicable by section 1519 of the Bankruptcy Code.

The Sale Process, Bidding Procedures and Stalking Horse Bid

(d) The Monitor has demonstrated that the Foreign Applicants have insufficient capital to continue operations and that the sale of the Foreign Applicants' assets is the best way to preserve value for creditors;

(e) The Monitor has demonstrated that the bidding procedures set forth in the Motion substantially conform to the requirements of section 363 of the Bankruptcy Code; and

(f) The break-up fee and expense reimbursement each (1) were a material inducement for, and a condition of, the stalking horse bidder's entry into the asset purchase agreement described in the Motion, (2) are fair, reasonable and appropriate in view of the fact that such protections will increase the chances that the auction will be successful, (3) will preserve the value of the Foreign Applicants' estates, (4) were negotiated by the parties in good faith and at arm's length, and, thus, the Foreign Applicants and their estates will receive the

highest and/or best offer for their assets. The expense reimbursement payable in accordance with the bidding procedures is commensurate with the actual and necessary costs and expenses of preserving the Foreign Applicants' assets, and the real and substantial benefit conferred upon the Foreign Applicants' estates by the stalking horse bidder. It is therefore appropriate for this Court to enforce the Ontario Court's approval thereof pursuant to the Initial Order.

(iii) The Monitor has demonstrated that the relief will not cause or create an undue hardship to a party in interest that is not outweighed by the benefit to the Foreign Applicants.

(iv) The Monitor has demonstrated that entry of this Order is in the public interest because it will further the public policy of the United States as articulated in, *inter alia*, section 1501 of the Bankruptcy Code.

(E) The entry of this Order is in the best interest of the Foreign Applicants, their estates, and the creditors and other parties in interest.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is granted in all respects except that the order approving the sale of the Foreign Applicants' assets will be entered only following a subsequent hearing before this Court. ~~upon a showing that the sale was conducted pursuant to the sale process approved by the Initial Order~~.

2. The Initial Order is hereby given full force and effect in the United States.

3. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

4. The Lenders are hereby granted a first priority lien on all the Foreign Applicants' US assets, subject to the terms and conditions set forth in the Initial Order.

5. Pursuant to sections 1519(a)(3), 1521(a)(7), 364(e) and 105(a) of the Bankruptcy Code, the validity of the indebtedness, and the priority of the liens authorized by the Initial

Order and made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition to the Canadian Proceeding pursuant to section 1517 of the Bankruptcy Code.

6. The security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7065 of the Federal Rules of Bankruptcy Procedure, are hereby waived.

7. Notice of this Order in the form annexed hereto as Exhibit 2 shall be served on or before May 27, 2008, in accordance with this Court's Order Specifying Form and Manner of Service and Related Relief dated May 20, 2008 (Docket No. 18).

8. Service in accordance with this Order shall constitute adequate and sufficient service and notice.

9. The Supporting Papers shall be made publicly available by the Monitor on its website at http://www.rsmrichter.com or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Tania Ingman, (212) 756-1199, Chapter15.Destinator@allenovery.com.

10. 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 cases, 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.

Dated: Wilmington, Delaware
May 23, 2008

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
DESTINATOR TECHNOLOGIES INC., *et al.*,[1]	Case No. 08-11003 (CSS)
Foreign Applicants in Foreign Proceeding.	Jointly Administered

Re: D.I. 41

ORDER GRANTING RECOGNITION AND RELIEF IN AID OF FOREIGN PROCEEDING PURSUANT TO 11 U.S.C. §§ 1517, 1520 AND 1521

This matter was brought before the Court to consider the Verified Petition for Recognition which was filed for each of the Foreign Applicants, as defined below (collectively, the "**Chapter 15 Petitions**") pursuant to sections 1504 and 1515 of title 11 of the United States Code (the "**Bankruptcy Code**") commencing the above-captioned chapter 15 cases (collectively, the "**Chapter 15 Cases**") filed on May 20, 2008, by RSM Richter Inc., the court-appointed monitor (the "**Monitor**") and foreign representative of Destinator Technologies Inc. (Canada), DESTINATOR TECHNOLOGIES INC., and Destinator Technologies Intellectual Properties Inc. (together, the "**Foreign Applicants**"), in proceedings (the "**Canadian Proceeding**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**"). This Court entered an Order (the "**Emergency Order**") on May 20, 2008, (A) imposing a stay of all proceedings against the Monitor, the Foreign Applicants, their business and property, and their

[1] The Foreign Applicants in these proceedings are: Destinator Technologies Inc. (Canada) (Tax ID No. XX-XXX4969); DESTINATOR TECHNOLOGIES INC. (Tax ID No. XX-XXX3351); and Destinator Technologies Intellectual Properties Inc. All three Foreign Applicants are located at 95 Mural Street, 6th Floor, Richmond Hill, Ontario L4B 3G2, Canada. Destinator Technologies Inc. (Canada) was formerly known as Homeland Security Technology Corporation Canada Inc. DESTINATOR TECHNOLOGIES INC. was formerly known as Homeland Security Technology Corporation. Destinator Technologies Intellectual Properties Inc. was formerly known as PRAV Intellectual Properties Inc. and HSTC Intellectual Properties Inc.

former, current and future directors and officers, to the extent provided in the Initial Order of the Ontario Court (the "**Initial Order**") and filed with this Court upon the commencement of these cases, and (B) authorizing the Foreign Applicants to incur a portion of the indebtedness authorized by the Initial Order in order to avoid immediate and irreparable harm to the Foreign Applicants' estates. After notice and a hearing, this Court entered on May 23, 2008, an order (the "**Provisional Order**") enforcing the Initial Order in the United States, and thereby (A) approving the procedures leading to sale of the Foreign Applicants' assets, (B) authorizing the Foreign Applicants to borrow the remainder of the financing authorized by the Initial Order, subject to the Monitor's supervision and control and (C) extending the stay obtained by the Emergency Order to the full extent set forth in the Initial Order, due and timely notice of the filing of the Chapter 15 Petitions was given in accordance with this Court's order dated May 20, 2008, approving the form of notice and manner of service thereof (the "**Notice Order**"), which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. The Court has considered and reviewed the other pleadings and exhibits submitted by the Monitor in support of the Chapter 15 Petitions (collectively the "**Supporting Papers**"), and no objections to the Chapter 15 Petitions were filed. After due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 1501.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410(1) and (3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code is the duly appointed foreign representative of each of the Foreign Applicants within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceeding is pending in Canada, which is the location of the Foreign Applicants' center of main interests, and as such, is a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided pursuant to section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court's granting of the relief requested by the Monitor.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceeding is hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 of the Bankruptcy Code throughout the duration of these chapter 15 cases or until otherwise ordered by this Court.

3. The Provisional Order of this Court shall continue in effect in accordance with its terms.

4. Notice of entry of this Order shall be served on or before June 11, 2008, in accordance with the Notice Order.

5. Service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

6. The Chapter 15 Petitions and the Supporting Papers shall be made available by the Monitor through its website at http://www.rsmrichter.com or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Tania Ingman, (212) 756-1199, Chapter15.Destinator@allenovery.com.

7. Notwithstanding Rule 7062 of the Federal Rules of Bankruptcy Procedure, made applicable to these Chapter 15 Cases by Rule 1018, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: Wilmington, Delaware
June 6, 2008

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
The Honorable Michael E. Romero

In re:	)	
	)	Case No. 07-22719 MER
PETITION OF ERNST & YOUNG, INC., as Receiver of Klytie's Developments, Inc., Klytie's Developments, LLC, Efrat Friedman, and Hidai Friedman,	)	
	)	Chapter 15
Debtors in a Foreign Proceeding.	)	

ORDER

THIS MATTER comes before the Court on the Petition of Ernst & Young, Inc. for Recognition of Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the Bankruptcy Code (the "Petition"), and the Responses thereto filed by the Securities Commissioner for the State of Colorado (the "Commissioner") and certain parties to United States District Court for the District of Colorado Civil Action No. 07-CV-1318-WDM-BNB (the "Severino Plaintiffs"). The Court has considered the evidence and legal argument presented by the parties and hereby makes the following findings of fact and conclusions of law.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(P), as it concerns recognition of foreign proceedings under Chapter 15 of Title 11.

BACKGROUND FACTS

The background facts stated herein are taken from the Petition, the Affidavit of Craig Munro with Exhibits (the "Munro Affidavit"),[1] the direct testimony received from Craig Munro ("Munro") at the hearing on the Petition, and other exhibits admitted at the same hearing.

Efrat and Hidai Friedman (collectively the "Friedmans") are Israeli citizens who lived in Canada and now reside in California. *Petitioner Exhibit 3*, p. 4. On March 8, 2005, the Friedmans formed Klytie's Developments, Inc. ("KDI") under the laws of Canada, which entity maintained its registered office in Calgary, Alberta. *Id.* The Friedmans own 80% of KDI's stock and the remaining 20% is owned by Jason Sharkey ("Sharkey"), a resident of Denver, Colorado. *Id.* In July, 2005, KDI formed and registered Klytie's Developments, LLC ("KD/CO") in Colorado. *Id.* Sharkey was responsible for the operation of KD/CO under the supervision and direction of the Friedmans. *Petitioner Exhibit 20.*

[1] Although the Munro Affidavit was not admitted as evidence because Mr. Munro testified personally, the Court notes much of the information contained in the Munro Affidavit and its exhibits is substantially the same as Mr. Munro's testimony and the exhibits admitted by stipulation at the hearing.

Through KDI and KD/CO, the Friedmans and Sharkey solicited investments in a fund to finance the purchase of real estate developments and holdings throughout the world. These real estate developments and holdings would serve as the assets of the investment fund. Investors in the fund were told they would receive, through shared profits, a minimum annual return on their investment. As a key part of its sales efforts, KD/CO used a prospectus drafted and created by the Friedmans and KDI. *Petitioner Exhibits 18 and 19.*

It is alleged approximately $7.6 million was raised through investors located in the United States, Canada and Israel. *Petitioner Exhibit 3*, p. 5. According to the Commissioner, approximately 88% of the investment proceeds were paid into KD/CO. *Commissioner's Response and Supplemental Trial Brief*, Exhibit 2. The monies raised by KD/CO were deposited in United States banks and a significant portion of these funds were subsequently transferred to KDI and/or the Friedmans. *Petitioner Exhibits 17 and 20.*

In early 2006, the Commissioner initiated an investigation of KDI and KD/CO, and forwarded documents from his investigation to the Alberta Securities Commission ("ASC"), which then commenced its own investigation in Canada. *Petitioner Exhibit 3*, p. 6. On October 23, 2006, the Commissioner filed a Complaint against the Friedmans, KDI, KD/CO, and Sharkey in the District Court for the City and County of Denver, Colorado (the "Colorado Court"). *Petitioner Exhibit 21*. On November 3, 2006, the Colorado Court entered an Order enjoining the defendants in that action from selling interests in the fund, and from brokering, dealing, or selling securities in Colorado. The defendants were also prohibited from dissipating assets or destroying records of KDI or KD/CO. *Petition*, Exhibit B.[2]

The ASC also initiated an action against KDI and the Friedmans, and obtained an Order on October 5, 2006, freezing all monies in their accounts located at the Toronto Dominion Bank of Canada and Royal Bank of Canada. *Petitioner Exhibit 3*, p. 6. On June 5, 2007, the ASC and the Friedmans entered into a settlement agreement under which KDI and the Friedmans admitted to committing fraud, agreed to pay ASC $220,000 (Can.), and agreed to refrain from work in the securities field for 25 years. *Petitioner Exhibit 4.*

On June 22, 2007, the Severino Plaintiffs filed a Complaint against KDI, KD/CO, the Friedmans and Sharkey in the United States District Court for the District of Colorado (the "Federal Court Action"). The Complaint asserted claims for fraudulent sale of unregistered securities, deceit, false representation, and violation of Colorado securities laws. *Petitioner Exhibit 22.* The defendants in the Federal Court Action have moved to stay that case based on the legal proceedings in Canada and based on pending criminal indictments against Hidai Friedman and Sharkey which were entered by the Grand Jury in Jefferson County, Colorado, on October 19, 2007. *Petitioner Exhibits 23 and 24.*

On August 16, 2007, the Court of Queen's Bench of Alberta, District of Calgary (the "Canadian Court"), entered an Order appointing Ernst & Young, Inc. ("Ernst & Young") as receiver for KDI (the "Receiver"). *Petitioner Exhibit 1.* Two months later, the Canadian Court expanded the coverage of its previous order to include the Friedmans and related entities, including KD/CO. *Petitioner Exhibit 2.* The Canadian Court's Orders (i) authorized the Receiver to manage

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[2] The Court notes although the parties referred to this Order at the hearing in this matter and appeared to be in consensus as to its contents, no copy of this Order was submitted to this Court.

and operate the businesses affected, collect accounts receivable, and to pursue all legal proceedings relating to KDI and related entities; (ii) stayed all legal proceedings involving KDI and enjoined persons other than the Receiver from dealing with property of KDI and its related entities; (iii) required knowledgeable persons to cooperate with the Receiver; and (iv) authorized the Receiver to seek recognition of its orders and to seek "aid and recognition" of courts in the United States. *Petitioner Exhibits 1 and 2*.

The Petition alleges the Alberta receivership proceeding is a collective judicial proceeding arising under the common law of Canada and the United Kingdom relating to insolvency (the "Receivership Proceeding"). It states the Receivership Proceeding constitutes a "foreign main proceeding" under 11 U.S.C. §§ 101(23) and 1502(4)[3] because KDI was incorporated in Alberta, Canada under the Alberta Business Corporations Act, because the operations of KDI and KD/CO were conducted primarily from Calgary, Alberta, Canada and because the principal assets of KDI and KD/CO are located in Alberta. Further, the Petition states recognition as a foreign main proceeding is necessary to assist the Receiver in investigating and pursuing assets of KDI and its related entities located in Colorado and elsewhere in the United States. Alternatively, the Petition asserts the Receivership Proceeding is a "foreign nonmain proceeding" under § 1502(5).

DISCUSSION

Chapter 15 of the Bankruptcy Code was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Chapter 15 essentially implements the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law ("UNCITRAL"). *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund*, 374 B.R. 122, 126 (Bankr. S.D.N.Y. 2007) (*citing* H.R.Rep. No. 109-31 at 105-07 (2005), U.S.Code Cong. & Admin. News (2005 p. 88)); *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 631-32 (Bankr. E.D. Cal. 2006). Chapter 15 was included in BAPCPA to facilitate cooperation between United States courts, trustees, examiners, debtors and debtors-in-possession and the courts and other competent authorities of foreign countries; to provide greater consistency in the law for trade and investment; and to promote fair and efficient administration of cross-border insolvencies while protecting the interests of all creditors and other interested parties, including the debtor. *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006), *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007).

Pursuant to § 1504, a case under Chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under § 1515. The petition for recognition must be accompanied by evidentiary documents which are presumed to be authentic in the absence of evidence to the contrary. *See* 11 U.S.C. §§ 1515(b) and 1516(b). A foreign representative may request recognition of the foreign proceeding as either a "foreign main proceeding" or a "foreign nonmain proceeding." 11 U.S.C. § 1517(a)(1).

Section 1502(4) defines a foreign main proceeding as a "foreign proceeding pending in the country where the debtor has the *center of its main interests*" ("COMI") (emphasis added). 11 U.S.C. § 1502(4); *see In re Petition of Lloyd*, 2005 WL 3764946, at *2 (Bankr. S.D.N.Y. 2005) (granting recognition of foreign main proceeding). A foreign nonmain proceeding is defined as any other proceeding "pending in a country where the debtor has an establishment." 11 U.S.C.

[3] Unless otherwise noted, all future statutory references in the text are to title 11 of the United States Code.

§ 1502(5). An "establishment" means "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2).

Under § 1516(c), "[i]n the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests." The legislative history of § 1516 indicates "the presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy." H.R.Rep. No. 31, 109th Cong., 1st Sess 1516 (2005), U.S. Code Cong. & Admin. News 2005, pp. 88, 175. The *Tri-Continental* Court found the debtor's COMI comparable to the concept of "principal place of business" under United States law. *Tri-Continental*, 349 B.R. at 633-34.

In *Bear Stearns*, Judge Lifland set forth the following analysis of the COMI presumption:

> As noted by the European Court of Justice, the COMI presumption may be overcome "particular[ly] in the case of a 'letterbox' company not carrying out any business in the territory of the Member State in which its registered office is situated." *See In re Eurofood IFSC Ltd.*, *supra* at ¶ 35; *see also In re SPhinX, Ltd.*, 371 B.R. 10 (S.D.N.Y.2007). In addition, the Guide explains that the presumption does "not prevent, in accordance with applicable procedural law, calling for or assessing other evidence if the conclusion suggested by the presumption is called into question by the court or an interested party." See Guide ¶ 122.

Bear Stearns, 374 B.R. at 129 (citing to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency).

In the Petition before the Court, the objecting parties do not dispute Ernst & Young is the Receiver appointed in the Receivership Proceeding, and is a foreign representative pursuant to § 101(24).[4] Nor do they dispute the Receivership Proceeding is a foreign proceeding as defined in § 101(23).[5] In addition, the Court finds Ernst & Young, as a foreign representative, constitutes a "person" under § 101(41).[6] KDI, KD/CO, and the Friedmans are debtors under § 1502(1).[7]

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[4] A "foreign representative" under § 101(24) is:

> 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.

[5] A "foreign proceeding" under § 101(23) is:

> 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.

[6] A "person" under § 101(41) includes an "individual, partnership, and corporation . . ."

[7] Section 1502(1) defines a "debtor" as "an entity that is the subject of a foreign proceeding."

However, the Commissioner asserts this action stems from multi-national cross-border securities fraud perpetrated by primarily KD/CO, through Sharkey, a Denver resident, and thus disputes Canada is the appropriate COMI. The Commissioner contends the Debtors' COMI is where the fraud occurred and, since KD/CO was the entity primarily responsible for the fraud, and because the monies from investors flowed through KD/CO and through banks in the United States, the Debtors' COMI is Colorado.

The Commissioner also asserts recognition of the Receivership Proceeding as a foreign main proceeding would be contrary to public policy and would result in harm to the recovery efforts already commenced here in Colorado.[8] He further asserts the factors set forth in § 1507 weigh in favor of not granting the recognition of the proceeding, or at least modifying any recognition order to protect the public interest. Finally, the Commissioner alleges the Receivership Proceeding will not provide relief against all parties, because neither the Receivership Proceeding nor the Chapter 15 Petition include Sharkey as a party.

The Severino Plaintiffs also dispute the assertion the Debtors' COMI is Canada, noting the Receivership Proceeding was instituted by the petition of Israeli investors and not by Canadian or United States investors. They further contend declaring the Receivership Proceeding a foreign main proceeding may allow the Receiver to obtain the funds being held by the Colorado Court and distribute those funds pursuant to Canadian law to the detriment of the Severino Plaintiffs' rights. They assert there has been no determination in the Receivership Proceeding as to whether there will be one common fund or several funds set up for distribution to creditors of KDI and KD/CO. They also raise the concern the Receiver's cost of pursuing assets will exceed any claims held by creditors located in the United States.

Based on the parties' respective arguments, the Court must determine whether the foreign proceeding, *i.e.*, the Receivership Proceeding, is "in the country where the debtor has the center of its main interests," and whether recognition would be "manifestly contrary to the public policy of the United States" under § 1506.

A. Center of Main Interests

The Bankruptcy Code does not define "center of main interests." However, as noted above, the place where the debtor has its registered office is presumed to be the center of the debtor's main interests under § 1516(c).[9] Each of the small number of cases addressing the COMI dilemma offers insight into the determination of this key issue. However, the determination of the issue is necessarily fact driven in each particular case.

The bankruptcy court's decision in *SPhinX* involved a debtor in a Cayman Islands liquidation case. The debtor had its registered office in the Cayman Islands, but was not authorized

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[8] As a result of the Commissioner's efforts, it appears approximately $465,000 is being held by the Colorado Court. *See Petitioner Exhibit 3*, p.6, ¶17 (indicating the Colorado Court's order of November 3, 2006 froze bank accounts in Colorado); *see also Petitioner Exhibit 21*, ¶12 (The Complaint alleges $200,000 located at Guaranty Bank and Trust and $265,000 at U.S.Bank. Both banks are located in Denver, Colorado).

[9] Bankruptcy Judge Drain determined this presumption might not be helpful in the case of a serious dispute about where a debtor has its main interests, and found the presumption could be rebutted. *SPhinX*, 351 B.R. at 117 (*citing* H.R. Rep. No. 109-31, pt. 1, at 112-113 (2005), U.S. Code Cong. & Admin. News 2005, pp. 88, 174-176).

to do business in that locale. Rather, all of its assets and business operations were located in the United States. The bankruptcy court found the debtor and its creditors sought recognition of the Cayman Islands liquidation as a foreign main proceeding as a litigation tactic--to obtain the automatic stay to defeat a settlement, and that the liquidators were forum shopping. Based upon those facts, the bankruptcy court declined to recognize the Cayman Islands case as a "foreign main proceeding," but determined no harm would result from recognizing the case as a "foreign nonmain proceeding," subject to later modification pursuant to the provisions of § 1517(d).[10] *SPhinX*, 351 B.R. at 117.

In *Tri-Continental*, the bankruptcy court determined the debtor's COMI was St. Vincent and the Grenadines because it was organized under the law of that jurisdiction, and conducted regular business at offices located there. *Tri-Continental*, 349 B.R. at 635. In reaching its conclusion, the *Tri-Continental* Court relied upon § 1508, which requires the COMI analysis to be consistent with the interpretation of similar statutes in foreign jurisdictions. *Id*. The Court stated:

> In the European Union, the broadest grant of jurisdiction is to the courts of the Member state, where the "centre of a debtor's main interests is situated." In the regulation adopting the EU Convention, the concept is elaborated upon as "the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties."

Id. at 634 (footnotes omitted).

More recently, in *Bear Stearns,* Judge Lifland stated the mere fact the subject debtors were organized under the laws of a certain locale (in that case, the Cayman Islands), did not mean that locale was the COMI for Chapter 15 purposes. *Bear Stearns*, 374 B.R. at 128. He found the evidence before him established the debtors' activity was actually centered in New York. *Id.* at 129. Moreover, Judge Lifland determined there was really no "establishment" in the Cayman Islands – that is, no "nontransitory economic activity" under § 1502(5). Specifically, in addition to having no employees or managers located outside New York, all business conducted by the debtors in the Cayman Islands was related to their New York operation. Hence, no "nontransitory" activity existed. *Id*. at 131. As a result, the foreign proceeding was not eligible for relief as a foreign main or a nonmain proceeding. *Id.* at 132. As part of his analysis, Judge Lifland identified several other factors that may be helpful in determining a debtor's COMI, including: (1) the location of those who manage the debtor; (2) the location of the debtor; (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. *Id.* at 128.

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[10] In affirming the Bankruptcy Court's decision, the Federal District Court for the Southern District of New York stated:

> Such circumstances as this support denial of recognition as a foreign main proceeding on the ground that the recognition is being sought for an improper purpose. *See, e.g., Baker v. Latham Sparrowbush Assocs.*, 931 F.2d 222, 228 (2d Cir.1991) (finding that an entity may not file a Chapter 11 petition "which is solely designed to attack a judgment collaterally"); *In re Rimsat, Ltd.*, 98 F.3d 956, 962 (7th Cir.1996) (declining to defer to a foreign proceeding as "instituted in an effort to defeat" a U.S. bankruptcy proceeding and "strategic conduct that is not to be encouraged").

In re SPhinX, Ltd, 371 B.R. 10, 18 (S.D.N.Y. 2007).

In the instant case, the COMI determination is complicated because there is a lack of clarity as to the identity of the Debtor(s) in the Receivership Proceeding. Originally, the only entity subject to the receivership was KDI. It was the subsequent Order of the Canadian Court expanding the receivership to include KD/CO which has created the confusion. For COMI purposes, should each of these entities be evaluated separately? Should there be an evaluation similar to a "piercing the corporate veil" analysis so as to determine whether there are two separate and distinct entities? Does the issue of control of the entities come into play, and if so, to what extent?

The factors set forth in *Bear Stearns* offer a useful analytical framework to determine the above issues. The first factor indicates the Court should determine the location of those who manage the debtor. Herein, the evidence establishes the driving force behind both entities was the Friedmans. Although the Friedmans now live in the United States, they formed their fraudulent organization(s) and directed the operations of KDI and KD/CO (at least indirectly, through Sharkey) from Canada.[11]

The second *Bear Stearns* factor - the location of the debtor, is not critical in this case because there was no real business being operated out of either entity. Rather, the creation of both KDI and KD/CO was part of a fraudulent scheme.

Of greater importance to the analysis is the third *Bear Stearns* factor - the location of the principal assets of each entity. According to the evidence presented, as part of the fraudulent scheme, investors were told they were investing in a private real estate fund known as Klytie's Developments, Inc. Global Real Estate Fund. Several parcels of real property were purchased with some of the investors' contributions; however, it is unclear under what name these properties were held. For purposes of the present analysis, it does not appear any of the purchased real estate was held in the name of KD/CO, but rather, in the name of KDI. In fact, the only assets of KD/CO appear to be the monies tendered by investors which were deposited into the KD/CO account at Guaranty Bank and Trust and U.S. Bank (the "Colorado Accounts"). As of the date of the hearing on the Petition, a total of $465,000 remains in the Colorado Accounts, which were frozen as part of the Commissioner's action brought in the Colorado Court. *See supra, note 8.* The testimony of Sharkey, provided through a sworn statement as part of the Commissioner's investigation, indicates the monies deposited in the Colorado Accounts were regularly transferred to KDI or related

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[11] Mr. Friedman's control of the business from Canada is supported by *Petitioner Exhibit 20*, the Sworn Statement of Jason Sharkey, illustrated by the following excerpts:

–page 25, lines 1–13 (Sharkey checked Mr. Friedman's history with the ASC and later traveled to Calgary, where Mr. Friedman showed him properties alleged to belong to KDI)
–page 85, lines 14-18 (indicating the sales power point for solicitation to investors was created by Mr. Friedman)
–page 101, lines 11-13 (all information was provided to Sharkey by Mr. Friedman)
–page 112, lines 1-12 (Mr. Friedman provided all prospectuses to be used by Sharkey)

entities.[12] Thus, the available evidence shows the majority of assets involved were in the name of or ultimately controlled by KDI in Canada.

The final two *Bear Stearns* factors (location of the majority of the debtor's creditors and the jurisdiction whose law would apply to most disputes) are not critical to the COMI determination in this case. The investors defrauded by the Friedmans and their entities were citizens of several countries, including Canada, the United States and Israel. As for applicable law, jurisdiction lies equally in Canada and the United States.

Although not clearly enunciated as such in the Bankruptcy Code, the recognition determination appears to be a summary determination. As a result, a full and final adjudication of *alter ego* and corporate governance issues does not need to be completed. While not making a final determination on the issue, the Court finds, based on the evidence presented, there is a reasonable probability KDI and KD/CO were operated as one for purposes of perpetrating a fraud on investors. Should it be determined in the Receivership Proceeding that KDI and KD/CO are two independent entities which should be liquidated separately, Chapter 15 of the Bankruptcy Code allows the recognition determination to be modified or terminated in the future. *See* 11 U.S.C. § 1517(d).

B. Public Policy

The remaining issue is whether recognition of the Petition would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. The legislative history to Chapter 15 indicates this exception is to be applied narrowly, and should be invoked only when the most fundamental policies of the United States are at risk. *See* H.R. Rep. No. 109-31 at 109 (2005), reprinted in U.S.C.C.A.N. 88, 172; *see also In re Ephedra Products Liability Litigation*, 349 B.R. 333, 336-337 (S.D.N.Y. 2006) (the inability to have a jury trial in Canada, where one would be allowed in the United States, was not "manifestly contrary to the public policy of the United States").

Here, the objecting parties' arguments are twofold. Initially, they contend Colorado investors (or more broadly, United States investors) may receive less in the Receivership Proceeding, which will include creditors from Canada and Israel, than what these "local" investors would receive from the Colorado Court or the Federal Court. However, the Court finds this argument unpersuasive. All wronged investors should share in the assets accumulated in the Receivership Proceeding, regardless of nationality or locale.

Second, the objecting parties argue the costs attendant to the Receivership Proceeding will deplete the assets of KDI and KD/CO to such a degree that distributions to the wronged investors will be minimal. However, other than pointing out the Receiver is an international firm, the

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[12] The following excerpts are illustrative of the money transfer process:

-page 34, lines 5-19 (reason why KD/CO was created and when funds transferred between entities)
–page 132, lines 20-24 (funds sent from Israel were received by KDI and later forwarded to Canada at Mr. Friedman's direction)
–page 189, lines 8-17 (the ultimate responsibility for all funds in the operation was Mr. Friedman's)

objecting parties provided no evidence to support this allegation.[13] Costs of liquidation are a reality, whether through a foreign proceeding, or through a United States bankruptcy case. Accordingly, the Court finds this public policy argument equally unpersuasive. As a result, the Court can find no evidence at this time to support a finding that the Receivership Proceeding will produce a result so drastically different to be "manifestly contrary" to United States public policy.

CONCLUSION

For the above reasons,

IT IS HEREBY ORDERED the Petition meets the requirements of 11 U.S.C. § 1515 and the Receivership Proceeding is hereby recognized as a foreign main proceeding within the meaning of 11 U.S.C. § 1502(4), with Ernst & Young as the foreign representative.

IT IS FURTHER ORDERED that, on or before May 1, 2008, the Receiver shall file a status report with the Court containing the results of its investigations, after which the Court may set a status hearing, if necessary.

Dated February 8, 2008

BY THE COURT

Michael E. Romero
United States Bankruptcy Judge

[13] The Court notes Mr. Munro testified at the recognition hearing the Receiver had to date incurred approximately $300,000 in fees and costs. No further testimony was presented on this issue.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
MAAX Corporation, *et al.*,	Case No. 08-11443 (CSS)
Foreign Applicants in Foreign Proceedings.	Jointly Administered

ORDER GRANTING PROVISIONAL RELIEF

This *ex parte* motion (the "**Motion**") was brought by Alvarez & Marsal Canada ULC, the court-appointed monitor (the "**Monitor**") and authorized foreign representative of MAAX Corporation ("**MAAX Corp.**") and certain of its direct and indirect wholly owned subsidiaries (together, the "**MAAX Group**")[1] in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Quebec Superior Court (Commercial Division) (the "**Quebec Court**") in above-captioned chapter 15 cases (the "**Chapter 15 Cases**") ancillary to the Canadian Proceedings pursuant to chapter 15 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), for the entry of an order granting the Monitor provisional relief under sections 1519(a)(3), 1521(a)(7) and 105(a) of the Bankruptcy Code making section 365(e) of the Bankruptcy Code applicable to the MAAX Group's real property leases pending disposition of the Chapter 15 Petitions (defined below). The Court has considered and reviewed the Motion, the petitions filed by the Monitor in the Chapter 15 Cases (the "**Chapter 15 Petitions**"), and the Memorandum of Law in support thereof filed contemporaneously therewith. Based on the foregoing, the Court finds and concludes as follows:

[1] The MAAX Group includes MAAX Corp., MAAX Canada Inc., 4200217 Canada Inc., MAAX Spas (Ontario), Inc., MAAX Cabinets Inc., MAAX KSD LLC, Pearl Baths LLC, MAAX-Hydro Swirl Manufacturing Corp., MAAX Midwest, Inc., MAAX Spas (Arizona), Inc. and Aker Plastics Company, Inc.

a) The Monitor has demonstrated a reasonable probability that the MAAX Group is subject to pending foreign main proceedings or pending foreign non-main proceedings in Canada and that the Monitor is the foreign representative of the MAAX Group;

b) The Monitor has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to the MAAX Group's real property leases may take the position that the commencement of the Canadian Proceedings or these proceedings authorizes them to terminate their leases. Such termination may cause the MAAX Group to be unable to perform under the Purchase Agreement (as defined in the Chapter 15 Petitions) for the sale of their assets which has been approved by the Quebec Court and result in irreparable damage to the value of the MAAX Group's estates;

c) The Monitor has demonstrated that no harm will result to any party that is greater than the harm to the MAAX Group's estates in the absence of the requested relief and the interest of the public will be served by this Court's granting of the relief requested by the Monitor;

e) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code;

f) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

g) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410 (1) and (3).

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Pursuant to sections 1519 and 1521(a)(7) of the Bankruptcy Code, Section 365(e)(1) of the Bankruptcy Code is applicable to the MAAX Group's real property leases in these Chapter 15 Cases. ~~Any provision of the type described in section 365(e)(1) in a real property lease is unenforceable against the MAAX Group~~ until such time as an order disposing of the Chapter 15 Petitions is entered.

2. Notice of the entry of this Order shall be served in accordance with the procedures in the Order Specifying Form and Manner of Service dated July 14, 2008 entered in these Chapter 15 Cases (the "**Service Order**").

3. Service in accordance with the Service Order shall constitute adequate and sufficient service and notice.

4. The Motion and all other filings in this case shall be made publicly available by the Monitor on its website at http://www.alvarezandmarsal.com/maax or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Tania Ingman, (212) 756-1199, Chapter15.MAAX@allenovery.com.

5. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
July 14, 2008

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
MAAX Corporation, *et al.*,	Case No. 08-11443 (CSS)
Foreign Applicants in Foreign Proceedings.	Jointly Administered

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought before the Court by Alvarez & Marsal Canada ULC, the court-appointed monitor (the "**Monitor**") and authorized foreign representative of the MAAX Corporation and certain of its direct and indirect wholly owned subsidiaries (together, the "**MAAX Group**")[1] in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Quebec Superior Court (Commercial Division) (the "**Quebec Court**"), to consider the Verified Petitions for Recognition of the Canadian Proceeding which were filed on July 14, 2008 for each member of the MAAX Group (collectively, the "**Chapter 15 Petitions**")[2] commencing the above-captioned chapter 15 cases (collectively, the "**Chapter 15 Cases**") pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1507, 1520, 1521, 363 and 105 of the Bankruptcy Code of (i) the Initial Order of the Quebec Court dated June 12, 2008 (the "**Initial Order**"), as extended on June 26, 2008 and on July 10, 2008 (collectively, the "**Initial Orders**") and (ii) the Sale and Vesting Order of the Quebec Court dated July 10, 2008 (the "**Vesting Order**"). Due

[1] The MAAX Group includes MAAX Corp., MAAX Canada Inc., 4200217 Canada Inc., MAAX Spas (Ontario), Inc., MAAX Cabinets Inc., MAAX KSD LLC, Pearl Baths LLC, MAAX-Hydro Swirl Manufacturing Corp., MAAX Midwest, Inc., MAAX Spas (Arizona), Inc. and Aker Plastics Company, Inc.
[2] Capitalized terms not defined herein have the meanings ascribed to them in the Vesting Order.

and timely notice of the filing of the Chapter 15 Petitions was given in accordance with this Court's order dated July 14, 2008, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. The Court has considered and reviewed the other pleadings and exhibits submitted by the Monitor in support of the Chapter 15 Petitions including the Initial Orders annexed hereto as Exhibits 1A, 1B and 1C respectively, the Vesting Order annexed hereto as Exhibit 2 and the Asset Purchase Agreement between the MAAX Group and the Purchaser dated June 11, 2008 (the **"Purchase Agreement"**) annexed hereto as Exhibit 3 (collectively the "**Supporting Papers**"). Any objections to the Chapter 15 Petitions that have not been withdrawn or resolved have been overruled.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410 (1) and (3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each member of the MAAX Group within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceedings are pending in Canada, which is the location of each member of the MAAX Group's center of main interests, and as such, constitute foreign main proceedings pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

(M) Purchaser has acted in good faith, within the meaning of section 363(m) of the Bankruptcy Code.

(N) Time is of the essence in consummating the sale. To maximize the value of the assets, it is essential that the sale of the Purchased Assets occur within the time constraints set forth in the Purchase Agreement. Cause has been shown as to why this Order should not be subject to the stay provided by Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

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.

2. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 of the Bankruptcy Code throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The Initial Orders are hereby given full force and effect in the United States.

4. The Vesting Order is hereby given full force and effect in the United States.

5. The Purchaser is hereby found to be a good-faith purchaser and granted all of the protections provided to a good-faith purchaser under section 363(m) of the Bankruptcy Code.

6. As set forth in the Vesting Order, effective as of the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A to the Vesting Order, the sale of the Purchased Assets by the MAAX Group to Purchaser shall constitute a legal, valid, and effective transfer of the MAAX Group's right, title and interest in the Purchased Assets notwithstanding any requirement for approval or consent by any person and shall vest Purchaser with all right, title, and interest of the MAAX Group in and to the Purchased Assets free and clear of all liens, claims and encumbrances of any kind (except the Permitted Encumbrances set forth in the Purchase Agreement), pursuant to section 363(f) of the Bankruptcy Code.

7. The MAAX Group is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Purchase Agreement, any related agreements and this Order, including amended and restated limited-liability-company agreements, certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any officer of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action is deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if

any, required by the corporation laws of the state of Delaware and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Purchase Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

8. The MAAX Group is hereby authorized and empowered to assign all real property leases required to be assigned under the Purchase Agreement.

9. Notwithstanding Bankruptcy Rules 6004, 7062, and 9021, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the MAAX Group and Purchaser are free to close under the agreement at any time, subject to the terms of the Purchase Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the MAAX Group and Purchaser close under the Purchase Agreement, Purchaser shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the agreement if this Order or any authorization contained herein is reversed or modified on appeal.

10. The automatic stay under section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the Purchase Agreement.

11. The MAAX Group shall be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system and continue their current and any future banking arrangements (collectively, the "**Cash Management System**") and the stay under section 362 of the Bankruptcy Code shall not apply to the operation of such Cash Management System.

12. Any present or future bank, financial institution or person providing the Cash Management System (i) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the MAAX Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) shall be entitled to provide the Cash Management System without any liability in respect thereof to any person other than the MAAX Group, pursuant to the terms of the documentation applicable to the Cash Management System; and (iii) shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan formulated in the Canadian Proceedings with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

13. To the extent provided in paragraph 21 of the Initial Order, and notwithstanding anything in this Order to the contrary, the MAAX Group shall be entitled but not required to pay and fulfil the following expenses and obligations whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses, and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) all outstanding and future trade obligations or related expenses incurred in the ordinary course of business and other amounts related to the preservation of the Property or the Business, including without limitation obligations to customers, suppliers, sale agents, independent contractors, governmental and taxation authorities or other third parties;

(c) the fees and disbursements of any assistants retained or employed by the Petitioners in respect of these proceedings, at their standard rates and charges; and

(d) such other amounts and obligations as agreed to by the MAAX Group and BBLF.

14. 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 Cases, 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.

15. Service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

16. The Chapter 15 Petitions and the Supporting Papers shall be made available by the Monitor through its website at http://www.alvarezandmarsal.com/maax or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Tania Ingman, (212) 756-1199, Chapter15.MAAX@allenovery.com.

17. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 Cases by Bankruptcy Rule 1018, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: Wilmington, Delaware
8/5, 2008

UNITED STATES BANKRUPTCY JUDGE

The Honorable Paul B. Snyder
Chapter 15

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re:	Chapter 15
MADILL EQUIPMENT CANADA	**Case No. 08-41426 (PBS)(lead case)**
MADILL INC.	08-41428
MADILL HOLDINGS (ONTARIO) LP	08-41429
MADILL GP INC.	08-41430
MADILL LP	08-41431
MADILL CORPORATION	08-41433
MADILL FINANCE (US) LLC	08-41434
MADILL HOLDINGS (US) INC.	08-41435
Debtors in a Foreign Proceeding.	

ORDER ON
MOTION FOR PROVISIONAL RELIEF

THIS MATTER comes before the Court on the Motion for Provisional Relief Pursuant To 11 U.S.C. § 1519 (the "Motion") filed on behalf of RSM Richter Inc. (the "Receiver") as foreign representative of Madill Equipment Canada, Madill Inc., Madill Holdings (Ontario) LP, Madill GP Inc., Madill LP, Madill Corporation, Madill Finance (US) LLC, and Madill Holdings (US) Inc. (collectively, the "Madill Group"). The Receiver was appointed as receiver for the Madill Group in proceedings in the Supreme Court of British Columbia (the "Canadian Receivership") pursuant to an order entered April 1, 2008, a copy of which is attached to the Verified Petition For Recognition Of Foreign Main Proceeding (the "Petition for

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Recognition"). In the Motion for Provisional Relief, the Receiver seeks an order pursuant to 11 U.S.C. § 1519:

(i) staying any collection activity by creditors against the Madill Group's assets in the United States consistent with 11 U.S.C. § 362;

(ii) entrusting management of the Madill Group's assets in the United States to the Receiver in a manner consistent with the Receivership Order; and

(iii) authorizing the interim use of cash collateral in the United States, and granting the Madill Group's Senior Lenders a replacement lien for the resulting diminution in the value of their collateral pending the hearing on the Petition for Recognition, and

(iv) ordering the above relief on an ex parte basis, provided that parties in interest may seek to modify the provisions of the order either at the hearing on the Petition for Recognition or on shortened notice.

The Court has considered the Motion, the Declaration of Robert Kofman In Support Of Petition for Recognition Of Foreign Main Proceeding And Related Relief, and the statements of counsel in support of the Motion.

BASED ON THE FOREGOING, the Court makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

C. Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

D. The Canadian Receivership is pending in British Columbia, Canada, and the Receiver has been authorized to take control of the assets and business of the Madill Group pursuant to the terms of the Receivership Order. The Receiver has also been authorized to act as foreign representative of the Madill Group in these proceedings.

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E. Based on the pleadings filed to date, the Court concludes that the Receiver is likely to prevail on the merits of the Petition for Recognition.

F. The relief sought by the Receiver in the Motion is authorized under Section 1519 of the Bankruptcy Code, and the Receiver has demonstrated that irreparable harm to the Madill Group may occur in the absence of the relief sought in the Motion.

G. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, and consistent with the public policy of the United States.

H. Entry of this Order on an ex parte basis is warranted under the circumstances.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. All persons and entities are hereby enjoined from:

(a) commencing or continuing an action or proceeding concerning the Madill Group's assets, rights, obligations or liabilities;

(b) executing against the Madill Group's assets within the territorial jurisdiction of the United States;

(c) taking or continuing any act to obtain possession of, or exercise control over, the Madill Group or any assets of the Madill Group;

(d) taking or continuing any act to create, perfect or enforce a lien or other security interest, set-off or other claim against the Madill Group or the Receiver (in its capacity as receiver for the Madill Group) or any assets of the Madill Group;

(e) transferring, encumbering, relinquishing or disposing of any assets of the Madill Group to any person or entity other than the Receiver and its expressly authorized representatives and agents; or

(f) managing, exercising control over, or possessing any of the Madill Group's assets except as expressly authorized by the Receiver.

2. The Receiver is hereby entrusted with the administration or realization of all of the Madill Group's assets within the territorial jurisdiction of the United States, and in

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connection therewith, subject to the terms and conditions contained in the Receivership Order, pending the hearing on the Petition for Recognition. The foregoing is without prejudice to the right of the Receiver to seek additional relief under applicable provisions of the Bankruptcy Code.

3. The Receiver is hereby authorized pursuant to Section 363(a) of the Bankruptcy Code to use cash collateral in the exercise of its powers under and subject to the terms and conditions contained in the Receivership Order. Pursuant to Bankruptcy Code Section 361 and as adequate protection for the use of their collateral by the Receiver, the Senior Lenders ~~(as that term is defined in the Receivership Order)~~ are hereby granted a replacement lien in the Madill Group's post-petition assets of the same kind, type and nature as the Senior Lenders' collateral existing as of the date of filing of the Petition for Recognition to secure the diminution in value occurring in their collateral as a result of the use of cash collateral. The Senior Lenders' replacement lien granted pursuant to this order shall be deemed perfected without any further action, including without limitation the requirement of filing any UCC financing statements or other documents with any filing authority.

4. No action taken by the Receiver, the Madill Group or each of their successors, agents, representatives, advisers or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Canadian Receivership, this Order, or this Chapter 15 case, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the immunity afforded such person under Sections 306 and 1510 of the Bankruptcy Code.

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5. Any party in interest may seek relief from this Order either by filing an objection to be heard at the same time as the hearing on the Petition for Recognition, or may file a motion for relief from this order on shortened time.

DATED this 3 day of April, 2008.

Honorable Paul B. Snyder
United States Bankruptcy Judge

Presented by:

Davis Wright Tremaine LLP
Attorneys for RSM Richter Inc., Receiver

By /s/ Ragan L. Powers
Ragan L. Powers, WSBA #11935

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 15
Metcalfe & Mansfield Alternative Investments et al.,	Case No. 09-16709 (MG)
Debtors in Foreign Proceedings.	Jointly Administered

ORDER GRANTING RECOGNITION, ENFORCEMENT OF CANADIAN ORDERS AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Metcalfe & Mansfield Alternative Investments II Corp., ("**Metcalfe II**"), Metcalfe & Mansfield Alternative Investments III Corp. ("**Metcalfe III**"), Metcalfe & Mansfield Alternative Investments V Corp. ("**Metcalfe V**"), Metcalfe & Mansfield Alternative Investments XI Corp. ("**Metcalfe XI**"), Metcalfe & Mansfield Alternative Investments XII Corp. ("**Metcalfe XII**"), 6932819 Canada Inc. ("**6932819**") and 4446372 Canada Inc., ("**4446372**" and together with Metcalfe II, Metcalfe III, Metcalfe V, Metcalfe XI, Metcalfe XII, and 6932819, the "**Issuer Trustees**"), which are the trustees of the third-party (non-bank sponsored) conduit trusts, and the debtors in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**").

This Court has reviewed the Verified Petitions For Recognition of Foreign Proceedings which were filed on November 10, 2009 for each Issuer Trustee (collectively, the "**Chapter 15 Petitions**") commencing the above-captioned chapter 15 cases (collectively, the

"**Chapter 15 Cases**") pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1507, 1521(a) and 105(a) of the Bankruptcy Code of the Amended Sanction Order and the Plan Implementation Order of the Ontario Court (together, the "**Canadian Orders**") and attached as Exhibits 1 and 2, respectively to the Amended Proposed Order (Document Number 25) in the Lead Case.

Due and timely notice of the filing of the Chapter 15 Petitions was given in accordance with this Court's order dated November 23, 2009, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. No objections to the Chapter 15 Petitions or any of the relief sought thereby have been filed with the Court.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410(3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each Issuer Trustee within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceedings are pending in Canada, which is the location of each Issuer Trustee's center of main interests, and as such, constitute foreign main proceedings pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

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.

2. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 of the Bankruptcy Code throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The Canadian Orders are hereby given full force and effect in the United States and are binding on all persons subject to this court's jurisdiction pursuant to sections 1521(a)(7), 1507 and 105(a) of the Bankruptcy Code.

4. 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 Cases, 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.

5. Notice of entry of this order shall be served in accordance with this Court's prior order directing the manner of service and notice. Such service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

6. The Chapter 15 Petitions and copies of the Canadian Orders shall be made available upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Amélie Baudot, (212) 610-6300, amelie.baudot@allenovery.com.

7. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 Cases by Bankruptcy Rule 1018, this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: New York, New York
January 5, 2009

/s/Martin Glenn_____
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re EPHEDRA PRODUCTS LIABILITY LITIGATION	04 MD 1598 (JSR)
In re MUSCLETECH RESEARCH AND DEVELOPMENT INC., et al.;	
Foreign Applicants in Foreign Proceedings.	06 Civ. 538 (JSR)
In re RSM RICHTER INC., AS FOREIGN REPRESENTATIVE OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND ITS SUBSIDIARIES,	06 Civ. 539 (JSR)
Plaintiff,	
-v-	
SHARON AGUILAR, an individual; et al.,	ORDER
Defendants.	

JED S. RAKOFF, U.S.D.J.

This Order will serve to clarify and reduce to plain English the Order dated February 9, 2006, which this Order supersedes. Specifically, for the reasons previously stated, the Court grants the injunctive relief requested by RSM Richter Inc. (the "Monitor") on the following terms:

(1) Prosecution in any respect of any "Product Liability Action" (as defined in the Monitor's petitions commencing these actions) is stayed to the extent such action is against:

(a) MuscleTech Research and Development Inc. ("MuscleTech") and/or its subsidiaries;

(b) any of the affiliates of MuscleTech, namely, Iovate Health Sciences Group Inc., Iovate Health Sciences Inc., Iovate Health Sciences Research Inc., Iovate Health Sciences International Inc., Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences Capital Inc., and Iovate Copyright Ltd.;

(c) Paul Gardiner, Terence Begley, Carlan Colker, Douglas Kalman, and/or Stuart Lowther;

(d) the Paul Gardiner Family Trust;

(e) HVL, Inc., Douglas Laboratories Inc., Peak Wellness, Inc., and/or Miami Research Associates Inc.;

(f) Walgreen Co., Wal-Mart Stores, Inc., General Nutrition Corporation, GN Oldco Corporation, General Nutrition Companies Inc., GNCI Oldco, Inc., General Nutrition, Inc. GNI Oldco, Inc., GNC Franchising, LLC, General Nutrition Distribution, L.P., General Nutrition Distribution Corporation, General Nutrition Sales Corporation, General Nutrition Centers, Inc., Oldco Corporation, General Nutrition Companies, Inc., General Nutrition Center, Store 100122, General Nutrition Center, Store 101603, GNC Corporation, General Nutrition Center International, Inc., GNC Franchising, Inc., Mandeville GNC (a/k/a Mackie Shilstone's GNC), CVS Corporation, Rite Aid Corporation, Jackie Kneifel, Raaj Singh, and/or James R. Wilson; and

(g) any other defendant in a Product Liability Action who claims indemnification from MuscleTech and its subsidiaries.

(2) The stay shall continue until completion of the April 6, 2006 status conference in the related Ephedra MDL action, or such time thereafter as the Court then prescribes.

(3) The Monitor and any other interested party who may so desire shall report to the Court at the April 6 hearing regarding the status of the parties' efforts to arrive at a global settlement. The Monitor shall contemporaneously file electronically, with a hard copy to the undersigned's chambers, unredacted copies of any written reports or other papers filed with the Ontario Superior Court in connection with the related Canadian bankruptcy proceedings.

(4) Any interested party may seek relief from, or modification of, this stay by scheduling motion practice in the manner prescribed by the Individual Rules of this Court.

(5) Any interested party may appear at the April 6 hearing and be heard as to any extension of the stay.

(6) Counsel for MuscleTech shall immediately file a copy of this Order in each of the Product Liability Actions to which the Order applies.

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
March 2, 2006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: EPHEDRA PRODUCTS LIABILITY LITIGATION	04 MD 1598 (JSR)
In re: MUSCLETECH RESEARCH AND DEVELOPMENT INC., et al., Foreign Applicants in Foreign Proceedings.	06 CIV 538 (JSR)
RSM RICHTER INC., AS FOREIGN REPRESENTATIVE OF MUSCLETECH RESEARCH AND DEVELOPMENT INC. AND ITS SUBSIDIARIES Plaintiff, v. SHARON AGUILAR, an individual; *et al.*; Defendants.	06 CIV 539 (JSR) **ORDER**

ORDER, PURSUANT 11 U.S.C. §§ 105(a), 1519 AND 1521, ENFORCING CANADIAN CLAIMS BAR DATE ORDER AND RELATED CLAIMS PROCEDURES AND FORMS IN THE UNITED STATES

Upon the Motion, dated February 28, 2006 (the "Motion") of RSM Richter Inc., as the court-appointed monitor (the "Monitor") and foreign representative of MuscleTech Research and Development Inc. ("MDI") and certain of its subsidiaries (together with MDI, the "Foreign Applicants") in proceedings (the "Canadian Proceedings") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pending before the Ontario Superior Court of Justice

(Commercial List) (the "Canadian Court"), in these cases (the "Chapter 15 Cases") pursuant to chapter 15 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), for the entry of an order, pursuant to sections 105(a), 1519 and 1521 of the Bankruptcy Code, recognizing and enforcing in the United States the Canadian Court's order establishing a "call for claims" process under the CCAA to establish a claims bar date and related forms and procedures for filing and asserting claims under the CCAA against the Foreign Applicants and other persons as described more fully below (the "Canadian Claims Procedures Order") (copy annexed hereto as Exhibit "A"); and all interested parties having had due and proper notice of the Motion; and based upon the foregoing, and after due deliberation and sufficient cause appearing therefor, this Court ORDERS as follows:

ORDERED, that the Motion is granted and, pursuant to sections 105(a), 1519 and 1521, the Canadian Claims Procedures Order is hereby given full force and effect in the United States and is enforceable in accordance with its terms; and it is further

ORDERED, that this Court's stay of the Product Liability Actions (as defined in the Motion), and to the extent applicable, the automatic stay under section 362 of Bankruptcy Code, are hereby modified and lifted solely for the purpose of allowing the filing of Complaints pursuant to the Canadian Claims Procedures Order but for no other purpose unless expressly ordered by this Court; and it is further;

ORDERED, that the requirement to file a memorandum of law in support of the Motion under Local Bankruptcy Rule 9013-1(b) for the Southern District of New York is hereby waived; and it is further

ORDERED, that the Monitor and the Foreign Applicants are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

Dated: New York, New York
March 28, 2006

JED S. RAKOFF, U.S.D.J.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Nortel Networks Corporation, *et al.*,	Case No. 09-10164(KG)
Foreign Applicants in Foreign Proceedings.	Jointly Administered Re: D.I. # 135, 145

ORDER ENFORCING THE ORDER OF THE ONTARIO COURT APPROVING CLAIMS PROCEDURE ORDER

This matter was brought before the Court upon the motion (the "**Motion**")[1] of Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Nortel Networks Corporation and certain of its direct and indirect subsidiaries, Nortel Networks Limited, Nortel Networks Technology Corporation, Nortel Networks Global Corporation, and Nortel Networks International Corporation (collectively, the "**Canadian Nortel Group**") in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") seeking the entry of an order pursuant to sections 1525, 1501, 1507 and 105(a) of title 11 of the United States Code (the "**Bankruptcy Code**") giving effect in the United States to the order of the Ontario Court dated July 30, 2009 (the "**Claims Procedure Order**"). Adequate notice of the Motion was given. The Court has considered and reviewed the Motion, including the Claims Procedure Order annexed hereto as Exhibit 1. After due deliberation and sufficient cause appearing therefore; it is hereby:

1. ORDERED that the Motion is granted.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

2. ORDERED that the Claims Procedure Order is hereby given full force and effect in the United States.

Dated: Wilmington, Delaware
August 31, 2009

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Nortel Networks Corporation, *et al.*,	Case No. 09-10164 (KG)
Foreign Applicants in Foreign Proceedings.	Jointly Administered

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Nortel Networks Corporation and certain of its direct and indirect subsidiaries, Nortel Networks Limited, Nortel Networks Technology Corporation, Nortel Networks Global Corporation, and Nortel Networks International Corporation (collectively, the "**Canadian Nortel Group**") in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**"), to consider the Verified Petitions for Recognition of Foreign Proceedings which were filed on January 14, 2009 for each member of the Canadian Nortel Group (collectively, the "**Chapter 15 Petitions**") commencing the above-captioned chapter 15 cases (collectively, the "**Chapter 15 Cases**") pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1507, 1520, 1521 and 105(a) of the Bankruptcy Code of the Initial Order of the Ontario Court dated January 14, 2009 (the "**Initial Order**"), an amended and restated form of which was approved by the Ontario Court on February 10, 2009 (the "**Amended Initial Order**"). Based upon the Affidavit of Service of Patricia Birley sworn to on February 9, 2009, the

Affidavit of Publication in the Wall Street Journal (national edition) of Erin Ostenson sworn to on January 28, 2009 and the Affidavit of Publication in The Globe and Mail sworn to on January 28, 2009, sufficient notice of the Chapter 15 Petitions has been given. The Monitor also filed notice of the Amended Initial Order on February 10, 2009 (docket no. 29) and served a copy of the notice on parties in interest as reflected in the Affidavit of Melissa N. Flores sworn to on February 11, 2009 (docket no. 30). The Court has considered and reviewed the pleadings and exhibits submitted by the Monitor in support of the Chapter 15 Petitions including the Amended Initial Order annexed hereto as Exhibit 1. No objections to the Chapter 15 Petitions were filed with the Court.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410 (1) and (3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each member of the Canadian Nortel Group within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceedings are pending in Canada, which is the location of each member of the Canadian Nortel Group's center of main interests, and as such, constitute foreign main proceedings pursuant to section 1502(4) of the Bankruptcy Code

and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

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.

2. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 and the provisions of section 363 of the Bankruptcy Code throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The Amended Initial Order (and any further amendments or extensions thereof as may be granted from time to time by the Ontario Court) is hereby given full force and effect in the United States.

4. 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 Cases, 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.

5. Service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

6. The Chapter 15 Petitions and the Supporting Papers shall be made available by the Monitor through its website at www.ey.com/ca/nortel, or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Bethany Kriss, (212) 756-1199, Bethany.Kriss@allenovery.com.

7. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 Cases by Bankruptcy Rule 1018, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: Wilmington, Delaware
February 27, 2009

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:	)	
	)	Chapter 15
POSEIDON CONCEPTS CORP.,	)	Case No. 13-15893-HRT
Debtor in Foreign Proceeding.	)	**(*Jointly Administered*)**
	)	

PRELIMINARY INJUNCTION ORDER

Upon the application (the "Application")[1] of PricewaterhouseCoopers Inc. ("PWC"), as the court-appointed monitor (the "Monitor") and authorized foreign representative of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. (collectively referred to as the "PC Debtors") in the proceeding pending in the Court of Queen's Bench of Alberta, Canada (the "Canadian Proceeding") under the Companies' Creditors Arrangement Act (the "CCAA"), pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the "Bankruptcy Code") for entry of an order to show cause with temporary restraining order and a preliminary injunction (the "Preliminary Injunction"), and this Court having considered and reviewed: (i) the Application, the petition (the "Petition") pursuant to Section 1515 of the Bankruptcy Code for entry of an order recognizing the Canadian Proceeding as a foreign main proceeding; (iii) the Declaration of L.T. Roberts and the Declaration of Leigh Cassidy (the "Declarations") offered in support of the Application and the Petition; (iv) the initial order entered in the Canadian Proceeding on April 9, 2013 (the "CCAA Order"); and (v) all other documents filed in support thereof (together with the Application, Petition, Declarations and CCAA Order, the "Supporting Papers"), and this Court having heard the parties on April 25,

[1] Capitalized terms undefined herein shall have the meanings ascribed in the Application.

2013, and based upon the representations made on the record at such hearing, this Court finds and concludes as follows:

A. There is a substantial likelihood that the Monitor will be able to demonstrate that the Canadian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code and that the Monitor is a "foreign representative" of the debtor, as defined in Section 101(24) of the Bankruptcy Code;

B. The commencement or continuation of any action or proceeding in the United States against the PC Debtors, the Monitor, in its role as foreign representative of the PC Debtors, or any of PC Debtors' assets or proceeds thereof should be enjoined pursuant to Sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditions and economical administration of the PC Debtors' estate in the Canadian Proceeding, and the relief requested either: (i) will not cause undue hardship to; or (ii) any hardship to parties in interest is outweighed by the benefits of the relief requested;

C. Unless a preliminary injunction order issues, there is a material risk that the PC Debtors' assets could be subject to efforts by creditors in the United States to control or possess such assets. Such acts could: (i) interfere with the jurisdictional mandate of this Court under Chapter 15 of the Bankruptcy Code; (ii) interfere with and cause harm to the Canadian Proceeding; and (iii) undermine the PC Debtors and the Monitor's efforts to achieve an equitable result for the benefit of all of the PC Debtors' creditors. Accordingly, there is a material risk that PC Debtors may suffer immediate and irreparable injury for which it will have no adequate remedy at law and therefore it is necessary that the Court enter this Order;

D. The interest of the public will be served by this Court's entry of this Order;

E. The Monitor, in its role as foreign representative of the PC Debtors, and the PC Debtors, are entitled to the full protections and rights available pursuant to Section 1519(a) of the Bankruptcy Code; and

F. 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 this case and is therefore waived.

THEREFORE, IT IS HEREBY ORDERED, that beginning on the date of this Order and continuing until further Order of this Court, all persons and entities are:

1. enjoined from: (i) commencing or continuing any legal proceeding (including, without limitation, arbitration, or any judicial, quasi judicial, administrative or regulatory action, proceeding or process whatsoever), including any discovery, or

taking any other action (each, an "Action") against the Monitor, in its role as foreign representative of the PC Debtors, the PC Debtors, or the PC Debtors' United States assets or the proceeds thereof, rights, obligations, or liabilities; (ii) the enforcement of any judicial, quasi judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Monitor, in its role as foreign representative of the PC Debtors, the PC Debtors, or the PC Debtors' United States assets or the proceeds thereof; and (iii) the commencement or continuation of any Action to create, perfect or enforce any lien, setoff or other claim against the PC Debtors or against any of its assets or the proceeds thereof; provided, however, that no Action described in Sections 555, 556, 557, 559, 560, 561, 562 and 1519(d) and (f) of the Bankruptcy Code shall be enjoined by such preliminary injunction (the "Excepted Actions");

2. required, if plaintiff in an action in which the PC Debtors is or was named as a party, or as a result of which liability against the PC Debtors may be established, to place the Monitor's U.S. Counsel (as defined below) on the master service list of any such action or proceeding and take such other steps as may be necessary to ensure that such counsel receive: (i) copies of any and all documents served by the parties to such action or proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or proceeding, and (ii) any and all correspondence or other documents circulated to parties listed on the master service list; and

3. prohibiting all persons and entities other than the PC Debtors from possessing or exercising control over the PC Debtors' assets located in the United States, except as authorized in writing by the PC Debtors, by Order of this Court, or in the Canadian Proceeding.

It is further ordered that nothing in this Order shall be deemed to prohibit or enjoin any civil action pending in the United States against third parties and non-PC Debtor entities or enjoin discovery as otherwise authorized against third parties and non-PC Debtor entities.

It is further ordered that until further Order of this Court, the Monitor, in its role as foreign representative of the PC Debtors, and the PC Debtors, are entitled to the full protection and rights available pursuant to Section 1519(a) of the Bankruptcy Code, including:

a. In accordance with and subject to the terms of the CCAA Order, the right and power of the PC Debtors to administer and/or realize all or part of the PC Debtors' assets located in the United States in order to protect and preserve the value of such assets;

b. The right and power to transfer, encumber, or otherwise dispose of any assets of the PC Debtors is prohibited, except by the PC Debtors as provided in this Preliminary Injunction, the CCAA Order, or to facilitate the operation of the PC Debtors' business in the ordinary course; and

c. The right and power to seek additional relief that is available to a trustee except for relief available under Sections 522, 544, 545, 547, 548, 550, and 724(a) of the Bankruptcy Code.

Nothing in this Order shall be deemed to entrust or otherwise vest the PC Debtors or their assets to the Monitor, or provide the Monitor with any greater rights or obligations than those afforded to it under the CCAA Order.

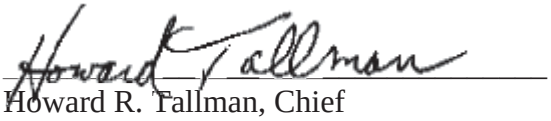
It is further ordered that (i) any party in interest may make a motion seeking relief from, or modification of, this Preliminary Injunction, by filing a motion on not less than ten (10) business days notice to the U.S. Counsel (as defined below), seeking an order for such relief, and any such request shall be the subject of a hearing scheduled by the Court and (ii) any party in interest may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing on any subsequent relief sought by the Monitor in this proceeding.

It is further ordered that, objections, if any, submitted for the purpose of opposing this Preliminary Injunction must be made in writing and shall be filed with this Court electronically by registered users of the Court's ECF System, with hard copy to the Chambers of the Honorable Howard R. Tallman, and served upon Brent R. Cohen, Esq., Rothgerber Johnson & Lyons LLP, 1200 17th Street, Suite 3000, Denver, CO 80202 (the "U.S. Counsel").

It is further ordered that pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

Dated: April 26th, 2013.

BY THE COURT



Howard R. Tallman, Chief
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:	)	
	)	Chapter 15
POSEIDON CONCEPTS CORP.,	)	Case No. 13-15893-HRT
Debtor in Foreign Proceeding.	)	
	)	
In re:	)	
	)	Chapter 15
POSEIDON CONCEPTS LTD.	)	Case No. 13-15894-HRT
Debtor in Foreign Proceeding.	)	
	)	
	)	
In re:	)	
	)	Chapter 15
POSEIDON CONCEPTS LIMITED PARTNERSHIP,	)	Case No. 13-15895-HRT
Debtor in Foreign Proceeding.	)	
	)	
In re:	)	
	)	Chapter 15
POSEIDON CONCEPTS INC.,	)	Case No. 13-15896-HRT
Debtor in Foreign Proceeding.	)	

ORDER GRANTING RECOGNITION AS A FOREIGN MAIN PROCEEDING AND RELATED RELIEF

THIS MATTER is brought before the Court by PricewaterhouseCoopers Inc. ("PWC"), as the court-appointed monitor (the "Monitor") and authorized foreign representative of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. (collectively referred to as the "PC Debtors") in the proceeding pending in the Court of Queen's Bench of Alberta, Canada (the "Canadian Proceeding") under the Companies' Creditors Arrangement Act (the "CCAA").

The Court has reviewed the official form petitions and the petitions for recognition as a foreign main proceeding (together, the "Petition"), each dated April 12, 2013, pursuant to Section 1515 of Title 11 of the United States Code (the "Bankruptcy Code") for entry of an order recognizing the Canadian Proceeding as a foreign main proceeding 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.

Due and timely notice of the filing of the Petition was given pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure.

After due deliberation and sufficient cause appearing, the Court finds and concludes as follows:

A. 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).

B. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).

C. The Monitor is a person within the meaning of Section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the PC Debtors within the meaning of Section 101(24) of the Bankruptcy Code.

D. This case was properly commenced pursuant to Sections 1504 and 1515 of the Bankruptcy Code.

E. The Canadian Proceeding is a foreign proceeding within the meaning of Section 101(23) of the Bankruptcy Code.

F. The Canadian Proceeding is entitled to recognition by this Court pursuant to Section 1517 of the Bankruptcy Code.

G. The Canadian Proceeding is entitled to recognition as a foreign main proceeding pursuant to Section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to Section 1517(b)(1) of the Bankruptcy Code.

H. The Monitor is entitled to the relief afforded under Section 1520 of the Bankruptcy Code.

I. In order to protect the assets of the PC Debtors and the interests of creditors, the Monitor is entitled to additional relief provided in and pursuant to Section 1521 of the Bankruptcy Code.

J. 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 Proceeding is hereby recognized as a foreign main proceeding pursuant to Section 1517 of the Bankruptcy Code.

2. The Monitor is granted all of the relief afforded under Section 1520 of the Bankruptcy Code except for those powers set forth in Section 1520(a)(3), which shall remain with the PC Debtors.

3. The terms of the initial order granted in the Canadian Proceeding under the CCAA on December 15, 2008 (the "CCAA Order") are given full force and effect in the United States.

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

(b) Execution against the assets of the PC 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 PC Debtors within the territorial jurisdiction of the United States is hereby entrusted to the PC Debtors, and the terms of the CCAA Order shall apply to the PC Debtors, its creditors, the Monitor, and any other parties-in-interest; and

(d) The right of any person or entity, other than the PC Debtors, to transfer or otherwise dispose of any assets of the PC Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the PC Debtors or by Order of this Court.

5. Nothing in this Order shall be deemed to entrust or otherwise vest the PC Debtors or its assets to the Monitor, with the terms of the CCAA Order to expressly govern the rights and responsibilities as foreign representative in this foreign main proceeding.

6. 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. 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.

Dated: May 15, 2013.

BY THE COURT

Howard R. Tallman, Chief
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: **PRO-FIT HOLDINGS LIMITED**, Debtor in a Foreign Proceeding.	Case No.: LA08-17043SB Case No.: LA08-17049SB Case No.: LA08-17054SB (administratively consolidated)
In re: **PRO-FIT INTERNATIONAL LIMITED**, Debtor in a Foreign Proceeding.	Chapter 15 Date: July 9, 2008 Time: 11:00 a.m. Ctrm: 1575
In re: **GENESIS BRADFORD LIMITED**, Debtor in a Foreign Proceeding.	**Amended Opinion Granting Interim Relief to Chapter 15 Debtors Under 11 U.S.C. § 1519**

I. Introduction

The recently appointed joint administrators of three chapter 15 debtors, Pro-Fit Holdings Limited ("Pro-Fit Holdings"), Pro-Fit International Limited ("Pro-Fit International"), and Genesis Bradford Limited ("Genesis") (collectively, "Pro-Fit"), bring this application for provisional relief under § 1519[1] to apply § 362 to stay the enforcement of a U.S. district court order, following judgment on the merits, attaching the U.S. assets of Pro-Fit Holdings and Pro-fit International. These three related corporations are currently in administration under the applicable bankruptcy law in the United Kingdom, a reorganization procedure akin to the U.S. chapter 11. The joint administrators are awaiting a hearing on their application for recognition of the U.K. proceedings as "foreign main proceedings" under § 1502(4). Judgment creditor Libra Securities LLC ("Libra") opposes the motion mainly on the grounds that the applicants have not followed the "standards, procedures, and limitations applicable to an injunction" pursuant to § 1519(e).

The court holds that the relief requested falls outside of § 1519(e), because it is not an injunction or temporary restraining order. Rather, the relief requested is the application of § 362 on a provisional basis, which does not require an adversary proceeding. Consequently, pursuant to § 1519, the court orders that § 362 apply in these chapter 15 cases with respect to Pro-Fit's U.S. assets pending this court's ruling on the application for recognition of the foreign proceedings as foreign main proceedings. In addition, by consent of the petitioners, and at the request of a creditor that has expressed an interest in purchasing substantially all of Pro-Fit's assets, § 363 also applies provisionally with respect to the debtors' U.S. assets pending the recognition determination.

[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C.A. §§ 101-1532 (West 2008) and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

II. Relevant Facts

Petitioners J.N.R. Pitts and M.E.G. Saville were appointed joint administrators[2] of Pro-Fit International on April 4, 2008, and of Pro-Fit Holdings and Genesis Bradford on April 7, 2008. These three related companies are registered under the laws of the United Kingdom, and are currently in administration in the High Court of Justice of England and Wales, Leeds District Registry.[3] Among their assets, the companies claim the rights to certain patents relating to waistband technology used in manufacturing athletic clothing, and have licensees both in the United Kingdom and the United States.

In light of Pro-Fit's interests in the United States, the administrators filed a chapter 15 petition for recognition[4] on May 21, 2003 for each of the three companies. In addition to Official Form 1, each petition includes a "Verified Petition for Recognition of Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief," which requests a hearing for recognition of the foreign proceeding as a foreign main proceeding.[5] To each petition is attached the notices of appointment of the administrators in each of the three cases in

[2] Pursuant to Schedule B1 of the Insolvency Act of 1986, an administrator is an officer of the court, appointed by order of the court, or by the company or its directors, with the objective of (a) rescuing the company as a gong concern, (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or (c) realizing property in order to make a distribution to one or more secured or preferential creditors.

[3] Court Case No. 473 of 2008.

[4] Section 1504 provides: "A case under [chapter 15] is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515."

[5] The hearing on these motions, originally set for hearing on July 8, 2008, is now scheduled on July 23, 2008.

Leeds, England. Further, each petition is accompanied by a notice of related cases, which include the pending administration cases in the United Kingdom[6] and pending litigation in the United States.

In addition to their intellectual properties, Pro-Fit Holdings and Pro-Fit International are parties to three pending civil actions in the District Court for the Central District of California.[7] Two of these actions were commenced in 2004 and 2007 by Tag-It Pacific Inc. (known today as Talon International Inc.), a U.S. licensee of Pro-Fit's waistband patents. Neither case is active. Talon's main concern in this chapter 15 case is not its pending litigation with Pro-Fit, but rather its interest in purchasing, in due course, substantially all of Pro-Fit's assets (either pursuant to § 363 or pursuant to applicable English law).

Libra commenced a third action against Pro-Fit Holdings and Pro-Fit International in 2007 in the U.S. District Court for the Central District of California. In that action, Libra obtained summary judgment on May 19, 2008. Pursuant to this judgment, Libra obtained an order[8] on May 21, 2008 (after the filing of these chapter 15 cases) attaching the U.S. assets of Pro-Fit Holdings and Profit International, including the stream of royalties from the U.S. patents.

Libra's writ of attachment prompted the debtors' foreign administrators to file an *ex parte* application for an order to show cause, on notice to counsel for both Talon and Libra, for a preliminary injunction and for an interim temporary restraining order. At the hearing, however, the petitioners changed their request to seek the imposition of the automatic stay under § 362 as to the two actions involving Talon, and most urgently the action involving Libra. Libra initially objected to this change in position, but was ultimately satisfied with an opportunity at the hearing to address petitioners' request for a stay under § 362, rather than a temporary restraining order and injunction.[9]

Libra opposes the application before the court on three grounds. First, Libra contends that § 1519(e) requires the filing of an adversary proceeding, which the foreign administrators have not done, to obtain the relief requested. Second, Libra argues that the foreign administrators have made no showing of imminent harm to justify the entry of a temporary restraining order. Finally, Libra maintains that the foreign administrators have provided no explanation for their delay in filing these chapter 15 cases, pursuant to which they now request relief on an emergency basis.

Talon, on the other hand – a licensee of the debtors who is also in litigation with them – does not oppose the emergency relief requested. On the contrary, Talon's concern is that the joint administrators, since the date of their appointment, have been working at less than arm's length with the insiders of Pro-Fit to consummate a sale transaction to insiders. Because it has an interest in buying the worldwide assets of the respective debtors, Talon welcomes the imposition of a stay on the debtors' assets, and further requests that the

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[6] While each of the foreign proceedings is pending in the High Court in Leeds, the foreign administrators do not have court order from England appointing them as administrators because English law does not require such an order for the entry of a corporate debtor in administration under the applicable insolvency law.

[7] Those actions are: (a) Libra Securities LLC v. Pro-Fit International Limited, et al., No. 2:07-cv-02520-SVW-JWJ; (b) Tag-It Pacific Inc. v. Pro-Fit Holdings Limited, No. 2:04-cv-02694-AHM-RC; and (c) Tag-It Pacific Inc. v. Pro-Fit Holdings Ltd., et al., No. 2:07-cv-01484-AHM-RC.

[8] Federal law in the United States does not provide directly for a writ of attachment. Instead, post-judgment remedies are provided by the law of the state where the federal court sits. *See* Rule 9014(c) (making Rule 7064 applicable to contested matters); Rule 7064 (adopting by reference FED. R. CIV. P. 64).

[9] To protect Talon's due process rights, the court set a further hearing two days later to consider further the propriety of imposing the automatic stay of § 362 on the creditors in these three cases. The next day Talon informed the court that it would not take advantage of the further hearing on this issue.

provisions of § 363 be made applicable for all worldwide assets of Pro-Fit during the gap period, pursuant to § 1519, until the foreign proceeding is recognized (at which time § 363 will apply pursuant to § 1520).

III. Discussion

This application for provisional relief raises three issues under the new chapter 15. The first issue is whether § 1519(e) should be read broadly to require the filing of an adversary proceeding to obtain any relief under § 1519. The second issue is whether, even on a narrower reading of § 1521(e), the adoption § 362 for a chapter 15 case is in the nature of issuing an injunction that requires an adversary proceeding. The third issue is whether the court may grant provisional relief under § 1519 by adopting other sections of the bankruptcy code and making them applicable in a particular chapter 15 case on a provisional basis pending a decision on recognition.

A. Background of Chapter 15

Congress enacted chapter 15 in 2005 as an implementation of the Model Law on Cross-Border Insolvency ("the Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") in 1997.[10] The language of chapter 15 tracks the Model Law, with adaptations designed to mesh with United States law.[11] Congress prescribed a rule of interpretation that expressly requires United States courts to take into account the statute's international origin and to promote applications of chapter 15 that are consistent with versions of the Model Law adopted in other jurisdictions.[12]

However, the matters presently before the court in this case do not implicate provisions of chapter 15 derived from the Model Law. Instead, they arise from provisions that Congress specially added in adapting the Model Law to the U.S. bankruptcy code.

B. Pendency of Foreign Proceeding and Qualification of Administrators

Section 1515 imposes the following requirements on a chapter 15 petition for recognition:

> (a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.
>
> (b) A petition for recognition shall be accompanied by—
>
> (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.
>
> (c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

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[10] The United States was an active participant in the discussions leading to the adoption of the Model Law. *See* H.R. REP. NO. 109-31, at 105-07 (2005), U.S. CODE CONG. & ADMIN. NEWS 2005, at 88; Jay Lawrence Westbrook, *Chapter 15 at Last,* 79 AM. BANKR. L.J. 713, 719-20 (2005). *See also In re* Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 n.3 (Bankr. S.D. N.Y.) (Lifland, J.) (stating that Judge Lifland, Professor Jay Westbrook and Daniel Glosband were among the authors of the Model Law).

[11] H.R. REP. NO. 109-31, at 105-07; Westbrook, *supra* note 11, at 719.

[12] *See* § 1508; H.R. REP. NO. 109-31, at 109-10.

(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

While compliance with subparagraphs (c) and (d) is clear, compliance with subparagraph (b) requires further explanation.

The Insolvency Act 1986 for England and Wales[13] authorizes a company to enter into administration by filing a petition with the high court.[14] After filing the case, the company may elect to enter into "administration," pursuant to which one or more administrators are appointed by the directors of the company, and not by the court, to reorganize or to liquidate the company.[15] Under this procedure, there is no court order for the appointment of the administrators. In these cases, instead of such a court order, the debtors have each attached a notice of appointment signed by Phillip Morris, a Leeds solicitor,[16] giving notice of their appointment. The court provisionally finds that these notices are sufficient, pursuant to § 1515(b)(3), to show both the existence of the foreign proceedings and the appointment of the foreign representatives.[17]

C. Provisional Relief Under § 1519

To authorize relief during the gap period between the time of filing a petition for recognition and the court ruling on recognition, § 1519(a) provides that "the court may grant relief of a provisional nature," at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors.[18]

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[13] *See* Margaret R. Cole, *The Insolvency Laws of the United Kingdom,* in 2 INTERNATIONAL INSOLVENCY, U.K. (Carl Felsenfeld et al., eds. 2003). The bankruptcy law in the United Kingdom is not unified: there is one law for England and Wales, one for Scotland and one for Northern Ireland. All three laws were enacted by the United Kingdom Parliament in Westminster, and they vary mainly in details that are not relevant herein. Because the administration for the companies in these chapter 15 cases is pending in Leeds, England, it is the law for England and Wales that applies to the administration of these three entities.

[14] *See* Insolvency Act 1986, ch. 45, Pt. II, s. 9. Administration may also be commenced by the directors of a company without filing a case at all under the Bankruptcy Act 1986. *See id.* Schedule B1, ¶ 22(2).

[15] *See id.*

[16] The practice of law in the United Kingdom is not unified. Most of what corresponds to U.S. law practice is carried out by solicitors, who often practice in law firms of substantial size. Most court appearances, however, are made by barristers, who are separately licensed and are hired by solicitors to conduct court proceedings.

[17] The purpose of § 1515(b) is to circumvent the usual requirement of exequatur for the proof of a foreign legal document, which requires a very complex and time-consuming procedure involving certifications by both foreign and U.S. officials.

[18] Section 1519 states:

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—
  (1) staying execution against the debtor's assets;
  (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

As with any provisional relief under § 1519, the court's preliminary order lasts until the court enters an order on recognition.[19] If the court ultimately grants recognition pursuant to § 1517, a main administrative order may then replace the interim order pursuant to § 1521(a), which authorizes the court to grant "any appropriate relief" after the recognition of a foreign proceeding as either a main or nonmain proceeding.[20]

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(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

[19] *See* § 1519(a).

[20] *See* § 1521(a).

1. Applicability of § 1519(e)

Libra argues that the joint administrators have not properly followed the procedural requirements to bring before the court the imposition of the § 362 stay. Libra contends that, pursuant to § 1519(e), no provisional relief under § 1519 can be granted unless the movant complies with the standards, procedures, and limitations applicable to an injunction, which are provided under Rules 7001 and 7065. Under this interpretation, relief is available to stay Libra's execution against the debtors' assets during the gap period between petition and recognition only pursuant to an adversary proceeding under Rule 7001. In addition, such injunctive relief would be subject to the standards and limitations applicable generally to injunctions (which the debtors have not attempted to satisfy).

a. Injunctions – Standards, Procedures & Limitations

Rule 7001 imposes specific procedures for obtaining an injunction.[21] A proceeding to obtain an injunction must comply with the adversary proceeding provisions of Part VII: the applicant must file a complaint under Federal Rule of Bankruptcy Procedure 7001, naming the parties against whom injunctive relief is sought, that complies with the federal pleading requirements.

The standards for obtaining a preliminary injunction are substantial. Under Ninth Circuit law, a party seeking a preliminary injunction (usually the plaintiff) must demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor.[22]

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[21] Rule 7001 provides in relevant part: An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: . . . (7) a proceeding to obtain an injunction or other equitable relief . . . ."

[22] *See, e.g.,* E. & J. Gallo Winery v. Andina Licores S.A., 446 F.3d 984, 990 (9th Cir. 2006).

A preliminary injunction is most often requested to preserve the status quo pending a decision by the court on the merits of the underlying dispute.[23]

Rule 65 of the Federal Rules of Civil Procedure, which Rule 7065 makes applicable in adversary proceedings, imposes limitations on a temporary restraining order (which is a form of preliminary injunction). Such an order must "describe in reasonable detail the act or acts sought to be restrained," must "set forth the reasons for its issuance," and is binding only upon the parties to the action (including their officers, agents, servants, employees and attorneys), and upon those persons in active concert or participation with them who receive actual notice of the order. Further requirements and limitations apply if the temporary restraining order is granted *ex parte* (*i.e.*, without notice to the party enjoined).[24]

The question before the court is whether the foreign administrators in these chapter 15 cases must comply with the foregoing requirements to permit the court to issue an order imposing the automatic stay on all U.S. creditors on a preliminary basis under § 1519. To make this determination, we look at three considerations: the consequences in § 1519 of applying this interpretation; the larger context in which this provision of § 1519 appears; and the nature of the § 362 automatic stay.

b. Applicability of Injunction Standards to § 1519 Relief

While one could perhaps read 1519(e) as broadly as Libra contends, such a reading would impose procedural barriers that are unknown in the bankruptcy law to the availability of at least some § 1519 remedies. For example, § 1519(a)(3) authorizes "any relief referred to in paragraph (3), (4), or (7) of section 1521(a)." This relief includes the examination of witnesses pursuant to Rule 2004 and the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities" (§ 1521(a)(4)). It is implausible to require an adversary proceeding for such actions in a chapter 15 case, where no adversary proceeding is required for such activity in a case under any other bankruptcy code chapter.

The legislative history of § 1519(e) also belies Libra's interpretation. The legislative history states: "Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence."[25] According to this legislative comment, the rules and jurisprudence for an injunction apply, pursuant to § 1519(e), only where a foreign representative seeks an injunction under § 1519, and not where the relief sought is not an injunction.

Nonetheless, it is clear that § 1519(e) applies at least to certain kinds of relief under § 1519. Section 1519(a)(1) specifically authorizes relief "staying execution against the debtor's assets." If nothing else, relief under § 1519(a)(1) is the kind of relief that is subject to the procedural requirements of § 1519(e). In their moving papers, the joint administrators in fact have requested such a stay of execution, which would require an adversary proceeding as Libra contends. However, at the hearing the foreign administrators changed their motion to request only the imposition of § 362 on a provisional basis pending a decision on recognition of the foreign proceedings.

Thus the analysis of § 1519 itself indicates that the prerequisites for obtaining injunctive relief specified by § 1519(e) do not apply to all relief under § 1519. Instead, these requirements should apply only where the relief sought under § 1519 is injunctive relief, such as the staying of execution pursuant to § 1519(a). In contrast, if the foreign representative is seeking different relief, and not an injunction, subsection (e) does not apply.

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[23] *See, e.g.*, Keirnan v. Utah Transit Auth., 339 F.3d 1217, 1220 (10th Cir. 2003) ("A preliminary injunction serves to preserve the status quo pending a final determination of the case on the merits.").

[24] *See* FED. R. CIV. P. 65(b).

[25] H.R. REP. NO. 109-31(I) at 116 (2005), *as reprinted in* 1005 U.S.C.C.A.N. 88, 178.

c. Context of § 1519(e)

Section 1519(e) must be interpreted in the context of its nearly identical counterpart in § 1521, which supports the same determination. Section 1521 provides the very broad scope of relief that a court may grant upon the recognition of a foreign proceeding as either a main proceeding or a nonmain proceeding (which has not yet occurred in these cases). Like § 1519(e), § 1521(e) provides: "The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3) and (6) of subsection (a)."

Section 1521 is complemented by § 1520 which provides that, upon the recognition of a foreign main proceeding (but not the recognition of a foreign nonmain proceeding), a number of other provisions of the bankruptcy code either apply automatically (§§ 361, 362, 363, 549 and 552) or apply unless the court orders otherwise (operation of the debtor's business pursuant to §§ 363 and 552). Notably, § 1520 lacks any provision remotely similar to §§ 1519(e) and 1521(e).

Section 1521(e) thus may require an adversary proceeding for granting an injunction after recognition of a foreign proceeding (whether as a main proceeding or as a nonmain proceeding) if the foreign administrator seeks any of the following orders: (a) staying the commencement or continuation of an individual action (i.e., outside the chapter 15 case) by a creditor (§ 1521(a)(1)); (b) staying execution against the debtor's assets (§ 1521(a)(2)); (c) suspending the debtor's right to transfer, encumber or otherwise dispose of assets (§ 1521(a)(3)); or (d) extending provisional relief granted under § 1519 (§ 1521(a)(6)). Notably, however, no such adversary proceeding is required if the first two kinds of relief (staying the commencement or continuation of an individual action by a creditor, or staying execution against the debtor's assets) are imposed automatically under § 1520.

The only published opinion interpreting § 1521(e) is *Ho Seok Lee,* [26] which finds that § 1521(e) does not require an adversary proceeding to grant an injunction after an order for recognition. The court in that case had recognized a Korean bankruptcy case as the main proceeding for the debtor. However, the automatic stay provided by § 1520(a) was not sufficient for the debtor, because the debtor wanted a permanent injunction (and not just the temporary stay that § 362 provided) to prohibit a creditor from suing the debtor for the resulting deficiency after the payments provided in the Korean reorganization plan. The court found that an adversary proceeding was not required, notwithstanding § 1521(e), because the legislative history states, "[t]his section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304,"[27] and prior case law authorized a preliminary injunction under § 304 without requiring an adversary proceeding. [28]

To support the position of the foreign administrators in these cases, this court need not agree with the interpretation of § 1521(e) (and its cognate in § 1519(e)) in the *Ho Seok Lee* opinion. More modestly, the court in these cases only needs to find that the relief sought here, the application of § 362 on a provisional basis, does not require an adversary proceeding. The foregoing analysis of the cognate provision to § 1519(e) in § 1521(e) does not support the position that all relief sought under § 1519 requires an adversary proceeding.

d. The Automatic Stay – § 362

An analysis of the nature of the automatic stay itself also suggests that no adversary proceeding should be required before it is imposed on creditors on a provisional basis in a chapter 15 case.

1. Nature of the Automatic Stay

The automatic stay (moratorium) is one of the most powerful forms of preliminary relief

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[26] *In re* Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006).

[27] *Id.* at 802 (*citing* H.R. REP. NO. 109-31(I), at 116, *as reprinted in* 2005 U.S.C.C.A.N. 88, 178).

[28] *Id., citing In re* Rukavina, 227 B.R. 234 (Bankr. S.D.N.Y. 1999).

available in a U.S. court. It stops virtually every creditor action to collect a debt from a bankruptcy debtor. Such a petition, when filed, "operates as a stay . . . [on] the commencement or continuation . . . of a judicial action . . . against the debtor that was or could have been commenced" before the petition date, as well as against "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.[29] Except in a chapter 15 case, the automatic stay applies from the moment that a bankruptcy case is filed.

The automatic stay has four main purposes in bankruptcy cases: (1) to stop collection efforts against a debtor so that the debtor has time to devise a plan to get out of the financial situation that caused the bankruptcy filing in the first place; (2) to give time to permit the trustee to undertake the collective procedure of collecting the debtor's assets and liquidating them for the benefit of all creditors; (3) to give assurance to all creditors that other creditors are not pursuing independent remedies (either judicial or non-judicial) to drain the debtor's assets; (4) to harmonize the interests of the creditors and the debtor.[30] These goals are clearly important in these chapter 15 cases.

The automatic stay of § 362 is provisional relief. In a plenary bankruptcy case, in due course it is replaced by a permanent injunction (if the debtor is an individual and receives a discharge),[31] a plan of reorganization,[32] or the closing or dismissal of the case.[33]

Unlike other forms of preliminary relief, the automatic stay is truly automatic: it does not depend on the issuance of any order by the court. The automatic stay takes effect without any notice whatever to creditors, without an opportunity to oppose its imposition, or even an opportunity to be heard thereon.

The United States automatic stay applies worldwide,[34] whether or not this is consistent with domestic law in the relevant foreign country. If a creditor violates the stay anywhere in the world, that creditor is subject to sanctions in the United States.[35] Sanctions may include the denial of a creditor's claim in a U.S. bankruptcy case, monetary sanctions and, in an extreme case, injunctive relief.[36] If a foreign creditor has assets that are subject to the jurisdiction of a United States court or has filed a claim in the relevant bankruptcy case,[37] the bankruptcy court will be able to enforce sanctions for violation of the automatic stay, even if the violation occurred outside the United States. However, in a chapter 15 case, the automatic stay of § 1520 applies only to the

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[29] § 362(a)(1), (3).

[30] *Cf.* Caffey v. Russell (*In re* Caffey), 384 B.R. 297, 305 (Bankr. S.D. Ala. 2008); Johnston v. Parker (*In re* Johnston), 321 B.R. 262, 273-74 (D.Ariz.2005) (internal citations omitted); *see also,* H.R. REP. NO. 95-595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97.

[31] *See* §§ 727(b) (liquidations); 944 (municipal cases); 1141 (reorganizations).

[32] A plan of reorganization, under chapters 9, 11, 12 and 13, is binding on all creditors, and normally replaces the automatic stay. *See* §§ 944(a) (municipal cases), 1141 (reorganizations), 1227 (family farmers and fishermen), 1327 (debts of individuals).

[33] *See* § 362(c).

[34] *See, e.g.,* Nakash v. Zur (*In re* Nakash), 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996).

[35] *See* § 105.

[36] *See Underwood v. Hilliard* (*In re* Rimsat, Ltd.), 98 F.3d 956, 962 (9th Cir. 1996); *Lykes Bros. S.S. Co. v. Hanseatic Marine Serv.* (*In re* Lykes Bros. S.S. Co.), 207 B.R. 282, 287 (Bankr. M.D. Fla. 1997).

[37] *See Hong Kong & Shanghai Banking Corp. v. Simon* (*In re* Simon), 153 F.3d 991, 997 (9th Cir. 1998) (filing proof of claim in bankruptcy case submits creditor to general jurisdiction of the bankruptcy court), *cert. denied,* 525 U.S. 1141 (1999); *Lykes Bros. S.S. Co. v. Hanseatic Marine Serv.,* (*In re* Lykes Bros S.S. Co.), 207 B.R. 282 (Bankr. M.D. Fla. 1997).

debtor and the debtor's property that is within the territorial jurisdiction of the United States.[38] A stay imposed under § 1521, after the recognition of a foreign nonmain proceeding, or on a preliminary basis under § 1519, should likewise be so limited.

Creditors affected by the automatic stay are protected by its procedure authorizing relief from the automatic stay in certain circumstances. A creditor may qualify for relief from the automatic stay upon a showing of "cause," including a lack of adequate protection of a movant's interest in property,[39] or that the debtor lacks equity in the property and it is not necessary for an effective reorganization.[40] It is chiefly secured creditors who may obtain relief from the automatic stay under these provisions.[41]

In the Ninth Circuit, any action taken in violation of the automatic stay is void, whether or not the creditor had notice of the stay at the time of the action at issue.[42] Indeed, the chief benefit to a creditor of its lack of notice of the automatic stay is that the lack of notice is a defense to the imposition of punitive damages against the offending creditor.[43]

Unlike cases filed under other chapters of the U.S. bankruptcy code,[44] the filing of a chapter 15 petition does not automatically impose a stay on creditor collection efforts. Indeed, in some chapter 15 cases, the automatic stay never comes into effect.

If a foreign proceeding is recognized as a main proceeding, the stay comes into effect automatically upon the issuance of the order for recognition. However, if a foreign proceeding is recognized as a nonmain proceeding in a chapter 15 case, a stay comes into effect only if it is specially ordered by the court: there is no automatic stay as to the debtor's U.S. assets upon the recognition of a foreign proceeding as a nonmain proceeding.[45]

2. Differences Between Automatic Stay and Injunction

As Libra argues, the relief that § 362 gives a debtor and creditors is at least similar to an injunction, albeit without either the limitations or the procedural safeguards of an injunction. Nonetheless, the automatic stay is quite a different animal from an injunction.

An injunction is a court order, "directed to a party, enforceable by contempt, and designed to accord or protect some or all of the substantive relief sought by a complaint in more than temporary fashion."[46] An order that does

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[38] *See* § 1520(a)(1).

[39] *See* § 362(d)(1).

[40] *See* § 362(d)(2).

[41] Relief from the automatic stay is also available under a shortened time frame in a single asset real estate case (§ 362(d)(3)) and under certain circumstances where the bankruptcy petition is part of a scheme to delay, hinder and defraud creditors (§ 362(d)(4)).

[42] *See, e.g.,* Schwartz v. United States (*In re* Schwartz), 954 F.2d 569, 571-72 (9th Cir. 1992).

[43] *See, e.g., In re* Augustino Enters., Inc., 13 B.R. 210, 212 (Bankr. D. Mass 1981).

[44] A U.S. bankruptcy case may be filed under chapter 7, chapter 9, chapter 11, chapter 12, chapter 13 or chapter 15. Chapters 1, 3 and 5 have general provisions that are typically applicable to cases under any chapter. The remaining chapter numbers are unused.

[45] There may be a foreign stay, nonetheless, that applies worldwide and is effective in the United States. *See, e.g., In re* Artimm, 278 B.R. 832 (Bankr. C.D. Cal. 2002) (recognizing that the Italian automatic stay applied to the debtor's assets in the United States in consequence of its filing a bankruptcy case in Rome, Italy). Such a stay would apply to the U.S. assets in a chapter 15 case, both before and after the issuance of a recognition order. However, none of the parties before the court has claimed that the Pro-Fit assets in the United States are subject to an automatic stay that is in force in the Leeds cases.

[46] CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE 2d § 3922 (1996) (internal quotations omitted); *accord,* U.S. v.

not encompass all of the branches of this definition does not normally qualify as an injunction.[47]

The stay under § 362 is fundamentally different in several respects from an injunction. Perhaps the most important difference is that the stay is *in rem*: its purpose is to protect property that is *in custodia legis* in consequence of the bankruptcy filing.[48] Accordingly, it is not directed to a party in litigation, or even to any particular person. Instead, it is directed to the world at large, including all individuals and corporate entities.

The *in rem* status of bankruptcy cases is most clearly articulated by the United States Supreme Court in *Central Virginia Community College v. Katz*, [49] where the Supreme Court stated:

> Bankruptcy jurisdiction, at its core, is *in rem*. . . . Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor's property, the equitable distribution of that property among the debtor's creditors, and the ultimate discharge that gives the debtor a "fresh start" by releasing him, her, or it from further liability for old debts.[50]

The court further stated: "Bankruptcy jurisdiction, as understood today and at the time of the framing, is principally *in rem* jurisdiction (citing cases). In bankruptcy, the court's jurisdiction is premised on the debtor and his estate, and not on the creditors.[51]

The issuance of a stay to protect the property of the debtor is in particular an exercise of the bankruptcy court's *in rem* jurisdiction. Its purpose is to protect the property for the benefit of the creditors, and to shield it from particular creditors who seek to obtain preferential payment of their debts to the disadvantage of other creditors. This is precisely the purpose for which the foreign administrators seek an interim stay order in these cases.

Furthermore, the fact that § 362 takes effect automatically in all bankruptcy cases, except those filed under chapter 15, without the limitations or procedural safeguards of an injunction, supports the inference that these limitations and procedural safeguards are not needed when a court imposes § 362 in a chapter 15 case on an interim basis.

Indeed, in chapter 15 itself, § 362 takes effect automatically upon the recognition of a foreign main proceeding. Section 1521 makes it clear that an adversary proceeding is not required to achieve this result.

In sum, an adversary proceeding is never needed under the bankruptcy code for the imposition of the automatic stay, and satisfaction of the requirements for an injunction is never required.

D. Adoption of Other Provisions of the Bankruptcy Code

Further analysis is useful with respect to the technique of adopting a non-chapter 15 provision by reference in a chapter 15 case. This technique can be useful with respect to a number of provisions in other chapters of the bankruptcy code.

Chapter 15 generally does not specify what other bankruptcy code provisions should be applied in a chapter 15 case. Section 103(a) specifies that, for all chapter 15 cases, §§ 307, 362(n), 555 – 557, and 559 – 562 apply. In addition, § 1520 provides that, if a

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E-Gold, Ltd., 521 F.3d 411, 415 (D.C. Cir. 2008).

[47] *See id.*

[48] In a plenary bankruptcy case, the property at issue is property of the estate pursuant to § 541(a). In a chapter 15 case, normally there is no estate created. However, there is U.S. property of the debtor that is protected by the automatic stay once recognition is granted. *See* § 1520(a)(1). It is this property that may be entitled to interim protection by applying § 362 on an interim basis until an order for recognition is granted.

[49] *See* Cent. Va. Comm. College v. Katz, 546 U.S. 356 (2006).

[50] *Id.* at 362-64.

[51] *Id.* at 357 (inner quotations omitted).

foreign proceeding is recognized as a foreign main proceeding, several other sections (notably including §§ 361 and 362) apply to the chapter 15 case from that point forward. A much smaller set of sections applies automatically under § 1521 upon the recognition of a foreign nonmain proceeding.

It is highly unlikely that a court can simply ignore all the rest of the bankruptcy code and the other provisions relating to bankruptcy cases in the United States, just because they are not specifically mentioned in chapter 15 or § 103. The better reading is that many other provisions of the bankruptcy code can be applicable in a chapter 15 case: Some should apply in most cases, while others should be applied only on a case by case basis.

Thus, the specific provisions of chapter 15 only designate the sections of the bankruptcy code apart from chapter 15 that apply automatically to a chapter 15 case upon the recognition of a foreign proceeding as a main proceeding or as a nonmain proceeding. The question of which other bankruptcy code provisions may be made applicable by court order in a particular chapter 15 case is left open.

Furthermore, and more important for these chapter 15 cases, the list in § 1519 of the sections from the other parts of the bankruptcy code that can be adopted as provisional relief under § 1519 is incomplete. Thus, a number of other provisions of the bankruptcy code may be applied provisionally under § 1519 while an application for recognition is pending.

The adoption of a section or sections of another part of the bankruptcy code, in appropriate circumstances, is often a far better procedure than adopting a court order that specifies in detail the rights and obligations of the debtor and the creditors. By incorporating a section of the bankruptcy code (such as § 362) by reference, the court thereby imports both the statutory language (which is ten pages long for § 362), and the case law arising from that statutory provision. For § 362, for example, adopting it by reference imports all of the details of the circumstances where § 362 applies and does not apply. In addition, it imports the provisions for automatic termination of the automatic stay, and the provisions for obtaining relief from the stay. A simple phrase making § 362 applicable in a chapter 15 case imports all of this law into the case.

This conclusion is further supported by § 105(a), which provides: "The court may issue any order process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 103 specifically makes chapter 1 (including § 105) applicable to cases under chapter 15.

E. Change in Request for Provisional Relief

Notwithstanding Libra's acquiescence at the hearing on this application, the court notes that the papers before the court are cast as if they are requesting something in the nature of a temporary restraining order and preliminary injunction, rather than the application of §§ 361 and 362. The court finds this to be a change in the position of the applications, and by no means a trivial change, given the court's analysis. Nonetheless, the court holds that the provisional application of §§ 362 and 361 – by way of § 1519 – may be ordered on a provisional basis pending the hearing on recognition.

To protect Libra's due process rights and its right to be informed of the relief that the foreign representatives seek, the court set a further hearing two days after the first hearing, where the relief granted herein could be reconsidered at Libra's request. The next day, Libra informed the court that it declined to proceed with that hearing.

F. § 363 Relief Under § 1519

Talon's main interest in this chapter 15 case is that any assets of the UK companies be sold pursuant to § 363. It is Talon's fear that the administration proceeding in the United Kingdom would lack the supervision of a sale process like that in a U.S. bankruptcy case. For this reason, Talon and its related entities have welcomed this chapter 15 case, because pursuant to § 1520, once a foreign proceeding is recognized as a foreign main proceeding, § 363 applies "to any transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." § 1520(a)(2).

Talon's initial concern at the hearing was that the foreign administrators, in their application, had requested the entry of a

temporary restraining order "entrusting the administration or realization of the foreign debtor's property to the foreign representatives." Such relief would be available to the foreign representatives on an interim basis pursuant to § 1519(a)(2).

Talon reads § 1519(a)(2) as allowing the court to authorize the joint administrators to dispose of assets in a manner other than as provided under § 363. Since it now appears, however, that petitioners are not requesting the relief provided under § 1519(a)(2), the court need not reach the question of whether § 1519(a)(2) could allow a petitioner to override the requirements of § 363 during the gap period before recognition.

Talon nevertheless welcomes the application of § 362 in this case, as this will maintain the status quo so that the § 363 process may eventually occur. In addition, Talon requests that the provisions of § 363 be made immediately applicable in this case to all the assets of the debtors. It appears to the court, however, that while it may make the provisions of § 363 applicable in this case pursuant to §§ 1519(a), 105(a), and 105(d), the court does not have the authority under chapter 15 alone to make these provisions applicable to assets outside of the United States.

IV. Conclusions

For the foregoing reasons, the court finds that the imposition of the § 362 automatic stay as provisional relief under § 1519 is not injunctive relief that is subject to the § 1519(e) requirement imposing the standards for an injunction. For this reason, the requirements of § 1519(e) do not apply to such an order.

The court concludes that sufficient authority exists under §§ 1519(a), 105(a), and 105(d) for the adoption of § 362 provisionally in these cases, to apply to all of the debtors' property in the United States pending a ruling on recognition of the foreign proceedings relating to the debtors herein.

Further, the provisions of § 363, by consent of the petitioners, also apply provisionally with respect to United States assets. In addition to these statutory provisions, each of which applies in its entirety, all of the case law thereunder is hereby made applicable to these cases. The court denies such relief with respect to assets outside the territorial jurisdiction of the United States, on the grounds that chapter 15 alone does not provide the court with the authority to grant such relief at this time.

Dated: July 11, 2008

HONORABLE SAMUEL L. BUFFORD
United States Bankruptcy Judge

PROOF OF SERVICE

I certify that a true copy of this **Amended Opinion Granting Interim Relief to Chapter 15 Debtors Under 11 U.S.C. § 1519** was served on JUL 11 2008.

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Dated: JUL 11 2008

Edlene J. Garcia
DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: **PRO-FIT HOLDINGS LIMITED**, Debtor in a Foreign Proceeding.	Case No.: LA08-17043SB Case No.: LA08-17049SB Case No.: LA08-17054SB (administratively consolidated)
In re: **PRO-FIT INTERNATIONAL LIMITED**, Debtor in a Foreign Proceeding.	Chapter 15 Date: July 9, 2008 Time: 11:00 a.m. Ctrm: 1575
In re: **GENESIS BRADFORD LIMITED**, Debtor in a Foreign Proceeding.	**Amended Opinion Granting Interim Relief to Chapter 15 Debtors Under 11 U.S.C. § 1519**

I. Introduction

The recently appointed joint administrators of three chapter 15 debtors, Pro-Fit Holdings Limited ("Pro-Fit Holdings"), Pro-Fit International Limited ("Pro-Fit International"), and Genesis Bradford Limited ("Genesis") (collectively, "Pro-Fit"), bring this application for provisional relief under § 1519[1] to apply § 362 to stay the enforcement of a U.S. district court order, following judgment on the merits, attaching the U.S. assets of Pro-Fit Holdings and Pro-fit International. These three related corporations are currently in administration under the applicable bankruptcy law in the United Kingdom, a reorganization procedure akin to the U.S. chapter 11. The joint administrators are awaiting a hearing on their application for recognition of the U.K. proceedings as "foreign main proceedings" under § 1502(4). Judgment creditor Libra Securities LLC ("Libra") opposes the motion mainly on the grounds that the applicants have not followed the "standards, procedures, and limitations applicable to an injunction" pursuant to § 1519(e).

The court holds that the relief requested falls outside of § 1519(e), because it is not an injunction or temporary restraining order. Rather, the relief requested is the application of § 362 on a provisional basis, which does not require an adversary proceeding. Consequently, pursuant to § 1519, the court orders that § 362 apply in these chapter 15 cases with respect to Pro-Fit's U.S. assets pending this court's ruling on the application for recognition of the foreign proceedings as foreign main proceedings. In addition, by consent of the petitioners, and at the request of a creditor that has expressed an interest in purchasing substantially all of Pro-Fit's assets, § 363 also applies provisionally with respect to the debtors' U.S. assets pending the recognition determination.

[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C.A. §§ 101-1532 (West 2008) and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

II. Relevant Facts

Petitioners J.N.R. Pitts and M.E.G. Saville were appointed joint administrators[2] of Pro-Fit International on April 4, 2008, and of Pro-Fit Holdings and Genesis Bradford on April 7, 2008. These three related companies are registered under the laws of the United Kingdom, and are currently in administration in the High Court of Justice of England and Wales, Leeds District Registry.[3] Among their assets, the companies claim the rights to certain patents relating to waistband technology used in manufacturing athletic clothing, and have licensees both in the United Kingdom and the United States.

In light of Pro-Fit's interests in the United States, the administrators filed a chapter 15 petition for recognition[4] on May 21, 2003 for each of the three companies. In addition to Official Form 1, each petition includes a "Verified Petition for Recognition of Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief," which requests a hearing for recognition of the foreign proceeding as a foreign main proceeding.[5] To each petition is attached the notices of appointment of the administrators in each of the three cases in

[2] Pursuant to Schedule B1 of the Insolvency Act of 1986, an administrator is an officer of the court, appointed by order of the court, or by the company or its directors, with the objective of (a) rescuing the company as a gong concern, (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or (c) realizing property in order to make a distribution to one or more secured or preferential creditors.

[3] Court Case No. 473 of 2008.

[4] Section 1504 provides: "A case under [chapter 15] is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515."

[5] The hearing on these motions, originally set for hearing on July 8, 2008, is now scheduled on July 23, 2008.

Leeds, England. Further, each petition is accompanied by a notice of related cases, which include the pending administration cases in the United Kingdom[6] and pending litigation in the United States.

In addition to their intellectual properties, Pro-Fit Holdings and Pro-Fit International are parties to three pending civil actions in the District Court for the Central District of California.[7] Two of these actions were commenced in 2004 and 2007 by Tag-It Pacific Inc. (known today as Talon International Inc.), a U.S. licensee of Pro-Fit's waistband patents. Neither case is active. Talon's main concern in this chapter 15 case is not its pending litigation with Pro-Fit, but rather its interest in purchasing, in due course, substantially all of Pro-Fit's assets (either pursuant to § 363 or pursuant to applicable English law).

Libra commenced a third action against Pro-Fit Holdings and Pro-Fit International in 2007 in the U.S. District Court for the Central District of California. In that action, Libra obtained summary judgment on May 19, 2008. Pursuant to this judgment, Libra obtained an order[8] on May 21, 2008 (after the filing of these chapter 15 cases) attaching the U.S. assets of Pro-Fit Holdings and Profit International, including the stream of royalties from the U.S. patents.

Libra's writ of attachment prompted the debtors' foreign administrators to file an *ex parte* application for an order to show cause, on notice to counsel for both Talon and Libra, for a preliminary injunction and for an interim temporary restraining order. At the hearing, however, the petitioners changed their request to seek the imposition of the automatic stay under § 362 as to the two actions involving Talon, and most urgently the action involving Libra. Libra initially objected to this change in position, but was ultimately satisfied with an opportunity at the hearing to address petitioners' request for a stay under § 362, rather than a temporary restraining order and injunction.[9]

Libra opposes the application before the court on three grounds. First, Libra contends that § 1519(e) requires the filing of an adversary proceeding, which the foreign administrators have not done, to obtain the relief requested. Second, Libra argues that the foreign administrators have made no showing of imminent harm to justify the entry of a temporary restraining order. Finally, Libra maintains that the foreign administrators have provided no explanation for their delay in filing these chapter 15 cases, pursuant to which they now request relief on an emergency basis.

Talon, on the other hand – a licensee of the debtors who is also in litigation with them – does not oppose the emergency relief requested. On the contrary, Talon's concern is that the joint administrators, since the date of their appointment, have been working at less than arm's length with the insiders of Pro-Fit to consummate a sale transaction to insiders. Because it has an interest in buying the worldwide assets of the respective debtors, Talon welcomes the imposition of a stay on the debtors' assets, and further requests that the

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[6] While each of the foreign proceedings is pending in the High Court in Leeds, the foreign administrators do not have court order from England appointing them as administrators because English law does not require such an order for the entry of a corporate debtor in administration under the applicable insolvency law.

[7] Those actions are: (a) Libra Securities LLC v. Pro-Fit International Limited, et al., No. 2:07-cv-02520-SVW-JWJ; (b) Tag-It Pacific Inc. v. Pro-Fit Holdings Limited, No. 2:04-cv-02694-AHM-RC; and (c) Tag-It Pacific Inc. v. Pro-Fit Holdings Ltd., et al., No. 2:07-cv-01484-AHM-RC.

[8] Federal law in the United States does not provide directly for a writ of attachment. Instead, post-judgment remedies are provided by the law of the state where the federal court sits. *See* Rule 9014(c) (making Rule 7064 applicable to contested matters); Rule 7064 (adopting by reference FED. R. CIV. P. 64).

[9] To protect Talon's due process rights, the court set a further hearing two days later to consider further the propriety of imposing the automatic stay of § 362 on the creditors in these three cases. The next day Talon informed the court that it would not take advantage of the further hearing on this issue.

provisions of § 363 be made applicable for all worldwide assets of Pro-Fit during the gap period, pursuant to § 1519, until the foreign proceeding is recognized (at which time § 363 will apply pursuant to § 1520).

III. Discussion

This application for provisional relief raises three issues under the new chapter 15. The first issue is whether § 1519(e) should be read broadly to require the filing of an adversary proceeding to obtain any relief under § 1519. The second issue is whether, even on a narrower reading of § 1521(e), the adoption § 362 for a chapter 15 case is in the nature of issuing an injunction that requires an adversary proceeding. The third issue is whether the court may grant provisional relief under § 1519 by adopting other sections of the bankruptcy code and making them applicable in a particular chapter 15 case on a provisional basis pending a decision on recognition.

A. Background of Chapter 15

Congress enacted chapter 15 in 2005 as an implementation of the Model Law on Cross-Border Insolvency ("the Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") in 1997.[10] The language of chapter 15 tracks the Model Law, with adaptations designed to mesh with United States law.[11] Congress prescribed a rule of interpretation that expressly requires United States courts to take into account the statute's international origin and to promote applications of chapter 15 that are consistent with versions of the Model Law adopted in other jurisdictions.[12]

However, the matters presently before the court in this case do not implicate provisions of chapter 15 derived from the Model Law. Instead, they arise from provisions that Congress specially added in adapting the Model Law to the U.S. bankruptcy code.

B. Pendency of Foreign Proceeding and Qualification of Administrators

Section 1515 imposes the following requirements on a chapter 15 petition for recognition:

> (a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.
>
> (b) A petition for recognition shall be accompanied by—
>
> (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.
>
> (c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

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[10] The United States was an active participant in the discussions leading to the adoption of the Model Law. *See* H.R. REP. NO. 109-31, at 105-07 (2005), U.S. CODE CONG. & ADMIN. NEWS 2005, at 88; Jay Lawrence Westbrook, *Chapter 15 at Last,* 79 AM. BANKR. L.J. 713, 719-20 (2005). *See also In re* Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 n.3 (Bankr. S.D. N.Y.) (Lifland, J.) (stating that Judge Lifland, Professor Jay Westbrook and Daniel Glosband were among the authors of the Model Law).

[11] H.R. REP. NO. 109-31, at 105-07; Westbrook, *supra* note 11, at 719.

[12] *See* § 1508; H.R. REP. NO. 109-31, at 109-10.

(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

While compliance with subparagraphs (c) and (d) is clear, compliance with subparagraph (b) requires further explanation.

The Insolvency Act 1986 for England and Wales[13] authorizes a company to enter into administration by filing a petition with the high court.[14] After filing the case, the company may elect to enter into "administration," pursuant to which one or more administrators are appointed by the directors of the company, and not by the court, to reorganize or to liquidate the company.[15] Under this procedure, there is no court order for the appointment of the administrators. In these cases, instead of such a court order, the debtors have each attached a notice of appointment signed by Phillip Morris, a Leeds solicitor,[16] giving notice of their appointment. The court provisionally finds that these notices are sufficient, pursuant to § 1515(b)(3), to show both the existence of the foreign proceedings and the appointment of the foreign representatives.[17]

C. Provisional Relief Under § 1519

To authorize relief during the gap period between the time of filing a petition for recognition and the court ruling on recognition, § 1519(a) provides that "the court may grant relief of a provisional nature," at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors.[18]

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[13] *See* Margaret R. Cole, *The Insolvency Laws of the United Kingdom,* in 2 INTERNATIONAL INSOLVENCY, U.K. (Carl Felsenfeld et al., eds. 2003). The bankruptcy law in the United Kingdom is not unified: there is one law for England and Wales, one for Scotland and one for Northern Ireland. All three laws were enacted by the United Kingdom Parliament in Westminster, and they vary mainly in details that are not relevant herein. Because the administration for the companies in these chapter 15 cases is pending in Leeds, England, it is the law for England and Wales that applies to the administration of these three entities.

[14] *See* Insolvency Act 1986, ch. 45, Pt. II, s. 9. Administration may also be commenced by the directors of a company without filing a case at all under the Bankruptcy Act 1986. *See id.* Schedule B1, ¶ 22(2).

[15] *See id.*

[16] The practice of law in the United Kingdom is not unified. Most of what corresponds to U.S. law practice is carried out by solicitors, who often practice in law firms of substantial size. Most court appearances, however, are made by barristers, who are separately licensed and are hired by solicitors to conduct court proceedings.

[17] The purpose of § 1515(b) is to circumvent the usual requirement of exequatur for the proof of a foreign legal document, which requires a very complex and time-consuming procedure involving certifications by both foreign and U.S. officials.

[18] Section 1519 states:

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—
  (1) staying execution against the debtor's assets;
  (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

As with any provisional relief under § 1519, the court's preliminary order lasts until the court enters an order on recognition.[19] If the court ultimately grants recognition pursuant to § 1517, a main administrative order may then replace the interim order pursuant to § 1521(a), which authorizes the court to grant "any appropriate relief" after the recognition of a foreign proceeding as either a main or nonmain proceeding.[20]

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(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

[19] *See* § 1519(a).

[20] *See* § 1521(a).

1. Applicability of § 1519(e)

Libra argues that the joint administrators have not properly followed the procedural requirements to bring before the court the imposition of the § 362 stay. Libra contends that, pursuant to § 1519(e), no provisional relief under § 1519 can be granted unless the movant complies with the standards, procedures, and limitations applicable to an injunction, which are provided under Rules 7001 and 7065. Under this interpretation, relief is available to stay Libra's execution against the debtors' assets during the gap period between petition and recognition only pursuant to an adversary proceeding under Rule 7001. In addition, such injunctive relief would be subject to the standards and limitations applicable generally to injunctions (which the debtors have not attempted to satisfy).

a. Injunctions – Standards, Procedures & Limitations

Rule 7001 imposes specific procedures for obtaining an injunction.[21] A proceeding to obtain an injunction must comply with the adversary proceeding provisions of Part VII: the applicant must file a complaint under Federal Rule of Bankruptcy Procedure 7001, naming the parties against whom injunctive relief is sought, that complies with the federal pleading requirements.

The standards for obtaining a preliminary injunction are substantial. Under Ninth Circuit law, a party seeking a preliminary injunction (usually the plaintiff) must demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor.[22]

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[21] Rule 7001 provides in relevant part: An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: . . . (7) a proceeding to obtain an injunction or other equitable relief . . . ."

[22] *See, e.g.,* E. & J. Gallo Winery v. Andina Licores S.A., 446 F.3d 984, 990 (9th Cir. 2006).

A preliminary injunction is most often requested to preserve the status quo pending a decision by the court on the merits of the underlying dispute.[23]

Rule 65 of the Federal Rules of Civil Procedure, which Rule 7065 makes applicable in adversary proceedings, imposes limitations on a temporary restraining order (which is a form of preliminary injunction). Such an order must "describe in reasonable detail the act or acts sought to be restrained," must "set forth the reasons for its issuance," and is binding only upon the parties to the action (including their officers, agents, servants, employees and attorneys), and upon those persons in active concert or participation with them who receive actual notice of the order. Further requirements and limitations apply if the temporary restraining order is granted *ex parte* (*i.e.*, without notice to the party enjoined).[24]

The question before the court is whether the foreign administrators in these chapter 15 cases must comply with the foregoing requirements to permit the court to issue an order imposing the automatic stay on all U.S. creditors on a preliminary basis under § 1519. To make this determination, we look at three considerations: the consequences in § 1519 of applying this interpretation; the larger context in which this provision of § 1519 appears; and the nature of the § 362 automatic stay.

b. Applicability of Injunction Standards to § 1519 Relief

While one could perhaps read 1519(e) as broadly as Libra contends, such a reading would impose procedural barriers that are unknown in the bankruptcy law to the availability of at least some § 1519 remedies. For example, § 1519(a)(3) authorizes "any relief referred to in paragraph (3), (4), or (7) of section 1521(a)." This relief includes the examination of witnesses pursuant to Rule 2004 and the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities" (§ 1521(a)(4)). It is implausible to require an adversary proceeding for such actions in a chapter 15 case, where no adversary proceeding is required for such activity in a case under any other bankruptcy code chapter.

The legislative history of § 1519(e) also belies Libra's interpretation. The legislative history states: "Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence."[25] According to this legislative comment, the rules and jurisprudence for an injunction apply, pursuant to § 1519(e), only where a foreign representative seeks an injunction under § 1519, and not where the relief sought is not an injunction.

Nonetheless, it is clear that § 1519(e) applies at least to certain kinds of relief under § 1519. Section 1519(a)(1) specifically authorizes relief "staying execution against the debtor's assets." If nothing else, relief under § 1519(a)(1) is the kind of relief that is subject to the procedural requirements of § 1519(e). In their moving papers, the joint administrators in fact have requested such a stay of execution, which would require an adversary proceeding as Libra contends. However, at the hearing the foreign administrators changed their motion to request only the imposition of § 362 on a provisional basis pending a decision on recognition of the foreign proceedings.

Thus the analysis of § 1519 itself indicates that the prerequisites for obtaining injunctive relief specified by § 1519(e) do not apply to all relief under § 1519. Instead, these requirements should apply only where the relief sought under § 1519 is injunctive relief, such as the staying of execution pursuant to § 1519(a). In contrast, if the foreign representative is seeking different relief, and not an injunction, subsection (e) does not apply.

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[23] *See, e.g.*, Keirnan v. Utah Transit Auth., 339 F.3d 1217, 1220 (10th Cir. 2003) ("A preliminary injunction serves to preserve the status quo pending a final determination of the case on the merits.").

[24] *See* FED. R. CIV. P. 65(b).

[25] H.R. REP. NO. 109-31(I) at 116 (2005), *as reprinted in* 1005 U.S.C.C.A.N. 88, 178.

c. Context of § 1519(e)

Section 1519(e) must be interpreted in the context of its nearly identical counterpart in § 1521, which supports the same determination. Section 1521 provides the very broad scope of relief that a court may grant upon the recognition of a foreign proceeding as either a main proceeding or a nonmain proceeding (which has not yet occurred in these cases). Like § 1519(e), § 1521(e) provides: "The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3) and (6) of subsection (a)."

Section 1521 is complemented by § 1520 which provides that, upon the recognition of a foreign main proceeding (but not the recognition of a foreign nonmain proceeding), a number of other provisions of the bankruptcy code either apply automatically (§§ 361, 362, 363, 549 and 552) or apply unless the court orders otherwise (operation of the debtor's business pursuant to §§ 363 and 552). Notably, § 1520 lacks any provision remotely similar to §§ 1519(e) and 1521(e).

Section 1521(e) thus may require an adversary proceeding for granting an injunction after recognition of a foreign proceeding (whether as a main proceeding or as a nonmain proceeding) if the foreign administrator seeks any of the following orders: (a) staying the commencement or continuation of an individual action (i.e., outside the chapter 15 case) by a creditor (§ 1521(a)(1)); (b) staying execution against the debtor's assets (§ 1521(a)(2)); (c) suspending the debtor's right to transfer, encumber or otherwise dispose of assets (§ 1521(a)(3)); or (d) extending provisional relief granted under § 1519 (§ 1521(a)(6)). Notably, however, no such adversary proceeding is required if the first two kinds of relief (staying the commencement or continuation of an individual action by a creditor, or staying execution against the debtor's assets) are imposed automatically under § 1520.

The only published opinion interpreting § 1521(e) is *Ho Seok Lee,* [26] which finds that § 1521(e) does not require an adversary proceeding to grant an injunction after an order for recognition. The court in that case had recognized a Korean bankruptcy case as the main proceeding for the debtor. However, the automatic stay provided by § 1520(a) was not sufficient for the debtor, because the debtor wanted a permanent injunction (and not just the temporary stay that § 362 provided) to prohibit a creditor from suing the debtor for the resulting deficiency after the payments provided in the Korean reorganization plan. The court found that an adversary proceeding was not required, notwithstanding § 1521(e), because the legislative history states, "[t]his section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304,"[27] and prior case law authorized a preliminary injunction under § 304 without requiring an adversary proceeding. [28]

To support the position of the foreign administrators in these cases, this court need not agree with the interpretation of § 1521(e) (and its cognate in § 1519(e)) in the *Ho Seok Lee* opinion. More modestly, the court in these cases only needs to find that the relief sought here, the application of § 362 on a provisional basis, does not require an adversary proceeding. The foregoing analysis of the cognate provision to § 1519(e) in § 1521(e) does not support the position that all relief sought under § 1519 requires an adversary proceeding.

d. The Automatic Stay – § 362

An analysis of the nature of the automatic stay itself also suggests that no adversary proceeding should be required before it is imposed on creditors on a provisional basis in a chapter 15 case.

1. Nature of the Automatic Stay

The automatic stay (moratorium) is one of the most powerful forms of preliminary relief

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[26] *In re* Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006).

[27] *Id.* at 802 (*citing* H.R. REP. NO. 109-31(I), at 116, *as reprinted in* 2005 U.S.C.C.A.N. 88, 178).

[28] *Id., citing In re* Rukavina, 227 B.R. 234 (Bankr. S.D.N.Y. 1999).

available in a U.S. court. It stops virtually every creditor action to collect a debt from a bankruptcy debtor. Such a petition, when filed, "operates as a stay . . . [on] the commencement or continuation . . . of a judicial action . . . against the debtor that was or could have been commenced" before the petition date, as well as against "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.[29] Except in a chapter 15 case, the automatic stay applies from the moment that a bankruptcy case is filed.

The automatic stay has four main purposes in bankruptcy cases: (1) to stop collection efforts against a debtor so that the debtor has time to devise a plan to get out of the financial situation that caused the bankruptcy filing in the first place; (2) to give time to permit the trustee to undertake the collective procedure of collecting the debtor's assets and liquidating them for the benefit of all creditors; (3) to give assurance to all creditors that other creditors are not pursuing independent remedies (either judicial or non-judicial) to drain the debtor's assets; (4) to harmonize the interests of the creditors and the debtor.[30] These goals are clearly important in these chapter 15 cases.

The automatic stay of § 362 is provisional relief. In a plenary bankruptcy case, in due course it is replaced by a permanent injunction (if the debtor is an individual and receives a discharge),[31] a plan of reorganization,[32] or the closing or dismissal of the case.[33]

Unlike other forms of preliminary relief, the automatic stay is truly automatic: it does not depend on the issuance of any order by the court. The automatic stay takes effect without any notice whatever to creditors, without an opportunity to oppose its imposition, or even an opportunity to be heard thereon.

The United States automatic stay applies worldwide,[34] whether or not this is consistent with domestic law in the relevant foreign country. If a creditor violates the stay anywhere in the world, that creditor is subject to sanctions in the United States.[35] Sanctions may include the denial of a creditor's claim in a U.S. bankruptcy case, monetary sanctions and, in an extreme case, injunctive relief.[36] If a foreign creditor has assets that are subject to the jurisdiction of a United States court or has filed a claim in the relevant bankruptcy case,[37] the bankruptcy court will be able to enforce sanctions for violation of the automatic stay, even if the violation occurred outside the United States. However, in a chapter 15 case, the automatic stay of § 1520 applies only to the

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[29] § 362(a)(1), (3).

[30] *Cf.* Caffey v. Russell (*In re* Caffey), 384 B.R. 297, 305 (Bankr. S.D. Ala. 2008); Johnston v. Parker (*In re* Johnston), 321 B.R. 262, 273-74 (D.Ariz.2005) (internal citations omitted); *see also,* H.R. REP. NO. 95-595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97.

[31] *See* §§ 727(b) (liquidations); 944 (municipal cases); 1141 (reorganizations).

[32] A plan of reorganization, under chapters 9, 11, 12 and 13, is binding on all creditors, and normally replaces the automatic stay. *See* §§ 944(a) (municipal cases), 1141 (reorganizations), 1227 (family farmers and fishermen), 1327 (debts of individuals).

[33] *See* § 362(c).

[34] *See, e.g.,* Nakash v. Zur (*In re* Nakash), 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996).

[35] *See* § 105.

[36] *See Underwood v. Hilliard* (*In re* Rimsat, Ltd.), 98 F.3d 956, 962 (9th Cir. 1996); *Lykes Bros. S.S. Co. v. Hanseatic Marine Serv.* (*In re* Lykes Bros. S.S. Co.), 207 B.R. 282, 287 (Bankr. M.D. Fla. 1997).

[37] *See Hong Kong & Shanghai Banking Corp. v. Simon* (*In re* Simon), 153 F.3d 991, 997 (9th Cir. 1998) (filing proof of claim in bankruptcy case submits creditor to general jurisdiction of the bankruptcy court), *cert. denied,* 525 U.S. 1141 (1999); *Lykes Bros. S.S. Co. v. Hanseatic Marine Serv.,* (*In re* Lykes Bros S.S. Co.), 207 B.R. 282 (Bankr. M.D. Fla. 1997).

debtor and the debtor's property that is within the territorial jurisdiction of the United States.[38] A stay imposed under § 1521, after the recognition of a foreign nonmain proceeding, or on a preliminary basis under § 1519, should likewise be so limited.

Creditors affected by the automatic stay are protected by its procedure authorizing relief from the automatic stay in certain circumstances. A creditor may qualify for relief from the automatic stay upon a showing of "cause," including a lack of adequate protection of a movant's interest in property,[39] or that the debtor lacks equity in the property and it is not necessary for an effective reorganization.[40] It is chiefly secured creditors who may obtain relief from the automatic stay under these provisions.[41]

In the Ninth Circuit, any action taken in violation of the automatic stay is void, whether or not the creditor had notice of the stay at the time of the action at issue.[42] Indeed, the chief benefit to a creditor of its lack of notice of the automatic stay is that the lack of notice is a defense to the imposition of punitive damages against the offending creditor.[43]

Unlike cases filed under other chapters of the U.S. bankruptcy code,[44] the filing of a chapter 15 petition does not automatically impose a stay on creditor collection efforts. Indeed, in some chapter 15 cases, the automatic stay never comes into effect.

If a foreign proceeding is recognized as a main proceeding, the stay comes into effect automatically upon the issuance of the order for recognition. However, if a foreign proceeding is recognized as a nonmain proceeding in a chapter 15 case, a stay comes into effect only if it is specially ordered by the court: there is no automatic stay as to the debtor's U.S. assets upon the recognition of a foreign proceeding as a nonmain proceeding.[45]

2. Differences Between Automatic Stay and Injunction

As Libra argues, the relief that § 362 gives a debtor and creditors is at least similar to an injunction, albeit without either the limitations or the procedural safeguards of an injunction. Nonetheless, the automatic stay is quite a different animal from an injunction.

An injunction is a court order, "directed to a party, enforceable by contempt, and designed to accord or protect some or all of the substantive relief sought by a complaint in more than temporary fashion."[46] An order that does

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[38] *See* § 1520(a)(1).

[39] *See* § 362(d)(1).

[40] *See* § 362(d)(2).

[41] Relief from the automatic stay is also available under a shortened time frame in a single asset real estate case (§ 362(d)(3)) and under certain circumstances where the bankruptcy petition is part of a scheme to delay, hinder and defraud creditors (§ 362(d)(4)).

[42] *See, e.g.,* Schwartz v. United States (*In re* Schwartz), 954 F.2d 569, 571-72 (9th Cir. 1992).

[43] *See, e.g., In re* Augustino Enters., Inc., 13 B.R. 210, 212 (Bankr. D. Mass 1981).

[44] A U.S. bankruptcy case may be filed under chapter 7, chapter 9, chapter 11, chapter 12, chapter 13 or chapter 15. Chapters 1, 3 and 5 have general provisions that are typically applicable to cases under any chapter. The remaining chapter numbers are unused.

[45] There may be a foreign stay, nonetheless, that applies worldwide and is effective in the United States. *See, e.g., In re* Artimm, 278 B.R. 832 (Bankr. C.D. Cal. 2002) (recognizing that the Italian automatic stay applied to the debtor's assets in the United States in consequence of its filing a bankruptcy case in Rome, Italy). Such a stay would apply to the U.S. assets in a chapter 15 case, both before and after the issuance of a recognition order. However, none of the parties before the court has claimed that the Pro-Fit assets in the United States are subject to an automatic stay that is in force in the Leeds cases.

[46] CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE 2d § 3922 (1996) (internal quotations omitted); *accord,* U.S. v.

not encompass all of the branches of this definition does not normally qualify as an injunction.[47]

The stay under § 362 is fundamentally different in several respects from an injunction. Perhaps the most important difference is that the stay is *in rem*: its purpose is to protect property that is *in custodia legis* in consequence of the bankruptcy filing.[48] Accordingly, it is not directed to a party in litigation, or even to any particular person. Instead, it is directed to the world at large, including all individuals and corporate entities.

The *in rem* status of bankruptcy cases is most clearly articulated by the United States Supreme Court in *Central Virginia Community College v. Katz*, [49] where the Supreme Court stated:

> Bankruptcy jurisdiction, at its core, is *in rem*. . . . Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor's property, the equitable distribution of that property among the debtor's creditors, and the ultimate discharge that gives the debtor a "fresh start" by releasing him, her, or it from further liability for old debts.[50]

The court further stated: "Bankruptcy jurisdiction, as understood today and at the time of the framing, is principally *in rem* jurisdiction (citing cases). In bankruptcy, the court's jurisdiction is premised on the debtor and his estate, and not on the creditors.[51]

The issuance of a stay to protect the property of the debtor is in particular an exercise of the bankruptcy court's *in rem* jurisdiction. Its purpose is to protect the property for the benefit of the creditors, and to shield it from particular creditors who seek to obtain preferential payment of their debts to the disadvantage of other creditors. This is precisely the purpose for which the foreign administrators seek an interim stay order in these cases.

Furthermore, the fact that § 362 takes effect automatically in all bankruptcy cases, except those filed under chapter 15, without the limitations or procedural safeguards of an injunction, supports the inference that these limitations and procedural safeguards are not needed when a court imposes § 362 in a chapter 15 case on an interim basis.

Indeed, in chapter 15 itself, § 362 takes effect automatically upon the recognition of a foreign main proceeding. Section 1521 makes it clear that an adversary proceeding is not required to achieve this result.

In sum, an adversary proceeding is never needed under the bankruptcy code for the imposition of the automatic stay, and satisfaction of the requirements for an injunction is never required.

D. Adoption of Other Provisions of the Bankruptcy Code

Further analysis is useful with respect to the technique of adopting a non-chapter 15 provision by reference in a chapter 15 case. This technique can be useful with respect to a number of provisions in other chapters of the bankruptcy code.

Chapter 15 generally does not specify what other bankruptcy code provisions should be applied in a chapter 15 case. Section 103(a) specifies that, for all chapter 15 cases, §§ 307, 362(n), 555 – 557, and 559 – 562 apply. In addition, § 1520 provides that, if a

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E-Gold, Ltd., 521 F.3d 411, 415 (D.C. Cir. 2008).

[47] *See id.*

[48] In a plenary bankruptcy case, the property at issue is property of the estate pursuant to § 541(a). In a chapter 15 case, normally there is no estate created. However, there is U.S. property of the debtor that is protected by the automatic stay once recognition is granted. *See* § 1520(a)(1). It is this property that may be entitled to interim protection by applying § 362 on an interim basis until an order for recognition is granted.

[49] *See* Cent. Va. Comm. College v. Katz, 546 U.S. 356 (2006).

[50] *Id.* at 362-64.

[51] *Id.* at 357 (inner quotations omitted).

foreign proceeding is recognized as a foreign main proceeding, several other sections (notably including §§ 361 and 362) apply to the chapter 15 case from that point forward. A much smaller set of sections applies automatically under § 1521 upon the recognition of a foreign nonmain proceeding.

It is highly unlikely that a court can simply ignore all the rest of the bankruptcy code and the other provisions relating to bankruptcy cases in the United States, just because they are not specifically mentioned in chapter 15 or § 103. The better reading is that many other provisions of the bankruptcy code can be applicable in a chapter 15 case: Some should apply in most cases, while others should be applied only on a case by case basis.

Thus, the specific provisions of chapter 15 only designate the sections of the bankruptcy code apart from chapter 15 that apply automatically to a chapter 15 case upon the recognition of a foreign proceeding as a main proceeding or as a nonmain proceeding. The question of which other bankruptcy code provisions may be made applicable by court order in a particular chapter 15 case is left open.

Furthermore, and more important for these chapter 15 cases, the list in § 1519 of the sections from the other parts of the bankruptcy code that can be adopted as provisional relief under § 1519 is incomplete. Thus, a number of other provisions of the bankruptcy code may be applied provisionally under § 1519 while an application for recognition is pending.

The adoption of a section or sections of another part of the bankruptcy code, in appropriate circumstances, is often a far better procedure than adopting a court order that specifies in detail the rights and obligations of the debtor and the creditors. By incorporating a section of the bankruptcy code (such as § 362) by reference, the court thereby imports both the statutory language (which is ten pages long for § 362), and the case law arising from that statutory provision. For § 362, for example, adopting it by reference imports all of the details of the circumstances where § 362 applies and does not apply. In addition, it imports the provisions for automatic termination of the automatic stay, and the provisions for obtaining relief from the stay. A simple phrase making § 362 applicable in a chapter 15 case imports all of this law into the case.

This conclusion is further supported by § 105(a), which provides: "The court may issue any order process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 103 specifically makes chapter 1 (including § 105) applicable to cases under chapter 15.

E. Change in Request for Provisional Relief

Notwithstanding Libra's acquiescence at the hearing on this application, the court notes that the papers before the court are cast as if they are requesting something in the nature of a temporary restraining order and preliminary injunction, rather than the application of §§ 361 and 362. The court finds this to be a change in the position of the applications, and by no means a trivial change, given the court's analysis. Nonetheless, the court holds that the provisional application of §§ 362 and 361 – by way of § 1519 – may be ordered on a provisional basis pending the hearing on recognition.

To protect Libra's due process rights and its right to be informed of the relief that the foreign representatives seek, the court set a further hearing two days after the first hearing, where the relief granted herein could be reconsidered at Libra's request. The next day, Libra informed the court that it declined to proceed with that hearing.

F. § 363 Relief Under § 1519

Talon's main interest in this chapter 15 case is that any assets of the UK companies be sold pursuant to § 363. It is Talon's fear that the administration proceeding in the United Kingdom would lack the supervision of a sale process like that in a U.S. bankruptcy case. For this reason, Talon and its related entities have welcomed this chapter 15 case, because pursuant to § 1520, once a foreign proceeding is recognized as a foreign main proceeding, § 363 applies "to any transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." § 1520(a)(2).

Talon's initial concern at the hearing was that the foreign administrators, in their application, had requested the entry of a

temporary restraining order "entrusting the administration or realization of the foreign debtor's property to the foreign representatives." Such relief would be available to the foreign representatives on an interim basis pursuant to § 1519(a)(2).

Talon reads § 1519(a)(2) as allowing the court to authorize the joint administrators to dispose of assets in a manner other than as provided under § 363. Since it now appears, however, that petitioners are not requesting the relief provided under § 1519(a)(2), the court need not reach the question of whether § 1519(a)(2) could allow a petitioner to override the requirements of § 363 during the gap period before recognition.

Talon nevertheless welcomes the application of § 362 in this case, as this will maintain the status quo so that the § 363 process may eventually occur. In addition, Talon requests that the provisions of § 363 be made immediately applicable in this case to all the assets of the debtors. It appears to the court, however, that while it may make the provisions of § 363 applicable in this case pursuant to §§ 1519(a), 105(a), and 105(d), the court does not have the authority under chapter 15 alone to make these provisions applicable to assets outside of the United States.

IV. Conclusions

For the foregoing reasons, the court finds that the imposition of the § 362 automatic stay as provisional relief under § 1519 is not injunctive relief that is subject to the § 1519(e) requirement imposing the standards for an injunction. For this reason, the requirements of § 1519(e) do not apply to such an order.

The court concludes that sufficient authority exists under §§ 1519(a), 105(a), and 105(d) for the adoption of § 362 provisionally in these cases, to apply to all of the debtors' property in the United States pending a ruling on recognition of the foreign proceedings relating to the debtors herein.

Further, the provisions of § 363, by consent of the petitioners, also apply provisionally with respect to United States assets. In addition to these statutory provisions, each of which applies in its entirety, all of the case law thereunder is hereby made applicable to these cases. The court denies such relief with respect to assets outside the territorial jurisdiction of the United States, on the grounds that chapter 15 alone does not provide the court with the authority to grant such relief at this time.

Dated: July 11, 2008

HONORABLE SAMUEL L. BUFFORD
United States Bankruptcy Judge

PROOF OF SERVICE

I certify that a true copy of this **Amended Opinion Granting Interim Relief to Chapter 15 Debtors Under 11 U.S.C. § 1519** was served on JUL 11 2008.

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Dated: JUL 11 2008

Edlene J. Garcia
DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 15
Quebecor World Inc.,	Case No. 08-13814 (JMP)
Debtor in Foreign Proceedings.	Honorable James M. Peck

ORDER GRANTING RECOGNITION AND ENFORCEMENT OF CANADIAN SANCTION ORDER AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Quebecor World Inc. ("**QWI**") in proceedings (the "**Canadian Proceedings**") pending before the Quebec Superior Court (Commercial Division) (the "**Quebec Court**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**Motion**") seeking entry of an order pursuant to sections 1507, 1521 and 105(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), recognizing and giving effect in the United States to the Quebec Court's order sanctioning the Plan of Reorganization and Compromise of Quebecor World Inc. (the "**Canadian Sanction Order**"), a copy of which is annexed hereto as Exhibit 1.

Due and timely notice of the filing of the Motion was given to those creditors of QWI required to be served under the Bankruptcy Code, other parties in interest, and the Office of the United States Trustee, which notice is adequate for purposes of the Motion and no other or further notice thereof need be given. Any objections to the Motion that have not been withdrawn or resolved have been overruled.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. § 1410(3).

(D) The relief granted is necessary and appropriate, in the interests of the public and international comity, consistent with United States public policy, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(E) Pursuant to section 1507(b), the relief granted will reasonably assure:

(1) just treatment of all holders of claims against or interests in QWI's property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceedings;

(3) prevention of preferential or fraudulent dispositions of property of QWI; and

(4) distribution of proceeds of QWI's property substantially in accordance with the order prescribed by the Bankruptcy Code.

(F) The interest of the public will be served by this Court granting the relief requested by the Monitor.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Sanction Order is hereby given full force and effect in the United States and is binding on all persons subject to this Court's jurisdiction pursuant to sections 1507, 1521(a)(7), and 105(a) of the Bankruptcy Code.

2. The Motion and this Order shall be made available on the Monitor's website at www.ey.com/ca/quebecorworld or upon request at the offices of Allen & Overy LLP,

1221 Avenue of the Americas, New York, New York 10020, Attention: Bethany Kriss, (212) 610-6300, Bethany.Kriss@allenovery.com.

3. Notwithstanding Rule 7062 of the Federal Rules of Bankruptcy Procedure, made applicable to this case by Rule 1018 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: New York, New York
July 1, 2009

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Canadian Sanction Order

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

File: No: 500-11-032338-085

Montréal, June 30, 2009

Present: The Honourable Robert Mongeon, J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

QUEBECOR WORLD INC. and the other Petitioners listed on Schedule "A" to the Initial Order and to this Order

Petitioners

and

ERNST & YOUNG INC.

Monitor

ORDER

(Sanctioning QWI Plan)

SEEING the Petitioners' Motion for an Order Sanctioning the Second Amended and Restated Plan of Reorganization and Compromise of Quebecor World Inc. attached as Schedule "B" to this Order (the "**QWI Plan**"), including the Articles of Reorganization and the Series I and Series II Warrant Indenture posted on the Monitor's website on June 20, 2009 with the note that the latter two documents remain subject to the acceptance of each of the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably, and Other Relief pursuant to Sections 6, 9 and 10 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "**CCAA**") and Section 191 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), and the affidavit of Mr. Roland Ribotti in support thereof (the "**Motion**"), the Monitor's Twenty-Seventh Report dated June 10, 2009 and

Twenty-Eighth Report dated June 23, 2009, and the submissions of counsel for the Petitioners and the Monitor, and other interested parties;

GIVEN the provisions of the initial order granted by this Court in this matter on January 21, 2008, as amended (the "**Initial Order**"), the cross-border insolvency protocol approved by this Court pursuant to the Initial Order, as amended and confirmed by this Court on April 21, 2008 (the "**CBIP**"), the claims procedure order granted by this Court on September 29, 2008 (the "**Claims Procedure Order**"), the cross-border claims protocol approved by this Court on September 29, 2008 pursuant to the Claims Procedure Order (the "**Claims Protocol**"), and the creditors' meeting order granted by this Court on May 14, 2009 (the "**Creditors' Meeting Order**");

GIVEN the provisions of the CCAA and CBCA;

WHEREFORE, THE COURT:

1. **GRANTS** the Motion;

Definitions

2. **ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meaning ascribed thereto in the QWI Plan or the Creditors' Meeting Order, as the case may be;

Joint Hearing

3. **AUTHORIZES** the holding of a Joint Hearing (as such term is defined in the CBIP) to facilitate and coordinate the proper and efficient resolution and adjudication of this matter, and **DECLARES** that said Joint Hearing was validly called and held;

Service and Meeting

4. **DECLARES** that the notices given of the presentation of the Motion and the related Sanction Hearing are proper and sufficient, and in accordance with the Creditors' Meeting Order;

5. **DECLARES** that there has been proper and sufficient service and notice of the Articles of Reorganization and the Meeting Materials, including the QWI Plan, the Circular and the Notice to Creditors in connection with the Creditors' Meeting, to all Affected Creditors, and that the Creditors' Meeting was duly convened, held and conducted in conformity with the CCAA and all other Orders of the Court;

6. **DECLARES** that no meetings or votes of holders of Existing QWI Shares or Other Equity Securities are required in connection with the QWI Plan or the adoption or filing of the Articles of Reorganization, or any exchange, transfer, compromise, arrangement, reorganization or other transaction, including the Restructuring Transactions, effected or contemplated thereby;

QWI Plan Sanction

7. **DECLARES** that:

   (a) the QWI Plan has been approved by the Required Majorities of Affected Creditors of QWI in conformity with the CCAA;

   (b) there is no evidence before the Court to suggest that QWI has not complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;

   (c) there is no evidence before the Court to suggest that QWI has neither done nor purported to do anything that is not authorized by the CCAA;

   (d) the QWI Plan and the transactions, including the Restructuring Transactions and reorganization, contemplated thereby are fair and reasonable, and in the best interests of QWI, the Affected Creditors and the other stakeholders of QWI (having considered, among other things, the composition of the vote, what creditors would receive in liquidation or sale as compared to the QWI Plan, alternatives to the QWI Plan or liquidation or sale, whether any oppression exists or has occurred, the treatment of shareholders and the public interest);

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(e) prior to the Court's sanctioning of the QWI Plan and approving the transactions, including the Restructuring Transactions, contemplated therein, the Court conducted a hearing and made findings of fact and conclusions of law that the terms and conditions of the issuance of the QWI Common Shares, the QWI Class A Preferred Shares, the Warrant Bundles and the Litigation Trust Interests to the Affected Creditors under the QWI Plan and the U.S. Plan collectively in exchange for, and in full and final satisfaction of, the Affected Claims held by the Affected Creditors, were approved and determined to be substantively and procedurally "fair" to the Affected Creditors and all other Persons (the "**Fairness Hearing**") and, in connection therewith, as part of the Fairness Hearing, the Court made the following additional findings of fact and/or conclusions of law: (i) that prior to the Fairness Hearing, QWI advised the Court that it would be relying on the Section 3(a)(10) exemption under the *U.S. Securities Act*, and the exemption under Section 1145 of the *U.S. Bankruptcy Code* in order to issue, without registration with the United States Securities and Exchange Commission, the QWI Common Shares, the QWI Class A Preferred Shares, the Warrant Bundles and the Litigation Trust Interests to the Affected Creditors (or to such other Persons as set out in the Restructuring Transactions Notice); (ii) that the Court was, and is, authorized under the CCAA to conduct the Fairness Hearing and to approve the fairness of the terms and conditions of such issuance and exchange; and (iii) that the Fairness Hearing was open to all of the Affected Creditors and all other Persons and, prior to the Fairness Hearing, all of the Affected Creditors and all other Persons were given adequate notice thereof and that there were no impediments to the Affected Creditors and all other Persons appearing and being heard at said hearing;

8. **ORDERS** that the QWI Plan (including the compromises, arrangements, reorganizations, corporate transactions, releases and discharges set out therein and the transactions, Restructuring Transactions and reorganization contemplated thereby) is sanctioned and approved pursuant to Section 6 of the CCAA and Section 191 of the CBCA and, as at the Completion Time, will be effective and will enure to the benefit of and be binding upon QWI, the Affected Creditors and all other Persons stipulated in the QWI Plan;

QWI Plan Implementation

9. **ORDERS** that QWI, the other Petitioners and the Monitor are authorized and directed to take all steps and actions necessary or appropriate, as determined by QWI and the other Petitioners in accordance with and subject to the terms of the QWI Plan, to implement the QWI Plan, including, without limitation, filing the Articles of Reorganization with the Director, and the transactions contemplated by the QWI Plan in accordance with and subject to the terms of the QWI Plan and this Order (including to enter into, implement and consummate the contracts, instruments, releases, indentures and other documents to be created or which have come into effect in connection with the QWI Plan) and such steps and actions are approved;

10. **DECLARES** that, effective as of the Implementation Date, the articles of QWI will be amended as set out in the Articles of Reorganization;

11. **DECLARES** that, effective as of the Implementation Date, all Other Equity Securities will be of no further force or effect, and that all such Other Equity Securities will be cancelled for no consideration and any agreement, contract, plan, indenture, deed, certificate or other document or instrument having created or governing such Other Equity Securities will be terminated as at such date;

12. **DECLARES** that the Restructuring Transactions shall be effected, subject to Section 5.2 of the QWI Plan, in accordance with the Restructuring Transactions Notice;

13. **DECLARES** that the QWI Common Shares, QWI Class A Preferred Shares and Warrant Bundles issued in connection with the QWI Plan, the Articles of Reorganization or the Warrant Indenture (these two last documents having been posted on the Monitor's website on June 20, 2009 with the note that they remain subject to the acceptance of each of the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably), will be validly issued and outstanding, and in the case of the QWI Common Shares and the QWI Class A Preferred Shares, will be issued as fully paid and non-assessable;

14. **ORDERS** that, without limitation to the Claims Procedure Order and the Claims Protocol, an Affected Creditor who did not file a Proof of Claim in accordance with the

provisions of the Claims Procedure Order and the Claims Protocol, whether or not such Affected Creditor received notice of the claims process established by the Claims Procedure Order and the Claims Protocol, shall be and is hereby forever barred from making any Affected Claim against QWI and shall not be entitled to any distribution under the QWI Plan, and that such Affected Claim is forever extinguished;

15. **ORDERS** that, as of the Implementation Date, and subject to the terms of the QWI Plan (including, without limitation, Article 4 thereof), all Affected Claims of Affected Creditors of any nature against QWI or the Property (as defined in the Initial Order) are hereby forever discharged and released and all proceedings with respect thereto or in connection therewith are permanently stayed, subject only to the right of the Affected Creditors to receive the distributions in respect of such Affected Claims in accordance with the QWI Plan, the Claims Procedure Order and the Claims Protocol;

16. **ORDERS** that all Affected Creditors having an Affected Claim of any nature against QWI or the Property (as defined in the Initial Order) shall, at the request of QWI from and after the Completion Time, execute and deliver to QWI such further releases, discharges, authorizations and directions, instruments, notices and other documents as QWI may reasonably request for the purpose of evidencing the release of all of the security interests, hypothecs, assignments, pledges, mortgages, charges and other liens with respect to such Affected Claim of any nature against QWI or the Property, the whole at the expense of QWI;

17. **DECLARES** that all Proven Claims determined in accordance with the Claims Procedure Order, the Claims Protocol, the Creditors' Meeting Order and the QWI Plan are final and binding on QWI and all Affected Creditors;

18. **GIVEN** that the discharge and release provisions set forth herein constitute good faith compromises and settlements of the matters covered thereby, such compromises and settlements are made in exchange for consideration and are in the best interests of QWI and its stakeholders, are fair, equitable, reasonable, and are integral elements of the restructuring and resolution of these proceedings in accordance with the Plan, and each of the discharges and releases provisions set forth in the Plan:

(a) is within the jurisdiction of the Court,

(b) is an essential means of implementing the Plan,

(c) is an integral element of the settlements and transactions incorporated into the Plan,

(d) is supported by valuable consideration provided by the beneficiary of such provisions,

(e) confers material benefit on, and is in the best interests of, QWI and their stakeholders, and,

(f) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties- in-interest in these proceedings with respect to QWI and its organization, capitalization, operation, and reorganization.

the failure to effect the discharge, release, indemnification, and exculpation provisions described in the Plan would seriously impair the ability of QWI to sanction the Plan.

19. **ORDERS** that as at the Completion Time and subject to the provisions of Subsection 5.1(2) of the CCAA, QWI will be deemed forever to release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights of QWI to enforce the QWI Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered thereunder or pursuant thereto) whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing in any way relating to QWI, the subject matter of, or the transactions or events giving rise to, any Claims or interests that are treated in the QWI Plan or in the U.S. Plan that could be asserted by or on behalf of QWI against: (i) present or former directors, officers and employees of QWI, in each case, in their respective capacities as of the Determination Date; (ii) the New Directors (as defined below) in respect of any actions taken pursuant to the consulting and indemnity agreement referred to below; (iii) the agents, legal counsel, financial advisors and other professionals of QWI and the Subsidiaries (including all current and former legal counsel to the directors of QWI and the Subsidiaries); (iv) the Monitor, its legal counsel and its current officers and directors; (v) the Syndicate Committee, all current and former members of the Syndicate Committee in

their respective capacities as such, and the Administrative Agent and the Syndicate Agreement Collateral Agent in their respective capacities as such; (vi) the Syndicate Released Parties; (vii) the Senior Notes Released Parties; (viii) the DIP Lenders solely in their capacities as such; (ix) the Creditors' Committee and all current and former members of the Creditors' Committee in their respective capacities as such; (x) the Chief Restructuring Officer; and (xi) where applicable, with respect to each of the above named parties, such party's advisors, principals, employees, officers, directors, representatives, financial advisors, counsel, accountants, investment bankers, consultants, agents and other representatives or professionals, provided, however, and notwithstanding anything else contained in the QWI Plan or the U.S. Plan, that any Holder of Affected Soc. Gen Claims in its capacity as such shall not be deemed to be released in respect of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, including, without limitation, in respect of the Paulian Action;

20. **ORDERS** that, as at the Completion Time, or in the case of Subsidiaries that are also subject to releases under the U.S. Plan, at the times contemplated for such releases under the U.S. Plan, the Released Parties, namely, QWI, the Subsidiaries, the Monitor and the Chief Restructuring Officer, as well as their respective present and former officers, directors, principals, employees, financial advisors, counsel, investment bankers, consultants, agents and accountants, and the New Directors (as defined below) will be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person (including QWI and the U.S. Debtors, as applicable, and including any Person who may claim contribution or indemnification against or from them) may be entitled to assert (including any and all claims in respect of potential statutory liabilities of the Persons for which the Initial Order authorized the granting of a CCAA Charge, but other than the rights of Persons to enforce the QWI Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder or pursuant thereto) whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction,

dealing or other occurrence existing or taking place on or prior to the Completion Time relating to, arising out of or in connection with the Claims, the business and affairs of the Petitioners, the CCAA Charges, the QWI Plan, the U.S. Plan and the CCAA Proceedings, provided that nothing in this paragraph 20 will release or discharge any Petitioner from or in respect of any Excluded Claim, or QWI from or in respect of the Paulian Action;

21. **ORDERS**, that as at the Completion Time, all Affected Creditors will be deemed forever to release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, as against the Syndicate Releasees, namely the Administrative Agent, and any lender in the Syndicate, from time to time, and each such Person's advisors, principals, employees, officers, directors, representatives, financial advisors, counsel, accountants, investment bankers, consultants, agents and other representatives or professionals, and the Syndicate Agreement Collateral Agent in relation to the Syndicate Agreement and the recoveries or distributions to which the Administrative Agent, the Syndicate Agreement Collateral Agent or any Syndicate member may be, or may in the future become, entitled to receive under the QWI Plan and in furtherance thereof, without limitation, the Paulian Action shall be dismissed, with prejudice, without costs as against the Syndicate Releasees and the Syndicate Agreement Collateral Agent to the extent of the rights and benefits it holds in favour of the Syndicate Releasees under the Syndicate Agreement;

22. **ORDERS** that, from and after the Completion Time, all Persons shall be deemed to have waived any and all defaults of QWI (except for defaults under the securities, contracts, instruments, releases and other documents delivered under the QWI Plan or entered into in connection therewith or pursuant thereto) then existing or previously committed by QWI or caused by QWI, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and QWI arising from the filing by the Petitioners under the CCAA or the transactions contemplated by the QWI Plan, and any and all notices of

default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded;

23. **DECLARES** that, subject to the performance by QWI of its obligations under the QWI Plan, all contracts, leases, agreements and other arrangements to which QWI is a party and that have not been terminated or repudiated pursuant to the Initial Order will be and remain in full force and effect, unamended, as at the Completion Time, and no Person who is a party to any such contract, lease, agreement or other arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of dilution or other remedy) or make any demand under or in respect of any such contract, lease, agreement or other arrangement and no automatic termination will have any validity or effect, by reason only of:

(a) any event that occurred on or prior to the Implementation Date and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults, events of default, or termination events arising as a result of the insolvency of QWI);

(b) the insolvency of QWI or the fact that QWI or any Subsidiary sought or obtained relief under the CCAA, the CBCA or the Bankruptcy Code;

(c) any compromises or arrangements effected pursuant to the QWI Plan or any action taken or transaction effected pursuant to the QWI Plan; or

(d) any change in the control of QWI arising from the implementation of the QWI Plan;

24. **ENJOINS** the prosecution, whether directly, derivatively or otherwise, of any claim, obligation, suit, judgement, damage, demand, debt, right, cause of action, liability or interest released, discharged or terminated pursuant to the QWI Plan including, without limitation, the Paulian Action against the Syndicate Released Parties;

25. **ORDERS**, that each of the individuals named on Schedule "C" hereto shall, upon their consent, be appointed as new directors of QWI (the "**New Directors**") to hold office until

such time as successors shall be appointed or elected in accordance with the CBCA or they sooner cease to hold office in accordance with the CBCA, and further **ORDERS** that such appointments shall be effective upon the Implementation Date (or, in the event that their consent to act as a new Director of QWI is given after the Implementation Date, upon such consent date), or:

(a) in the event that any of the individuals named on Schedule "C" hereto cannot serve as new directors of QWI as and from the Implementation Date but are ultimately able to serve beginning on a date after the Implementation Date (such later date for any given individual being his "**Delayed Incumbency Date**"), then the applicable Delayed Incumbency Date for such individual, such date not to be later than thirty days following the Implementation Date; or

(b) in the event that it is impossible to establish, as of the Implementation Date, the legislatively prescribed minimum quorum of three (3) directors of QWI, then such later date (the "**Quorum-related Incumbency Date**") as the search committee referred to in Section 5.9 of the QWI Plan (the "**Selection Committee**") shall designate in respect of the new director(s) required to meet such minimum quorum, such date not to be later than thirty days following the Implementation Date;

26. **ORDERS** that effective upon the Implementation Date, or the Quorum-related Incumbency Date, if any, any current director who is then in office shall cease to be a director of QWI, unless such individual is appointed as new director pursuant to paragraph 25 above;

27. **ORDERS** that QWI is hereby authorized and directed to provide an indemnity to the New Directors substantially in the form of the consulting and indemnity agreement dated June 18, 2009 and attached hereto as Schedule "D";

28. **DECLARES** that, effective as at the Completion Time, the Application for Bankruptcy Order, and the endorsement related thereto dated January 25, 2008 will be of no further force or effect and that the Syndicate Released Parties are released and discharged from the Paulian Action;

Charges created in the CCAA Proceedings

29. **ORDERS** that all CCAA Charges and any other charges against the assets of the Petitioners that were created pursuant to orders of the Court in the CCAA Proceedings will be cancelled, released and discharged as of the Completion Time;

Exit Financing

30. **ORDERS** that QWI is authorized and empowered to (i) enter into and perform and receive the proceeds of the Exit Loan Facility, including a revolving credit facility in the aggregate principal amount of approximately U.S. $350,000,000 and a term loan in the aggregate principal amount of approximately U.S. $450,000,000, the whole to be in form and substance acceptable to the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably, and on the terms described in the exit financing term sheets, as filed, as such term sheets may be amended, supplemented or otherwise modified, in each case as approved by the borrowers, the lead arrangers and agents parties thereunder and the whole to be in form and substance acceptable to the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably, (the "Term Sheets"), (ii) grant security interests, hypothecs, charges, claims and liens in connection therewith, and (iii) pay the fees, costs and expenses in connection with the arrangement, syndication and all other matters relating to or arising under the Exit Loan Facility as set out in the Term Sheets, and the Engagement Letter approved by this Court on May 8, 2009. On the Implementation Date, all of the liens and security interests to be granted by QWI in accordance with the Exit Loan Facility shall be deemed to be approved. The terms and conditions of the Exit Loan Facility as set forth in said exit financing term sheets, as such term sheets may be amended, supplemented or otherwise modified from time to time by the borrowers, the lead arrangers and agents parties thereunder, in form and substance acceptable to the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably, are approved and ratified as being entered into in good faith and being critical to the success and feasibility of the Plan;

31. **ORDERS** that QWI is authorized and empowered to execute and deliver credit agreements, guarantees, security documents, and other documents required to effectuate

the Exit Loan Facility (collectively, the "**Exit Loan and Security Documents**"), as may be required by the Exit Loan Facility's lenders in connection with the Exit Loan Facility, such Exit Loan Facility and the Exit Loan and Security Documents to be in form and substance acceptable to the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably, and QWI is authorized to perform all of its obligations under the Exit Loan and Security Documents;

Stay Extension

32. **DECLARES** that the stay of proceedings under the Initial Order shall continue until the filing with this Court of a certificate of the Monitor confirming that the Implementation Date has occurred, the date of such filing to be the Stay Termination Date (as such term is defined in the Initial Order);

33. **ORDERS** that all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or inconsistent with, this Order, the Creditors' Meeting Order, or any further Order of this Court;

Monitor and Chief Restructuring Officer

34. **ORDERS** that the First to Twenty Ninth Reports of the Monitor filed with this Court (the "**Monitors' Reports**") be and are hereby approved, that all actions and conduct of the Monitor and Chief Restructuring Officer in connection with the Claims, the business and affairs of the Petitioners, the CCAA Charges, the QWI Plan, the U.S. Plan and the CCAA Proceedings, including, without limitation, the actions and conduct of the Monitor and the Chief Restructuring Officer disclosed in the Monitors' Reports, are hereby approved, and that the Monitor and the Chief Restructuring Officer have satisfied all of their obligations up to and including the date of this Order;

35. **APPROVES** the conduct of the Chief Restructuring Officer and the Monitor in relation to QWI and the other Petitioners and, provided that they have acted reasonably and in good faith, **DECLARES** that they shall not be held liable for loss or damage to any person with respect to their acts errors and omissions;

36. **ORDERS** that no proceeding shall be commenced against the Monitor or the Chief Restructuring Officer in any way arising from or related to its capacity or conduct as Monitor or Chief Restructuring Officer except with prior leave of this Court on notice to the Monitor and Chief Restructuring Officer and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with the proposed action or proceeding;

37. **ORDERS** that the protections afforded to Ernst & Young Inc. as Monitor and as an officer of this Court, and to the Chief Restructuring Officer pursuant to the terms of the Initial Order and the other Orders made in the CCAA Proceedings shall not expire or terminate on the Implementation Date and, subject to the terms hereof, shall remain effective and in full force and effect notwithstanding the discharge provided for herein;

38. **ORDERS** that the Monitor shall be discharged of its duties and obligations pursuant to the QWI Plan, this Order and all other Orders made in the CCAA Proceedings, upon the filing with this Court of a certificate of the Monitor certifying that all of its duties in relation to the claims procedure and all matters relating thereto as set out in the Claims Procedure Order and the Claims Protocol, and all other matters for which it is responsible under the QWI Plan or pursuant to the Orders of this Court made in the CCAA Proceedings, are completed to the best of the Monitor's knowledge;

Claims Officers

39. **ORDERS** that, in accordance with paragraph 33 hereof, any Claims Officer appointed in accordance with the Claims Procedure Order shall continue to have the authority conferred upon, and to benefit from all protections afforded to, Claims Officers pursuant to Orders in the CCAA Proceedings;

General

40. **ORDERS** that the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, the Petitioners and the Monitor shall continue to discuss with a view to reaching an acceptable compromise on the wording of the Articles or Reorganization and the Series I and II Warrant Indenture (Exhibit R-4). If no agreement is reached by July 13, 2009 a Joint Hearing shall be scheduled and held at 2:30 p.m. to

further assess the situation, take whatever steps and render such further orders as are necessary in order to resolve any dispute resulting for the foregoing;

41. **DECLARES** that any of the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other;

42. **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada, in the United States of America and elsewhere;

43. **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order, including, without limitation, the registration of this Order in any office of public record by any such court or administrative body or by any Person affected by the Order;

Provisional Execution

44. **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;

THE WHOLE, without costs.

Montréal (Quebec), June 30, 2009

Honourable Robert Mongeon, J.S.C.

Certified true Copy

HON. ROBERT MONGEON J.S.C.

Schedule "A"

Quebecor World (USA) Inc.	Delaware
Quebecor Printing Holding Company	Delaware
Quebecor World Capital Corporation	Delaware
Quebecor World Capital II GP	Delaware
Quebecor World Capital II LLC	Delaware
QW Memphis Corp.	Delaware
The Webb Company	Delaware
Quebecor World Printing (USA) Corp.	Delaware
Quebecor World Loveland Inc.	Delaware
Quebecor World Systems Inc.	Delaware
Quebecor World San Jose Inc.	California
Quebecor World Buffalo Inc.	New York
Quebecor World Johnson & Hardin Co.	Ohio
Quebecor World Northeast Graphics Inc.	Delaware
Quebecor World Up / Graphics Inc.	Delaware
Quebecor World Great Western Publishing Inc.	Arizona
Quebecor World DB Acquisition Corp.	Georgia
WCP-D, Inc.	Delaware
Quebecor World Taconic Holdings Inc.	Virginia
Quebecor World Retail Printing Corporation	Massachusetts
Quebecor World Arcata Corp.	Delaware
Quebecor World Nevada Inc.	Nevada
Quebecor World Atglen Inc.	Delaware
Quebecor World Krueger Acquisition Corp.	Delaware
Quebecor World Book Services LLC	Delaware
Quebecor World Dubuque Inc.	Delaware
Quebecor World Pendell Inc.	Michigan
Quebecor World Fairfield Inc.	Delaware
QW New York Corp.	Delaware
Quebecor World Dallas II Inc.	Delaware
Quebecor World Nevada II LLC	Delaware
Quebecor World Dallas, L.P.	Delaware
Quebecor World Mt. Morris II LLC	Delaware
Quebecor World Petty Printing Inc.	Illinois
Quebecor World Hazleton Inc.	Pennsylvania
Quebecor World Olive Branch Inc.	Delaware
Quebecor World Dittler Brothers Inc.	Georgia
Quebecor World Atlanta II LLC	Georgia
Quebecor World Rai Inc.	Wisconsin
Quebecor World KRI Inc.	Delaware
Quebecor World Century Graphics Corporation	Louisiana
Quebecor World Waukee Inc.	Iowa
Quebecor World Logistics Inc.	Delaware
Quebecor World Mid-South Press Corporation	Tennessee
Quebecor World Lease GP	Delaware
Quebecor Printing Aviation Inc.	Delaware
WCZ, LLC	Delaware
Quebecor World Eusey Press Inc.	Massachusetts
Quebecor World Infiniti Graphics Inc.	Connecticut
Quebecor World Lincoln Inc.	Delaware
Quebecor World Magna Graphic Inc.	Kentucky
Quebecor World Memphis LLC	Delaware
Quebecor World Lease LLC	Delaware

Schedule "B"
Second Amended and Restated Plan of Reorganization and Compromise dated June 8, 2009 of QWI
(Attached)

a clean copy thereof to be attached to the Court Order to be presented at the Sanction Hearing

and a copy thereof is available at the following page of the Monitor's website

http://documentcentre.eycan.com/Pages/Main.aspx?SID=54

under the heading "Information relating to the Creditors' Meeting and the vote", subheading "Updated and New Documents, dated June 8, 2009".

together with the Articles of Reorganization and the Series I and Series II Warrant Indenture posted on the Monitor's website on June 20, 2009, under the same heading "Information relating to the Creditors' Meeting and the vote", and subheading "New documents, dated June 20, 2009", with the note that these two documents remain subject to the acceptance of each of the Administrative Agent, the Ad Hoc Group of Noteholders and the Creditors' Committee, acting reasonably

Schedule "C"
Directors of QWI

1. **Michael Allen**, veteran of the printing industry.
2. **Mark Angelson**, CEO and Director at RR Donnelley between 2004 and March 2007.
3. **Raymond J. Bromark**, director of CA, Inc. since 2007 and retired senior partner of PricewaterhouseCoopers.
4. **Gabriel de Alba,** Managing Director and Partner of Catalyst Capital Group of Toronto.
5. **James J. Gaffney**, serving on Duff & Phelps' Senior Advisory Board since 2007 and director of the Imperial Sugar Company since August 2001. Also served as Chairman since February 2003
6. **Jack Kliger**, former President and CEO of Hachette Filipacchi. Occupied other positions at Si Newhuse's Advance Publications, Condé Nast and *Parade.*
7. **Jacques Mallette**, Quebecor World Inc.'s Chief Executive Officer.
8. **David L. McAusland**, Executive Vice President of Corporate Development at Rio Tinto Alcan (formerly, Alcan Inc.) of Alcan France S.A.S. from 2005 to 2008 and Chief Legal Officer from October 2000 to February 2008.
9. **Thomas O. Ryder**, Director of Amazon.Com, Inc. since November 2002, Director of Starwoods Hotels & Resorts Worldwide, Inc. and Chairman of the Board of Directors at Virgin Mobile USA, Inc.

Schedule "D"
Consulting and Indemnity Agreement

CONSULTING AND INDEMNITY AGREEMENT

THIS AGREEMENT is made as of June 18, 2009
BETWEEN:

QUEBECOR WORLD INC., a corporation governed by the laws of Canada, (the "**Corporation**")

- and -

The individuals listed on Schedule "A" hereto (the "**Consulting Parties**" and each an "**Consulting Party**")

RECITALS:

A. On January 21, 2008, the Corporation filed for creditor protection under the *Companies' Creditors Arrangement Act* in Canada with the Quebec Superior Court of Justice (the "**Court**"), as well as in the United States under Chapter 11 of the United States Bankruptcy Code (the "**Proceedings**").

B. In connection with the Proceedings, a meeting of the creditors of the Corporation was held on June 22, 2009, to consider and approve the Second Amended and Restated Plan of Reorganization and Compromise of the Corporation dated June 8, 2009 (the "**Reorganization Plan**"), pursuant to which, among other things, a new slate of directors (the "**Proposed Directors**") will be appointed upon the implementation of the Reorganization Plan on or before July 21, 2009.

C. It is currently anticipated that the Reorganization Plan will be sanctioned by the Court on June 30, 2009 and that such order will, effective on the implementation of the Reorganization Plan, appoint the following individuals as directors of the Corporation: Mark Angelson, Michael Allen, Raymond J. Bromark, James J. Gaffney, Jack Kliger, David L. McAusland, Thomas O. Ryder and Gabriel de Alba.

D. In order to facilitate an orderly transition of the Corporation on the date that the Corporation implements the Reorganization Plan (the "**Implementation Date**"), it is in the best interests of the Corporation that the Proposed Directors receive information concerning the business and affairs of the Corporation (including confidential and proprietary information), make preparations to assume responsibility for board matters on the Implementation Date, and in that regard, provide the Corporation and the existing board with consulting advice regarding transitional and other matters as they may deem appropriate or necessary to effect or facilitate such orderly transition of responsibility for board matters (the "**Transition Process**").

E. Accordingly, the Corporation considers it desirable and in the best interests of the Corporation to enter into this Agreement to set out, *inter alia*, the circumstances and manner in which the Proposed Directors may be indemnified in respect of certain

liabilities or expenses which such Proposed Directors may incur as a result of participating in the Transition Process.

THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Whenever used in this Agreement, the following words and terms shall have the meanings set out below:

(a) **"Act"** means the *Canada Business Corporations Act*, as the same exists on the date of this Agreement or may hereafter be amended;

(b) **"Agreement"** means this consulting and indemnity agreement, including all schedules, and all amendments or restatements as permitted, and references to "Article" or "Section" mean the specified Article or Section of this Agreement;

(c) **"Business Day"** means any day, other than a Saturday or Sunday, on which the principal commercial banks located in Toronto, Ontario and Montreal, Quebec are open for commercial banking business during normal banking hours;

(d) **"Claim"** includes any civil, criminal, administrative or investigative or other proceeding of any nature or kind in which the Consulting Party is involved during the Transition Period because of the Consulting Party's association with the Corporation or Other Entity, or as a result of his or her participation in the Transition Process;

(e) **"Losses"** includes all costs, charges, expenses, losses, damages, fees (including any legal, professional or advisory fees or disbursements), liabilities, amounts paid to settle or dispose of any Claim or satisfy any judgment, fines, penalties or liabilities, without limitation, and whether incurred alone or jointly with others, including any amounts which the Consulting Party may reasonably suffer, sustain, incur or be required to pay in respect of the investigation, defence, settlement or appeal of or preparation for any Claim or in connection with any action to establish a right to indemnification under this Agreement, and for greater certainty, includes all taxes, interest, penalties and related outlays of the Consulting Party arising from any indemnification of the Consulting Party by the Corporation pursuant to this Agreement;

(f) **"Other Entity"** means a Subsidiary of the Corporation;

(g) **"Parties"** means the Corporation and the Consulting Party collectively and "**Party**" means any one of them;

(h) **"Subsidiary"** has the meaning set out in the Act; and

(i) "**Transition Period**" means the period of time commencing on the date of this Agreement and terminating on the Implementation Date.

1.2 Certain Rules of Interpretation

In this Agreement:

(a) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

(b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(c) **Number** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa*.

(d) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.

(e) **Entire Agreement** – This Agreement, including Schedule A, constitutes the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

(f) **Schedules** – Schedule A is an integral part of this Agreement.

ARTICLE 2
REPRESENTATIONS

2.1 Representations of the Corporation

The Corporation represents and warrants to the Consulting Party that:

(a) **Incorporation and Corporate Power** – The Corporation is a corporation duly incorporated and existing under the laws of Canada and has all necessary corporate power, authority and capacity to enter into this Agreement, to carry out its obligations under this Agreement, to own its assets and to carry on its business as presently conducted.

(b) **Due Authorization** – The execution and delivery of this Agreement and the performance of the obligations contemplated by this Agreement have been duly authorized by all necessary corporate action on behalf of the Corporation. Subject to the approval of the Court, this Agreement constitutes a valid and binding obligation of the Corporation enforceable against it in accordance with its terms.

(c) **No Conflict** – The Corporation is not a party to, bound or affected by or subject to any:

(i) indenture, mortgage, agreement, obligation or instrument;

(ii) charter or by-law; or

(iii) applicable law, statute, regulation, rule, order, ordinance, judgment, decree, licence or permit,

that would be violated, breached by, or under which default would occur or an encumbrance would be created as a result of the execution and delivery of this Agreement or the performance of any of the obligations provided for under this Agreement.

ARTICLE 3
TRANSITIONAL MATTERS

3.1 Engagement of Consulting Parties

The Corporation hereby engages each of the Consulting Parties to: (a) provide the Corporation and the existing board of directors of the Corporation with such advice as he deems necessary or advisable from time to time in connection with the Transition Process; and (b) prepare, plan for and do or take all such necessary or advisable steps to effect an orderly transition of responsibility for board matters on the Implementation Date. It is understood and agreed that, until the appointment of the Consulting Parties as directors of the Corporation on the Implementation Date, none of the Consulting Parties shall be deemed to be acting as directors of the Corporation, and that all authority, power and responsibility for any and all corporate and

other matters regarding the Corporation prior to the Implementation Date shall remain the sole authority, power and responsibility of the existing board of directors of the Corporation and management. For greater certainty: (a) all matters, steps or measures taken by the Corporation in respect of the Transition Process prior to the Implementation Date shall be subject to the approval of the existing board of directors of the Corporation; and (b) the Consulting Parties do not and shall not be deemed to assume any powers, authorities, responsibilities or duties of or belonging to the existing board of directors of the Corporation or management in respect of any corporate, transition or other matters relating to or arising prior to the Implementation Date.

3.2 Confidentiality

Each of the Consulting Parties agrees to maintain as confidential all information of a non-public nature relating to the Corporation which is provided to them prior to the Implementation Date.

ARTICLE 4
INDEMNIFICATION BY CORPORATION AND OBLIGATIONS OF CONSULTING PARTY

4.1 Indemnification

(a) **General Indemnity** – Except in respect of an action by or on behalf of the Corporation or Other Entity to procure a judgment in its favour against the Consulting Party, or except as otherwise provided in this Agreement, the Corporation agrees to indemnify and hold the Consulting Party harmless from and against any and all Losses which the Consulting Party may reasonably suffer, sustain, incur or be required to pay in respect of any Claim, provided that the indemnity provided for in this Section 4.1(a) will only be available if:

(i) the Consulting Party was acting honestly and in good faith with a view to the best interests of the Corporation or Other Entity, as the case may be;

(ii) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Consulting Party had reasonable grounds for believing that the Consulting Party's conduct was lawful.

(b) **Indemnity as of Right** – Notwithstanding anything in this Agreement, the Consulting Party is entitled to an indemnity from the Corporation in respect of all costs, charges and expenses reasonably incurred by the Consulting Party in connection with the defence of any Claim, if the Consulting Party:

(i) was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the Consulting Party ought to have done; and

(ii) fulfils the conditions set out in Sections 4.1(a)(i) and (a)(ii) above.

(c) **Derivative Claims** – In respect of any action by or on behalf of the Corporation or Other Entity to procure a judgment in its favour against the Consulting Party, in respect of which the Consulting Party is made a party because of the Consulting Party's association with the Corporation or Other Entity or as a result of the Consulting Party's participation in the Transition Process, the Corporation shall make application, at its expense, for the approval of a court of competent jurisdiction to advance monies to the Consulting Party for costs, charges and expenses reasonably incurred by the Consulting Party in connection with such action and to indemnify and save harmless the Consulting Party for such costs, charges and expenses of such action provided the Consulting Party fulfils the conditions set out in Sections 4.1(a)(i) and (a)(ii) above and provided the Consulting Party shall repay such funds advanced if the Consulting Party ultimately does not fulfil the conditions set out in Sections 4.1(a)(i) and (a)(ii) above.

(d) **Incidental Expenses** – Except to the extent such costs, charges or expenses are paid by the Other Entity, the Corporation shall pay or reimburse the Consulting Party for the Consulting Party's reasonable and necessary travel, lodging or accommodation costs, charges or expenses paid or incurred by or on behalf of the Consulting Party.

(e) **Partial Indemnification** – If the Consulting Party is determined to be entitled under any provisions of this Agreement to indemnification by the Corporation for some or a portion of the Losses incurred in respect of any Claim but not for the total amount thereof, the Corporation shall nevertheless indemnify the Consulting Party for the portion thereof to which the Consulting Party is determined by a court of competent jurisdiction to be so entitled.

(f) **Advance of Expenses** – Subject to Section 4.1(c) of this Agreement, the Corporation shall, at the request of the Consulting Party, advance to the Consulting Party sufficient funds, or arrange to pay on behalf of or reimburse the Consulting Party for any costs, charges or expenses reasonably incurred by the Consulting Party in investigating, defending, appealing, preparing for, providing evidence in or instructing and receiving the advice of the Consulting Party's counsel or other professional advisors in regard to any Claim or other matter for which the Consulting Party may be entitled to an indemnity or reimbursement under this Agreement, and such amounts shall be treated as a non-interest bearing advance or loan to the Consulting Party, pending approval of the Corporation and the court (if required), to the payment thereof as an indemnity and provided that the Consulting Party fulfils the conditions set out in Sections 4.1(a)(i) and (a)(ii) above. In the event it is ultimately determined by a court of competent jurisdiction that the Consulting Party did not fulfil the conditions set out in Sections 4.1(a)(i) and (a)(ii) above, or that the Consulting Party was not entitled to be fully so indemnified, such loan or advance, or the appropriate portion thereof shall, upon written notice of such determination being given by the Corporation to the Consulting Party detailing the basis for such determination, be

repayable on demand and shall bear interest from the date of such notice at the prime rate prescribed from time to time by the Bank of Canada.

4.2 Notice of Proceedings

The Consulting Party shall give notice in writing to the Corporation as soon as practicable upon being served with any statement of claim, writ, notice of motion, indictment, subpoena, investigation order or other document commencing, threatening or continuing any Claim involving the Corporation or Other Entity or the Consulting Party which may result in a claim for indemnification under this Agreement, and the Corporation agrees to give the Consulting Party notice in writing as soon as practicable upon it or any Other Entity being served with any statement of claim, writ, notice of motion, indictment, subpoena, investigation order or other document commencing or continuing any Claim involving the Consulting Party. Such notice shall include a description of the Claim or threatened Claim, a summary of the facts giving rise to the Claim or threatened Claim and, if possible, an estimate of any potential liability arising under the Claim or threatened Claim. Failure by the Consulting Party to so notify the Corporation of any Claim shall not relieve the Corporation from liability under this Agreement except to the extent that the failure materially prejudices the Corporation.

4.3 Subrogation – The Corporation

Promptly after receiving written notice from the Consulting Party of any Claim or threatened Claim (other than a Claim by or on behalf of the Corporation or Other Entity to procure a judgment in its favour against the Consulting Party), the Corporation may, and upon the written request of the Consulting Party shall, by notice in writing to the Consulting Party, assume conduct of the defence thereof in a timely manner and retain counsel on behalf of the Consulting Party who is reasonably satisfactory to the Consulting Party, to represent the Consulting Party in respect of the Claim. On delivery of such notice by the Corporation, the Corporation shall not be liable to the Consulting Party under this Agreement for any fees and disbursements of counsel the Consulting Party may subsequently incur with respect to the same matter. In the event the Corporation assumes conduct of the defence on behalf of the Consulting Party, the Consulting Party consents to the conduct thereof and of any action taken by the Corporation, in good faith, in connection therewith, and the Consulting Party shall fully cooperate in such defence including, without limitation, the provision of documents, attending examinations for discovery, making affidavits, meeting with counsel, testifying and divulging to the Corporation all information reasonably required to defend or prosecute the Claim.

4.4 Separate Counsel

In connection with any Claim or other matter for which the Consulting Party may be entitled to indemnity under this Agreement, the Consulting Party shall have the right to employ separate counsel of the Consulting Party's choosing and to participate in the defence thereof but the fees and disbursements of such counsel shall be at the Consulting Party's expense unless employment of such other counsel has been authorized by the Corporation, in which event, the fees and disbursements of such counsel shall be paid by the Corporation.

4.5 No Presumption as to Absence of Good Faith

Unless a court of competent jurisdiction otherwise has held or decided that the Consulting Party is not entitled to be fully or partially indemnified under this Agreement, the determination of any

Claim by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create any presumption for the purposes of this Agreement that the Consulting Party is not entitled to indemnity under this Agreement.

4.6 Settlement of Claim

No admission of liability and no settlement of any Claim in a manner adverse to the Consulting Party shall be made without the consent of the Consulting Party, acting reasonably. No admission of liability shall be made by the Consulting Party without the consent of the Corporation and the Corporation shall not be liable for any settlement of any Claim made without its consent.

4.7 Determination of Right to Indemnification

If the payment of an indemnity or the advancement of funds under this Agreement requires the approval of a court either the Corporation or the Consulting Party may apply to a court of competent jurisdiction for an order approving such indemnity or the advancement of such funds by the Corporation pursuant to this Agreement.

ARTICLE 5
MISCELLANEOUS MATTERS

5.1 Corporation and Consulting Party to Cooperate

The Corporation and the Consulting Party shall, from time to time, provide such information and cooperate with the other, as the other may reasonably request, in respect of all matters under this Agreement.

5.2 Insolvency

The liability of the Corporation under this Agreement shall not be affected, discharged, impaired, mitigated or released by reason of the discharge or release of the Consulting Party in any bankruptcy, insolvency, receivership or other similar proceeding of creditors, including, without limitation, the Proceedings and the implementation of the Reorganization Plan.

5.3 Multiple Proceedings

No action or proceeding brought or instituted under this Agreement and no recovery pursuant thereto shall be a bar or defence to any further action or proceeding which may be brought under this Agreement.

ARTICLE 6
GENERAL

6.1 Assignment

Neither Party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party.

6.2 Enurement

This Agreement enures to the benefit of and is binding upon the Parties and the heirs, attorneys, guardians, estate trustees, executors, trustees, administrators and permitted assigns of the Consulting Party and the successors (including any successor by reason of amalgamation) and permitted assigns of the Corporation.

6.3 Amendments

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be so bound. For greater certainty, the rights of the Consulting Party under this Agreement shall not be prejudiced or impaired by permitting or consenting to any assignment in bankruptcy, receivership, insolvency or any other creditor's proceedings of or against the Corporation or by the winding-up or dissolution of the Corporation.

6.4 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

(a) in the case of a Notice to the Consulting Parties, in accordance with the information set out on Schedule "A" hereto; and

(b) in the case of a Notice to the Corporation at:

Quebecor World Inc.
999 Boulevard de Maisonneuve West
Suite 1100
Montreal, Quebec
H3A 3L4

Attention: ●
Fax: ●
E-mail: ●

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. If the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day. Any Party may, from time to time, change its address by giving Notice to the other Party in accordance with the provisions of this Section.

6.5 Further Assurances

The Corporation and the Consulting Party shall, with reasonable diligence, do all things and execute and deliver all such further documents or instruments as may be necessary or desirable for the purpose of assuring and conferring on the Consulting Party the rights created or intended

by this Agreement and giving effect to and carrying out intention or facilitating the performance of the terms of this Agreement, or evidencing any loan or advance made pursuant to Section 4.1(f) hereof.

6.6 Independent Legal Advice

The Consulting Party acknowledges that the Consulting Party has been advised to obtain independent legal advice with respect to entering into this Agreement, that the Consulting Party has obtained such independent legal advice or has expressly determined not to seek such advice, and that the Consulting Party is entering into this Agreement with full knowledge of the contents hereof, of the Consulting Party's own free will and with full capacity and authority to do so.

6.7 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS OF WHICH the Parties have duly executed this Agreement.

QUEBECOR WORLD INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

SIGNED, SEALED & DELIVERED
In the presence of:

_____
Witness

_____
Mark Angelson

SIGNED, SEALED & DELIVERED
In the presence of:

_____
Witness

_____
Michael Allen

SIGNED, SEALED & DELIVERED
In the presence of:

_____
Witness

_____
Raymond J. Bromark

SIGNED, SEALED & DELIVERED
In the presence of:

_____
Witness

_____
James J. Gaffney

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

Jack Kliger

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

David L. McAusland

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

Thomas O. Ryder

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

Gabriel de Alba

SCHEDULE A
Consulting Parties

Name	Address	Email Address	Facsimile
Mark Angelson	●	●	●
Michael Allen	●	●	●
Raymond J. Bromark	●	●	●
James J. Gaffney	●	●	●
Jack Kliger	●	●	●
David L. McAusland	●	●	●
Thomas O. Ryder	●	●	●
Gabriel de Alba	●	●	●

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Quebecor World Inc. Foreign Applicant in Foreign Proceeding.	Chapter 15 Case No. 08-13814 (JMP)

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Quebecor World Inc. ("**QWI**") in a proceeding (the "**Canadian Proceeding**") pending before the Quebec Superior Court (Commercial Division) (the "**Canadian Court**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

This Court has reviewed the Verified Petition For Recognition of the Foreign Proceeding filed on September 30, 2008 (the "**Chapter 15 Petition**") commencing the above-captioned chapter 15 case pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1521(a)(7), 1507, and 105(a) of the Bankruptcy Code of the Claims Procedure Order of the Canadian Court dated September 29, 2008, a copy of which is annexed hereto (the "**Claims Procedure Order**") as Exhibit A.

Due and timely notice of the filing of the Chapter 15 Petition was given in accordance with this Court's order dated October 1, 2008, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. No objection to the relief sought by the Chapter 15 Petition has been filed with the Court.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. § 1410(3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of QWI within the meaning of section 101(24) of the Bankruptcy Code.

(E) This case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petition meets the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceeding is pending in Canada, which is the location of QWI's center of main interest, and as such, constitutes a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted is necessary and appropriate, in the interests of the public and international comity, consistent with United States public policy, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceeding is hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. The Claims Procedure Order is hereby given full force and effect in the United States and is binding on all persons subject to this court's jurisdiction pursuant to sections 1521(a)(7), 1507, and 105(a) of the Bankruptcy Code.

3. The Chapter 15 Petition and this Order shall be made available on the Monitor's website at www.ey.com/ca/quebecorworld or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attention: Tania Ingman, (212) 756-1199, Chapter15.QWI@allenovery.com.

4. Notwithstanding Rule 7062 of the Federal Rules of Bankruptcy Procedure, made applicable to this case by Rule 1018 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: New York, New York
November 14, 2008

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Quebecor World Inc. Foreign Applicant in Foreign Proceeding.	Chapter 15 Case No. 08-13814 (JMP)

ORDER GRANTING RECOGNITION AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Quebecor World Inc. ("**QWI**") in a proceeding (the "**Canadian Proceeding**") pending before the Quebec Superior Court (Commercial Division) (the "**Canadian Court**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

This Court has reviewed the Verified Petition For Recognition of the Foreign Proceeding filed on September 30, 2008 (the "**Chapter 15 Petition**") commencing the above-captioned chapter 15 case pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code, as amended (the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1521(a)(7), 1507, and 105(a) of the Bankruptcy Code of the Claims Procedure Order of the Canadian Court dated September 29, 2008, a copy of which is annexed hereto (the "**Claims Procedure Order**") as Exhibit A.

Due and timely notice of the filing of the Chapter 15 Petition was given in accordance with this Court's order dated October 1, 2008, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. No objection to the relief sought by the Chapter 15 Petition has been filed with the Court.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. § 1410(3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of QWI within the meaning of section 101(24) of the Bankruptcy Code.

(E) This case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petition meets the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceeding is pending in Canada, which is the location of QWI's center of main interest, and as such, constitutes a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted is necessary and appropriate, in the interests of the public and international comity, consistent with United States public policy, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceeding is hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. The Claims Procedure Order is hereby given full force and effect in the United States and is binding on all persons subject to this court's jurisdiction pursuant to sections 1521(a)(7), 1507, and 105(a) of the Bankruptcy Code.

3. The Chapter 15 Petition and this Order shall be made available on the Monitor's website at www.ey.com/ca/quebecorworld or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attention: Tania Ingman, (212) 756-1199, Chapter15.QWI@allenovery.com.

4. Notwithstanding Rule 7062 of the Federal Rules of Bankruptcy Procedure, made applicable to this case by Rule 1018 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: New York, New York
November 14, 2008

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
SemCanada Crude Company, *et al.*,	Case No. 09-12637 (BLS)
Applicants in Foreign Proceedings.	Jointly Administered

ORDER GRANTING RECOGNITION, ENFORCEMENT OF CANADIAN MEETINGS ORDER AND RELATED RELIEF

This matter was brought before the Court by Ernst & Young Inc., the court-appointed monitor (the "**Monitor**") and authorized foreign representative of SemCanada Crude Company, SemCAMS ULC and SemCanada Energy Company and certain of its subsidiaries, including A.E. Sharp Ltd. and CEG Energy Options, Inc. (together the "**SemCanada Group**") in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pending before the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Calgary Court**").

This Court has reviewed the Verified Petitions For Recognition of Foreign Proceedings which were filed on July 24, 2009 for each member of the SemCanada Group (collectively, the "**Chapter 15 Petitions**") commencing the above-captioned chapter 15 cases (collectively, the "**Chapter 15 Cases**") pursuant to sections 1504, 1515 and 1517 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**"), and seeking enforcement pursuant to sections 1507, 1521(a) and 105(a) of the Bankruptcy Code of the Canadian Creditors' Meetings Order of the Calgary Court (the "**Canadian Meetings Order**").

Due and timely notice of the filing of the Chapter 15 Petitions was given in accordance with this Court's order dated July 28, 2008, approving the form of notice and manner of service thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given. Based upon the Affidavit of Service of Paige Norfolk sworn to August 12, 2009, sufficient notice of the Chapter 15 Petitions has been given. The Monitor also filed notice of the Canadian Meetings Order on August 7, 2009 (docket no. 14 and annexed here as Exhibit 1) and served a copy of the notice on parties in interest as reflected in the Affidavit of Jennifer Parisi sworn to on August 11, 2009 (docket no. 15). No objections to the Chapter 15 Petitions or any of the relief sought thereby have been filed with the Court.

Therefore, after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

(A) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

(C) Venue is proper in this District pursuant to 28 U.S.C. §§ 1410(3).

(D) The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each member of the SemCanada Group within the meaning of section 101(24) of the Bankruptcy Code.

(E) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

(F) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

(G) The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code.

(H) The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

(I) The Canadian Proceedings are pending in Canada, which is the location of each member of the SemCanada Group's center of main interests, and as such, constitute foreign main proceedings pursuant to section 1502(4) of the Bankruptcy Code and are

entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

(J) The Monitor is entitled to all the relief provided by section 1520 of the Bankruptcy Code without limitation.

(K) The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

(L) The interest of the public will be served by this Court granting the relief requested by the Monitor.

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.

2. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, the stay under section 362 of the Bankruptcy Code throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The Canadian Meetings Order (as may be amended by the Calgary Court without objection from the Monitor, including any changes to the dates of the meetings of Canadian creditors and the Calgary Court's sanction hearing) is hereby given full force and effect in the United States and is binding on all persons subject to this court's jurisdiction pursuant to sections 1521(a)(7), 1507 and 105(a) of the Bankruptcy Code.

4. 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 Cases, 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.

5. Notice of entry of this order shall be served in accordance with this Court's prior order directing the manner of service and notice. Such service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

6. The Chapter 15 Petitions and the notices and orders in these cases shall be made available by the Monitor through its website at www.ey.com/ca/semcanadagroup, or upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Andrew Dove, (212) 610-6300, andrew.dove@allenovery.com.

7. Notwithstanding Bankruptcy Rule 7062, made applicable to these Chapter 15 Cases by Bankruptcy Rule 1018, this Order shall be immediately effective and enforceable upon its entry, and upon its entry, this Order shall become final and appealable.

Dated: Wilmington, Delaware
August 27, 2009

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARSHALL W. COLLINS, GARY DANNENBERG, THEODORE M. KOLER, and ELMER WALKER, Individually and on Behalf of All Others Similarly Situated

Plaintiffs,

-v-

OILSANDS QUEST INC. (f/k/a CANWEST PETROLEUM CORPORATION), CHRISTOPHER H. HOPKINS, T. MURRAY WILSON, KARIM HIRJI, GARTH WONG, RONALD PHILLIPS, THOMAS MILNE, GORDON TALLMAN, WILLIAM SCOTT THOMPSON, PAMELA WALLIN, JOHN READ, MCDANIEL & ASSOCIATES CONSULTINGS LTD. and TD SECURITIES, INC.,

Defendants.

11 Civ. 1288 (JSR)

ORDER

In re: OILSANDS QUEST INC., et.al.,

Applicants in Foreign Proceedings

Chapter 15
12-10476(JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

Pending before the Court are the Verified Petitions for Recognition of Foreign Proceedings and Related Relief filed by Ernst & Young, the bankruptcy monitor and authorized foreign representative (the "Monitor") of Oilsands Quest Inc. and certain of its subsidiaries (collectively "Oilsands"). The Monitor filed its petitions pursuant to Chapter 15 of the Bankruptcy Code, and seeks 1) recognition of certain bankruptcy proceedings pending before the Court of Queen's Bench of Alberta (the "Canadian Proceedings") as "foreign main

proceedings" under section 1517 of the Bankruptcy Code; 2)an Order giving full force in the United States to the Initial Order of the Court of Queen's Bench of Alberta and two subsequent orders (the "Alberta Orders"). The only contested parts of these orders are the stays of pending litigation against the individual officers and directors of Oilsands; 3)a stay of proceedings in the above-captioned civil case against McDaniel & Associates Consulting Ltd. ("McDaniel"), a former consultant to Oilsands.

For reasons that will be explained in a forthcoming written opinion, the Court hereby grants the Monitor's request that this Court recognize the Canadian Proceedings as foreign main proceedings and give full force and effect to the Alberta Orders. Moreover, the plaintiffs agreed at oral argument that if the Court granted the Monitor's request to enforce the Alberta Orders, it should also grant the Monitor's request to stay the above-captioned civil case against McDaniel. See Transcript of Oral Argument, Mar. 15, 2012. Therefore, the Monitor's petitions are granted in full. The Monitor is directed to promptly file with this Court any new orders signed by the Alberta Court. The above-captioned civil case, 11 Civ. 1288 (JSR) is stayed in its entirety until further order of this Court.

SO ORDERED.

Dated: New York, NY
March 29, 2012

JED S. RAKOFF, U.S.D.J.

Not Reported in F.Supp.2d, 1999 WL 111465 (E.D.Pa.), 33 Bankr.Ct.Dec. 1263
(Cite as: 1999 WL 111465 (E.D.Pa.))

United States District Court, E.D. Pennsylvania.
James B. SMITH, On Behalf of Himself and Others Similarly Situated, Plaintiff,
v.
DOMINION BRIDGE CORPORATION (f/k/a Cedar Group, Inc.), Michel L. MarengÈre and Nicolas Matossian, Defendants.

No. CIV. A. 96–7580.
March 2, 1999.

MEMORANDUM

REED.

***1** Before the Court is the motion of defendants Dominion Bridge Corporation ("DBC"), Michel L. Marengère, and Nicolas Matossian (collectively the "individual defendants") for stay of proceedings (Document No. 32). Based on the following analysis, the motion to stay will be granted.

I. BACKGROUND AND POSITIONS OF THE PARTIES

The following background on this class action is taken from the complaint and the Memorandum and Order of the Court dated March 5, 1998 granting the plaintiff's motion for class certification (Document No. 28). Cedar Group, Inc. was an international engineering, infrastructure, project management, aerospace and industrial metal transformation company. In August of 1996, Cedar changed its name to Dominion Bridge Corporation. Defendant Michel L. Marengère was DBC's Chairman of the Board and Chief Executive Officer, and defendant Nicolas Matossian was DBC's President, Chief Financial Officer, and Chief Operating Officer during the period of time relevant to this lawsuit. The common stock of DBC was traded publicly in the United States on the NASDAQ Stock Exchange and in Canada on the Vancouver Stock Exchange.

The plaintiffs allege that between April 20, 1995 and May 18, 1996, defendants failed to disclose to the investment community that DBC's construction contracts were at risk of either not being formed or being canceled, that DBC lost $40 million in contracts for fiscal 1996, that DBC suffered from a lack of adequate accounting controls, that DBC's financial status lacked credibility because of inaccurate and misleading accounting practices, and that the defendants had been accused of violations of federal securities law in a letter from a former executive. The *Montreal Gazette* published this information on May 18, 1996. In addition to DBC's failure to disclose, Smith alleges that DBC issued several misleading statements to the press touting the purported success and growth of DBC during this period.

Smith brought this class action in this Court on November 12, 1996 alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t, and Rule 10b–5, 17 C.F.R. 240.10b–5, which was promulgated thereunder. Marengère and Matossian resigned from DBC on April 28, 1998. (Marengère Declaration ¶ 3; Matossian Declaration ¶ 3).

The defendants filed the pending motion to stay the proceedings after DBC filed a notice of intention to file a proposal [FN1] pursuant to Canada's Bankruptcy and Insolvency Act ("BIA") § 50.4 in the Quebec Superior Court, Bankruptcy Division, District of Montréal, Canada on August 11, 1998. (Leduc Declaration ¶ 1). The defendants contend that under BIA § 69, the filing of the notice of intention automatically stayed the commencement or continuation of all suits, actions and proceedings against DBC, except by leave of the Canadian court. (Leduc Declaration ¶ 6; Pls.' Ex. A, Notice of Stay Order). The defendants argue that this Court should extend comity to the stay of the Canadian court and exercise its inherent power to stay the proceedings as to DBC in this lawsuit.

FN1. A notice of intention to file a proposal is an indication to creditors that the debtor is going to reorganize. (Pls.' Ex. C, Leduc Dep. at 11).

***2** Although the defendants acknowledge that

the stay issued by the Canadian court does not apply to the individual defendants in this lawsuit, the defendants seek to stay the proceedings against the individual, non-debtor defendants as well, in order to protect the interests of DBC. The defendants contend that any judgment against the individual defendants could have a collateral estoppel effect on the liability of DBC. In addition, under to the Certificate of Incorporation of DBC and agreements entered into between the individual defendants and DBC (Defs.' Exs. A, B, and C), the individual defendants contend that they are entitled to indemnity from DBC for any liability that they may incur as a result of this litigation. (Marengère Declaration ¶ 6; Matossian Declaration ¶ 6).

The plaintiffs argue that comity should not be extended to the Canadian stay and that this lawsuit should proceed against DBC. Alternatively, the plaintiffs argue that if the Court grants the stay as to the claims against DBC, it should be conditioned upon DBC's production of certain documents. The plaintiffs argue that a stay should not be granted as to their claims against the individual defendants as they are former officers and directors of DBC who are not involved in the reorganization efforts of DBC. In addition, the plaintiffs argue that no harm would incur to DBC if the case proceeds against the individual defendants as collateral estoppel would not apply to the claims against DBC and DBC has no duty to indemnify the individual defendants.

II. ANALYSIS

A. Extension of Comity to the Canadian Stay

A federal court has discretion to exercise its inherent power to stay the proceedings before it. *See I.J.A., Inc. v. Marine Holdings, Ltd.*, 524 F.Supp. 197, 198 (E.D.Pa.1981) (citing *Landis v. North American Co.*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). In general, a federal court should give effect to executive, legislative, and judicial acts of a foreign nation under the principle of international comity. *See Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A.*, 44 F.3d 187, 191 (3d Cir.1994). Comity 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, 163, 16 S.Ct. 139, 40 L.Ed. 95 (1895). Courts in the United States have long extended comity to foreign bankruptcy actions. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 714 (2d Cir.1987). According comity to a foreign bankruptcy proceeding enables "the assets of debtor to be disbursed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic, or piecemeal fashion." *Cunard S.S. Co. v. Salen Reefer Services A.B.*, 773 F.2d 452, 457–58 (2d Cir.1985). "Under general principles of comity ..., federal courts will recognize foreign bankruptcy proceedings provided the foreign laws comport with due process and fairly treat the claims of local creditors." *Victrix S.S. Co.*, 825 F.2d at 714. In *Philadelphia Gear Corp.*, the Court of Appeals for the Third Circuit concluded that a party seeking a stay of a judicial proceeding based on a foreign bankruptcy proceeding must demonstrate that "(1) the foreign bankruptcy court shares our policy of equal distribution of assets; and (2) the foreign law mandates the issuance or at least authorizes the request for the stay." 44 F.3d at 193.

***3** As a sister common law jurisdiction, courts have consistently extended comity to Canadian bankruptcy proceedings. *See In re Davis*, 191 B.R. 577, 587 (Bankr.S.D.N.Y.1996) (finding that the BIA "contains a comprehensive procedure for the orderly marshaling and equitable distribution of a Canadian debtor's assets which closely resembles that under the [Bankruptcy] Code"); *Cornfeld v. Investors Overseas Services, Ltd.*, 471 F.Supp. 1255, 1259 (S.D.N.Y.1979). The defendants submitted the declaration of René C. Leduc, the administrator acting on behalf of Arthur Andersen Inc. who was appointed trustee under DBC's proposal, which describes Canadian bankruptcy law. (Leduc Declaration ¶¶ 6, 9–20). Canadian law provides for equal distribution of assets and authorizes the stay of proceedings against an entity that has filed for bankruptcy protection. (Leduc Declaration ¶¶

9, 6). The provision for an automatic stay of proceedings against the debtor issued under Canadian law is analogous to 11 U.S.C. § 362, which provides for an automatic stay of the continuation or commencement of any action against a bankrupt. Moreover, there is no indication in the record that the proceedings instituted by DBC in Canada do not comport with American notions of due process or that extending comity here would be prejudicial to the interests of the plaintiffs or the United States. *See Philadelphia Gear Corporation,* 44 F.3d at 193 (noting that a court should consider (1) whether the court in which the proceedings were pending is a duly authorized tribunal, (2) whether the foreign bankruptcy code provides for equal treatment of creditors, (2) whether a stay would be in some manner "inimical to this country's policy of equality;" and (4) whether the creditor would be prejudiced by the stay).

The plaintiffs argue that the United States has an overriding public policy interest in enforcing its securities laws; however, deference may be given to foreign bankruptcy proceedings notwithstanding that the plaintiffs in this Court are Americans and the claims are based on the securities laws of this country. *See Lindner Fund, Inc. v. Polly Peck International PLC,* 143 B.R. 807, 810 (S.D.N.Y.1992) (extending comity to English bankruptcy proceedings by dismissing action claiming violations of the Security and Exchange Act of 1934 filed in the United States federal court against debtor on the grounds that dismissal "would further the public policies underlying the automatic stay provisions of the English Insolvency Act and the analogous provision of the United States Bankruptcy Code.").

These notions of international comity and the case law on the issue suggest that comity should be extended to the Canadian bankruptcy proceedings and the automatic stay issued by the Canadian court; accordingly, the motion to stay will be granted as to the proceedings against DBC.

B. Extension of Stay to Proceedings against Non–Debtor Defendants

***4** Neither the stay entered by the Canadian court nor the automatic stay provision of § 362(a) apply to non-bankrupt co-defendants of the debtor, such as the individual defendants in this case. *See United National Insurance Company v. Equipment Managers, Inc.,* No. 95–0116, 1997 WL 241152, *3 (E.D.Pa. May 6, 1997). However, under certain "unusual circumstances," [FN2] courts have stayed proceedings against non-debtor co-defendants in cases in which the claims against the debtor were automatically stayed. *See McCartney v. Integra Nat'l Bank North,* 106 F.3d 506, 510 (3d Cir.1997). "Unusual circumstances" exist when "there is such identity between the debtor and third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third party defendant will in effect be a judgment or finding against the debtor" or where the protection of a stay is essential to the debtor's reorganization efforts. *Id.* (quoting *A.H. Robins Co., Inc. v. Piccinin,* 788 F.2d 994, 999 (4th Cir.), *cert. denied,* 479 U.S. 876 (1986)). Similarly, many bankruptcy courts have issued preliminary injunctions pursuant to 11 U.S.C. § 105(a), [FN3] staying the prosecution of actions against non-debtor defendants who were officers or directors of the debtor. *See e.g., In re American Film Technologies, Inc.,* 175 B.R. 847, 850 (Bankr.D.Del.1994) (citing cases).

FN2. There is some disagreement as to whether under "unusual circumstances," the stay provisions of § 362 apply automatically to non-debtor co-defendants or if the stay provisions must be extended by court order. *See In re Bidermann Industries U.S.A., Inc.,* 200 B.R. 779, 782 (Bankr.S.D.N.Y.1996). There is no need to address this issue here as the Court is only considering the automatic stay by analogy in determining whether to exercise its inherent power to stay proceedings before it.

FN3. The plaintiffs argue that the Court should apply the standard for a preliminary injunction to determine whether to stay the proceedings against the individual defendants. However, the cases which the plaintiffs cite concern a court's

> power to issue an injunction staying proceedings in other courts pursuant to § 105. As the motion requests that this Court stay proceedings before it pursuant to its inherent power to stay, the defendants do not need to satisfy the requirements for a preliminary injunction to obtain a stay in this Court.

In *United National Insurance*, the court, in the context of considering a motion to sever the claims against individual, non-debtor defendants, considered four factors that have been used to determine whether a court should proceed without a party whose absence from the litigation is compelled by other reasons: "(1) the plaintiff's interest in having a forum and whether or not plaintiff has a satisfactory alternative forum; (2) whether the defendant may wish to avoid multiple litigation or inconsistent relief or sole responsibility for liability he shares with another; (3) the interest of the outsider whom it would have been desirable to join and the extent to which the judgment may, as a practical matter, impair or impede the absent party's ability to protect his interest; and (4) the interest of the courts and the public in the complete, consistent and efficient settlement of controversies." 1997 WL 241152 at *3 (citing *Cushman and Wakefield, Inc. v. Backos*, 129 B.R. 35, 36 (E.D.Pa.1991)). Consideration of these factors is helpful in determining whether unusual circumstances exist such that the proceedings against the individual defendants should be stayed.

As to the first factor, because this is a motion to stay the proceedings not a motion to dismiss, the plaintiffs retain this Court as the forum in which to bring their claims, even if they are unable to bring their claims before the bankruptcy court in Canada. Extending the stay to all defendants does not shield any of the defendants from liability, but rather merely delays the proceedings until DBC can submit and implement a reorganization plan to its creditors. The interests in avoiding multiple proceedings and potentially inconsistent relief and in the efficient resolution of claims, represented in the second and fourth factors, weigh in favor of extending the stay to the claims against the individual defendants.

***5** As to the third factor, given the fact that the individual defendants were officers of DBC at the time of the allegations of plaintiffs and that the claims against the individual defendants arise out of the same factual basis as the claims against DBC, I conclude that DBC will not be able to adequately protect its interests if it is not present while the case proceeds against the individual defendants. Two issues contribute to this potential hindrance to DBC: the possible operation of collateral estoppel and DBC's potential duty to indemnify the individual defendants. If this case is allowed to proceed against the individual defendants, collateral estoppel may prevent DBC from litigating factual and legal issues critical to the claims of the plaintiffs against it. *See In re Johns–Manville Corporation*, 26 B.R. 420, 429 (Bankr.S.D.N.Y.1983) (extending the automatic stay to enjoin a security holders' class action suit against various employees and agents of a debtor, noting the risk that the corporate debtor "would be found to be a controlling nonparty ... [and] thus could be collaterally estopped in subsequent suits from relitigating issues determined against its officers and directors"), *vacated in part on other grounds*, 41 B.R. 926 (S.D.N.Y.1984).

The parties disagree as to whether the individual defendants have a right to indemnification by DBC for any liability they may incur in this lawsuit. Because it is possible that DBC may be required to indemnify the individual defendants for any liability they incur as a result of this lawsuit and in the least, it would be in DBC's interest to protect itself in the proceedings against the individual defendants in case its duty to indemnify is later established, continuing with the claims against the individual defendants in the absence of DBC would undermine the purpose of granting the stay as to the claims against DBC. Indeed, it is likely that DBC would have to focus some of its efforts on the defense of these individual defendants to protect its interests, which would detract from its ability to successfully reorganize.

All four of the factors discussed in *United National Insurance* weigh in favor of staying the

proceedings against the individual defendants. In addition, the case law addressing this issue under similar facts supports the same conclusion. *See e.g.*, *Allstate Life Insurance Co. v. Linter Group Ltd.*, 994 F.2d 996, 1000 (2d Cir.1993) (affirming the lower court's dismissal of suit against individual, non-debtor defendants and noted that "since these individuals were sued solely because of their affiliation with the [debtor], to allow these claims to go forward in the United States despite the dismissal as to the [debtor] would defeat the purpose of granting comity in the first place"); *United National Insurance*, 1997 WL 241152 at *4 (denying motion to sever case against individual defendants and proceed to trial and noting that "where wrongful conduct by officers and agents of a corporation and the corporation itself are alleged, there is great potential for the interest of [the debtor] to be impaired or impeded if the case were to proceed against the individual defendants"). Because I find that unusual circumstances exist such that there is identify between DBC and the individual defendants such that DBC may be said to be the real party defendant and a stay is necessary to DBC's reorganization efforts, the motion to stay as to the claims against the individual defendants will be granted.

C. Request for Discovery

***6** The plaintiffs request that this Court require DBC to produce certain documents that the plaintiffs argue DBC agreed to produce in July of 1998 before it filed for bankruptcy protection in Canada. Because I conclude that the plaintiffs will not suffer prejudice if discovery is delayed and that requiring DBC to proceed with document production in this lawsuit during its efforts to reorganize would defeat the purpose in extending comity to the Canadian stay in the first place, the request will be denied.

IV. CONCLUSION

Based on the foregoing analysis, the motion to stay will be granted. The request of plaintiffs that this Court condition the stay on the production of certain documents by DBC will be denied.

An appropriate Order follows.

ORDER

AND NOW, this 2nd day of March, 1999, upon consideration of the motion of defendants for stay of proceedings (Document No. 32), the response of the plaintiffs thereto (Document No. 35), and the reply of the defendants (Document No. 36), and for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that the motion is GRANTED and the proceedings in this Court are STAYED until further order of the Court. The parties shall notify the Court when the automatic stay imposed by the Canadian bankruptcy court is lifted.

IT IS FURTHER ORDERED THAT the request of the plaintiffs that the stay be conditioned on the production of certain documents by Dominion Bridge Corporation is DENIED.

IT IS FURTHER ORDERED that the Clerk shall place this case on the civil suspension docket of this Court.

E.D.Pa.,1999.
Smith v. Dominion Bridge Corp.
Not Reported in F.Supp.2d, 1999 WL 111465 (E.D.Pa.), 33 Bankr.Ct.Dec. 1263

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