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ATTORNEYS FOR CANADIAN RECEIVER

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

In re:	§	
	§	Case No. 19-33868-15
EAGLE ENERGY INC.¹	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Jointly Administered

**RECEIVER’S MOTION TO CLOSE CASE WITH FINAL REPORT
PURSUANT TO FED. R. BANKR. P. 5009(C)**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, ROOM 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON APRIL 12, 2021, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH

¹ The Debtors are: (1) Eagle Energy Inc., (2) Eagle Energy Trust, (3) Eagle Energy Holdings Inc., and (4) Eagle Hydrocarbons Inc.

HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

Now comes FTI Consulting Canada Inc. (“**FTI**”) solely in its capacity as court-appointed receiver and foreign representative (the “**Receiver**”) of (1) Eagle Energy Inc. (“**Eagle Energy**”), (2) Eagle Energy Trust (“**Eagle Trust**”), Eagle Energy Holdings Inc. (“**Eagle Holdings**”), and Eagle Hydrocarbons Inc. (“**Eagle Hydrocarbons**”) (collectively, referred to as the “**Debtors**”), based upon the Receivership Order (defined below) dated November 19, 2019, entered by the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada under Canada’s Bankruptcy and Insolvency Act, and as authorized foreign representative of the above-captioned Debtors, and files this *Receiver’s Motion To Close Case With Final Report Pursuant To Fed. R. Bankr. P. 5009(c)* (“**Motion and Final Report**”) and states:

I.
INTRODUCTION

1. The Receiver is the authorized foreign representative from a Canadian proceeding of the above-captioned Chapter 15 debtors. The Receiver submits that the purpose of the Receiver’s appearance in this Court has been completed and, therefore, files this final report and seeks closure of the above-referenced, jointly administered chapter 15 bankruptcy.

II.
JURISDICTION, CORE PROCEEDING, VENUE, AND STATUTORY PREDICATES

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

3. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a), 350 and 1517, and Fed. R. Bankr. P. 5009(c).

III.
SUPPORT FOR THIS MOTION AND FINAL REPORT

4. The Receiver relies on the record in this case, including judicial notice of the filings in this case and any evidence provided at any hearing on this Motion and Final Report. Specifically, the Receiver relies on **Exhibit A** “Receiver’s Third Report”, and **Exhibit B** ORDER (Re: Conditional Discharge of Receiver).¹

IV.
FINAL REPORT

A. Canadian Proceedings

5. On November 19, 2019, White Oak Global Advisors, LLC, in its capacity as the administrative agent (in such capacity, the “**Agent**”) under that certain Loan and Security Agreement dated as of March 13, 2017 (as amended, modified, or supplemented, the “**Loan Agreement**”), for itself and on behalf of a group of lenders on whose behalf White Oak Global Advisors, LLC signed (collectively, and in such capacity, the “**Lenders**”), filed an Application in the Canadian Proceedings seeking the appointment of FTI as receiver under section 243 of the Bankruptcy and Insolvency Act (the “**BIA**”), RSC 1985 c B-3 and section 13(2) of the Judicature Act, RSA 2000 c J-2 in the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary (the “**Canadian Court**”) in the proceeding styled In the Matter of the Receivership of Eagle Energy Inc. et. al, Alberta Court of Queen’s Bench File No. 1901-16293 (the “**Canadian Proceedings**”). [Dkt. No. 35, p. 2, ¶B].

¹ Due to their volume, Exhibits are not being served with this Motion. Copies of Exhibits may be obtained by going to the Receiver’s website at <http://cfcanada.fticonsulting.com/EagleEnergy>.

6. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.¹ The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations. The BIA also authorizes a court to appoint a receiver upon a secured creditor's application. *Id.* § 243(1). Such court-appointed receivers are given a mandate and specific powers as set out in the order appointing the receiver. These duties typically include: (1) taking possession and control of the property and assets of the debtor; (2) marketing and selling such property and assets in a commercially reasonable manner (whether as a going concern, en-bloc, or otherwise) and under the supervision and approval of the appointing court; and (3) distributing the proceeds of such sales to the stakeholders in accordance with the legal entitlement. The appointing court has broad discretion to authorize the receiver to "take any other action that the court considers advisable." *Id.* § 243(1)(c). A court-appointed receiver under the BIA is a "national" receiver, meaning that a receiver administers assets in each of Canadian's ten provinces and three territories, typically without further order of provincial courts. The BIA and its related legislation (the Companies' Creditors Arrangement Act) are federal legislation. But provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters, similar to the interplay between state and federal law in the United States. Nonetheless, the BIA provides a statutory framework for a court-appointed receiver to carry out its mandate on a national basis rather than relying on the various provincial statutes or courts for its authority. The Judicature Act authorizes the Court to appoint a receiver where it is "just and convenient" on any terms and conditions the Court

¹ The second federal legislation in Canada concerning bankruptcies and insolvencies is the Companies' Creditors Arrangement Act ("CCAA"), which affords financially troubled corporations the opportunity to restructure their financial affairs through a "Plan of Arrangement." Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.). The CCAA process is akin to chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure operations rather than liquidate. *See In re Fracmaster, Ltd.*, 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).

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

7. On November 19, 2019, the Canadian Court, Honorable Justice R.A. Neufeld, granted a receivership order in Alberta Court of Queen’s Bench File No. Court File No. 1901-16293 (the “**Receivership Order**”) appointing FTI as the Receiver and manager of the Debtors. [Dkt. No. 35, p. 2, ¶C.].

B. The Chapter 15 Cases

8. On November 20, 2019 (the “**Petition Date**”), the Receiver filed Official Form No. 401 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. §§ 1504, 1509(a) and 1515(a), commencing the above-referenced chapter 15 cases (the “**Chapter 15 Cases**”) [Dkt. No. 35, p. 2, ¶D.].

9. On December 5, 2019, this Court entered *Order (I) Granting Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief And (II) Authorizing Receiver’s Limited Use Of Cash Collateral* (“**Recognition Order**”). [Dkt. No. 35].

10. Among other things, the Recognition Order provides that:

The Receiver is the duly appointed foreign representative of the Debtors within the meaning of Section 101(24) of the Bankruptcy Code. [Dkt. No. 35, p. 3 ¶H].

The Canadian Proceedings are entitled to recognition as foreign main proceedings pursuant to Sections 1502(4) and 1517(b)(1) of the Bankruptcy Code with respect to each of the Debtors. [Dkt. No. 35, p. 3 ¶L].

Sections 363, 549 and 552 of the Bankruptcy Code apply to a transfer of an interest of the Debtors in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate. [Dkt. No. 35, p. 4 ¶3(b)].

The Receiver may, but is not obligated to, operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by 11 U.S.C. §§ 363 and 552. [Dkt. No. 35, p. 4 ¶3(c)].

C. Sale of Assets

11. On February 11, 2020, the Receiver filed in the Canadian Court an *Application Approval of Sale Process and Order Sealing* (the "**Canadian Application**") requesting authorization to implement the Sale Process (as defined in the Canadian Application).

12. On February 12, 2020, the Receiver filed in this Court *Receiver's Expedited Motion For Approval Of Sale Process* (the "**U.S. Application**") requesting approval of the Sale Process for the assets of the Debtors located in the territorial jurisdiction of the United States. [Dkt. No. 48].

13. On February 20, 2020, the Canadian Court entered an *Order Approval of Engagement and Sale Process* ("**Canadian Sale Process Order**") authorizing and directing the Receiver to implement the Sale Process in respect of the Debtors.

14. On February 24, 2020, this Court entered *Order Granting Receiver's Expedited Motion for Approval of Sale Process* (the "**Sale Process Order**") approving, among other things, the Sale Process for U.S. Assets. [Dkt. No. 57].

15. After following the sales process, on May 29, 2020, the Receiver filed with the Canadian Court an *Amended Application (Sale of Eagle Hydrocarbons Inc. Assets to White Oak Global Advisors LLC)* ("**Canadian Sale Motion**") with respect to the sale of the U.S. Assets.

16. On June 2, 2020, the Canadian Court held a hearing on the Canadian Sale Motion, and signed the *Sale Approval and Vesting Order (Sale by Receiver)* ("**Canadian Sale Order**").

17. On June 3, 2020, the Receiver filed *Receiver's Expedited Motion For Order (I) Approving Sale Of Certain Of The Debtors' United States Assets Free And Clear Of Liens, Claims, Encumbrances, And Interests, (II) Recognizing And Giving Full Force And Effect To The Order Of The Canadian Court Approving The Sale Of Such Assets, And (III) Granting Related Relief* (“**Sale Motion**”). [Dkt. No. 69].

18. On June 26, 2020, the Court entered *Order (I) Approving The Sale Of Certain Of The Debtors' United States Assets Free And Clear Of Liens, Claims, Encumbrances, And Interests, (II) Recognizing And Giving Full Force And Effect To The Order Of The Canadian Court Approving The Sale Of Such Assets, And (III) Granting Related Relief* (“**Sale Order**”) [Dkt. No. 80]. The Sale Order approved the sale of the Debtors' assets located in the United States free and clear of all liens, claims, encumbrances, and other interests other than permitted encumbrances and assumed liabilities, subject to and in accordance with the terms and conditions of a Purchase and Sale Agreement to purchaser Aguila Energy, LLC. The sale transaction was a “credit bid” sale to the Agent under the Loan Agreement, because the purchaser is a Delaware limited liability company that is an affiliate of the Agent.

D. Canadian Proceedings Completed

19. On June 29, 2020, the Receiver filed with the Canadian Court its *Third Report Of FTI Consulting Canada Inc., In Its Capacity As Court-Appointed Receiver And Manager Of Eagle Energy Inc., Eagle Energy Trust, Eagle Energy Holdings Inc., And Eagle Hydrocarbons Inc.* (“**Receiver's Third Report**”). Exhibit A. The Receiver's Third Report, which was made available on the Receiver's website at <http://cfcanada.fticonsulting.com/EagleEnergy> provides a detailed background of the activities of the Receiver in winding up the remaining affairs of the Debtors, including a statement of receipts and disbursements since the Receiver's appointment.

20. On July 2, 2020, the Canadian Court entered an *ORDER (Re: Conditional Discharge of Receiver)*, which provides, among other things:

7. Upon the filing of the Receiver's Completion Certificate certifying that the Remaining Tasks, as such term is defined in the Third Report, have been completed, the Receiver shall be discharged as Receiver of the Debtors, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver. For greater certainty, in the event the Receiver does not file the Completion Certificate, the Receiver shall not be discharged until further Order of this Court.

Exhibit B.

21. The Receiver shall file its Completion Certificate after entry of the Final Order in this Chapter 15 case.

V.
ARGUMENT AND AUTHORITIES

A. Comity for Canadian Discharge Order

22. The Canadian Discharge Order provides in pertinent part:

10. This Court **hereby requests the aid and recognition** of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province **or any court** or any judicial, regulatory or administrative body **of any other nation** or state, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order.

Dkt. 51 at Ex C-000003 [emphasis added].

23. This Court has found that that the Canadian Proceedings are foreign main proceedings. Upon recognition of a foreign proceeding under 11 U.S.C. § 1517, a U.S. court must grant comity or cooperation to the foreign representative. *Id.* § 1509(b)(3). This requirement is subject to any limitations that the court may impose consistent with the policy of

chapter 15. *Id.* §§ 1509(b); 1506. Consistent with § 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee. *Id.* § 1525(a).

24. With respect to a case under chapter 15 of the Bankruptcy Code, upon recognition of a foreign proceeding, courts “may provide additional assistance to a foreign representative under this title” considering “whether such additional assistance, consistent with the principles of comity, will reasonably assure . . . the just treatment of all holders of claims against or interests in the debtor’s property [and] the protection of claim holders in the United States against prejudice and inconvenience.” 11 U.S.C. § 1507.

25. Moreover, upon recognition of a foreign proceeding, “any appropriate relief” may be granted “where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1521(a).

26. A central tenet of chapter 15 is the importance of comity in cross-border insolvency proceedings. *Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB De CV (In re Vitro SAB De CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The Supreme Court defined comity over a century ago as follows:

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

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

27. The exceptions to comity are construed especially narrowly when the foreign jurisdiction is like Canada, a sister common law jurisdiction with procedures akin to those in the United States. *Clarkson Co. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (holding that not

recognizing the Canadian judgment at issue would contravene the public policy of New York); *In re Petition of Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) (“Courts in the United States uniformly grant comity to Canadian proceedings . . . consistent with the treatment accorded by federal courts to foreign proceedings in ‘sister common law jurisdictions.’”).

28. The extension of comity to Canadian orders has continued since the 2005 enactment of Chapter 15. *Raymond Chabot, Inc. v. Serge Côté Family Trust*, No. 6:14-cv-03392, 2014 U.S. Dist. LEXIS 117128, at *6 (D.S.C. Aug. 22, 2014) (entering temporary restraining order assisting Canadian bankruptcy receiver and noting “the widely-accepted view that Canadian judgments are entitled to recognition and enforcement here”); *Collins v. Oilsands Quest, Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012) (holding that comity required deference to the procedures set forth in the Canadian insolvency proceeding and enforcement of the stay granted by the Canadian court and not a redetermination of whether a stay should have issued at all); *In re Metcalfe & Mansfield*, 421 B.R. 685, 698–99 (Bankr. S.D.N.Y. 2010) (extending comity to Canadian CCAA order providing for a third party release and citing numerous cases where American courts have extended comity to Canadian judgments).

29. Based on the foregoing, the Receiver seeks an order granting comity to the Canadian Discharge Order.

B. Closing of a Chapter 15 Case

30. A case under Chapter 15 may be closed in the manner prescribed under 11 U.S.C. § 350. 11 U.S.C. § 1517(d). After an estate is fully administered and the court has discharged the trustee, the court shall close the case. 11 U.S.C. § 350(a).

31. Bankruptcy Code § 105(a) empowers courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of chapter 15 is to promote cooperation between courts of the United States

and courts of foreign countries involved in cross-border insolvency cases. 11 U.S.C. § 1501(a)(1). Consistent with Bankruptcy Code § 1501, Bankruptcy Code § 1525(a) requires that courts “cooperate to the maximum extent possible with a foreign court or a foreign representative.” 11 U.S.C. § 1525(a).

32. Fed. R. Bankr. P. 5009(c) concerns the requirements for closing a Chapter 15 case. It provides:

(c) Cases under chapter 15. A foreign representative in a proceeding recognized under § 1517 of the Code [11 USCS § 1517] shall file a final report when the purpose of the representative’s appearance in the court is completed. The report shall describe the nature and results of the representative’s activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

Fed. R. Bankr. P. 5009(c).

33. The purpose of the Receiver’s appearance as foreign representative of the Debtors is completed. This Motion, along with the Canadian Discharge Application and the Third Report, shall serve as a Final Report describing the nature and results of the Receiver’s activities in the court.

34. The Receiver has administered the assets of the Debtors. This Motion and Final Report requests an Order approving of the final distributions by the Receiver of the assets of the Debtors and constituting a bar of any party in interest asserting claims against the Debtors’ assets or the Receiver.

35. The only remaining duties of the Receiver are to complete and close Chapter 15 proceedings, complete certain administrative matters including completing final estate

accounting and record keeping, updating Receiver's website with Court and other materials and completing various statutory filings with respect to the Canadian proceedings.

C. Service of this Motion and Final Report

36. Pursuant to Fed. R. Bankr. P. 5009(c), the Receiver is transmitting this Motion and Final Report to the United States Trustee, and giving notice of its filing to the Debtors, all persons or bodies authorized to administer foreign proceedings of the Debtors, all parties to litigation pending in the United States in which the Debtors were a party at the time of the filing of the petition, and such other entities as the Court may direct. The Receiver will file a certificate with this Court that such notice has been given.

VI.
PRAYER

WHEREFORE, the Receiver respectfully requests that the Court enter the Proposed Form of Order Granting Receiver's Motion To Close Case With Final Report Pursuant To Fed. R. Bankr. P. 5009(c), granting the relief requested herein; and for all other relief, at law or in equity, to which the Receiver is justly entitled.

Dated: March 19, 2021

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/Steve A. Peirce

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COUNSEL FOR CANADIAN RECEIVER

CERTIFICATE OF SERVICE

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

/s/Steve A. Peirce