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HON. SAMUEL J. STEINER  
Chapter 15  
HEARING DATE:  
HEARING TIME:  
RESPONSE DEADLINE:

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re  
  
DELOITTE & TOUCHE, INC.  
as Foreign Representative of  
  
EVERGREEN GAMING CORP.,  
Debtor in a Foreign Proceeding.

Case No. 09-13567 (SJS)  
  
APPLICATION FOR RECOGNITION  
OF FOREIGN MAIN PROCEEDING  
AND MEMORANDUM OF LAW IN  
SUPPORT THEREOF

Deloitte & Touche, Inc., by and through its designated representative and Senior Vice President, Jervis Rodregues, (“Deloitte” or the “Monitor”) respectfully applies to this Court for entry of an order (the “Recognition Order”) pursuant to 11 U.S.C. §§ 105(a), 1504, 1507, 1515, 1517, 1519, 1520 and 1521 recognizing the Monitor as a Foreign Representative, as defined in 11 U.S.C. 101(24) and the CCAA Proceeding (as defined below) as a foreign main proceeding pursuant to 11 U.S.C. §1502(4). Alternatively, if for any reason the Court finds that CCAA Proceeding is not eligible for recognition as a foreign main proceeding, the Monitor seeks recognition of the CCAA Proceeding as a foreign nonmain proceeding, as defined in §1502(5), and relief under §§1521(a) and (b) of the Code.

APPLICATION FOR RECOGNITION OF  
FOREIGN MAIN PROCEEDING – 1

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Phone: 206.359.8000  
Fax: 206.359.9000

1 This Petition is supported by the files and records herein, the accompanying  
2  
3 Declaration of Jervis Rodrigues in Support of Application for Recognition of Foreign  
4  
5 Proceeding (the “Rodrigues Declaration”), the Declaration of Cory Coyle In Support of  
6  
7 Application for Recognition of Foreign Proceeding (the “Coyle Declaration”), the  
8  
9 Declaration of John Sandrelli Concerning Canadian Law (the “Sandrelli Declaration”), and  
10  
11 the exhibits attached thereto. The Monitor has submitted all documents required by  
12  
13 11 U.S.C. §1515.<sup>1</sup>  
14

15 **I. STATEMENT OF FACTS**  
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17 Chapter 15 applies where, as here, assistance is sought in the United States by a  
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19 foreign representative, such as the Monitor, in connection with a foreign proceeding.  
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21 11 U.S.C. §1501(b)(1). The chapter 15 petition in this case, (and each of the related chapter  
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23 15 petitions) has been filed for the purpose of obtaining the assistance of this Court to ensure  
24  
25 the orderly reorganization of Evergreen Gaming Corporation and its subsidiaries, and the  
26  
27 effective and economical implementation of the CCAA Proceeding now pending in British  
28  
29 Columbia.  
30

31 **A. The CCAA Proceeding in Canada.**  
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34 On April 15, 2009, Evergreen Gaming Corporation (“Evergreen” or the “Debtor”)  
35  
36 and nineteen Canadian and American affiliates (collectively, the “Evergreen Group” or the  
37  
38 “Debtors”) filed a consolidated voluntary petition in the Supreme Court of British Columbia,  
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<sup>1</sup> By separate motion the Monitor seeks entry of an emergency order pursuant to 11 U.S.C. §§1519, 105 and  
43 362(a) staying all actions against the Evergreen Group (as defined below) or property of the any individual  
44 debtor therein within the territorial jurisdiction of the United States, and all actions to create, perfect or enforce  
45 any lien against property of the debtors’ estate pending entry of the Recognition Order pursuant to §1517 and  
46 the granting of permanent relief pursuant to 11 U.S.C. §§1520 and 1521.  
47

1 Canada under the Canadian Companies' Creditors Arrangement Act (the "CCAA"), R.S. C.  
2  
3 1985, c.C-36 and C-44 and the Business Corporations Act, S.B.C. 2002, c.57 (the "CCAA  
4 Proceeding").<sup>2</sup> Sandrelli declaration at ¶ 2. By order entered that same day, the Supreme  
5 Court of British Columbia appointed Deloitte & Touche Inc. as Monitor for all Debtors in  
6  
7 the CCAA Proceeding. Id. at ¶ 3. A certified copy of the order (i) granting relief under the  
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9 CCAA, (ii) appointing Deloitte & Touche Inc. as the Monitor and (iii) authorizing the  
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11 Monitor to commence this Chapter 15 Proceeding (the "CCAA Order") is attached to the  
12  
13 Chapter 15 Petition filed by the Monitor. Rodrigues Declaration, ¶ 2, Exhibit A.  
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17 Under the terms of the CCAA Order, the Monitor is appointed as an officer of the  
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19 Court, to monitor the Debtor's Property and conduct of its Business, each as defined in the  
20  
21 CCAA Order, with the powers and obligations set out in the CCAA or set forth in the Order.  
22  
23 The Debtors in the CCAA Proceeding and their shareholders, officers, directors, and  
24  
25 assistants must cooperate fully with the Monitor in the exercise of its powers and rights and  
26  
27 discharge of its obligations. Rodrigues Declaration at Exhibit A.  
28

29 The CCAA Order further provides that the Monitor is at liberty and authorized and  
30  
31 empowered to apply to any court, tribunal, regulatory or administrative body, wherever  
32  
33 located, for the recognition of the Order and for assistance in carrying out the terms of the  
34  
35 Order. In particular, the Monitor and the Debtors are each authorized to apply to the United  
36  
37 States Bankruptcy Court for relief pursuant to Chapter 15 of the Bankruptcy Code. Id.  
38

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40 \_\_\_\_\_  
41 <sup>2</sup> The "Evergreen Group" consists of Evergreen Gaming Corporation, the parent company, and the following  
42 direct and indirect subsidiaries: EGC Holdings Ltd., EGC Properties Ltd., Frank Sisson's Silver Dollar Ltd.,  
43 Washington Gaming, Inc., Big Nevada, Inc., Little Nevada II, Inc., Little Nevada III, Inc., Silver Dollar Mill  
44 Creek, Inc., Golden Nugget Tukwila, Inc., Shoreline Gaming, Inc., Little Nevada, Inc., Snohomish Gaming  
45 Inc., Hollydrift Gaming, Inc., Royal Casino Holdings, Inc., Gameco, Inc., Gaming Management Inc., Gaming  
46 Consultants, Inc., Shoreline Holdings Inc., and Mill Creek Gaming, Inc. With the exception of EGC Holdings  
47 Ltd., EGC Properties Ltd., and Frank Sisson's Silver Dollar Ltd., each of the entities has filed chapter 15 a  
petition in this Court.

1                   **B. The Debtor’s Organization, the Nature of Its Businesses and the Center**  
2                   **of Main Interests.**  
3

4                   Evergreen Gaming Corp. (“Evergreen”), formerly Transec Enterprise Corp., is a  
5 Canadian corporation, organized and existing under the laws of the Province of British  
6 Columbia. Evergreen was incorporated under the Business Corporations Act, S.B.C. 2002  
7 c. 57, in 1979, and is a public company, listed on the Toronto TSX Venture Exchange (TSX-  
8 TNS-V). Evergreen has a registered address of 700-595 Howe Street, Vancouver BC V6C  
9 2T5, and a primary business office at 11331 Coppersmith Way, in Richmond, B.C. Directly  
10 or indirectly, Evergreen owns 100% of the stock in all but one member of the Evergreen  
11 Group, which consists of a total of twenty (20) entities in British Columbia, Alberta and  
12 western Washington.<sup>3</sup> Evergreen prepares financial statements on a consolidated basis for  
13 all of its subsidiaries for purposes of Canadian Securities law compliance. Evergreen  
14 Group’s chief executive officer, Daniel Sutherland, and its President, Norman Osatuik,  
15 reside in British Columbia, and its Vice Presidents and three of four members of its Board of  
16 Directors. All Board of Directors meetings take place in Canada Coyle Declaration at ¶ 5.  
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30                   The business of the Evergreen Group is owning and operating casinos and house-  
31 banked card rooms, and it owns related real estate and casino management and service  
32 businesses in Alberta, Canada and the United States. Evergreen’s primary assets are the  
33 stock in its subsidiaries, each of which either operates a casino or provides related services.  
34 Evergreen’s largest single asset is Silver Dollar Casino, a 100,000 square foot casino and  
35 entertainment complex in Calgary, Alberta, featuring slot machines, gaming tables, lottery  
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44                   <sup>3</sup> Washington Gaming, Inc. is a wholly owned subsidiary of Evergreen Gaming, Inc.; each of the Washington  
45 subsidiaries except Shoreline Gaming, Inc. is a wholly owned subsidiary of Washington Gaming. 50% of the  
46 stock in Shoreline Gaming, Inc., dba Golden Nugget Casino is owned by Michael McCarthy, a resident of  
47 Washington. The other 50% is held by Washington Gaming.

1 terminals, a 38-lane bowling alley, a 1,200 seat live entertainment facility and numerous  
2 related food and beverage service outlets.. Coyle Declaration, ¶ 6.  
3

4  
5 By comparison, the Washington subsidiary operations are each limited to no more  
6 than 15 gaming tables, and some have as few as six tables. The largest Washington card  
7 room (Club Hollywood) is less than one-fourth (1/4) the size of the Calgary casino and one,  
8 the Golden Nugget Casino in Tukwila, is only forty-five hundred square feet; none of the  
9 Washington casinos have slot machines, and none of them have bowling alleys or live  
10 entertainment facilities. Id. at ¶ 7.  
11  
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13  
14 Although Evergreen subsidiaries operate ten casinos in King and Snohomish  
15 Counties,<sup>4</sup> the Evergreen Group's headquarters, where all significant business decisions are  
16 made, is in British Columbia, and the business is an integrated international enterprise that is  
17 owned by a publicly traded Canadian company. Evergreen's default on the Fortress loan (as  
18 discussed below) and its overall plan for organization of the Evergreen Group's business  
19 will be the focus and purpose of the CCAA Proceeding.  
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29 **C The Debtors' Financial Condition**

30 On October 2, 2007, Evergreen and Fortress Credit Corp. (Fortress), as agent for the  
31 Lenders and as a Lender itself, entered into a Credit Agreement pursuant to which the  
32 Lenders extended to Evergreen approximately US\$29 million in credit (the "Secured Debt").  
33 The total Secured Debt now alleged to be due, including principal, interest, fees and costs, is  
34 approximately \$30.1 million. The Secured Debt is guaranteed by the each member of the  
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<sup>4</sup> The operating Washington casinos are The Silver Dollar Casino – Seattle (Big Nevada, Inc); Silver Dollar Casino Tukwila and Silver Dollar Casino – Renton (Little Nevada, Inc.); Silver Dollar Casino - Mill Creek (Silver Dollar Mill Creek, Inc.); Golden Nugget Casino – Tukwila (Golden Nugget Casino Tukwila, Inc.); Golden Nugget Casino – Shoreline (Shoreline Gaming, Inc.); Royal Casino (Snohomish Gaming, Inc.); Hollywood Casino and Drift On Inn Casino (Hollydrift Gaming, Inc.) and Riverside Casino (Mountlake Gaming, Inc.). Each of these entities is a Washington corporation and all except Mountlake Gaming, Inc is a Debtor in the CCAA Proceeding and has filed a chapter 15 petition.

1 Evergreen Group, and is secured in part by a lien on substantially all of the Debtors' assets,  
2 including all deposit accounts held with any bank or financial institution. Fortress and the  
3 Washington State subsidiaries are also party to a Deposit Account Control Agreement with  
4 Banner Bank, the Debtors' Washington depository bank, under which Fortress has the right  
5 to seize control over all of the Debtors' bank accounts, including main accounts, payroll  
6 accounts and ATM accounts. Coyle Declaration at ¶ 9.  
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13 On April 1, 2009, Fortress served a Notice of Default and Acceleration on Evergreen  
14 and simultaneously served a Notice of Demand under Guaranty (the "Demand") on the  
15 Debtor, threatening to foreclose on its collateral if the Demand is not satisfied. Coyle  
16 Declaration, ¶ 10 and Exhibit A.  
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21 The Debtors' ordinary course business operations are essentially solid. All Debtors  
22 are substantially current on all trade debt and tax obligations, the employees have been and  
23 continue to be paid regularly, and the Washington subsidiaries are in compliance with all  
24 fiscal and accounting requirements of the Washington State Gambling Commission. Coyle  
25 Declaration at ¶ 8. The sole need for the Evergreen Group's decision to seek protection  
26 under the CCAA stems from Evergreen's default with respect to the \$29 million obligation  
27 to Fortress. Because the nineteen other Canadian and American members of the Evergreen  
28 Group are each a guarantor of Evergreen's debt to Fortress, all twenty Debtors were forced  
29 to seek the protections of the Canadian bankruptcy system as a group while Evergreen and  
30 Fortress work out their differences. Coyle Declaration at ¶ 11. The restructuring of the  
31 Evergreen Group can best and most efficiently be accomplished if CCAA Proceeding is  
32 designated the "foreign main proceeding" under §1517.  
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**LEGAL ARGUMENT**

Chapter 15 of Bankruptcy Code is intended to promote cooperation in cross-border bankruptcies and authorizes the recognition and primacy of foreign main proceedings. The stated purpose of Chapter 15 is to “incorporate the model law in cross-border insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of (1) cooperation between (a) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and (b) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) greater legal certainty for trade and investment; (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; (4) protection and maximization of the value of the debtor’s assets; and (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.” 11 U.S.C. § 1501(a).

In interpreting and applying chapter 15, “the court shall consider its international origin, and the need to promote an application of [chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions.” 11 U.S.C. §1508. The key terms in a chapter 15 case are “foreign proceeding”, “foreign representative” and “foreign main proceeding.” Those terms are defined in the Bankruptcy Code as follows:

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

11 U.S.C. § 101(23).

1 The term “foreign representative” means a person or body... authorized in a foreign  
2 proceeding to administer the reorganization or the liquidation of the debtor’s assets  
3 or affairs or to act as a representative of such foreign proceeding.  
4

5 11 U.S.C. § 101(24).  
6

7 The term “foreign main proceeding” means a foreign proceeding pending in the  
8 country where the debtor has the center of its main interests.  
9

10 11 U.S.C. § 1502(4).<sup>5</sup>  
11

12 The CCAA Proceeding is a judicial proceeding, within the meaning of §101(23). It  
13 is a proceeding for the purpose of the adjustment of debts of the Evergreen Gaming and the  
14 nineteen other members of the Evergreen Group. Sandrelli Declaration at ¶¶ 4-5. Pursuant  
15 to the CCAA Order, the assets and affairs of all twenty Debtors and the actions of the  
16 Monitor are subject to the control and supervision of the Canadian Court. By virtue of its  
17 appointment as Monitor and by the terms of the CCAA Order, the Monitor qualifies as  
18 “foreign representatives” pursuant to 11 U.S.C. § 101(24). The Monitor is, therefore,  
19 entitled to recognition by this Court.  
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28 Section 1515 provides that the application for recognition of a foreign proceeding  
29 need only be accompanied by proof of the commencement of the foreign proceeding and  
30 appointment of the foreign representative. The Monitor has satisfied the requirements of  
31 §1515, so the petition to recognize the foreign proceeding under Chapter 15 should be  
32 granted. The only issue to be decided is whether the CCAA Proceeding shall be designated  
33 as the foreign main proceeding as defined in §101 (23) of the Code.  
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45 <sup>5</sup> The term “foreign nonmain proceeding” means a foreign proceeding, other than a foreign main proceeding,  
46 pending in a country where the debtor has an establishment. 11 U.S.C. §1502(5).  
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1 imposition of a stay, centralization of the debtor’s assets under the control of a trustee with  
2 fiduciary obligations to the court and creditors, the involvement of creditors through  
3 designated representatives, court review of transactions, notice to creditors of disposition of  
4 property, remedies for avoidance of certain transfers, remedies related to the marshaling of  
5 assets and equitable distribution to creditors, and provisions for the restructuring of the  
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Petitioners business. Sandrelli Declaration at ¶ 5. The CCAA process undoubtedly fits within the definition of a “foreign proceeding” in §101(23).

In the absence of contrary evidence, a debtor’s registered office is presumed to be the center of the debtor’s main interests for purposes of determining “main” or “nonmain” status. 11 U.S.C. §1516(c). In this case, however, there is ample evidence that the Evergreen Group’s center of main interest is in Canada, despite the registration of a number of the subsidiary Debtors in Washington. First and foremost, Evergreen Gaming Corporation, the parent company, is a publicly traded Canadian company, listed on the Toronto Venture Exchange. Any person who invests in Evergreen therefore can be presumed to know they are investing in a Canadian enterprise.

Senior management is almost entirely in Canada: the CEO, the President, two Vice Presidents and three of four directors of Evergreen reside in Canada and all board of directors meetings take place in Canada. Moreover, the day-to-day operations of the Evergreen Group are conducted from the corporate headquarters in Richmond, B.C. Strategic and operational management functions are also directed and carried out from the Richmond B.C. headquarters. The Group’s largest asset is in Alberta, Canada, and the need for the Debtors to seek protection in the CCAA Proceedings stems solely from Evergreen’s default, in Canada, under the Fortress loan agreement. Coyle Declaration at ¶¶ 5, 11.



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DATED: April 15, 2009

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