EXHIBIT A:
Unpublished decisions and briefs

TO:
MEMORANDUM OF LAW IN SUPPORT OF CHAPTER 15 PETITIONS FOR RECOGNITION OF FOREIGN PROCEEDINGS AND *EX PARTE* MOTION FOR PROVISIONAL RELIEF

Analysis
As of: Jan 23, 2012

IN RE: GANDI INNOVATIONS HOLDINGS, LLC., GANDI INNOVATIONS, LLC, AND GANDI INNOVATIONS LIMITED, DEBTORS.

Case No. 09-51782-C, Case No. 09-51783-C, Case No. 09-51784-C, CHAPTER 15, (Jointly Administered Under Case No. 09-51782-C)

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

2009 Bankr. LEXIS 2751

June 5, 2009, Decided
June 5, 2009, Filed; June 5, 2009, Entered

PRIOR HISTORY: *In re Gandi Innovations Holding, LLC, 2009 Bankr. LEXIS 2750 (Bankr. W.D. Tex., May 22, 2009)*

CASE SUMMARY:

PROCEDURAL POSTURE: Applicant monitor sought entry of an order in debtors' Chapter 15 bankruptcy cases recognizing a proceeding in a Canadian court under the Companies' Creditors Arrangement Act (CCAA), R.S.C. ch. C-36 (1985), as a foreign main proceeding and enforcing an order entered in the CCAA proceeding.

OVERVIEW: The debtors' cases had been commenced under *11 U.S.C.S. §§ 1504* and *1515*. The bankruptcy court found that each of the three debtors was a foreign main proceeding within the meaning of *11 U.S.C.S. § 1502(4)*. The center of main interests for all three debtors was Canada. Two debtors' operations, employees, assets, managers, and bank accounts were located in Canada. Evidence regarding the center of main interest for the third debtor was mixed, as the debtor had assets, employees, and operations in both Texas and Canada. However, the debtor's senior management was located in Canada, and the nerve center for the debtor group was there. The CCAA proceeding was recognized as a foreign main proceeding as to each of the debtors. The monitor and the debtors were to operate the debtors' business as provided in the CCAA order and *11 U.S.C.S. § 363*, and the monitor was to have the same powers in the United States with respect to performance of its duties under the CCAA order as the monitor had in the CCAA proceeding.

OUTCOME: The monitor's application was granted.

CORE TERMS: monitor, main interest, managers, counsel of record, duly appointed, executory contracts, notice

COUNSEL: [*1] For Gandi Innovations Holdings, LLC,

San Antonio, TX, Debtor: Daniel Murdoch, STRIKEMAN ELLIOTT LLP, Barrister & Solicitors, Toronto, ON, Canada; David S. Gragg, Langley & Banack, Inc, San Antonio, TX; Harry Wylde, Anderson & Wylde, Toronto, ON, Canada; Maria Konyukhova, STRIKEMAN ELLIOTT LLP, Barristers & Solicitors, Toronto, ON, Canada; Roger Jaipargas, Borden Ladner Gervais, LLP, Toronto, ON, Canada.

BDO Dunwoody Limited, Foreign Representative, Pro se, Toronto, ON, Canada.

For Gandi Innovations LLC, Trent Garmoe, San Antonio, TX, Gandi Innovations Limited, Mississauga, ON, JointAdmin Debtors: David S. Gragg, Langley & Banack, Inc, San Antonio, TX.

JUDGES: LEIF M. CLARK, UNITED STATES BANKRUPTCY JUDGE.

OPINION BY: LEIF M. CLARK

OPINION

ORDER RECOGNIZING FOREIGN PROCEEDING PURSUANT TO CHAPTER 15

THIS MATTER having come before the Court upon the application of BDO Dunwoody Limited as the Monitor and authorized foreign representative appointed in the proceedings of Gandi Innovations Limited, Gandi Innovations, LLC, and Gandi Innovations Holdings, LLC (collectively the "Debtors" or "Gandi Group") in a proceeding commenced on May 8, 2009 under Court No. 09-CL-8172 (the "CCAA Proceeding") under the Companies' Creditors [*2] Arrangement Act, R.S.C. 1985, C. C-36, as amended (the "CCAA") in the Ontario Superior Court of Justice [Commercial List] Canada (the "Ontario Court") and having presented to this Court, by and through their counsel of record, Harry Perrin, of the Firm of Vinson & Elkins, as joined by the Gandi Group, by and through their counsel of record, David S. Gragg, of the Firm of Langley & Banack, Inc., for entry of an order, pursuant to *11 U.S.C. §§ 105(a), 1504, 1507, 1515, 1517, 1519, 1520* and *1521*, recognizing the CCAA Proceeding as a foreign main proceeding (the "Application"); and seeking enforcement pursuant to *sections 1507, 1520, 1521* and *105(a)* of the Code of that certain Initial Order dated May 8, 2009 (the "CCAA Order") the Court having considered the Declaration of Trent Garmoe and the Affidavit Blair Davidson filed in support of the Application and the Chapter 15 Petitions, as well as the pleadings and other materials on file in this case; and the Court finding that the CCAA Proceeding is a foreign proceeding entitled to recognition under Chapter 15 of the Code (as defined below); the Court makes the following findings of fact and conclusions of law (subject to further elaboration [*3] by way of memorandum decision):

A. This Court has jurisdiction over this matter pursuant to *28 U.S.C. §§ 157* and *1334* and *Section 1501* of the Code;

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 *11 U.S.C. § 1504*;

D. These Chapter 15 cases were duly commenced pursuant to *§§ 1504* and *1515 of the United States Bankruptcy Code* (the "Code") and the petitions on file together with the attachments thereto with respect to each of these cases meet all the requirements of *§ 1515* of the Code;

E. The CCAA Proceeding is a "foreign proceeding" within the meaning of *§ 101(23)* of the Code;

F. The Monitor is a person within the meaning of *Section 101(41)* of the Code and is a duly appointed "foreign representative" within the meaning of *§ 101(24)* of the Code;

G. Gandi Innovations Limited is a foreign main proceeding within the meaning of *§ 1502(4)*, with virtually all of its operations, employees, assets, managers, bank accounts, and major creditors in Canada. Its center of main interest is Canada. Gandi Innovations Holdings, LLC is a holding company incorporated in the United States, but whose principal assets (primarily stock certificates [*4] and a banking account) and managers are located in the Province of Ontario, Canada. Its center of main interests is Canada. Gandi Innovations Holdings, LLC is a foreign main proceeding.

H. Gandi Innovations LLC is an operating company with assets, employees, and operations in both the State of Texas, United States, and in the Province of Ontario, Canada. It is a free-standing corporation with both

employees and local managers in Texas, and collects accounts receivable from its customers at its San Antonio location. However, it does not manufacture what it distributes. Indeed, marketing and accounting, as well as distribution, take place in the Province of Ontario. Senior management for Gandi Innovations LLC is (or has within the six months prior to these petitions has been) located in the Province of Ontario, Canada. There are significant intercompany accounts between Gandi Innovations LLC and Gandi Innovations Limited. In addition, Gandi Innovations LLC is a guarantor of the indebtedness that has been the source of working capital for the entire Gandi Group. While the evidence regarding center of main interest is mixed, the court finds that the "nerve center" for the Gandi Group is [*5] within the Province of Ontario, Canada. As a matter of comity, and in the interests of fulfilling the stated purpose of chapter 15 as set out in *section 1501*, the court concludes that, in these circumstances, the court should find that the center of main interests for Gandi Innovations LLC should be Canada. The court so finds. Gandi Innovations LLC is a foreign main proceeding;

I. As the duly appointed foreign representative of a foreign main proceeding, the Monitor is entitled to all of the relief provided under *§ 1520* of the Code;

J. The Monitor has tacitly sought relief pursuant to *§ 1521* of the Code as well, in asking that this court adopt as its own order the Initial Order entered in the CCAA proceeding. The court finds that it is necessary to effectuate the purposes of this chapter and to protect the assets of the debtor and the interests of creditors by granting appropriate relief in the form of the adoption of the Initial Order in the CCAA proceedings, as further amended by that court's order of May 19, 2009, as the order of this court.; and

K. Notice of these proceedings has been sufficient and proper under the circumstances and satisfies the requirements of *Fed. R. Bankr. P. 2002 (q)*. [*6] No further notice is required or necessary.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Application is granted;

2. This Court recognizes the CCAA Proceeding as a foreign main proceeding pursuant to Chapter 15 as to each of the Debtors in the Gandi Group;

3. Except as herein provided, the provisions of *Section 1520* of the Code apply in these Chapter 15 Cases, including without limitation, the automatic stay under *Section 362* of the Code, throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

4. The CCAA 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. Accordingly, the Monitor and the Debtors may operate the Debtors' business as provided in the CCAA Order and *Section 363* of the Code.

5. Pursuant to *§ 1521(a)(6)* of the Code, the provisions of this Court's Interim Order Granting Emergency Relief in this Case prohibiting the termination of executory contracts with the Debtors shall remain in place and shall be to the same extent as provided in the CCAA Order. Any party wishing to terminate, modify, alter, or interfere with [*7] any executory contract with a Debtor in the United States, for any reason, must bring an action or proceeding for such relief in the CCAA Proceeding prior to taking any action with respect to such contract(s).

6. The Debtors are hereby authorized to continue using cash collateral in the exercise of their powers and subject to the terms of the CCAA Order.

7. The Monitor shall have the same powers in the United States with respect to performance of its duties under the CCAA Order as the Monitor has in the CCAA Proceeding, including but not limited to the right to access to the Property, books, records and employees of the Debtors; the authority to compel production of Debtors' books and records and the examination of any person pursuant to *Bankruptcy Rule 2004*; to monitor the Debtors' receipts and expenses, and to perform such other duties as required by the Court in the CCAA Proceeding; and

8. The Debtors shall cooperate fully with the Monitor with respect to the rights and duties of the Monitor under this Order and as the recognized foreign representative with respect to the CCAA Proceeding recognized by this Court as a foreign main proceeding.

9. This Court shall retain jurisdiction with [*8] 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 any entity for relief from this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

SO ORDERED.

SIGNED this 05th day of June, 2009.

/s/ Leif M. Clark

LEIF M. CLARK

UNITED STATES BANKRUPTCY JUDGE

Analysis
As of: Jan 23, 2012

IN RE: INNUA CANADA LTD., et al., Debtors in Foreign Proceedings.

Case No.: 09-16362 (DHS)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

2009 Bankr. LEXIS 995

April 15, 2009, Decided
April 15, 2009, Filed; April 15, 2009, Entered

NOTICE: NOT FOR PUBLICATION

CASE SUMMARY:

PROCEDURAL POSTURE: Pending were Chapter 15 Petitions for Recognition of the Canadian Proceedings filed by the receiver and foreign representative appointed by the Ontario Superior Court of Justice for the foreign debtors in its receivership proceeding (Canadian Proceeding). The receiver sought an Order recognizing the Canadian Proceeding as a "foreign main proceeding" under *11 U.S.C.S. § 1517(b)(1)*, or alternatively, a "foreign non-main proceeding," *§ 1517(b)(2)*.

OVERVIEW: According to *11 U.S.C.S. § 1517(a)*, subject to the public policy exception of *11 U.S.C.S. § 1506*, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if-- (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign non-main proceeding within the meaning of *11 U.S.C.S. § 1502*; (2) the foreign representative applying for recognition is a person or body; and (3) the petition met the requirements of *11 U.S.C.S. § 1515*. Simultaneously, a court also had to determine whether the recognition of the foreign proceeding was as a foreign main or foreign non-main proceeding for which the foreign representative bore the burden of proving. Here, the receiver clearly satisfied that it was a foreign representative. Moreover, the receiver was a "person" acting as the foreign representative with the Bankruptcy Code. Thus, it satisfied the second requirement of § 1571(a). Additionally, it established that *§ 1515*'s requirements had been met. Finally, the receiver established that the Canadian proceeding was a foreign main proceeding as to both foreign debtors.

OUTCOME: The application to recognize the Canadian Proceeding as a foreign main proceeding was granted.

CORE TERMS: receiver, receivership, insolvency, appointed, notice, registered, non-main, main interests, inventory, Model Law, cross-border, provisional, headquarters, entity, security agreement, plasticizer, stored, proffered testimony, principal assets, automatic stay, certified copy, public policy, reorganization, establishment, implementing, accompanied, liquidation,

supervision, appointment, evidentiary

LexisNexis(R) Headnotes

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings

[HN1] A Chapter 15 proceeding is commenced by the foreign representative's filing of a petition for recognition under *11 U.S.C.S. § 1515. 11 U.S.C.S. §§ 1504, 1509.* A foreign representative is defined in the Bankruptcy Code as person or body 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. *11 U.S.C.S. § 101(24).* The Bankruptcy Code defines a foreign proceeding as a collective judicial or administrative proceeding in a foreign country 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.S. § 101(23).*

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings

[HN2] In the context of bankruptcy law, a Chapter 15 Petition must be accompanied by the following documentation: (i) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; (ii) a certificate from the foreign court affirming the existence of the foreign proceeding and the appointed foreign representative; (iii) if the above two are not available, then any other evidence satisfying the court that the foreign proceeding has been commenced and the foreign representative has been appointed; and (iv) a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. *11 U.S.C.S. § 1515(b), (c).* Upon filing a Chapter 15 Petition, provisional relief may be granted under *11 U.S.C.S. § 1519.*

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
Evidence > Procedural Considerations > Burdens of Proof > Allocation

[HN3] A foreign representative must satisfy the following and, if so demonstrated, then the court must enter an order recognizing the foreign proceeding: (a) Subject to (the public policy exception of) *11 U.S.C.S. § 1506*, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if--(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of *11 U.S.C.S. § 1502*; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of *11 U.S.C.S. § 1515. 11 U.S.C.S. § 1517(a).* Simultaneously, a court must also determine whether the recognition of the foreign proceeding is as a foreign main or foreign non-main proceeding for which the foreign representative bears the burden of proving. A foreign main proceeding is defined as a foreign proceeding pending in the country where the debtor has the center of its main interests. *11 U.S.C.S. §§ 1502(4), 1517(b)(1).* A foreign non-main proceeding is defined as a foreign proceeding pending in a country where the debtor has an establishment. *11 U.S.C.S. §§ 1502(5), 1517(b)(2).* An establishment is any place of operations where the debtor carries out a nontransitory economic activity. *11 U.S.C.S. § 1502(2).*

Bankruptcy Law > Case Administration > Administrative Powers > Estate Property Lease, Sale & Use > General Overview
Bankruptcy Law > Case Administration > Administrative Powers > Stays > General Overview
Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings

[HN4] Upon a court granting recognition under *11 U.S.C.S. § 1517*, the foreign representative has the capacity to sue and be sued in the United States, the ability to apply directly to a United States court for appropriate relief, and all United States courts must grant comity and cooperation to the foreign representative. *11 U.S.C.S. § 1509. 11 U.S.C.S. § 1520* provides the relief granted to the foreign representative upon the court's entry of an order recognizing the foreign proceeding such as implementing the automatic stay under *11 U.S.C.S. § 362* and the automatic application of *11 U.S.C.S. §§ 363, 549, 552* to interests of the debtor in property located within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of the estate, which is necessary since *11 U.S.C.S. § 541*

is not applicable to Chapter 15 cases.

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
Evidence > Procedural Considerations > Burdens of Proof > Allocation
[HN5] The applicant bears the burden of demonstrating that it has satisfied the requirements of *11 U.S.C.S. § 1517(a)* in order for a court to grant recognition of the foreign proceeding.

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
[HN6] *11 U.S.C.S. § 1516(a)* allows a court to presume that the foreign proceeding is such if the foreign court's order states that it is a foreign proceeding and that the appointed person or entity is a foreign representative. *11 U.S.C.S. § 1516(a)*.

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
[HN7] Neither the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law (UNCITRAL) nor the Bankruptcy Code define "body" but it has been recognized as "an artificial person created by a legal authority."

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
[HN8] A foreign main proceeding is one which is pending in the country where the debtor has the center of its main interest. *11 U.S.C.S. § 1502(4)*. The Bankruptcy Code does not define center of main interests, referred to as COMI. Courts have found that the Guide to Enactment of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (Guide) explained that the COMI was modeled after the European Union (EU) Convention on Insolvency Proceedings (EU Convention) which states: the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties (end of quote). Council Reg. (EC) No. 1346/2000, P 13. This generally equates with the concept of a principal place of business in United States law. In discussing Article 16 of the Model Law, the Guide provides that *11 U.S.C.S. § 1516* allows courts to expedite the evidentiary process, but it does not prevent the court or another interested party from questioning the presumption.

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
[HN9] See *11 U.S.C.S. § 1516(c)*.

Bankruptcy Law > Case Administration > Commencement > Cases Ancillary to Foreign Proceedings
[HN10] The Bear Stearns decision states that the bankruptcy Chapter 15 Petition process should not become a rubber stamp exercise when no objection is filed. This serves as a departure from the decision in In re Sphinx where the court enumerated factors that could be useful in making the center of main interests (COMI) determination, but then found that the court should defer to the creditors' acquiescence in or support of a proposed COMI. The well-considered factors listed in In re Sphinx and utilized by other courts are: The location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

COUNSEL: [*1] Lowenstein Sandler PC, Michael S. Etkin, Esq., Roseland, New Jersey, ***Counsel for the Foreign Representative RSM Richter, Inc.***

JUDGES: DONALD H. STECKROTH, UNITED STATES BANKRUPTCY JUDGE.

OPINION BY: DONALD H. STECKROTH

OPINION

THE HONORABLE DONALD H. STECKROTH, BANKRUPTCY JUDGE

Before the Court are the Chapter 15 Petitions for

Recognition of the Canadian Proceedings ("Chapter 15 Petitions") filed by RSM Richter Inc. ("RSM" or "Receiver") as the receiver and foreign representative appointed by the Ontario Superior Court of Justice (Commercial List) ("Ontario Court") for Innua Canada Ltd. ("Innua Canada") and The Normandy Group S.A. ("Normandy") (collectively referred to as "Foreign Debtors") in its receivership proceeding ("Canadian Proceeding"). RSM seeks an Order recognizing the Canadian Proceeding as a "foreign main proceeding" under *Section 1517(b)(1)*, or alternatively, a "foreign non-main proceeding" under *Section 1517(b)(2) of the United States Bankruptcy Code*. The Court has reviewed the *Verified Petitions for Recognition of Foreign Proceeding and Related Relief* the *First Report of RSM Richter Inc., as Interim Receiver and Receiver and Manager of Innua Canada Ltd. and The Normandy Group S.A,* the *Declaration* [*2] *of Mitchell Vininsky in Support of Verified Petitions for Recognition of Foreign Proceeding and Related Relief,* and heard the proffered testimony of Mitchell Vininsky in Court. No opposition to the relief sought has been filed.

The Court has jurisdiction over this matter pursuant to *Sections 157* and *1334* of Title 28 and *Section 1501* of Title 11. This is a core proceeding pursuant to *28 U.S.C. Section 157(b)(2)(P)*. Venue in the District of New Jersey is proper under *28 U.S.C. Section 1410(1)* and *(3)* because the principal assets are located in New Jersey.

Factual Background

1

1 The factual recitation that follows has been gleaned from *Verified Petitions for Recognition of Foreign Proceeding and Related Relief, First Report of RSM Richter Inc.,* and *Declaration of Michael Vininsky in Support of Verified Petitions for Recognition of Foreign Proceeding and Related Relief.* In addition, the Court incorporates by reference its *Letter Opinion* in this matter dated March 25, 2009.

On March 13, 2009, the Ontario Superior Court of Justice ("Ontario Court") appointed RSM Richter Inc. ("RSM") as receiver and duly-authorized foreign representative ("Receiver") of Innua Canada and Normandy in a Canadian [*3] receivership proceeding ("Canadian Proceeding"). [2] The Foreign Debtors include Normandy, the parent company, and Innua Canada, a wholly-owned subsidiary. Normandy purchases plasticizers and polyvinyl chloride ("PVC") from producers mainly in Asia and sells those products through its subsidiaries. David and Gail Harris are the principals ("Principals") holding 100% of Normandy's common shares. The Principals reside in Tortola in the British Virgin Islands.

2 Counsel for the Receiver notified the Court that Normandy alone has taken an appeal of the Receivership Order, but has not pursued the appeal beyond the initial filing.

Normandy's registered office is located in Grand Turk in the Turks and Caicos Islands and operates in Canada from an office in Burlington, Ontario. Innua Canada is a Canadian federally incorporated company which operates throughout North America with its registered office also in Burlington, Ontario. Innua Canada's principal assets consist of: (a) accounts receivable of approximately $ 2.2 million and (b) an inventory of approximately 3,155 metric tons of di-sononyl phthalate (DINP), a liquid petroleum based plasticizer, presently stored in tank farms in Bayonne, New [*4] Jersey and Houston, Texas as well as railcars in various other locations. In addition, the Receiver believes that approximately 230 metric tons of DINP was in transit at the time of the Petition. All of these plasticizers are valued up to $ 4.2 million according to the Receiver's First Report filed with the Ontario Court.

Between July 2000 and January 2007, Fortis Bank (Nederland) N.V. and Normandy entered into lending agreements under which Fortis financed Normandy's trading activities by providing $ 6.5 million in 2000 up to $ 40 million in 2007. Fortis has a lock box control account at Wachovia Bank, in Newark, New Jersey out of which funds are used to pay down the financing arrangements. In January 2002, Fortis and Innua Canada entered into a Joint and Several Liability Agreement whereby Innua Canada agreed to be jointly and severally liable with Normandy for any amount due from Normandy to Fortis.

As security, Normany granted Fortis the following: (a) a continuing security agreement providing a lien on all of Normandy's personal property which was registered in Ontario and Washington, D.C. and (b) a deed of hypothec on movable property in the amount of $ 10,000,000 Canadian Dollars. [*5] In the same vain, Innua Canada granted Fortis: (a) general security

agreement; (b) a deed of hypothec on movable property in the amount of $ 16,000,000 Canadian Dollars; and (c) a continuing security agreement.

Upon reviewing Normandy's 2008 Financial Statements for the year ending September 30, 2008, Fortis realized that Normandy was in default of certain covenants in their agreements such as the solvency test, the maximum inventory amount, and the minimum earnings before tax. After issuing several notices of default resulting in no response regarding the provision of additional collateral to cover the shortfalls, Fortis allegedly lost confidence in the Foreign Debtors. Fortis contends that the Foreign Debtors failed to provide confirmation of inventory purchases and that they also directed their account debtors to make payments of accounts receivable to accounts other than that of Fortis. Additionally, the storage facilities for the DINP have outstanding invoices of approximately $ 750,000 and the warehousers have threatened to sell the inventory in their possession.

Due to these events and the Foreign Debtors' realization that the business could no longer operate as a going concern, [*6] Fortis issued a formal demand letter upon the Foreign Debtors on March 11, 2009 for repayment of the full amounts due and owing accompanied by notices of intention to enforce security in accordance with Canadian insolvency laws. As of March 11, 2009, the amount due and owing to Fortis was $ 11,432,172.60 in United States Dollars. On March 12, 2009, after receiving notice of the Canadian Proceeding, the Principals allegedly transferred $ 30,000 to a personal account and made a $ 45,000 severance payment to former employees. Fortis was also concerned that Innua had abandoned the entity known as Innua Canada as the company website was changed to include the name Innua Petrochem Ltd. As stated above, the Ontario Court appointed RSM as the receiver on March 13, 2009.

On March 16, 2009, pursuant to the Receivership Order issued by the Ontario Court, the Receiver commenced proceedings in the District of New Jersey by filing the Chapter 15 Petitions. In conjunction, the Receiver filed an Order to Show Cause which the Court entered on March 17, 2009 temporarily imposing the automatic stay under *11 U.S.C. Section 362* on any and all actions, pending a hearing and determination on the Receiver's [*7] Motion for Provisional Relief under *Section 1519(a)* and *Section 105(a) of the Bankruptcy Code*. The Receiver filed its first report with this Court on March 23, 2009 providing, *inter alia,* an overview of the events leading up to the receivership proceeding, its efforts to investigate the Foreign Debtors' operations and assets, and notification that Stolt-Nielson USA Inc. and other Stolt companies ("Stolt") commenced two actions in the United States District Court for the Southern District of Texas, Houston Division seeking amounts owed for storage services provided in excess of $ 500,000. The Receiver filed a notice of the Chapter 15 Petitions in the Texas District Court. This Court granted the provisional relief on March 25, 2009 and the Recognition Hearing was scheduled for April 13, 2009.

Discussion

I. Chapter 15 of the Bankruptcy Code

In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress enacted Chapter 15 of the Bankruptcy Code implementing the Model Law on Cross-Border Insolvency ("Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL"). *See 11 U.S.C. §1501(a) (2009).* The objectives of Chapter 15 are:

> [C]ooperation [*8] between United States courts, trustees, examiners, debtors and debtors in possession and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protect the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor's assets; and the facilitation of the rescue of financially troubled businesses.

In re Oversight & Control Commission of Avanzit, S.A., 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008) (citing *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. 122, 126 (Bankr. S.D.N.Y. 2007))*; *accord 11 U.S.C. § 1501(a).*

[HN1] A Chapter 15 proceeding is commenced by the foreign representative's filing of a petition for recognition under *Section 1515. See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 389 B.R. 325, 331 (S.D.N.Y. 2008)*; *accord 11*

U.S.C. §§ 1504 & 1509. A foreign representative is defined in the Bankruptcy Code as "person or body. . .authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets [*9] or affairs or to act as a representative of such foreign proceeding." *11 U.S.C. § 101(24); see In re Loy, 380 B.R. 154, 161 (Bankr. E.D. Va., Newport News Div. 2007).* The Bankruptcy Code defines a foreign proceeding as "a collective judicial or administrative proceeding in a foreign country. . .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).*

[HN2] The Chapter 15 Petition must be accompanied by the following documentation: (i) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; (ii) a certificate from the foreign court affirming the existence of the foreign proceeding and the appointed foreign representative; (iii) if the above two are not available, then any other evidence satisfying the court that the foreign proceeding has been commenced and the foreign representative has been appointed; and (iv) a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. *11 U.S.C. § 1515(b) & (c).* [*10] Upon filing a Chapter 15 Petition, provisional relief may be granted under *Section 1519*, for which this Court entered an Order and Letter Opinion on March 25, 2009.

[HN3] A foreign representative must satisfy the following and, if so demonstrated, then the Court must enter an order recognizing the foreign proceeding:

> (a) Subject to [the public policy exception of*]* [3] *section 1506*, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if--
>
> (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of *section 1502*;
>
> (2) the foreign representative applying for recognition is a person or body; and
>
> (3) the petition meets the requirements of *section 1515.*

11 U.S.C. § 1517(a); see In re Oversight & Control Commission of Avanzit, S.A., 385 B.R. at 532 (citing *In re Basis Yield Alpha Fund (Master), 381 B.R. 37, 52 (Bankr. S.D.N.Y. 2008)).* Simultaneously, the Court must also determine whether the recognition of the foreign proceeding is as a foreign main or foreign non-main proceeding for which the foreign representative bears the burden of proving. *Id.* A foreign main proceeding is defined as "a [*11] foreign proceeding pending in the country where the debtor has the center of its main interests." *See 11 U.S.C. §§ 1502(4) & 1517(b)(1).* A foreign non-main proceeding is defined as "a foreign proceeding. . . pending in a country where the debtor has an establishment." *See 11 U.S.C. §§ 1502(5) & 1517(b)(2).* An establishment is "any place of operations where the debtor carries out a nontransitory economic activity." *See 11 U.S.C. § 1502(2).*

> 3 *Section 1506* states: "Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." *11 U.S.C. § 1506.*

[HN4] Upon the Court granting recognition under *Section 1517*, the foreign representative has the capacity to sue and be sued in the United States, the ability to apply directly to a United States court for appropriate relief, and all United States courts must grant comity and cooperation to the foreign representative. *11 U.S.C. § 1509. Section 1520* provides the relief granted to the foreign representative upon the Court's entry of an order recognizing the foreign proceeding such as implementing the automatic stay under *Section 362* [*12] and the automatic application of *Sections 363, 549* and *552* to interests of the debtor in property located within the "territorial jurisdiction of the United States 'to the same extent that the sections would apply to property of the estate,'" which is necessary since *Section 541* is not applicable to Chapter 15 cases. 8-1520 *COLLIER ON BANKRUPTCY P 1520.01* (15th ed. rev. 2008).

II. Application of *Section 1517(a)*

In the instant matter, [HN5] RSM bears the burden of demonstrating that it has satisfied the requirements of *Section 1517(a)* in order for the Court to grant recognition of the foreign proceeding. RSM has clearly satisfied that it is a foreign representative made clear by the language of the Receivership Order entered by the

Ontario Court specifically stating that the Receiver has the authority to "commence proceedings under Chapter 15 of the United States Bankruptcy Code and to act as foreign representative in such proceedings." *Decl. of Mitchell Vininsky in Supp. of Verified Petitions for Recognition of Foreign Proceedings and Related Relief ("Vininsky Decl. "),* Ex. B. Furthermore, [HN6] *Section 1516(a)* allows a court to presume that the foreign proceeding is such if the foreign court's [*13] order states that it is a foreign proceeding and that the appointed person or entity is a foreign representative. *See 11 U.S.C. § 1516(a).* Here, the Order entered by the Ontario Court instituted a receivership proceeding under which the Foreign Debtors' assets and affairs are under the control of RSM with supervision by the Ontario Court. *See Vininsky Decl.,* Ex. B. Moreover, RSM is a "person" acting as the foreign representative with the Bankruptcy Code defining person to include individual, partnership and corporation. *See 11 U.S.C. § 101(41); In re Oversight & Control Commission of Avanzit, S.A., 385 B.R. 525, 540 (Bankr. S.D.N.Y. 2008).* Furthermore, [HN7] neither the Model Law nor the Bankruptcy Code define "body" but "it has been recognized as 'an artificial person created by a legal authority.'" *Id. at 540* (citation omitted). Thus, regardless of the presumption, RSM has satisfied the second requirement of *Section 1517(a).*

Additionally, RSM has established that *Section 1515*'s requirements have been met. Specifically, RSM provided a certified copy of the Receivership Order entered by the Ontario Court attached to the *Vininsky Declaration* at Exhibit B explicitly affirming the existence [*14] of a foreign proceeding in Canada and the appointment of RSM as the foreign representative. *Vininsky Decl.,* Ex. B; *accord 11 U.S.C. § 1515(b).* In accordance with *Section 1515(c), RSM* has filed an Amended List on March 19, 2009 detailing any pending litigation with respect to the Foreign Debtors and a list of known creditors. Therefore, the last element that the Receiver must demonstrate is whether the foreign proceeding is a foreign main or foreign non-main proceeding.

III. Types of Foreign Proceedings under *Section 1502*

The Court must next determine whether the instant foreign proceeding is main, or in the alternative, non-main.

A. Foreign Main Proceeding

[HN8] A foreign main proceeding is one which is pending in the country where the debtor has the center of its main interest. *11 U.S.C. § 1502(4); see In re Loy, 380 B.R. at 162.* The Bankruptcy Code does not define center of main interests, referred to as COMI. *See In re Basis Yield Alpha Fund (Master), 381 B.R. 37, 47 (Bankr. S.D.N.Y. 2008); In re Loy, 380 B.R. at 162.* Courts have found that the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency ("Guide") explained that the COMI was modeled after the European Union Convention [*15] on Insolvency Proceedings ("EU Convention") which states: "the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties." *See In re Bear Stearns, 374 B.R. at 129* (citing Council Reg. (EC) No. 1346/2000, P 13); *see also In re Basis Yield Alpha Fund, 381 B.R. at 47.* "This generally equates with the concept of a principal place of business in United States law." *In re Basis Yield Alpha Fund, 381 B.R. at 48* (citing *In re Tri-Continental Exchange, 349 B.R. at 633-34*); *In re Bear Stearns, 374 B.R. at 129* (citing same).

Furthermore, *Section 1516(c)* explicitly provides: [HN9] "In the absence of evidence to the contrary, the debtor's registered office. . .is presumed to be the center of the debtor's main interests." *11 U.S.C. § 1516(c); In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007)* (citing *In re Tri-Continental Exchange Ltd., 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006)).* Here, despite notice and the filing of an appeal in the Canadian Court to the appointment of the Foreign Representative of Normandy, no party filed an objection to recognition of the [*16] Chapter 15 Petitions. In discussing Article 16 of the Model Law, the Guide provides that *Section 1516* allows courts to expedite the evidentiary process, but it does not prevent the court or another interested party from questioning the presumption. [HN10] In *Bear Stearns,* the Honorable Burton R. Lifland stated that the Chapter 15 Petition process should not become a "rubber stamp exercise" when no objection is filed. *See In re Bear Stearns, 374 B.R. at 130.* This served as a departure from the decision made by the Honorable Robert D. Drain in *In re Sphinx* where the court enumerated factors that could be useful in making the COMI determination, but then found that the court should defer to the "creditors' acquiescence in or support of a proposed COMI." *See In re Sphinx, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006).* The well-considered factors listed in *In re Sphinx*

and utilized by other courts are:

> [T]he location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors [*17] who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

In re Sphinx, 351 B.R. at 117; *see In re Bear Stearns, 374 B.R. at 122*; *In re Loy, 380 B.R. at 163*.

In the instant matter, the evidence demonstrates Canada is clearly where the Foreign Debtors have their COMI. Innua Canada was incorporated in Canada and operated out of the registered head office in Burlington, Ontario with its employees located there until March 12, 2009. *See Vininsky Decl.,* Ex. C (containing the *Affidavit of Rachelle Smeets ("Smeets Aff.")*) at PP 8, 9. Furthermore, Innua Canada's headquarters, books and records, and accounting and business computer systems are all located in Canada. *Id.* at PP 9, 12.

As to Normandy, it is clear it also operated out of the same offices as Innua Canada in Burlington, Ontario. *Id.* at P 4. The Ontario office actually has a sign on the door bearing the name "Normandy" and the office contains Normandy's books and records that were not removed prior to the issuance of the Receivership Order. *See Vininsky Decl.* at PP 5-6. Normandy also utilized the Burlington, Ontario office address on principal loan documents. *See Smeets Aff.,* Ex. D & F. Furthermore, [*18] the proffered testimony elicited the following: (i) the company's financial and accounting statements were prepared by auditors based in Ontario; (ii) an Ontario insurance broker sent statements and invoices to Normandy at the Burlington, Ontario office; (iii) Mr. James Steele's business cards bear the names Innua Canada Ltd. and The Normandy Group, S.A. listing the Ontario office address and these were found in the Burlington office; and (iv) the examination of an employee demonstrated that two employees mostly worked for The Normandy Group based out of the Ontario office and received mail there. Finally, the records of the Normandy group were generated and stored in Canada and Normandy's post-2007 records are currently being stored by an employee at her residence in Canada. *See Hrg. Tr. (Apr. 13, 2009).*

Based on the evidentiary record and the affidavits submitted with the Chapter 15 Petitions, the Court is satisfied that RSM has met its burden in establishing the Canadian Proceeding is a foreign main proceeding as to both Foreign Debtors.

Conclusion

For the foregoing reasons, the application to recognize the Canadian Proceeding as a foreign main proceeding is hereby granted. An [*19] Order has been entered and a copy is attached hereto.

/s/ Donald H. Steckroth

DONALD H. STECKROTH

UNITED STATES BANKRUPTCY JUDGE

Dated: April 15, 2009

IT IS SO ORDERED.

Dated: April 17, 2008

Lawrence S. Walter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)

In re:	)	**Chapter 15**
	)	
ROL MANUFACTURING (CANADA) LTD., ET AL.,	)	**Case No. 08-31022**
	)	**(Jointly Administered)**
	)	
Debtors.	)	**Hon. Lawrence S. Walter**

ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING

WHEREAS, Raymond Chabot Inc. (the "Monitor") is the duly appointed monitor and the foreign representative of ROL Manufacturing (Canada) Ltd., ROL Holdings (Canada) Inc., ROL Holdings USA, Inc., ROL Manufacturing of America, Inc., and Marwil, Inc. (collectively, the "Debtors"), which filed, on March 7, 2008, joint proceedings (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pending before the Québec Superior Court (Commercial Division) (District of Montréal) (the "Canadian Court"); and

WHEREAS, the Monitor, by its United States counsel, filed petitions for each of the Debtors dated March 7, 2008 pursuant to chapter 15 of title 11 of the United States Code (the "Bankruptcy Code") seeking recognition of the Canadian Proceeding as a foreign main proceeding (the "Chapter 15 Petitions"); and

WHEREAS, due and timely notice of the filing of the Chapter 15 Petitions having been given pursuant to an order of this Court, dated March 12, 2008 [D.E. 25], as reflected in the filed affidavit of service of Jeffrey A. Chadwick, sworn to March 14, 2008 [D.E. 37], and which notice is deemed adequate for all purposes, and no other or further notice need be given; and

WHEREAS, a hearing was held before this Court on April 16, 2008 to consider the Chapter 15 Petitions, and the Court having considered and reviewed all pleadings and exhibits submitted by the Monitor in support of the Chapter 15 Petitions prior to or at such recognition hearing, and no objection or response to the Chapter 15 Petitions having been filed left unresolved by the Court; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

1. The Monitor has demonstrated that:

(a) the Debtors are subject to a pending foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code;

(b) the Debtors are subject to a foreign main proceeding within the meaning of section 1502(4) of the Bankruptcy Code;

(c) the Monitor is the foreign representative of the Debtors within the meaning of section 101(24) of the Bankruptcy Code;

(d) the Chapter 15 cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code;

(e) the Chapter 15 Petitions satisfied the requirements of section 1515 of the Bankruptcy Code.

2. The Monitor and Debtors are entitled to all of the relief provided pursuant to section 1520 of the Bankruptcy Code, without limitation.

3. The Monitor and Debtors are entitled to additional relief pursuant to sections 1521(a)(5), (a)(7) and 1521(b) of the Bankruptcy Code, maintaining the administration, realization and distribution of the Debtors' assets located in the United States with the Debtors, subject to the Monitor's oversight, in the Canadian Proceeding.

4. 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 sections 1520 and 1521 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors or other parties-in-interests that is not outweighed by the benefits of granting that relief.

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

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

ORDERED, that the Canadian Proceeding (including the initial order entered in the Canadian Proceeding, as has been amended, and as may be further amended from time to time (the "Initial CCAA Order")) is granted recognition pursuant to section 1517(a) of the Bankruptcy Code; and it is further

ORDERED, that the Canadian Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code; and it is further

ORDERED, that all relief afforded a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code is granted without limitation; and it is further

ORDERED, that the automatic stay of section 362 of the Bankruptcy Code applies with respect to the Debtors and any property of the Debtors that is within the territorial jurisdiction of the United States; and it is further

ORDERED, that additional relief – pursuant to sections 1521(a)(2), 1521(a)(5) and (a)(7) and 1521(b), maintaining the administration, realization and distribution of the Debtors' assets located in the United States with the Debtors, subject to the oversight of the Monitor in the Canadian Proceeding (except as may be expressly provided in the Initial CCAA Order) – is granted; and it is further

ORDERED, that this Order shall be served upon all known creditors (or their counsel) of the Debtors by electronic mail or by facsimile transmission, or in the event service by electronic mail or facsimile cannot be accomplished, then by either U.S. mail, first class postage prepaid, or overnight courier service, on or before April 19, 2008; and it is further

ORDERED, that service is accordance with this Order shall constitute adequate and sufficient service and notice.

ORDERED, that the following provisions of the Initial CCAA Order are hereby approved and incorporated herein by reference:

> [36.1] **APPROVE** and **ORDER** the implementation of the terms and conditions of the Forbearance Agreement entered into by and between Petitioner and HSBC as of March 6, 2008 (as amended, the "**Forbearance Agreement**"), which provides, *inter alia*, the circumstances under which Petitioner is permitted to borrow under the Operating Loan, as this term is defined in the Facility Letter which Petitioner and HSBC have entered into as of May 8, 2007, as amended by

the letter dated June 21, 2007 (the "**Facility Letter**"), up to an amount of US$22,000,000.00, the whole secured by the guarantees, hypothecs, mortgages and security agreements presently held by HSBC (**HSBC Security**);

[36.2] **APPROVE** and, in aid and assistance of the Canadian Court in the Canadian Proceeding:

(a) **ORDER** that notwithstanding anything to the contrary contained in section 552(a) of the *United States Code* (the "***US Bankruptcy Code***"), as adequate protection for, and to secure the payment of, an amount equal to the aggregate diminution (whether by depreciation, use, sale, loss or otherwise) in the value of HSBC's Pre-Petition Collateral (including cash collateral as defined in section 363(a) of the *US Bankruptcy Code*)[1] and as security for and an inducement to HSBC (a) to permit Petitioner's use of the HSBC Collateral (as defined below) (including, without limitation, amounts re-advanced hereunder) and (b) to increase and allow Petitioner to make additional borrowings under the Facility Letter (the "**Post-Petition Obligations**", together with the "**Pre-Petition Obligations**", the "**Obligations**"), in addition to all existing security interests and liens granted to HSBC, Petitioner hereby grants to HSBC, pursuant to the *US Bankruptcy Code*, including sections 361, 363, 364 and 552(b), but subject and subordinate to the allowed amounts of Administrative Charges and D&O Charges, (i) a first-priority, senior and duly perfected post-petition security interest in and charge or lien upon all of the Pre-Petition Collateral consisting of Canadian and US Current Assets itemized in the Security Agreements currently existing and hereafter-acquired, and the proceeds thereof, wherever located (but not including any of the Canadian or US Fixed Assets and Intangibles), (ii) a first-priority, senior and duly perfected post-petition security interest in and charge or lien upon all claims pursuant to sections 544, 545, 547, 548, 549, 550 and 553 of

[1] Pre-Petition Collateral shall include all of Petitioner's property itemized in the General Security Agreements dated September 30, 2005 (collectively, the "**Security Agreements**") which ROL Canada, ROL USA and Marwil executed and delivered to Bank and, in part, categorized as Canadian and US (a) Fixed Assets, (b) Intangibles and (c) Current Assets (i.e., Accounts, Inventory and Marketable Securities) in the Amended and Restated Priority Agreement dated June 21, 2007 (the "**Priority Agreement**").

the *US Bankruptcy Code*, and any and all proceeds of such claims, but only to the extent of the Post-Petition Obligations, (iii) a first-priority, senior and duly perfected post-petition security interest in and charge or lien upon all of Petitioner's unencumbered Property, wherever located, but only to the extent of the Post-Petition Obligations and (iv) a junior, duly perfected post-petition security interest in and lien upon all other Property of Petitioner, consisting of Canadian and US Fixed Assets and Intangibles and any Property other than Canadian and US Current Assets, which is subject to prior valid, perfected and unavoidable pre-petition liens of Petitioner's other secured creditors whether in accordance with law or whether by virtue of the rankings (priorities) set forth at Section 2 of the Priority Agreement (collectively, the "**HSBC Collateral**");

(b) **ORDER** that such security interests, charges and liens upon the HSBC Collateral in favor of HSBC shall be valid, perfected, enforceable and effective as of the Filing Date without any further action needed to be taken by Petitioner or HSBC and without the execution, filing or recordation of any financing statements, security agreements, or other documents;

(c) **ORDER** that such security interests, charges and liens upon the HSBC Collateral in favor of HSBC shall be senior in priority to any lien, security interest or charge encumbering Petitioner's Property that may be avoided and preserved for the benefit of Petitioner and their estates under section 551 of the *US Bankruptcy Code*;

(d) **ORDER** that as further adequate protection for, and to secure the payment of the full amount of the Obligations, HSBC is hereby granted an allowed super-priority administrative claim, pursuant to section 364(c)(1) of the *US Bankruptcy Code*, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Petitioner (except for the allowed amounts of Administrative Charges and D&O Charges), whether now in existence or hereafter incurred, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726, 1113 and/or 1114

of the *US Bankruptcy Code*, but only to the extent of the Post-Petition Obligations;

(e) **ORDER** that Petitioner shall not permit the imposition of any priming or *pari passu* lien or security interest in any of the HSBC Collateral, pursuant to section 363 or 364 of the *US Bankruptcy Code* or otherwise, without the prior written consent of HSBC;

(f) **ORDER** that no costs or expenses of administration which have or may be incurred in Petitioner's cases at any time shall be charged against HSBC, its claims or the HSBC Collateral, pursuant to section 506(c) of the *US Bankruptcy Code*, without the prior written consent of HSBC, and no such consent shall be implied from any other action, inaction, or acquiescence by HSBC;

(g) **ORDER** that notwithstanding anything to the contrary contained herein, Petitioner's use of HSBC Collateral (including without limitation Petitioner's cash collateral as defined in section 363(a) of the *US Bankruptcy Code*) shall expire, without further court order, on the earliest to occur of (i) the termination of Petitioner's rights under this Order, (ii) the dismissal or conversion of any of the Canadian or US bankruptcy cases of any Petitioner, (iii) the appointment of a trustee or examiner or other representative with expanded powers (other than the monitor in Canada or the foreign representative in the USA), (iv) any default under this Order or under the Financing Agreement, Security Documents, Facility Letter or Forbearance Agreement, (v) the enforcement or attempted enforcement of any junior liens in any of the HSBC Collateral or (vi) any attempt by Petitioner to obtain, or if any other party in interest obtains, an order of this Court or other order or judgment, and the effect of such order or judgment is to, invalidate, reduce or otherwise impair HSBC's claims or liens, or to subject any of the HSBC Collateral to any surcharge pursuant to section 506(c) of the *US Bankruptcy Code* (each, a "**Default**");

(h) **ORDER** that, upon the occurrence and continuance of a Default, Petitioner shall remain bound by all restrictions, prohibitions and other terms as provided herein, and HSBC (a) shall have no obligation to lend or advance any

additional funds to or on behalf of Petitioner, or provide any other financial accommodations thereto, and (b) HSBC is authorized to, without providing any prior notice thereof, declare all Obligations immediately due and payable, accelerate the Obligations, cease to extend advances under the Facility Letter, set off any Obligations with HSBC Collateral or proceeds thereof in HSBC's possession; provided, however, in order to exercise any other rights and remedies provided for in the Financing Agreement, Security Documents, Facility Letter or Forbearance Agreement, or under applicable non-bankruptcy law, foreign or domestic, HSBC shall provide not less than five (5) days' prior written notice (the "**Notice Period**") to the Monitor, Petitioner, their Canadian and US legal counsel, and each and every holder of a security interest, lien or charge upon the HSBC Collateral (the "**Notice Parties**"). In the event a Notice Party has not obtained an order from the US Court to the contrary before the end of the Notice Period, the automatic stay provisions of section 362 of the *US Bankruptcy Code* shall be deemed terminated, vacated and modified solely as to such other rights and remedies without the necessity of further action by the Court. The US Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders relating to the application, re-imposition or continuance of the automatic stay pursuant to section 362 of the *US Bankruptcy Code* or any other relief requested pursuant to section 362 of the *US Bankruptcy Code* in relation thereto and with respect to the US Assets;

(i) **ORDER** that this Order and the transactions contemplated hereby shall be without prejudice to the right of HSBC (i) to seek additional adequate protection, including the benefit of section 507(b) of the *US Bankruptcy Code* and (ii) to exercise any and all rights, remedies, claims and causes of action which HSBC may have against any other party;

(j) **ORDER** that, subject and pursuant to section 364(e) of the *US Bankruptcy Code*, any modification, vacation or reversal of this Order shall not affect the validity of the authorization to incur post-petition debt, the post-petition debt incurred, the grant and priority of liens in favour of HSBC and the continuing

applicability all of the terms and conditions of the Financing Agreement, Security Documents and Facility Letter as to HSBC's advances to Petitioner;

(k) **ORDER** that this Order and the transactions contemplated hereby shall be without prejudice to the right of Roynat and Laurentian Bank to seek adequate protection of their security interests in the Petitioner's Property, including the benefit of section 507(b) of the *US Bankruptcy Code*, to the extent consistent with the terms of the Priority Agreement and this Order, and that the Monitor is authorized to negotiate and approve such adequate protection;

"[36.3] **APPROVE** and, in aid and assistance of the Canadian Court in the Canadian Proceeding:

a) **ORDER** that for so long as (i) the Debtors are in compliance with the terms of this Order and any orders of the US Court entered in connection with the use of the US Collateral and (ii) no Termination Event (as this term is defined hereinafter) shall have occurred, Roynat and Laurentian Bank consent to the Debtors' use of the US Collateral;

b) **ORDER** that the Debtors agree and are ordered, as adequate protection for their use of the US Collateral, to make monthly interest-only payments on the Roynat Term Loans and on the Laurentian Term Loan (the "**Adequate Protection Payments**"). The Adequate Protection Payments shall be applied to the secured claims of Roynat and Laurentian Bank as of March 7, 2008 in accordance with further orders of this Court. The obligation of the Debtors to make Adequate Protection Payments hereunder shall terminate in the event that the Debtors shall no longer hold title to any US Collateral;

c) **ORDER** that, for further additional adequate protection for the use of the US Collateral, (i) the Debtors hereby grant, assign and pledge to each of Roynat and Laurentian Bank post-petition security interests and liens (the "**Adequate Protection Liens**") of the same validity, extent and priority as Roynat's and Laurentian Bank's pre-petition security interests in the US Collateral (but subject,

first, to the allowed amounts of Administrative Charges and D&O Charges and, thereafter, to the provisions of the Priority Agreement) in and to all of the Debtors' currently owned and after-acquired real and personal property, other than the proceeds of any avoidance actions under chapter 5 of the *US Bankruptcy Code* and (ii) the US Court grants to each of Roynat and Laurentian Bank a super-priority allowed administrative expense claim pursuant to section 503(b)(1) and 507(b) of the *US Bankruptcy Code* (the "**Administrative Claims**"). The Adequate Protection Liens and the Administrative Claims shall be limited to the extent of any diminution in the value of Roynat's and Laurentian Bank's interests in the US Collateral from March 7, 2008. The Administrative Claims shall be subject and subordinate, first, to the allowed amounts of Administrative Charges and D&O Charges and, second, to the priority and super-priority administrative expense claim granted by the Debtors in the Chapter 15 Case to HSBC for the Post-Petition Obligations as defined in the Initial Order, but senior to all other priority or super-priority claims in the Chapter 15 Case and *pari passu* with HSBC's remaining priority and super-priority administrative expense claim in the Chapter 15 Case. As among the Petitioner's secured lenders, the provisions of the Priority Agreement and the Initial Order, as amended, shall govern any distributions in respect of the Adequate Protection Liens and the Administrative Claims;

d) **ORDER** that, for additional adequate protection for the Debtors' use of the US Collateral, the Debtors agree and are ordered to comply with all material provisions of the credit agreements and related loan documents governing the Roynat Loans and the Laurentian Bank Loan including, but not limited to, those provisions concerning the delivery of financial reports, the maintenance of property, insurance, compliance with laws, and environmental laws;

e) **ORDER** that, nothing in this paragraph 36.3 shall be deemed to be a waiver by Roynat or Laurentian Bank of their rights (i) to request additional or further adequate protection of their interests in property of the Debtors' estates in the event of a material change in circumstances, (ii) to move for relief from the

automatic stay, (iii) to oppose any extension of the Debtors' exclusive period for filing a plan of reorganization or (iv) to request any other relief in this case; provided, that the Debtors reserve any and all rights with respect to any of the foregoing;

f) **ORDER** that the US Court's issuance of these orders shall constitute authorization, ratification, and approval of any reasonable actions taken or to be taken by the Debtors and/or Roynat and/or Laurentian Bank in furtherance hereof;

g) **ORDER** that, upon the occurrence of a Termination Event, the Debtors shall remain bound by all restrictions, prohibitions and other terms provided herein. The validity and enforceability of all security interests, liens and priorities authorized or created hereby shall survive the conversion of any case to a case under chapter 7 of the *US Bankruptcy Code*. The provisions of this Order shall be binding upon and inure to the benefit of Roynat, Laurentian Bank, the Debtors, and their respective successors and assigns. This Order shall bind any trustee hereafter appointed for the estates of the Debtors, whether in the Chapter 15 Case or in the event of conversion of the bankruptcy case to a liquidation under chapter 7 of the *US Bankruptcy Code*;

h) **ORDER** that "**Termination Event**" shall mean the occurrence of any of the following: (a) the conversion of any of the Debtors' bankruptcy cases to a case administered under chapter 7, (b) the dismissal of any of the Debtors' bankruptcy cases, (c) the appointment of a trustee or an examiner with expanded powers in any of the Debtors' bankruptcy cases, (d) the reversal, revocation, modification, amendment, stay or rescission of this Order, (e) the Debtors' failure to comply with, or their default under any term or condition of, this Order or any amendment or modification hereof, which failure or default is not cured within seven (7) calendar days of written notice by Roynat or Laurentian Bank to the Debtors, the Monitor and their respective counsel of the occurrence of such failure or default and (f) any enforcement action taken by HSBC on its collateral. Notice may be sent via facsimile and shall be effective when sent;

i) **ORDER** that the terms and conditions of this Order are reasonable and appropriate and are consistent with and satisfy the requirements and provisions of sections 363(e), 363(c)(2) and 361 of the *US Bankruptcy Code*;

ORDERED that the postpetition agreement among the Debtors and Freudenberg-NOK General Partnership/Corteco ("FNGP"), which was placed on the record on April 16, 2008 to resolve FNGP's objections to the Motion is approved.

IT IS SO ORDERED.

###

HON. KAREN A.OVERSTREET
Chapter 15
Ex Parte Relief Requested

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: KPMG INC., Foreign Representative of REDCORP VENTURES LTD. and REDFERN RESOURCES LTD., Petitioners.	NO. 09-12019 *EX PARTE* EMERGENCY ORDER GRANTING FOREIGN REPRESENTATIVE'S REQUEST FOR RELIEF UNDER 11 U.S.C. §§ 1519, 105 and 362(a) AND SETTING HEARING

THIS MATTER having come before the Court upon the motion (the "Stay Motion") of Redcorp Ventures Ltd. and Redfern Resources Ltd. (collectively, the "Petitioners") and , KPMG INC., the Monitor (the "Monitor" or "Foreign Representative") appointed in the case that the Petitioners commenced in British Columbia Canada on March 4, 2009 under the Canadian Companies' Creditors Arrangement Act, R.S. C. 1985, c.C-36 and C-44 (the "CCAA") and the Business Corporations Act, S.B.C. 2002, c.57 in British Columbia, Canada (the "CCAA Case" or the "Foreign Main Proceeding") (collectively "the Foreign Applicants") and the Chapter 15 petition and application of such Foreign Applicants for recognition of the Foreign Main Proceeding (the "Ancillary Petition Application") for an entry of an ex parte, emergency order granting relief under Section 11 U.S.C. §§ 105, 362 and 1519 seeking entry of an order staying actions of creditors affecting the Petitioners' assets located in the United States; the Court having considered the Declarations of Terry

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Chandler and Peter Gibson, as well as the pleadings and other materials on file in this case; and the Court finding that relief is urgently needed to protect the assets of the Petitioners and the interests of the Petitioners' creditors and to maintain the status quo pending the Court's consideration of the pending application for entry of an order of recognition of the CCAA Case as a foreign main proceeding; now, therefore, IT IS HEREBY

ORDERED that the relief requested under 11 U.S.C. § 1519 is granted and 11 U.S.C.§ 362(a) shall apply to the actions of all creditors against the Petitioners and their property located within the territorial limitations of the United States; and it is

FURTHER ORDERED that such § 362 stay shall prohibit the termination of contracts between the Petitioners and third parties within the United States including, but not limited to, the Restated Vessel Construction Contract dated July 9, 2008 between Redfern Resources, Ltd and Sundial Marine Construction and Repair Inc. (the "Hoverbarge Contract") for construction of a 64.2 Meter X 25.2 Meter Hoverbarge, an air cushion barge (the "ACB" or Hoverbarge); and it is

FURTHER ORDERED that such stay prohibits creditors in the United States from the obtaining of liens against assets of the Petitioners in the United States; and it is

FURTHER ORDERED that the U.S. Counsel for the Petitioners, Lane Powell, PC shall provide notice of this Stay Order to all affected creditors in the United States known to the Petitioners within three business days of the entry of this order; provided that facsimile or email notification shall be given immediately to any party with an interest in the Hoverbarge Contract; and it is

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FURTHER ORDERED that the stay granted shall continue until such time as this Court enters a further order after a hearing on March 13, 2008, at 9:30 am.

The notice of this order required above shall include notice of the hearing and shall provide that objections to the continued relief provided for herein shall be filed with the Court and served on U.S. Counsel for Petitioner on or before 4:30 pm on March 12, 2009.

Karen A. Overstreet
United States Bankruptcy Judge
(Dated as of Entered on Docket date above)

Presented by:

LANE POWELL PC

By: */s/ Mary Jo Heston*
Mary Jo Heston, WSBA No. 11065
Bruce W. Leaverton, WSBA No. 15329
Magdalena Bragun, WSBA No. 40770
Attorneys for Foreign Applicants KPMG INC., Redcorp Ventures Ltd. and Redfern Recourses Ltd.

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HON. KAREN A. OVERSTREET
Chapter 15
Ex Parte

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: KPMG INC., Foreign Representative of REDCORP VENTURES LTD. and REDFERN RESOURCES LTD., Petitioners.	NO. 09-12019 *EX PARTE* EMERGENCY MOTION OF FOREIGN REPRESENTATIVE FOR RELIEF UNDER 11 U.S.C. §§ 1519, 105 and 362(a)

COME NOW, jointly the Petitioners, Redcorp Ventures Ltd. and Redfern Resources Ltd. (the "Petitioners or Debtor"), who have filed a Petition under the Canadian Companies' Creditors Arrangement Act, R.S. C. 1985, c.C-36 and C-44 (the "CCAA") and the Business Corporations Act, S.B.C. 2002, c.57 in British Columbia, Canada (the "CCAA Case" or the "Foreign Main Proceeding") and the Monitor appointed in the CCAA Case, KPMG INC. (the "Monitor" or "Foreign Representative") and respectfully move this Court for entry of an ex parte emergency order pursuant to 11 U.S.C. §§ 1519, 105 and 362 granting automatic stay to protect the assets of the Petitioners (the "Pre-recognition Relief Motion" or "Motion"). This Motion is filed in connection with the Application for Recognition and the petition under Chapter 15 filed by the Monitor

Specifically the Monitor and the Petitioners seek entry *ex parte* of an emergency order pursuant to 11 U.S.C. § 1519 staying all actions against property of the Petitioners

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within the territorial limitations of the United States and all actions to terminate contracts between the Petitioners and third parties within the United States, including, but not limited to any actions to terminate the Restated Vessel Construction Contract dated July 9, 2008 between Redfern Resources, Ltd. and Sundial Marine Construction and Repair Inc. (the "Hoverbarge Contract") for construction of a 64.2 Meter X 25.2 Meter Hoverbarge (the "Hoverbarge") pending entry of the order for recognition (the "Recognition Order") of the foreign main proceeding.

This Pre-Recognition Relief Motion is supported by the files and records herein, the accompanying Declarations of Peter Gibson, Senior Manager, acting on behalf of the Monitor, Terry Chandler, President of Petitioners, and Mary Jo Heston as well as the exhibits attached thereto.

A. STATEMENT OF FACTS

1. Petitioners, Redcorp Ventures Ltd. ("Redcorp") and Redfern Resources Ltd. ("Redfern"), are companies incorporated in Canada which have their head offices in Vancouver, British Columbia. Redcorp owns all of the shares of Redfern, and substantially all of the Petitioners assets are located in British Columbia. See Chandler Declaration, ¶ 2.

2. The principal asset of the Petitioners is a mine being developed by the Petitioners for the production of gold, silver, copper, lead and zinc (the "Tulsequah Project"). The Tulsequah Project is owned by Redfern but has been funded by advances from Redcorp. The Tulsequah Project is located on the east side of the Tulsequah River, approximately 100 km south of Atlin, British Columbia and 65 km northeast of Juneau, Alaska. See Chandler Declaration, ¶ 3. To date the Petitioners have spent approximately $169 million on developing the Tulsequah Project. Id.

3. The Tulsequah Project is located in the midst of traditional territory of The Taku River Tlingit First Nation ("First Nation") and any overland access to the Tulsequah Project would require the construction of a road through that territory. There was significant opposition

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from the First Nation to the road access and as a result of that the site is being developed on the basis of access via The Taku River from Juneau, Alaska, and by the use of an airstrip that has been constructed on the site. The Taku River access involves the use of the Hoverbarge, an air-cushion barge that is to be towed from Juneau, Alaska, by The Taku River to the mine site which is at the confluence of the Tulsequah and Taku Rivers. See Chandler Declaration, ¶ 4.

4. On July 9, 2009, Petitioners entered into a contract with Sundial Marine Construction and Repair Inc. ("Sundial") for construction of a 64.2 Meter X 25.2 Meter Hoverbarge. See Exhibit A to Chandler Declaration. Currently, the Hoverbarge is substantially completed at a shipyard in Portland, Oregon. The cost of the Hoverbarge to date totals $11.7 million, and the Petitioners estimate that completing the Hoverbarge and transporting it from Portland to Juneau will require an additional $3 million commitment. See Chandler Declaration, ¶ 5. The Hoverbarge is extremely important to Petitioner's mining operations because the overland access restrictions and the unique positioning of the mine site make it impossible to utilize roads to transport gold, silver and other goods in and out of the mine. Id.

5. The request for relief under the Stay Motion is important due to the fact that the Hoverbarge Contract includes an *ipso facto* provision that provides that if a petition is filed against a Party seeking reorganization, composition or other adjustment of debts it is an event of default if the petition remains pending for more than thirty days. Additionally, Sundial is currently owed over $1 million in due and outstanding payables for the work they have performed on the Hoverbarge. Finally, there are additional suppliers who have provided work in connection with the Hoverbarge that are owed additional funds who may be able to obtain attachments or liens against the Hoverbarge for such outstanding amounts. Maintaining the status quo as to the assets in the United States is in the best interests of the Petitioners and their creditors. See Chandler Declaration, ¶ 6. If the Hoverbarge Contract were to be terminated, the Petitioners would lose an important asset which may be required for an effective reorganization.

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B. LEGAL ARGUMENT

1. Automatic Stay as a Form of Provisional Relief under 11 U.S.C. 1519

11 U.S.C. § 1519 provides that a court may grant provisional relief at the request of a foreign representative under Chapter 15 during the "gap period" between the filing of a petition for recognition of foreign proceedings and the court's ruling on the recognition. Recent case law interpreting Section 1519 provides that an imposition of the automatic stay pursuant to 11 U.S.C. § 362 constitute one of the available forms of relief under Section 1519. In re Pro-Fit Holdings Ltd., 391 B.R. at 866 (Bankr. C.D. Cal. 2008) (see copy attached hereto). Thus, even though 11 U.S.C. § 1519 does not specifically refer to the automatic stay, Section 362 is available as a form of relief for parties seeking protection during the pre-recognition period. Id.

The court in Pro-Fit Holdings emphasized that Section 1519 lists only a few types of provisional relief and that "a number of other provisions of the bankruptcy code may be applied provisionally under § 1519 while an application for recognition is pending." Id. The court conducted in-depth analysis of the issues related to Section 1519 and concluded that based on Sections 1519(a), 105(a) and 105(d), automatic stay may be imposed as to all of the debtor's property in the United States pending a ruling on recognition. Id. at 867. Incorporating Section 362 of the Bankruptcy Code by reference has the effect of importing both the statutory language and the case law arising from that statutory provision. Id. at 866.

As with any provisional relief under Section 1519, the court's preliminary order lasts until the court enters an order on recognition. Id. at 859. If the court ultimately grants recognition pursuant to Section 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." Id.

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Finally, Pro-Fit Holdings holds that Section 1519(e) and the rules governing injunctive relief are inapplicable to requests for protection through the automatic stay provisions. Id. at 861. For this reason, this Motion need not discuss the standards for obtaining a preliminary injunction in context of Section 1519 relief. Id. The only relevant criterion in considering a motion for protection during the pre-recognition period is whether "relief is urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a).

2. Relief Requested by Petitioners is Absolutely Necessary to Protect Petitioners' Assets and Prevent Preferential Treatment of Selected Creditors

One of the Debtor's most important assets is a contract for the Hoverbarge being built by Sundial. The Hoverbarge is substantially completed at a shipyard in Portland, Oregon, and will soon need to be transported to Juneau, Alaska. The Hoverbarge is critical to the Debtor's business because there is no overland access to the Tulsequah Project. The Debtor has already invested $11.7 million into building the Hoverbarge and seeks to incur additional costs of approximately $3 million to complete the Hoverbarge and transport it to the mine site. Because of the unique geographic positioning of the Debtor's mine, the Debtor's chances of reorganizing successfully will be significantly impaired—if not completely destroyed—without the Hoverbarge.

Because the Hoverbarge Contract includes an *ipso facto* clause, it is at risk of being unilaterally terminated by Sundial. Accordingly, the Debtor needs immediate protection from this Court. Without the automatic stay in place, Sundial could exercise its power to terminate the Hoverbarge Contract prior to the Court's ruling on the Petitioners' Application for Recognition. Additionally, Sundial as well as several other suppliers, have significant outstanding amounts owing which might cause them to seek to enforce their claims against the Hoverbarge. For this reason, it is essential for the Petitioners to receive protection for their assets during the "gap period" between the filing of the Application for Recognition and

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the Court's ruling on the recognition. If no protection is afforded, the Petitioners could loose a major asset important to their successful reorganization.

The Monitor and the Petitioners are asking for this relief on an emergency basis *ex parte*, to avoid a termination prior to entry of the order of recognition. Petitioners will, however, give notice to the creditors immediately upon entry of the order.

In light of the above facts, Debtor respectfully requests that the Court enter an order granting its' Motion for provisional relief in the form of an automatic stay pursuant to 11 U.S.C. § 1519, 105 and 362(a) for the period between the filing of a petition for recognition and the Court's ruling on the recognition.

C. CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant their *ex parte* Motion for relief under 11 U.S.C. § 1519 by protecting Petitioners' assets, including the Hoverbarge Contract, through the automatic stay provisions incorporate into 11 U.S.C. § 1519 during the "gap period" between the filing of the Application for Recognition and this Court's ruling on the recognition. The Petitioners will give the affected parties notice of the entry of this order for relief immediately upon entry of the order.

A copy of the *proposed* Emergency Order Granting Foreign Representative's Request for Relief under 11 U.S.C. § § 1519, 105, and 362, which the Court may adopt, modify or reject consistent with the decision of the Court, is attached to this Motion as Exhibit A hereto.

DATED this 6th day of March 2009.

LANE POWELL PC

By: */s/ Mary Jo Heston*
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